

LEGISLATIVE COUNCIL

Thursday 21 November 2002

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

The President offered the Prayers.

PORT BOTANY EXPANSION

Motion by the Hon. Jennifer Gardiner agreed to:

1. That, under Standing Order 18, there be laid on the table of the House by 5.00 p.m. on Thursday 5 December 2002, and made public without restricted access, all documents in the possession, custody and power of:
 - (a) the Minister for Transport and Minister for Roads,
 - (b) the Minister for Planning,
 - (c) PlanningNSW,
 - (d) the Sydney Ports Corporation,
 - (e) the Newcastle Port Corporation,
 - (f) the Port Kembla Port Corporation,

in relation to the proposed Port Botany expansion, including any documents relating to any impact upon the port at Newcastle and/or Port Kembla of the proposed Port Botany expansion.
2. That an indexed list of all documents tabled under this resolution be prepared showing the date of creation of the document, a description of the document and the author of the document.
3. That anything required to be laid before the House by this resolution may be lodged with the Clerk of the House if the House is not sitting, and unless privilege is claimed, is deemed for all purposes to have been presented to or laid before the House and published by authority of the House.
4. Where a document required to be tabled under this order is considered to be privileged and should not be made public or tabled:
 - (a) a return is to be prepared and tabled showing the date of creation of the document, a description of the document, the author of the document and reasons for the claim of privilege,
 - (b) the documents are to be delivered to the Clerk of the House by the date and time required in paragraph 1 and:
 - (i) made available only to members of the Legislative Council,
 - (ii) not published or copied without an order of the House.
5.
 - (a) Where any member of the House, by communication in writing to the Clerk, disputes the validity of a claim of privilege in relation to a particular document, the Clerk is authorised to release the disputed document to an independent legal arbiter, for evaluation and report within five days as to the validity of the claim.
 - (b) The independent legal arbiter is to be appointed by the President and must be a Queen's Counsel, a Senior Counsel or a retired Supreme Court Judge.
 - (c) A report from the independent legal arbiter is to be lodged with the Clerk of the House, and:
 - (i) made available only to members of the Legislative Council,
 - (ii) not published or copied without an order of the House.

COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

Report

The Hon. John Hatzistergos, as Chairman, tabled report No. 9/52, entitled "Report on Matters Arising from the General Meeting with the Commissioner of the ICAC, held on 27 November 2000", dated November 2002.

Ordered to be printed.

GENERAL PURPOSE STANDING COMMITTEE No. 5**Report**

The Hon. Richard Jones, as the Chairman, tabled report No. 17, entitled "Inquiry into Land Clearing by Transgrid", dated November 2002, together with submissions.

Report ordered to be printed.

PETITIONS**Local Government Boundary Changes**

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

Demountable Classrooms

Petition praying that all demountable classrooms be phased out by 2010, received from **Ms Lee Rhiannon**.

BUSINESS OF THE HOUSE**Postponement of Business**

Business of the House Notice of Motion No. 1 called on and postponed on motion by the Hon. Don Harwin.

CHILD PROTECTION LEGISLATION AMENDMENT BILL**Second Reading**

The Hon. CARMEL TEBBUTT (Minister for Community Services, Minister for Ageing, Minister for Disability Services, Minister for Juvenile Justice, and Minister Assisting the Premier on Youth) [11.09 a.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The Carr Government has a proud record of protecting children—a record unequalled by any Government in the history of Australia.

The Government introduced four key child protection Acts in 1998:

- the *Children and Young Persons (Care and Protection) Act*;
- the *Commission for Children and Young People Act*;
- the *Child Protection (Prohibited Employment) Act*; and
- the *Crimes Legislation Amendment (Child Sexual Offences) Act*, which inserted s11G of the *Summary Offences Act*.

This Bill makes amendments to the schemes established under the last three of those Acts, as well as to the *Child Protection (Offenders Registration) Act 2000*.

The four Acts amended by this Bill are all based on the fundamental principle that the protection of children from abuse must be the paramount consideration.

All of these Acts link to provide a holistic scheme for better managing persons who pose a risk to child safety.

Part 7 of the *Commission for Children and Young People Act* operates to require all preferred applicants for paid child-related employment to be screened to determine their suitability to work with children.

In its first two years of operation, just under half a million preferred applicants for employment have been screened in NSW, and over 14,500 organisations have registered to screen their employees.

During this time 472 people have been subject to risk assessments, and 169 of these have subsequently been rejected for child-related employment.

The *Child Protection (Prohibited Employment) Act* makes it an offence for persons found guilty of serious sex offences to work in child related employment, whether or not a formal conviction is recorded against them.

The *Crimes Legislation Amendment (Child Sexual Offences) Act* inserted section 11G of the Summary Offences Act to make it an offence for convicted child sex offenders to loiter near schools or other places frequented by children.

23 charges have been laid under section 11G since 1999, with the average sentence being 12 months imprisonment and the maximum sentence being 2 years imprisonment.

The *Child Protection (Offenders Registration) Act 2000*, which has been in operation since October 2001, requires certain offenders against children to keep police informed of their name, address, employment, motor vehicle and travel details for a period of time after their release into the community.

This information is held on NSW Police's Child Protection Register.

As at 5 November, 636 offenders have registered with police, an initial compliance rate of over 95%.

The Register has been successfully used in a number of investigations.

In one matter, a 12 year old girl who was the victim of an attempted abduction reported that her alleged assailant was wearing overalls and carrying a construction hat.

This information was matched against the Register, which showed a person had registered as a construction worker.

This person was subsequently identified and charged.

I will now address the substantive provisions of the Bill.

The Bill ensures effect is given to the Government's original intent that all convictions for offences that attract the operation of the four Acts can be considered for the purposes of those Acts, irrespective of the sentence and the age of the conviction.

Section 579 of the *Crimes Act 1900* provides that a person who entered into a recognizance for any offence, and who did not breach that recognizance or receive a conviction for an offence punishable by imprisonment within 15 years of that recognizance, cannot have their conviction considered for any purpose.

Recognisances have now been replaced with good behaviour bonds.

Section 579 operates in addition to the spent conviction provisions of the Criminal Records Act, which prevent sexual and other offences from becoming spent.

This means some old convictions for extremely serious offences against children cannot be considered for employment screening or prohibited employment purposes.

It may also prevent some old convictions from being considered in determining reporting periods under the *Child Protection (Offenders Registration) Act*, although this has not been a problem to date.

This runs contrary to the intention of all of the Acts.

Accordingly, Schedules 1 [3], 2 [2], 3 [7] and 4 [2] amend the four Acts to exclude the operation of section 579 of the *Crimes Act*.

The Government has obtained Crown Solicitor's advice that the Acts, other than the *Commission for Children and Young People Act*, do not apply to offenders who are convicted of an offence where it is proven beyond reasonable doubt that they intended to sexually assault a child or commit any of the other offences that attract the operation of the Acts.

For example, a person who commits the offence of assault with intent to have homosexual intercourse with a child under 10 under section 78I of the *Crimes Act* is not required to register with police or prevented from working with children or loitering near places frequented by children.

These offenders pose a serious risk to child safety and should be covered by the legislation in the same manner as offenders who attempt, conspire or incite the commission of relevant offences.

The Crown Solicitor's advice also queries whether the definition of "relevant criminal record" in the *Commission for Children and Young People Act* extends to conspiracy and incitement offences, which are covered by the other three Acts.

Schedules 1 [1] and [2], 2 [1], 3 [5] and 4 [1] amend the four Acts to ensure they all apply similarly to relevant attempt, intent, conspiracy and incitement offences.

Transitional arrangements are necessary for the *Child Protection (Offenders Registration) Act* as, unlike the other Acts, it does not have full retrospective operation.

Schedule 1 [9] of the Bill extends registration obligations to all those under correctional supervision for intent offences at 15 October 2001, and those sentenced for intent offences after that date.

Necessary transitional arrangements have also been made for the *Child Protection (Prohibited Employment) Act*.

Schedule 1 [4] to [6] of the Bill provides additional flexibility to the offender reporting requirements under the *Child Protection (Offenders Registration) Act*.

Police have asked that they be able to take registration information at locations other than Police Stations, if they are satisfied with that arrangement.

Schedule 1 [7] of the Bill will enable three officers responsible for the Register, to give certificate evidence in proceedings for failure to report to police, or for giving false information to police, under the *Child Protection (Offenders Registration) Act*.

Certificate evidence provisions are common and the amendment will limit the circumstances in which police are required to attend court, although the defence will still be able to cross-examine relevant police if it wishes to call them.

Clauses 3 to 6 of Schedule 2 to the Bill make changes to the application process for persons seeking an exemption from the *Child Protection (Prohibited Employment) Act*.

The Commission for Children and Young People will be provided with the power to grant exemptions in those cases where it does not consider the applicant poses a risk to the safety of children.

This will streamline the application process by preventing needless delays caused by the current requirement to institute proceedings in the Industrial Relations Commission or the Administrative Appeals Tribunal where the Commission, which is a party to those proceedings, does not oppose the application.

These bodies may still hear applications that have not been granted by the Commission and applicants can still choose to have their matter heard before either of those two bodies.

Clauses [1] and [2] of Schedule 3 enable the Commission to access the information it needs to assess whether a prohibited person continues to pose a risk to child safety.

The Commission already has information access powers for the purposes of relevant Industrial Relations Commission or Administrative Decisions Tribunal hearings.

Schedule 3 contains a number of amendments to the employment screening provisions of the *Commission for Children and Young People Act*.

NSW Police has received legal advice that the complaint and employee management provisions of Part 8A and 9 of the Police Act 1990, which are unique to police, may not fall within the definition of "relevant disciplinary proceedings" under the *Commission for Children and Young People Act*.

Schedule 3 [6] of the Bill amends the Act's definition of relevant disciplinary proceedings to remove any doubt that the Act applies to Police.

This approach is supported by NSW Police and the Police Association of New South Wales.

Schedule 3 [4] is a minor amendment to clarify that the holders of remunerated positions fall within the definition of employment.

Whilst the courts takes a broad definitional approach to employment arrangements in beneficial legislation such as the *Commission for Children and Young People Act*, the amendment will ensure that there can be no question that holders of certain statutory offices are employees for the purposes of the Act.

Employment screening has been phased, with screening to date having been confined to relevant criminal record and disciplinary information.

The *Commission for Children and Young People Act* also makes provision for relevant apprehended violence orders to be considered for screening purposes and enables the Commission to collect and maintain a database of such orders.

Relevant apprehended violence orders are confined to final orders made by a court under Part 15A of the *Crimes Act*, where the application for the order is made by a police officer or other public official for the protection of a child.

Whilst the Commissioner of Police is empowered to provide the Commission for Children and Young People with relevant criminal record information under section 38 of the *Commission for Children and Young People Act*, the Crown Solicitor has advised that the Act does not empower the Commissioner of Police to provide the Commission with relevant AVO information.

Clauses [9] and [11] of Schedule 3 to the Bill enable AVO information to be provided to the Commission and for this information to be used in screening, as has always been intended.

There is no specified time limit in the *Commission for Children and Young People Act* for employment screening checks to be completed.

Consequently neither employers nor employees have any certainty that they have met their statutory obligations under the Act.

Schedule 3 [8] of the Bill ensures that employers will have fulfilled their obligations upon receipt of the screening result from an Approved Screening Agency.

The Bill improves the operation of, and consistency between, four key child protection Acts.

It will clarify and strengthen the mechanisms for checking the background of people seeking to work with children in NSW.

This Bill demonstrates the Carr Government's strong stance on child protection and its ongoing commitment to improving the safety and welfare of children.

I commend the Bill to the House.

The Hon. PATRICIA FORSYTHE [11.09 a.m.]: The Opposition, of course, does not oppose the Child Protection Legislation Amendment Bill. The purpose of the bill is to address loopholes and anomalies in the Child Protection (Offenders Registration) Act 2000, which itself supplanted the Child Protection (Prohibited Employment) Act 1998. I take exception to some of the comments made by the honourable member for Wyong, who moved the bill on behalf of the Government, in a second reading speech which I presume is similar to that which the Minister incorporated in this place. The speech begins:

The Carr Government has a proud record of protecting children, a record unequalled by any government in the history of Australia.

It then states that in 1998 the Government introduced four key child protection Acts. That may be one spin that could be placed on the events of 1998, but we must keep in mind that in 1998 this legislation was the end result of revelations that emerged during the Wood royal commission into the police service and, in particular, the focus of that royal commission into child assaults, paedophilia and many other issues that arose from the evidence. What did become clear, as I recall, from the Wood royal commission was the lack of clarity in government policy and the lack of clarity in definitions between the Department of Health, the Department of Community Services, the Department of Education and Training, and other key government agencies with an interest in, a role in, and a policy direction on behalf of children—and indeed, of course, the police service itself—of child assault and various issues in relation to, and arising out of, evidence that came out the time.

The Government was embarrassed into introducing the Children and Young Persons (Care and Protection) Act, the Commission for Children and Young People Act, the Child Protection (Prohibited Employment) Act and the Crimes Legislation Amendment (Child Sexual Offences) Act. The Government also made some changes to the Summary Offences Act. For the Government to suggest that it is a proud record ignores the Government's lack of clarity of policy and the clear gaps in legislation. I believe that needs to be considered. Having seen the 1998 legislation it is fair to say that as the Government was embarking on what was, in many cases, new ground, in some ways it was quite different from past legislation. The Government did not get it quite right and on a number of occasions it has had to come back and address anomalies in the legislation. That is again the situation with this legislation. Previous legislation required persons convicted of serious offences involving children to register with the police, prohibited people convicted of serious sex offences from working in child-related employment, and established a screening process.

This bill closes a legal loophole so that all relevant convictions, including those spent under the Crimes Act 1900, are considered for the purposes of the above Acts; clarifies that incitement and conspiracy to commit sexual offences are included for screening purposes; provides for closure of screening once an employer has been notified of a screening result; includes police as any other employees for screening; allows the Commissioner of Police to disclose information, including apprehended violence orders, for employment screening to the Commission for Children and Young People; and makes miscellaneous amendments, including information that can be provided at other than police stations, and enables police to give certificate evidence under the Child Protection (Offenders Registration) Act 2001.

It is interesting that this legislation is being debated in the House this week because this week it has become clear to the community of New South Wales that all the Government's claims about child protection have been found wanting. This week hopelessly inadequate sentences have been imposed on two men convicted of aggravated indecent assault of three young girls. One man was given only 18 months weekend detention for molesting two girls aged nine and 12 over a two-year period, while the second man was released on a 12-month good behaviour bond for indecently assaulting a 12-year-old girl. This highlights the fact that for all that the Government has said it has done about protecting children, when it comes to interpretation by the courts there is still a long way to go. This week the Coalition has made it very clear what it would do in cases such as these because we believe that for those families, for those children, the sentences were hopelessly inadequate.

We believe that when sex offenders are released from gaol there should be a 25 kilometre buffer zone between paedophiles and their victims. We would certainly go further than the Government has gone. We have

pledged to introduce a compulsory minimum sentence of five years for aggravated indecent assault on children under 16 years. We do not believe that the laws at the moment provide adequate protection. For all that the Government has said regarding offender registration legislation, when it comes to the protection of children we have not gone far enough. The protection of children must be one of the absolute priorities of any government. We often say, as we do in debate on many bills, that a society is judged by how it protects those who are least able to protect themselves. No group is potentially more vulnerable than young children who rely on the force of law to provide that protection and the force of law appropriately interpreted and acted upon by the courts. For the broad provisions of the bill we have no difficulty with what is being sought today.

Reverend the Hon. FRED NILE [11.16 a.m.]: The Christian Democratic Party is pleased to support this very important bill, which follows up the earlier legislation that the Government has introduced over a period of time to protect children in New South Wales. As honourable members know, four child protection Acts have been passed by this House: The Children and Young Persons (Care and Protection) Act, the Commission for Children and Young People Act, the Child Protection (Prohibited Employment) Act, and the Crimes Legislation Amendment (Child Sexual Offences) Act. I believe all of those bills have been very positive and very valuable in protecting children in this State.

This bill is related mainly to closing some of the loopholes that have been identified through the operation of the legislation, particularly the Crimes Legislation Amendment (Child Sexual Offences) Act. We are very pleased that during the time the legislation has been in effect—in fact in the first two years of operation—just under half a million preferred applicants for employment have been screened in New South Wales and over 14,500 organisations have registered to screen their employees. As I am on the list of accredited Uniting Church ministers, I received the forms that had to be completed because it is regarded by various denominations—not just the Uniting Church—that clergymen or ministers often come into contact with children. Even if they are not youth workers or specialised child workers they should also be screened. I am pleased that that showed the system is working in that area as well.

During the screening of those organisations 472 people have been subjected to risk assessments and 169 of these have subsequently been rejected for child-related employment. Since 1999, 23 charges have been laid under section 11G of the Summary Offences Act, which makes it an offence for convicted child sex offenders to loiter near schools or other places frequented by children. Those 23 charges have resulted in an average sentence of 12 months imprisonment, the maximum sentence being two years imprisonment. We are pleased with that positive result.

As a result of the Child Protection (Offenders Registration Act), as of 5 November, 636 offenders have registered with police—an initial compliance rate of more than 95 per cent. That register has been successfully used in a number of investigations. In one case a 12-year-old girl who was the victim of an attempted abduction reported that her alleged assailant was wearing overalls and carrying a construction hat. This information was matched against the register with a person who had registered as a construction worker. That person was subsequently identified and charged. The bill will tighten the legislation and close the loophole so that all relevant convictions, including those that are spent, are able to be included in an individual's criminal record check.

The bill widens the application of the criminal record check to include offences of intent, incitement and conspiracy to commit relevant offences. The bill provides for closure of screening once an employer has been notified of a screening result. The bill specifies that disciplinary proceedings taken against police officers will be treated in the same way as those taken against all other employees. I am sure all honourable members were shocked to read the report of the two young girls who were murdered in the United Kingdom and that as a result of investigations a police officer involved in the case was then charged with an offence involving child pornography. No area of employment should be exempt—not clergymen, police, members of Parliament or public servants. The bill must be strictly applied without fear or favour.

People who have the intent to sexually abuse children are usually very cunning and also very patient. Sometimes they spend years, in a role that gives them access to children, developing a relationship. I believe that some people have deliberately joined the church for the specific purpose of abusing children, sometimes years later. Therefore, these provisions must be strictly enforced to ensure that offenders do not escape detention. Prevention is always the best policy. I congratulate the Government and the Minister on this legislation.

The Hon. IAN COHEN [11.22 a.m.]: On behalf of the Greens I support the Child Protection Legislation Amendment Bill. In July 2000 the Working with Children Check process was established under the

Child Protection (Prohibited Employment Act) 1998 and the Commission for Children and Young People Act 1998. This legislation went through as a package along with the introduction of the new Children and Young Persons (Care and Protection) Act. It signalled a new era and focus on child protection issues. Since the operation of the Working with Children Check several anomalies and loopholes have been identified in the law. The bill seeks to close these loopholes and overcome the anomalies.

The Greens take this opportunity to ask the Government its time line with regard to proclaiming the outstanding sections and parts of the Children and Young Persons (Care and Protection) Act—particularly those relating to children in out-of-home care—the oversight role of the Children's Guardian and the provisions relating to kinship care. An entire parliamentary term has passed since the Act was introduced and important parts of it remained unproclaimed. I hope that the Minister in reply can assist on that matter. Other than those concerns, the Greens are pleased to support the bill.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.24 a.m.]: The Australian Democrats are committed to preventing child sexual abuse which, we believe, is far more widespread than is generally recognised. I have received a number of calls from people seeking a royal commission to follow on from the Wood royal commission. Indeed, that commission commenced inquiring into police corruption but ended up dealing with paedophilia. Police corruption was of immense interest at the time because of numerous rollovers, but the commission was then diverted to an inquiry into paedophilia.

Reverend the Hon. Fred Nile: That was the only way we could get an inquiry into paedophilia.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The inquiry into police corruption was not completed because the focus was then on paedophilia. It is unfortunate that people tend to remember the final Wood royal commission recommendations dealing with paedophilia rather than those dealing with police corruption. Indeed, a more thorough investigation into paedophilia should be commenced separately. I note the interjection from Reverend the Hon. Fred Nile that it was the only way he could get an inquiry into paedophilia. It is unfortunate if that is the case because the lives of many children have been blighted by paedophilia, although I acknowledge that it is difficult for people who have child sexual abuse tendencies to be treated. Therefore, children remain at risk from unidentified paedophiles who continue to work with children. The initiative to introduce long-term checks is very wise.

Another aspect that is important—and this has certainly been of concern to the Teachers Federation—is that once an allegation of paedophilia is made against someone, it is almost impossible for them to get rid of that allegation. Indeed, sexual abuse allegations generally are a problem for schoolteachers as an occupational group in particular. It is significant that there are very few male primary school teachers, particularly in view of the number of single-parent families. Children need a male role model, but the bill does not address this problem. Perhaps an inquiry into paedophilia might consider, in cases of flimsy and malicious allegations from adolescents, ways to ensure that the person against whom allegations have been made can continue to work.

Perhaps that person could be counselled or excluded from working with children. I acknowledge that the assessment of people in this area is difficult. The bill goes some way towards giving people a clean bill of health, but only by way of retrospective checks, not as to the allegations. The bill should receive support because it goes some way towards addressing this difficult area. However, I am disappointed that the Government has not addressed the concerns of the Teachers Federation. It may become necessary later to deal with paedophilia in broader detail. I would be interested to hear the Government's attitude to that.

The Hon. CARMEL TEBBUTT (Minister for Community Services, Minister for Ageing, Minister for Disability Services, Minister for Juvenile Justice, and Minister Assisting the Premier on Youth) [11.28 a.m.], in reply: I thank the Hon. Patricia Forsythe, who led for the Opposition, Reverend the Hon. Fred Nile and the Hon. Dr Arthur Chesterfield-Evans for their contributions. I thank in particular the Opposition and crossbench members for their support for the bill. It is essential that child protection matters receive bipartisan support and it is gratifying that we have been able to achieve that result. I should like to respond to a number of matters raised in the debate.

First, I refer to the comments of the Hon. Patricia Forsythe. She was correct in saying that this amending legislation is a result of the Wood royal commission, which disclosed inadequacies in the laws and systems to protect children in New South Wales. However, I should remind the House that if the Opposition had had its way we would not have had the benefit of the Wood royal commission because the Opposition opposed its establishment. It is one thing for the Hon. Patricia Forsythe to give us a history lesson about how the Wood royal commission disclosed inadequacies in our systems and laws in New South Wales, but I point out that the Wood royal commission was supported by Labor in Opposition; it was not supported by the Coalition.

The member for Baulkham Hills in the lower House referred to consultation on the amendments to the Child Protection (Offenders Registration) Act. While the Child Protection Registration Implementation Committee ceased meeting after the successful implementation of the Act, there was widespread consultation among affected agencies on the amendments put forward in the bill. For example, the need for evidentiary certificates was identified after consultation between NSW Police and the Local Courts administration. The Ministry for Police, which is co-ordinating the national working party on offender registration, has also raised the amendments to the Child Protection (Offenders Registration) Act with other Australian jurisdictions.

The Hon. Ian Cohen raised an issue about the Children's Guardian and progress on proclamation of chapters 8 and 10 of the Children and Young Persons (Care and Protection) Act. I have responded to this issue on a number of occasions, but I am happy once again to advise the House that I have said publicly on many occasions that I am committed to ensuring that children in out-of-home care have case plans, that these case plans are monitored and appropriately supported, that there are standards that service providers must meet and that that is monitored. Nonetheless, as I have also indicated, issues relating to chapters 8 and 10 have been identified by a range of people, including non-government organisations, the Department of Community Services and the Children's Guardian herself. These issues require further discussion and consultation.

Shortly after I took responsibility for Community Services I gave a commitment that I would establish a ministerial committee to provide me with further advice on a range of issues in the portfolio, and I have announced that committee this week. The ministerial advisory committee will be chaired by Leonie Manz, and will comprise representatives of a range of organisations involved in child and family services issues, including Nigel Spence from the Association of Child Welfare Agencies, Alan Kirkland from the Council of Social Service of New South Wales, and Children's Commissioner Robert Fitzgerald, as well as a range of other people. The first task I have asked that committee to do is to provide me with advice on progress with proclamation of chapters 8 and 10. I look forward to receiving the advice from that committee.

The committee is broadly representative and has the ability to co-opt other people with expertise in other areas in order to provide me with the fullest advice possible. There is also a representative of the Department of Community Services on the committee, and I believe that that is the best way to proceed. There has been a history in Community Services of often implementing good change without necessarily thinking through the full ramifications of that change, and I am determined that that will not happen with chapters 8 and 10. I believe that this committee will provide me with valuable advice as to how we can move forward on that issue. In conclusion, this bill is just one of the many ways the Carr Government is working to make New South Wales a safer place for children and young people. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

REGULATION REVIEW COMMITTEE

Report

The Hon. Don Harwin, on behalf of the Chair, tabled report No. 26/52, entitled "Report on the Protection of the Environment Operations (Clean Air) Regulation 2002", dated November 2002.

Ordered to be printed.

SUPERANNUATION LEGISLATION AMENDMENT BILL

SUPERANNUATION LEGISLATION FURTHER AMENDMENT BILL

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [11.34 a.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 *Superannuation Legislation Amendment Bill 2002* and the *Superannuation Legislation Further Amendment Bill 2002* implement a number of proposals affecting the New South Wales public sector superannuation schemes.

The Bills amend the:

- *Superannuation Act 1916*
- *State Authorities Superannuation Act 1987*
- *State Authorities Non-contributory Superannuation Act 1987*
- *Police Regulation (Superannuation) Act 1906*
- *First State Superannuation Act 1992*
- *Judges' Pension Act 1953* and
- *Parliamentary Contributory Superannuation Act 1971*

Honourable Members would be aware that before amendments to the *Parliamentary Contributory Superannuation Act 1971* can be passed in the Legislative Assembly, the Parliamentary Remuneration Tribunal must have certified that the amendments are warranted. I am pleased to advise that, following his assessment, such certification has been provided by the Parliamentary Remuneration Tribunal, His Honour, Judge Boland.

I will now provide a summary of the amendments contained in the first Bill, the ***Superannuation Legislation Amendment Bill 2002***.

A number of the amendments contained in this Bill accommodate Commonwealth changes that prescribe the manner in which ownership of superannuation benefits may be divided on marriage breakdown. The Commonwealth requires all superannuation funds to comply with the new rules from December this year.

This Bill also provides for the transfer of certain deferred benefits as they arise from the State Authorities Non-contributory Superannuation Scheme (also known as SANCS or the 3% scheme) to First State Super.

Other amendments in the Bill create regulation making powers so that the surcharge "cap" which exists in the NSW public sector defined benefit schemes can be adjusted to reflect possible changes by the Commonwealth to the maximum superannuation surcharge rate, and to address inequities in the way the surcharge cap is applied.

The Bill also introduces three reforms that are specific to the Parliamentary Contributory Superannuation Scheme.

The first of these reforms will ensure that Members are not entitled to superannuation benefits under the Parliamentary Contributory Superannuation Scheme whilst they are serving as Members of Parliament. This is consistent with the Commonwealth Parliamentary Scheme, and reflects general community expectations about Parliamentary superannuation arrangements.

The second set of amendments addresses an anomaly associated with the eligibility that members with combined Commonwealth and NSW Parliamentary service of 7 or more years have to a pension. Current provisions cannot always accommodate these members, and they may be unable to purchase sufficient service with their lump sum Commonwealth superannuation benefit to qualify for a NSW pension.

The Bill enables Members who have at least 7 years parliamentary service to also use other money to purchase sufficient service so they can qualify for a NSW Parliamentary pension.

The final reform to the Parliamentary Scheme reflects some minor changes to the actuarial investigation and reporting requirements which were recommended by the Government Actuary. These amendments, which are supported by Treasury, will ensure that triennial actuarial reports are more useful to the Government and in line with standard actuarial practice.

The Bill also extends the circumstances in which pensions may be paid to spouses, in all the schemes, so that in certain situations pensions may be paid where the relationship commenced after the member's retirement. Currently, spouse pensions can only be paid if the relationship commenced before the member's retirement.

Finally, the Bill also amends the *Judges' Pensions Act 1953* to ensure that superannuation guarantee requirements for certain judges are met.

I now propose to describe in more detail each of the amendments in this first Bill.

The Commonwealth requires the new rules for the division of superannuation on marriage breakdown to apply to all superannuation funds from December 2002.

The Bill amends the *First State Superannuation Act 1992* to facilitate implementation of the Commonwealth requirements. The amendments would allow a separate interest in First State Super to be created for the member's spouse once the Court has made orders, or the parties have agreed, on a division of the superannuation.

Amendments to other NSW public sector superannuation legislation will be required, but these other schemes are defined benefit schemes and the application of the Commonwealth requirements to them is very complex. These amendments will be dealt with in a separate Bill.

The *Superannuation Legislation Amendment (Miscellaneous) Act 2001* transferred 97,000 or so SANCS deferred benefits to First State Super. This Bill transfers SANCS benefits that have become deferred since then, and provides for the transfer of SANCS benefits that become deferred in the future.

As with the original transfer, these transfers will only apply in respect of those members who do not also have a benefit in one of the closed NSW public sector schemes. The amount standing to the member's credit in SANCS will be transferred to a new or existing FSS account for the member, without alteration.

The reasons for the transfer also remain the same as for the earlier transfers. That is, it is sensible for deferred SANCS benefits, which are accumulation style accounts, to be transferred from a defined benefit scheme to an accumulation scheme such as First State Super, where they can be administered with other accumulation accounts.

The transfer will benefit members as First State Super offers a choice of five investment strategies, whereas investment choice is not available in SANCS.

The proposed provisions are consistent with the objectives of the earlier transfers in simplifying the administration of NSW public sector superannuation arrangements and providing scheme members with investment options.

I now turn to amendments intended to address the way in which the Commonwealth superannuation surcharge tax applies to NSW public sector employees and Parliamentarians.

Currently, the NSW Acts require the superannuation scheme trustees to reduce members' benefits by an amount of Commonwealth surcharge tax which is payable at the time the benefit is paid. The maximum amount by which a benefit can be reduced is limited to 15% of the employer-financed benefit that accrued since the surcharge was introduced in 1996. This amount is known as the surcharge "cap".

The Commonwealth Government has announced it proposes to reduce the maximum superannuation surcharge rate over three years from 15% to 10.5%.

The Bill creates regulation making powers so that the 15% "cap" can be adjusted to reflect changes made to the maximum surcharge rate imposed by the Commonwealth. This will ensure members of the public sector schemes are protected by a surcharge "cap" that accurately reflects possible Commonwealth changes to the surcharge rate.

The regulation making power also provides flexibility in addressing anomalies identified in the application of the surcharge "cap". For example, when the surcharge "cap" provisions were originally introduced, it was not known that the Australian Taxation Office could issue surcharge assessments two to three years after the assessment period. This means some members exiting the scheme in that time become directly liable for an amount of surcharge that they otherwise might not have been required to pay.

I will now address the proposals affecting the Parliamentary Super Scheme. Under current provisions, serving Members of Parliament who reach 65 years of age may elect to receive their benefit, and serving MP's who reach 70 years of age must be paid their benefit.

The payment of superannuation benefits to MP's who are still in Office is inconsistent with the Commonwealth Parliamentary Superannuation Scheme, and with general community expectations.

The Bill amends these provisions so that Members are not entitled to superannuation benefits under the Parliamentary Contributory Superannuation Scheme while they are serving as Members of Parliament.

The new measures will not be extended to serving Members currently receiving benefits.

Members of the NSW Parliamentary Superannuation scheme must have 7 years service to be eligible for a pension benefit.

Former members of the Commonwealth Parliamentary Super Scheme who become Members of the NSW Parliament can purchase service in the NSW Parliamentary Super scheme using their lump sum payment from the Commonwealth scheme. However, the amount of service purchased is determined by the cost of providing the NSW pension, not by the length of the Commonwealth Parliamentary service.

This means that, currently, some NSW Parliamentarians who have a combined Commonwealth and NSW Parliamentary service of 7 years or more may not qualify for a NSW Parliamentary pension, because they were unable to purchase sufficient NSW service with their Commonwealth superannuation.

The Bill enables Members who will have combined Commonwealth and NSW parliamentary service of at least 7 years to also use other money to purchase sufficient service to qualify for a NSW Parliamentary pension.

The amendment will not allow Members to receive both Commonwealth and NSW Parliamentary pensions.

The Government Actuary recommended several changes be made to the requirements for actuarial investigation and reporting. The reason for the changes is to ensure that triennial actuarial reports are more useful to the Government and reflect standard actuarial practice.

The changes that will be made include:

- the actuary recommending the contributions to be paid to the Fund for the three year period to the next actuarial valuation instead of the next 25 years, as is currently required;
- the actuary reporting on additional issues of assets, liabilities, membership, benefit payments, investment earnings, legislative changes, demographic changes, administration expenses, and any other matters referred by the trustees or the Minister; and

- the Minister having the power to instigate interim investigations.

In all schemes where superannuation benefits are payable in the form of a pension, rather than a lump sum, benefits are also payable to the spouse of the member when the member dies, provided that the member and the spouse were in a relationship at the time of the member's retirement.

The Bill extends the circumstances in which spouse benefits can be paid, so that spouse benefits may also be paid where the relationship commenced after the member's retirement, and existed for at least three years prior to the member's death, and there is or has been a dependent child of the relationship. If the relationship has existed for less than three years at the time of the member's death, the benefit payable will be reduced on a pro rata basis.

Finally, the *Courts Legislation Amendment Act 2000* amended the *Judges' Pensions Act 1953* to provide for a lump sum superannuation guarantee benefit, as required by the Commonwealth's Superannuation Guarantee, for judges and acting judges not eligible for a pension.

The Superannuation Guarantee has been in place since 1992 and transitional provisions in the amendments ensure that judges' post 1992 service is recognised for calculating the lump sum. Due to an oversight, however, the 2000 amendments do not cover judges or acting judges who ceased to be judges before the amendments commenced. Amendments to the *Judges' Pensions Act 1953* in this Bill will ensure that the NSW Government satisfies its obligations to provide superannuation guarantee entitlements for all judges and acting judges.

I shall now summarise the amendments contained in the second Bill, the ***Superannuation Legislation Amendment Bill 2002***.

This Bill facilitates the implementation of an agreement to allow certain police officers to retire early from the NSW Police, in line with one of the recommendations of the Police Royal Commission.

The Bill will also facilitate the implementation of an industrial Award providing new death and incapacity benefits to certain firefighters. The Government recognises the inherent dangers faced daily by firefighters in the performance of their duties. The Award is expected to be finalised over the next few months and will include significant benefits for firefighters who are killed or injured as a result of their work.

Other amendments in the Bill will enable the trustees of the State Authorities Superannuation Scheme (known as SASS) to offer scheme members a new investment strategy that will provide greater protection from volatility in the investment markets.

Finally, the Bill contains amendments that provide for the transfer of certain deferred benefits in defined benefit schemes to First State Super. The proposed amendments would support other amendments in 2001 that enabled the transfer of similar accumulation style benefits to First State Super.

I now propose to describe in more detail each of the amendments in the second Bill, that is, the ***Superannuation Legislation Further Amendment Bill 2002***.

As Honourable Members may be aware, one of the recommendations made by the Police Royal Commission was that an opportunity be given for certain police officers to accept early retirement after 20 years service. I have been advised by my colleague, the Hon M Costa MLC, Minister for Police, that an agreement has been negotiated which supports this recommendation. Under the terms of the agreement, three hundred officers will be able to commence early retirement over the next three years.

This Bill amends the eligibility criteria for disengagement benefits in the *Police Regulation (Superannuation) Act 1906*, so that officers who are at least 45 years of age but less than 55 years of age with 20 or more years of equivalent full-time service will be eligible to receive the benefit.

The Government recognises that the work of firefighters is inherently dangerous, and agrees that firefighters should be adequately compensated if they are injured or killed while carrying out their duties. Over the next few months, the Government expects to implement new death and incapacity arrangements for firefighters. New death and incapacity benefits will become available for permanent and retained firefighters who are employed by NSW Fire Brigades, their spouses and children. The new benefits will apply to all firefighters who would not already be entitled to pension benefits from the old State Superannuation Scheme if they were killed or incapacitated. The purpose of the amendments in this Bill is simply to ensure that the Award provisions can be implemented for firefighters who are members of First State Super or the State Authorities Superannuation Scheme.

Members of the State Authorities Superannuation Scheme (or SASS) have certain member-financed benefits. These benefits consist of the member's contributions plus investment earnings, and along with deferred benefits in the scheme, are subject to the performance of the investment market.

The Government recognises that many members, particularly those close to retirement, would prefer to invest their benefits in a more conservative type of investment strategy. The scheme Trustee is currently developing a "cash-plus" option in respect of member-financed benefits and deferred benefits.

This option will offer members greater levels of capital security and less volatility in investment returns. Members will be allowed to invest all or part of their benefits, and to switch between the "cash plus" option and the investment mix that applies to the scheme as a whole.

Amendments to the *State Authorities Superannuation Act 1987* in this Bill will make it possible for the Trustee to implement this investment strategy. The amendments will also allow the Trustee to offer additional investment options in the future, reflecting the trend in the superannuation industry towards greater investment choice for members with accumulation benefits.

Finally this Bill provides for the transfer of certain deferred benefits to First State Super. The benefits to be transferred would be those that have been deferred in the State Authorities Superannuation Scheme (or SASS), and the State Authorities Non-contributory Superannuation Scheme (also known as SANCS or the 3% scheme). Benefits under these schemes are deferred when members cease employment in the public sector, and accrue with interest until they are paid.

Although the benefits are currently maintained in the defined benefit SASS and SANCS schemes, they are really accumulation style benefits, like those in First State Super.

It is more logical for these benefits to be administered with the accumulation accounts in First State Super, and for members to have the benefit of the investment choice available in First State Super. The proposed amendments will only apply to deferred benefits for former members who have already reached the retirement age applicable to the schemes, and who therefore have no other entitlements under the schemes.

The transfers are consistent with earlier legislative amendments introduced in 2001 that enabled the transfer of other deferred SANCS benefits to First State Super which offers members a range of investment options and, in many cases, has facilitated the consolidation of members' superannuation accounts.

As with the previous transfers, the full amount standing to the member's credit in SASS and SANCS will be transferred to a new or existing account for the member in First State Super, without alteration.

I commend these Bills to the House.

The Hon. GREG PEARCE [11.34 a.m.]: The Opposition does not oppose these bills. I refer honourable members to the comments made by the member for Upper Hunter in the other House on the bills. The member for Upper Hunter referred to a report by Mercer Investment Consulting, which was referred to in an article in the *Business Review Weekly* magazine of 1 August 2002. The article reported that the State Super Pooled Fund made an investment loss last year of \$2.25 billion. While both the Australian and international share markets performed poorly last year, this massive loss was sustained by the State Super Fund. In that year the average fund manager made a loss of 4.1 per cent, but the State Super Fund was well below par, recording a loss of 7.3 per cent. The article and the report were quite damning of the management of super funds in New South Wales. I shall repeat one of the quotes the member for Upper Hunter cited in the other place, because it is important that members of this House also be aware of it. The article stated:

Among this sea of red ink, one of the worst performances of 2001-02 was by Australia's largest superannuation fund, the \$25.5 billion defined benefit fund that holds the retirement assets of 178,000 New South Wales public sector employees, former Government employees and pensioners ...

To put the loss in context, about \$2 billion was wiped off the value of the fund's assets. More importantly, because of the questions it raises about the management of the fund, and because of the potential cost to the NSW Government and taxpayers, the result was significantly worse than the losses incurred by comparable funds ...

One of the perceptions of State Super in the marketplace is that it does not have the same depth of internal experience in commercial investment management as some of the other big public sector or corporate funds, and this has led to some poor choices of managers in the past.

That is particularly relevant in this House because, in terms of the management and organisational structure of the State Super Fund, the Special Minister of State is responsible for scheme legislation and the Treasurer is responsible for financial arrangements. When the funds have sustained such losses, and when the management of the funds has been criticised, the Treasurer, understandably, is very embarrassed each time he is asked about the performance of the funds. The Treasurer should be doubly embarrassed, having regard to the way he has recently politicised the role of Treasury in relation to the false costings of Coalition policies he has reported to the House during question time. He should be very embarrassed by the performance of these funds, as should the Special Minister of State.

I note that WorkCover's fund deficit has continued to climb, and part of the reason for that is mismanagement. Last year WorkCover switched into international equities in relation to its investments, just as the international equity market was crashing. Again, that is poor management in WorkCover. I refer to some of the promises Labor has made: The Central Coast high-speed rail link at \$8.7 billion, the north-west rail extension at \$1.4 billion, information technology services for schools and hospitals at \$1.3 billion, pay rises for nurses at \$1.08 billion—

The Hon. Peter Primrose: Point of order: As interesting as this fantasy is, I ask the honourable member to stick to the leave of the bills.

The PRESIDENT: Order! It is a convention in this House that the contributions of members can be wide ranging. The Hon. Greg Pearce is in order.

The Hon. GREG PEARCE: I was referring to the Government's management of the substantial investment funds held in the State Super Fund and WorkCover, and my comments related to these bills,

particularly the management of them. I will not go through the entire list of Labor's promises, but they add up to \$16 billion. That is \$16 billion the Government will never be able to fund. The Treasurer's attempt to criticise the Coalition's policies is nothing more than a piece of trash. The Opposition does not oppose these bills.

The Hon. IAN MACDONALD (Parliamentary Secretary) [11.39 a.m.], in reply: I thank honourable members for their contribution to the debate—except for the Hon. Greg Pearce!

Motion agreed to.

Bills read a second time.

Third Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [11.40 a.m.]: I move:

That these bills be now read a third time.

Ms LEE RHIANNON [11.40 a.m.]: These cognate bills make various miscellaneous changes to superannuation legislation in New South Wales. The majority of these changes are minor and administrative in nature and do not require particular comment. There are two changes in these bills that the Greens strongly support. The first is the amendment to enable First State Super to accommodate the Commonwealth changes that prescribe the manner in which ownership of superannuation benefits may be divided on marriage breakdown. The amendment seeks to allow the creation in the First State Superannuation Scheme of a separate interest for a person's spouse once the court has made orders, or the parties have agreed, on a division of superannuation. The significance of this amendment is that for the first time superannuation will be included in family court agreements following the breakdown of a marriage or de facto relationship. The Greens strongly support superannuation being so included.

It is a matter of record that the division of assets following the break-up of a relationship has tended to favour the male partner over the female partner because most wealth tends to be concentrated with the male partner for a number of reasons. For example, men are more likely to work in a full-time capacity throughout their working lives, whereas women still generally bear the brunt of child rearing and consequently accrue less superannuation. There is no reason why women should not be entitled to a fair share of any accrued superannuation. If a woman has stayed at home to care for children she has played an equal role in the relationship and in earning the family's income. Therefore, she should be entitled to a fair share of superannuation if the relationship breaks down.

The second element that the Greens are pleased to support is the provision ensuring that members of Parliament cannot receive superannuation benefits while still serving in office. This loophole brought discredit upon Parliament and members generally, and its removal will be one small step towards restoring public confidence in our democratic institutions. However, in the same vein, the Greens are highly disappointed that these bills do not contain a provision allowing members of Parliament to choose to opt out of their overgenerous superannuation scheme and to be regular members of First State Super. The Greens believe that all members of Parliament should be paid super—

The Hon. John Jobling: Point of order: The third reading of this bill has been moved. The second reading debate has concluded. I suggest that the honourable member is delivering a speech more appropriate to the second reading stage and is not speaking about why we should or should not support the third reading of the bill.

The PRESIDENT: Order! I refer to the rulings of former occupants of the chair. President Johnson ruled:

The prime purpose of a third reading of a bill is to ensure a last opportunity to oppose the legislation. The debate upon the third reading of a bill should be confined to that question.

Later, Deputy-President Willis ruled:

The prime purpose of a third reading of the bill is to ensure a last opportunity to oppose the legislation. The House should not be treated to a second reading debate speech on the third reading.

I uphold the point of order and ask the member to confine her speech to debating the reason the bills should not be read a third time.

Ms LEE RHIANNON: Thank you for clarifying that. I was about to conclude my speech, and will do so now.

Motion agreed to.

Bills read a third time.

GAMING MACHINES FURTHER AMENDMENT BILL

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [11.44 a.m.]: I move:

That this bill be now read a second time.

I seek leave to incorporate the speech in *Hansard*.

Leave granted.

The Gaming Machines Act that was introduced by this Government late last year commenced on 2 April of this year. The new arrangements, which are aimed at limiting the growth of poker machines in New South Wales, while still allowing open competition between gaming venues are, by necessity, quite complex. However, the new system is now fully operational, and it is working extremely well.

Since the commencement of the legislation, the Department of Gaming and Racing has established new systems and procedures to cope with the complexity of the new arrangements.

Hotels and registered clubs have now been issued with a certificate advising them of their current poker machine entitlements, as well as the number of approved amusement devices they may be authorised to keep.

The certificate also includes other details such as the number of hardship gaming machines that have been granted, and the 'SIA threshold' – i.e. the maximum number of gaming machines that may be authorised to be installed without the need to undergo a Social Impact Assessment.

Various applications are now being lodged under the new scheme, and those applications are being processed and approved. However, the implementation of the new arrangements has identified certain technical difficulties with the way the legislation is currently drafted. In addition, clubs and hotels have been providing feedback on the way the legislation is affecting them, and this has led to some policy changes being proposed.

During the implementation stage, it has also become apparent that, once again, there are some in the industry who, if given an inch will take a mile. Every time these people find even the smallest loop-hole in the legislation, the Government will act swiftly to make sure that it is plugged.

Apart from those issues, the Bill before the House is primarily of a house-keeping nature to tidy up some of the loose ends of the legislation.

I will now turn briefly to some of the key features.

The Bill will require "large-scale clubs" to forfeit entitlements when transferring between premises within 1 km of each other. One of the key elements of the new gaming machine legislation was to require clubs with more than 450 poker machines to shed some of those machines and forfeit one in three of the poker machine entitlements they divested.

One very large club has attempted to circumvent this forfeiture requirement by amalgamating with another small club close by, and seeking to transfer the surplus requirements to the smaller club without forfeiture.

This is because, as the legislation presently stands, clubs are not required to forfeit entitlements if they are transferring between two premises that lie within 1 km of each other. In order to prevent large scale clubs from using this exemption as a means of avoiding forfeiting entitlements, the amendment will provide that any transfer of entitlements between the premises of a large-scale club will require the forfeiture of one entitlement for every three transferred, regardless of the distance between the premises.

The Bill will also amend the Act to restrict the number of approved amusement devices that may be authorised to be installed in a hotel or club. These machines, also known as "cardies" or "draw poker machines", have been declining in numbers since the commencement of the legislation, from 2,510 on 2 April 2002, to about 620 at present. It is important to clarify the legislation to ensure that those that have been divested so far are not able to be replaced.

The Bill introduces a new definition of SIA threshold. As mentioned before, this term relates to the maximum number of gaming machines that may be authorised to be installed without the need to undergo a Social Impact Assessment or SIA.

The Bill provides for the SIA threshold to be decreased when entitlements are transferred from a venue in a shopping centre. The Government is committed to controlling the availability of poker machines in large shopping centres. The few hotels that are

already in shopping centres are permitted to retain those poker machines that they have, but once they sell any poker machine entitlements, the Bill will ensure that the venues will not be permitted to buy any more to replace those that have been divested.

The Bill also provides for a continuation of the previous arrangement which allowed persons with a declared financial interest in a hotel to share in the profits from the operation of gaming machines.

The Liquor Act previously provided that a hotel licensee was not to share profits from gaming machines with another person, unless that person had declared their interest in the hotel by means of an affidavit, or other than in connection with linked gaming systems or the operation of the TAB's investment licence. The Registered Clubs Act on the other hand provided a blanket prohibition on a club sharing the profits from its gaming machines with other parties, other than in connection with linked gaming systems.

The reason for previously allowing hotels, but not clubs, to share gaming machine profits with financially interested parties is that hotels are private, "for profit" ventures, whereas clubs must be non-profit organisations.

The version of the provisions relating to profit sharing that was carried forward to the Gaming Machines Act (section 73) was the registered clubs version, and not the version applying to hotels at that time. However, this has the unintended consequence of prohibiting a hotel licensee from returning any share in the profits from gaming machines to the person who owns the hotel – even in the case where the licensee may simply be a paid employee who has been appointed by the owner to manage the business on the owner's behalf. This result was clearly not intended.

The Bill will cure this problem by amending the Act to permit the sharing of hotel gaming machine profits by declared financially interested persons. The amendment is to be applied retrospectively from the date when the original provision allowing profit sharing by hoteliers was inadvertently removed. This will validate the many hotel leases that have continued to operate since that time under a profit-sharing arrangement.

The Bill will extend the capacity for poker machine entitlements to be transferred between premises of registered clubs without forfeiture. At the moment, clubs can transfer poker machine entitlements between their premises without forfeiture, provided those premises are not more than 1 km apart. The 1 km restriction is inappropriate in non-metropolitan areas, where distances between two premises of the one club can be significantly greater. The amendment will increase the distance threshold to 50 km for non-metropolitan clubs.

The Bill will also amend the Act to permit hotels and clubs to transfer all of their poker machine entitlements without forfeiture to temporary premises. The Liquor Act and the Registered Clubs Act include provisions to allow temporary premises to be approved for hotels and clubs for a limited period of time. Approval to move to temporary premises is usually sought by hotels, in particular, following a disaster such as a fire or flood, or during a period of extensive refurbishment.

The Gaming Machines Act does not make any provision for temporary premises. The effect is that if a hotel or registered club receives approval to move to temporary premises, any application to transfer poker machine entitlements would be subject to the standard forfeiture arrangements.

The Bill amends the legislation to allow hotels and clubs that move to temporary premises to transfer their full entitlements to the temporary premises, and then transfer them back again to the permanent premises.

The Bill also clarifies that the same Social Impact Assessment requirements will apply to temporary premises, as currently apply to a permanent removal – i.e. a Class 1 SIA will be required if the move is to premises within 1 km of the original premises, and a Class 2 SIA will be required if the move is to premises that are more than 1 km away and it is intended to transfer 4 or more gaming machines.

The Bill will also clarify the arrangements when a club or hotel licence is surrendered or cancelled, or where the club or hotel moves to other premises.

One important feature of the Bill is to make it clear that the Liquor Administration Board is to have regard to the need for gambling harm minimisation and other related matters when exercising its functions in relation to approving technical standards and declaring devices to be approved gaming machines.

It is understood that one gaming machine manufacturer has challenged the Board's right to consider whether a new feature on a gaming machine might exacerbate problem gambling before approving a device. The Bill will amend the legislation to make it absolutely clear that the Board is to take harm minimisation and other matters into account when exercising relevant functions. The Bill will also amend the Act to provide that the Board is not required to allocate a poker machine entitlement to a hotel or club unless the Board is satisfied that the particular venue was in a position to keep the poker machine at the time the venue was authorised to install it.

During the process of determining the number of poker machine entitlements that should be allocated to each club and hotel, it became obvious that, once again, some members of the industry had over-stepped the mark by misrepresenting their circumstances when originally applying to the Board to install poker machines.

In some cases, the Board had approved the authorisation of machines without being advised that the premises concerned were in no position to operate gaming machines at that time. For example, in some cases the premises had been demolished, the address was simply a hole in the ground, or the licence owner had no legal right to operate at the nominated address. Although the machines were authorised to be installed, quite clearly they could not be installed and they could not be operated in such circumstances.

The Bill will amend the Act to provide that the Board is not required to allocate poker machine entitlements unless it is satisfied that the hotel or club was in a position to keep poker machines at the time authorisation was granted, or would have been in a position to keep poker machines by the date nominated.

I will not go into detail on the other miscellaneous amendments included in the Bill, other than to note that they are important to the effective operation of the Act.

I commend the Bill to the House.

The Hon. JOHN JOBLING [11.44 a.m.]: According to the Government, this bill is of a machinery nature and clarifies a number of matters. The Opposition does not oppose it. The bill is more notable for what it does not include. The Government has not taken the opportunity to amend the Gaming Machines Act to abolish or at least delay the expansion of the compulsory shutdown of gaming machines from three hours daily to six hours daily. The shadow Minister in the other place indicated that the Coalition supports the principle of evidence-based gambling reform. It must be demonstrated that the current three-hour shutdown of gaming machines will reduce the incidence or the extent of problem gambling before the shutdown is extended to six hours. If the current arrangement does not reduce problem gambling, why are we doubling the time that gaming machines are to be shut down? It is Coalition policy not to extend the gaming machine shutdown to six hours until evidence is produced to support the need for that change.

The bill proposes a number of things. The provision of poker machine entitlements and the ability to transfer between registered clubs in country areas without forfeiting entitlements as long as the premises are within 50 kilometres of each other are of particular importance. These provisions may allow clubs and hotels moving to temporary premises to overcome their problems. The Opposition notes the provision to restore a repealed section of the Liquor Act that allows the profits from the operation of gaming machines to be shared with people who have a declared financial interest in hotels. The Parliamentary Secretary needs to answer a number of questions. In his second reading speech in the other House the Minister referred to cowboys. The Opposition would like the Government to clarify precisely how many cowboys this amendment will relate to and how many cases the amendment will address.

It is all very well for the Government to say that there are cowboys in the industry—and there might be. However, we need a much greater understanding of what the Minister is referring to and the relevance of the proposed amendment. Can the Parliamentary Secretary can tell us how the Liquor Administration Board will receive ministerial guidelines about when not to allocate a poker machine entitlement or when to request the forfeiture of entitlements? When will the upper House and the lower House have an opportunity to examine them and to determine how dictatorial or prescriptive they will be? Simply put, the question is: What will the guidelines entail? It has been the practice of this Government to pass legislation and later to produce quite interesting guidelines that might well lead to a totally different result from the one anticipated. The Government may have an adviser taking notes to guide the Parliamentary Secretary.

Could the Government explain what the board will consider to determine if a hotel or club was lawfully in a position to keep poker machines when the authorisation to keep poker machines was granted, or would have been lawfully in a position to keep the paper machines by the date nominated in the application for the authorisation? We would also like to know whether an appeal mechanism will be available if a registered club or hotel is not allocated entitlements or is requested to forfeit entitlements. It seems to me that the Registered Clubs Association and the Australian Hotels Association should know at this stage what mechanism will be in place, but they do not. If a hotel or club is not allocated entitlements or is requested to forfeit entitlements will it be prohibited from submitting an application for consideration of hardship entitlements in the legislation? The Opposition would also like to know whether the Government envisages that the amendment to section 62 of the Gaming Machines Act will have an impact on the competitiveness of gaming machine manufacturers. The Opposition hopes that the Government has been listening carefully to those questions and that it will supply an answer to the House. However, I suspect that with its usual arrogant nature it will not. The Opposition will not oppose the bill.

Reverend the Hon. FRED NILE [11.52 a.m.]: The Christian Democratic Party supports the Gaming Machines Further Amendment Bill, although we have one or two concerns about it. Most of the provisions of the Gaming Machine Act 2001 commenced on 2 April 2002, with the remainder having commenced by 2 July 2002. Both clubs and hotels have reported technical problems with the legislation. The Government has noted that certain clubs were abusing the legislation—I suppose with clever lawyers to exploit what they see as a loophole. The Government will need to be constantly aware to ensure that there are no opportunities to abuse the legislation. Where those loopholes are identified they should be closed, as is occurring with this bill. One very large club attempted to circumvent the forfeiture requirement by amalgamating with a small club close by and seeking to transfer the surplus machines to the small club without forfeiture.

The Act required clubs with more than 450 poker machines to get rid of some of them and to forfeit one in three of the divested entitlements. The Act allowed forfeited entitlements to be transferred between two

premises that lie within a kilometre of each other. So in order to prevent large clubs from using this exemption as a means of avoiding forfeiting entitlements the bill provides that any transfer of entitlements between the premises of a large-scale club requires the forfeiture of one entitlement for every three transferred, regardless of the distance between the premises. The bill will also amend the Act to restrict the number of approved amusement devices that may be authorised for installation within a hotel or club. These machines, commonly known as cardies or draw poker machines, have been declining in number since the commencement of the legislation, from 2,510 on 2 April 2002 to about 620 at present.

The legislation should ensure that those that have been divested so far are not able to be replaced. We agree with the Government's approach in that regard. We opposed poker machines or any so-called gaming machines—we call them gambling machines—being installed in hotels in the first place. It is now clear that major social problems have been caused. Their introduction to hotels should never have been allowed by the Government, supported by the Opposition at the time. Shortly after the introduction of poker machines to hotels the Government realised that the gambling craze had become a major social problem and it introduced a freeze. The freeze should have come in before hotels were able to get poker machines. I think the number of poker machines installed by hotels was 25,000, but it may be many more now. These are in addition to all those that were in the clubs.

We are pleased that the bill requires a social impact assessment procedure. However, I understand that it will result in an increase in the maximum number of gaming machines that may be authorised for installation without the requirement for a social impact assessment. The bill provides for the social impact assessment threshold to be decreased when entitlements are transferred from a venue in a shopping centre. In our view there should be no reduction in the requirement for a social impact assessment to be conducted. I think it is a very important part of the legislation previously produced by the Government.

The Hon. Ian Cohen: It is a good move to lower the threshold.

Reverend the Hon. FRED NILE: The Government has increased the number before a social impact assessment is required. That is how I understand it. The Hon. Ian Macdonald might clarify that point. Is the Government increasing the number of machines before a social impact assessment is required? That is how the bill reads. This may make it easier for hotels and clubs and reduce paperwork, but I think it is better to keep the level as it is. In fact, I would make the requirement even more strict rather than less strict. The Government has said that it is concerned about clubs that it refers to as cowboys in the industry. Clubs and hotels can shift their poker machines and other devices into temporary premises in circumstances such as when a flood has prevented the existing premises from being used. But this may be a loophole that allows further increases in the number of poker machines. Premises which are claimed to be temporary but which are not temporary could be used for some time. At one stage the casino was in premises at Circular Quay that were claimed to be temporary.

Pursuant to sessional orders business interrupted.

QUESTIONS WITHOUT NOTICE

GOVERNMENT INFORMATION TECHNOLOGY CONTRACT

The Hon. MICHAEL GALLACHER: I direct my question to the Special Minister of State. In his statement to the House on Tuesday 19 November, the Minister said "... at all times I have complied with the Constitution (Disclosure by Members) Regulation and the ministerial code of conduct." The latest publicly available ministerial code of conduct states in part 3.1:

A Minister shall be taken to have an interest in any matter on which a decision is to be made or any other action taken by the Minister in virtue of office, if the range of possible decision or action includes decision or action reasonably capable of conferring a pecuniary or other personal advantage on the Minister or the spouse or any child of the Minister.

How does the Minister reconcile his statement, given what the code states? Did the Minister at any time disclose that his wife's private company was seeking a major government contract? If so, to whom did he make that disclosure?

The Hon. JOHN DELLA BOSCA: As I said to the Leader of the Opposition and the House the other day—I have repeated it on several occasions—I have complied with all of the regulations. I am glad to see that

the Leader of the Opposition has found the ministerial code of conduct, which he has been asking me to table. It is such a secret document that it is available in the Parliamentary Library.

The Hon. Michael Egan: Oh, really?

The Hon. JOHN DELLA BOSCA: I will get the Treasurer a copy too. I have made it very clear that I have complied with all of my obligations under the code of conduct from which the Leader of the Opposition has quoted. As I stated in detail in the Chamber the other day and on previous occasions, the disclosures about the private and personal affairs of my spouse and family members have been exhaustively examined by this place courtesy of the disclosures I have made during answers to previous questions. As I said in answer to the Hon. Don Harwin's question, I have gone beyond the boundaries required by probity or the law.

The Hon. MICHAEL GALLACHER: I have a supplementary question. If the Special Minister of State has complied with the ministerial code of conduct as he has just claimed, will he inform the House to whom he made the disclosure as is required under that code?

The Hon. JOHN DELLA BOSCA: I thought I gave a pretty good answer. However, the Leader of the Opposition clearly does not understand the words he read out. He read out part of a lengthy document in respect of decisions taken by the Minister. I played no part in the decision relating to the tendering question.

HUNTER REGION COAL INDUSTRY

Mr WEST: My question is directed to the Minister for Mineral Resources. What is being done to support the continued growth of the coal industry in the Hunter region?

The Hon. EDDIE OBEID: The State's coal industry remains our single greatest mineral exporter and the Hunter region's production is the backbone of the industry. I recently visited Singleton to officially open the twenty-sixth Singleton-Upper Hunter Coal Discussion Day. This yearly forum is an important event for the Hunter coal industry. It is an important community event at which local residents can talk to industry representatives about local issues. The discussion day helps raise awareness about the regional industry and updates current activities. At present the Hunter region has 23 operating coalmines. Last financial year the region produced 70 million tonnes of coal for sale. That is more than 60 per cent of our State's total coal production. During the same period, 56 million tonnes of coal were exported from the region worth nearly \$3.5 billion in export income. The region's future looks very positive, with 15 new projects or significant extensions to existing mines planned in the Hunter Valley. In the past 18 months I have visited the Hunter region to hand over numerous mining leases approved by the New South Wales Government. That includes mining leases for the \$700 million Mt Arthur North project, the Sandy Creek mine and for extensions at South Bulga, Cumnock and Dartbrook mines.

The Hunter region's coal industry is vital to the State's economic growth and the creation of new jobs. Community and industry forums like this discussion day provide an important framework that recognises the importance of managing social and environmental aspects of mining in the region. The discussion day addressed proposed new coal developments in the region, along with new technology such as ultra-clean coal. The New South Wales Government supports continued growth in the Hunter coal industry. At the same time, it requires all new projects to undergo rigorous environmental assessment. It is committed to ensuring that infrastructure meets forecast growth in the coal industry. Coal transport and loading infrastructure has been improved in the Hunter Valley.

The Government has also supported increases in the coal-handling infrastructure. The Koorangang coal-handling terminal at Newcastle has been upgraded at a cost of \$345 million, and it can now move up to 89 million tonnes a year. The Hunter region's coal haulage capacity is predicted to receive a dramatic boost with a \$25 million rail management network to be based at Broadmeadow. The system is expected to be introduced over the next three years. It will help trains to move 100 million tonnes of export coal to the Port of Newcastle every year, which is a 30 per cent increase on current capacity. The coal discussion day is an important event for the Hunter region minerals industry. I look forward to updating the House about future developments in the Hunter region.

INTEGRAL ENERGY AND SYDNEY WATER BILLING SYSTEM

The Hon. DUNCAN GAY: My question is directed to the Treasurer. What is the total amount to date that can be attributed to billing system losses at Integral Energy and Sydney Water, both projects that came under the stewardship of Mr Alex Walker? Did the Minister approve of Mr Walker's move from Integral Energy to Sydney Water despite the poor financial performance of Integral Energy when it was under his control?

The Hon. MICHAEL EGAN: I thank the honourable member for his question. Of course he is aware that the position of chief executive of Sydney Water is a matter for Sydney Water.

The Hon. DUNCAN GAY: I have a supplementary question for the Treasurer. What is the total payout that Alex Walker will receive following his resignation from Sydney Water yesterday?

The Hon. MICHAEL EGAN: I understand that Mr Walker has resigned as chief executive of Sydney Water. In those circumstances, I do not think he would be entitled to any payout other than for accumulated leave.

DOCTOR SHORTAGE

The Hon. Dr PETER WONG: I direct my question to the Treasurer representing the Minister for Health. Yesterday's *Sydney Morning Herald* contained an article describing the crisis shortage of qualified doctors in New South Wales as a growing problem that is no longer restricted to country areas. Will the Minister explain how it can be justified that hundreds of thousands of dollars of funding is spent to recruit short-stay doctors when we clearly have an enormous pool of overseas-qualified doctors in Australia who are willing to participate in relevant retraining to qualify to practice in New South Wales? Will the Government show preference regarding areas of need for overseas-trained doctors to ensure our citizens can practice in New South Wales?

The Hon. MICHAEL EGAN: I thank the honourable member for his question, which I will take on notice.

ELECTRICITY INDUSTRY

The Hon. TONY KELLY: My question is directed to the Treasurer, and Minister for State Development. Will the Treasurer explain the implications of any recent Federal report on energy markets? What is the Opposition's position on the issue and the implications for customer protection?

The Hon. MICHAEL EGAN: I thank the member for his question on a very important subject. It is now clear that the Federal Government and the State Opposition are determined to deregulate household electricity prices. That simply means price protection for householders who choose to remain regulated customers. Of course, the Opposition and the Australian Democrats want to abolish the Electricity Tariff Equalisation Fund [ETEF].

The Hon. Duncan Gay: Yep!

The Hon. MICHAEL EGAN: He said it on the record—the shadow Minister for Energy wants to abolish ETEF. We can have either regulated prices for households and ETEF to protect us from a Californian-style energy crisis or no ETEF and no regulated prices for the 40 per cent of householders who choose to be regulated. That simply means that New South Wales householders will no longer be protected from the price spikes that happen in the wholesale market, and nor will they have the protection of regulated electricity prices.

The Hon. Duncan Gay: Point of order: Once again the Minister is misleading the House, not only on statements that the Opposition—

[Interruption]

The Hon. Duncan Gay: Just be careful, Mandy. You're so nice when you're angry.

The Hon. Amanda Fazio: Don't call me nice.

The Hon. Duncan Gay: Before I am asked to do so, I withdraw the word "nice".

The PRESIDENT: Order! There is no point of order. The Minister has the call.

The Hon. Duncan Gay: I was interrupted before I concluded my point of order.

The PRESIDENT: Order! If the point of order is that the Minister is misleading the House, that is not a point of order, and the honourable member knows that.

The Hon. Duncan Gay: He was misleading the House.

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

The Hon. MICHAEL EGAN: I assure the Deputy Leader of the Opposition and the House that with the event that happens in March next year, I will be making sure that every householder in New South Wales is aware of what the Opposition proposes to do if it is elected to government.

The Hon. John Ryan: So you're going to use public funds for electioneering?

The Hon. MICHAEL EGAN: That is an absurd suggestion.

The Hon. John Ryan: You're going to let every householder know.

The Hon. MICHAEL EGAN: That is so—in the normal way that you and I let every householder know about any public issue. I will be telling them the truth: that, if elected, the Coalition will abolish the ETEF, which simply means there will be no regulation on household electricity prices.

The Hon. Duncan Gay: Point of order: The Minister indicated that he was going to tell the truth, and that the truth is that we would get rid of the ETEF and replace it with two other protections for the people of New South Wales. The Minister is lying to this House.

The PRESIDENT: Order! I have warned members on numerous occasions not to make debating points in the form of points of order. There is no point of order. The Minister has the call.

The Hon. MICHAEL EGAN: What is more, we will be able to point out to the people of New South Wales that if there is a Liberal-National government, they will have the numbers in this House to do what they want because the Democrats have declared that they will also support the deregulation of household electricity prices and the abolition of the ETEF. [*Time expired.*]

The Hon. TONY KELLY: I ask a supplementary question. I ask the Minister to elucidate his answer.

The Hon. MICHAEL EGAN: The Parer report argues for an end to the price capping that protects householders from price spikes. The report says that the ETEF—a mechanism that makes it possible to cap retail prices and have a fully competitive wholesale market in electricity—should be scrapped. The fund was introduced by the Government to add another layer of consumer protection when the electricity market was opened to full retail competition. The fund essentially bridges the gap between highly volatile, unregulated wholesale power prices on one side and fixed retail prices on the other.

I make this very clear. The Government will not remove electricity price caps for families and small businesses, despite the Federal Government's recommendations and the determination of the Democrats and the Liberal and National parties in this State to do so. A Carr Labor Government will continue to guarantee that families have the choice of either shopping around for electricity or relying on a safety-net price set by an independent pricing watchdog, the Independent Pricing and Regulatory Tribunal.

What makes the latest recommendation absolutely staggering is that, as I pointed out, without this fund we could see in New South Wales a repeat of the Californian power industry collapse. It appears that the Opposition, particularly its energy spokesman, the Deputy Leader of the Opposition, could not care less. As the Deputy Leader of the Opposition indicated today, he has been a constant critic of the ETEF. I will not repeat the criticisms he has made, but they make it quite clear what the Opposition wants to do. What the Opposition would do if it gets the chance is to ensure that the Californian energy crisis is a real possibility for New South Wales. Energy companies went bankrupt in California because they—

The Hon. Duncan Gay: Point of order: The Treasurer cannot speak on behalf of the Opposition. It is simply out of order for him to indicate what the Opposition would do.

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

PILLIGA FARMERS DROUGHT ASSISTANCE

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: My question is directed to the Special Minister of State, representing the Minister for Agriculture. Is the Minister aware of correspondence from the Pilliga

Drought Committee regarding the plight of farmers in the Pilliga district? Will the Minister commit to supporting the Pilliga farmers and other farmers in New South Wales drought-affected areas by giving a cash grant of \$25 per breeding cow and \$2.50 per breeding ewe to keep breeding stock alive? Will the Minister also commit to cash grants to cropping farmers so they can fund crop plantings as soon as the rains come?

The Hon. JOHN DELLA BOSCA: I am very interested in the sudden character change. It simply goes to show that towards the end of the year a leopard can change its spots. Perhaps the Hon. Dr Arthur Chesterfield-Evans is feeling the pinch that Ms Lee Rhiannon and the Hon. Ian Cohen are making all the running for the conservation movement—

The Hon. Dr Arthur Chesterfield-Evans: That's an insult.

The Hon. JOHN DELLA BOSCA: I wasn't insulting the honourable member, I was simply making a comment. He should not take it personally. I am congratulating him on his excellent political flexibility. I am not aware of the correspondence that the Hon. Dr Arthur Chesterfield-Evans refers to. I assume that it has been forwarded to the Minister for Agriculture. I notice he has a copy, which he is about to give to me, and I thank him. I will pass on the question to the Minister and seek an early response for the honourable member.

ABALONE INDUSTRY

The Hon. JENNIFER GARDINER: My question is to the Minister for Fisheries. Further to the abalone harvesting closures that the Minister has put in place to take effect from tomorrow, is the Minister aware of the outrage he has caused to the abalone industry? What does the Minister say to the industry's charge that his explanation for the parasitic attack on abalone from Port Stephens to Jervis Bay is simplistic and that a whole-of-government approach to improving water quality is required to protect that and other marine resources? What is the Minister's reaction to the abalone industry's suggestion that part of its community contribution charge should be allocated to the research effort aimed at protecting the resource?

The Hon. EDDIE OBEID: If ever a member of this House led with her chin, it is the Hon. Jennifer Gardiner. She is now asking a question about the Act that the Coalition brought into this House. This is the outcome of the Fisheries Management Act, which was introduced by the Fahey Government. The abalone and rock lobster industries decided that they wanted to own the shares in their industries. As a consequence, like all good industries—including the abalone and rock lobster industries, and other non-fisheries industries—they have to pay royalties when they take out a community-owned resource.

The Hon. Jennifer Gardiner is now questioning the Government for coming to terms with the industries on their community contribution. The honourable member is defending the indefensible. Basically, she is suggesting that the community-owned resource should not have royalties attached to it. She wants to give away the resource without any contribution by privatising it back to the community. An independent pricing and regulatory review recommended a 20 per cent community contribution.

The Government, through the support of the Treasurer, reduced it to 6 per cent factored in over a number of years. That is the Government's contribution in support of the industry. Is the Opposition now questioning the Government as if it is a trifling disease? We have some of the best scientists in the world and they are doing a magnificent job in detecting diseases throughout our fisheries, our waterways, and anywhere else.

What I suggested in my answer yesterday was that this is a serious disease that could deplete the abalone industry. As a consequence a ban has been imposed from Port Stephens to Jervis Bay. Essentially it is important to make sure we give the opportunity for this particular resource to grow again. I cannot understand the honourable member's concern about a sector which decided it wanted to privatise this resource, it wanted to own it, but which does not pay a community contribution. The only expectation is that it pay for the research that goes along with it.

The Carr Government supports aquaculture and fisheries with over \$36 million a year. It is only fair when a group owns a resource, like farmers on the land, like any other privatised sector, that it contribute to research. We have some of the best scientists in the world in fisheries. They are doing a great job and their ability and their decisions that support the industry should not be questioned. This Government continues to support aquaculture, and will continue to support all our fisheries industries because it has put legislation in place to make sure we have a long-term, sustainable and viable commercial industry.

HUNTER ADVANTAGE FUND AND INNOVA SOIL TECHNOLOGY PTY LTD

The Hon. HENRY TSANG: My question without notice is addressed to the Treasurer and Minister for State Development. Will the Treasurer please update the House with details of the latest boost to industry in the Hunter?

The Hon. MICHAEL EGAN: I thank and commend the Hon. Henry Tsang for the interest he takes on matters of investment in the Hunter and, indeed, investment throughout the State. That, of course, is why he is the Premier's Parliamentary Secretary for Investment, and a very effective Parliamentary Secretary at that. I am pleased to provide honourable members with information about the latest innovative new soil remediation company, which has been supported by the Government's Hunter Advantage Fund. The trial of this innovative soil remediation plant in Newcastle could generate nearly 60 local jobs. Innova Soil Technology Pty Ltd is currently trialling a mobile soil remediation plant in Newcastle that will generate 27 new jobs in two years, as well as 30 jobs from subcontracting opportunities. This world-beating technology is a great example of cooperation between the private sector and the University of Newcastle, along with a number of local private investors, and the company's major shareholders. The University of Newcastle is a very go-ahead University, by the way, as the Hon. Patricia Forsythe will know.

Interestingly, Innova Soil Technology recently patented a technology that allows it to reuse energy within the plant. This cuts costs to less than half that of equivalent technologies from overseas. Companies of this calibre bring new corporate headquarters to the Hunter, promote a grassroots environmental technology with substantial national and international market potential, and generate skilled job opportunities. Innova Soil Technology has very good growth opportunities through access to a market estimated to be worth \$5 billion to \$7 billion. The company has already taken inquiries from Asia as well as a company in Glasgow wanting to remediate riverside properties there.

A leading American authority in soil remediation, Mr Bill Troxler, who works with the United States Government's Environmental Planning Authority, described the Innova Soil Technology plant as one of the best of its type in the world. The reclaimed soil that can be reused on building sites is remediated in a totally mobile plant, which can be shipped from site to site using semitrailers. Innova Soil Technology is confident that five to six of these plants will be operating in Australia within three years, as well as three plants overseas. They can treat 1,000 tonnes of contaminated soil per day with a number of contaminated sites in Sydney and Brisbane to be initially targeted as potential customers.

Government support for Innova Soil Technology Pty Ltd comes from the Hunter Advantage Fund, which is managed by the Department of State and Regional Development. The aim of this fund is to create 2,500 new jobs in the Lower Hunter region as a result of new job generating investment. I thank the Hon. Henry Tsang for his interest in this matter. I am sure that at some stage he would like to go and see the company and see the great technology that it has.

NATURAL RESOURCE MANAGEMENT

The Hon. IAN COHEN: My question is addressed to the Treasurer representing the Premier. Can the Treasurer, representing the Premier, indicate whether there are plans to amalgamate government agencies responsible for natural resource management? Can a guarantee be given that the responsibility for managing the State's natural and cultural heritage will remain with the National Parks and Wildlife Service after the election? Will the Treasurer, representing the Premier, inform the Parliament if there are any plans to change the structure of natural resource management agencies if the Australian Labor Party wins government after the March 2003 Election?

The Hon. MICHAEL EGAN: I thank the Hon. Ian Cohen for his question, which I will refer to the Premier. The administrative arrangements are a matter for leaders of government. I am not aware of any proposal for any changes.

DEPARTMENT OF COMMUNITY SERVICES HELPLINE

The Hon. PATRICIA FORSYTHE: My question without notice is to the Minister for Juvenile Justice, and Minister Assisting the Premier on Youth. Why are there more than 3,000 reports of children at risk of harm sitting in the in-tray at the Helpline waiting to be entered on the database? Do these 3,000 reports include level 1, 2 and 3 cases, which require action within 24 hours to 10 days? Why have many of these cases been left in the in-tray for two months? What action is the Minister taking to clear the backlog?

The Hon. CARMEL TEBBUTT: Based on my previous experience with issues that have been raised by the Opposition regarding community services, I take this question with a significant grain of salt because time and again the Opposition has got things wrong. Time and again members of the Opposition come along to question time, make all sorts of wild, exaggerated claims and run out and have a press conference. Making wild and exaggerated claims regarding community services is easy. What is much harder, and what the Opposition has never shown an ability to do, is to actually grapple with the complex issues that are part and parcel of community services.

The Hon. Greg Pearce: That is your job.

The Hon. CARMEL TEBBUTT: That is right, it is my job, because the Opposition is not capable of ever putting up a coherent alternative plan for community services in New South Wales. Nothing it ever did when it was in government and nothing it has ever done since has indicated that the Coalition has ever been able to come to grips with what needs to happen to have a system of child and family support in New South Wales that actually protects vulnerable children. I have clearly outlined the Government's approach on many occasions since I took on this portfolio. The Government has more than doubled funding for child protection in New South Wales. The Coalition when in government gutted the department, and people still talk about that. I acknowledge that the helpline is important, and all honourable members would be aware that the helpline struggled to deal with the huge volume of calls when it was initially set up.

The Hon. Duncan Gay: That is not what you used to say.

The Hon. CARMEL TEBBUTT: That is not true. In any response I have given on the helpline, I have always made it very clear that it did struggle initially and that there was an underestimation of the number of calls that it would receive. Since that time a range of measures have been put in place to address issues with the helpline. I am advised that on the first day of operation the helpline received 1,400 calls. This had not been estimated or planned for, so clearly a change had to be made. Calls to the helpline do fluctuate in volume. From 1 January to 30 June the helpline received an average of 256 calls a day. This remained stable from July to September, with an average of 258 calls. Generally the demand is lower on weekends, which indicates that the average working day figure would be higher. From July to 28 September an average of 199 faxes were received per business day. Overall, the helpline has received more than 200,000 calls, including messages, since it started operation.

The Government has invested significant additional resources in ensuring that the helpline operates effectively. As the Opposition is well aware, the Government has also set up the Kibble review, one of the functions of which is to examine the interface between the helpline and community service centres. The Government does not back away from the fact that establishing a centralised intake process involving community services is a challenge, and the Government is meeting that challenge. We have put in extra resources and addressed issues with the provision of faxes, et cetera. I suggest that some of the comments made by Opposition members should be taken with a grain of salt because they do not always get things right. [*Time expired.*]

ETHICAL CLOTHING TRADES COUNCIL

The Hon. RON DYER: My question without notice is addressed to the Minister for Industrial Relations. Will the Minister inform the House about the work of the Ethical Clothing Trades Council?

The Hon. JOHN DELLA BOSCA: On previous occasions I have advised honourable members of the progress of the Government's Behind the Label initiative, a campaign to make the clothing industry a fair and ethical industry for workers and employers. The working conditions of outworkers, those who often work for low, illegal rates of pay, is the primary focus of Behind the Label. In New South Wales the Ethical Clothing Trades Council plays a key role in improving the conditions of outworkers. The council's role is to provide advice to the Government on the levels of employer compliance with obligations to outworkers. The council also advises on developments in the clothing industry and their effects on the lives of outworkers.

I am pleased to inform the House that earlier today the first two quarterly reports of the Ethical Clothing Trades Council were tabled in this Chamber. I look forward to receiving the council's third report later this month. A key inclusion in the reports is the ethical clothing code of practice, which was negotiated by the council and which now forms the basis of the national agreement between the Australian Retailers Association and the Textile Clothing and Footwear Union. This agreement is the first of its kind in Australia. The New South Wales Executive Director of the Australian Retailers Association stated:

Retailers are ready to take the initiative and we welcome the key NSW Government support in facilitating an outcome that recognises the important role that retailers can play in tackling problems faced by home workers ... The NSW Government is to be praised for taking a leading role in such an important issue.

The reports tabled today also comment on the level of compliance in the outworker industry. This includes advice from community workers and bilingual investigators showing that the pay rates and working conditions of many clothing industry outworkers are considerably below other statutory standards. Other key inclusions in the reports are activities of retailers and manufacturers in relation to their obligations under the existing voluntary regulatory mechanism, and the success of the education and retraining programs for outworkers conducted by the Department of Industrial Relations and the Department of Education and Training.

I am encouraged by the level of activity and progress in monitoring compliance in the industry by the council and by the Department of Industrial Relations inspectorate. It is also pleasing to note that the legislative developments in Victoria designed to protect outworkers are based on New South Wales legislation. The passing of this legislation, along with the national retailer agreement, will ensure that a consistent regime applies to the clothing industry. In other developments just this week the Australian Capital Territory Legislative Assembly passed a motion calling for an end to the exploitation of outworkers. I commend the efforts of the Ethical Clothing Trades Council.

OVINE JOHNE'S DISEASE

The Hon. MALCOLM JONES: My question is directed to the Special Minister of State, representing the Minister for Agriculture. With the changes to NSW Agriculture's handling of ovine Johne's disease and change of direction, will the Government revisit compensation for farmers whose losses have been aggravated by the department's previous policies?

The Hon. JOHN DELLA BOSCA: This important question requires a detailed answer from the Minister. A number of people have raised this matter with me. I am sure that Government members and, indeed, all members of this Chamber who have contact with farmers and farming communities have had this matter drawn to their attention. I am sure the Minister will give it his full attention and provide the House with a detailed answer as soon as practicable.

COUNTRY RAIL FREIGHT SERVICES

The Hon. MELINDA PAVEY: My question without notice is addressed to the Treasurer, and Minister for State Development. Now that the road and rail task force of the New South Wales Farmers Association has found that the Government is failing country areas with road and rail infrastructure, will the Treasurer commit to redirecting funding from the sale proceeds of FreightCorp to maintenance and upgrading of grain lines to allow more grain to be carried by rail rather than by road? Given that the same report predicts more closures of rail branch lines unless funding is increased, will he give this commitment to regional New South Wales? If not, why not?

The Hon. MICHAEL EGAN: I thank the Hon. Melinda Pavey for her question. As I have mentioned on previous occasions, she is a young member with a lot of promise but she has a lot to learn. One of the things she will learn is that the Coalition had an abysmal record in relation to country rail.

The Hon. Dr Brian Pezzutti: That is not true.

The Hon. MICHAEL EGAN: Not true? The Coalition closed 17 rail lines. In contrast, we have not closed a single country rail line. In fact, we have reopened two—Kandos to Gulgong and Cowra to Blayney. The Rail Infrastructure Corporation [RIC] has also recently upgraded the Cobar restricted line to branch line status at a cost of \$5 million. The RIC has also just started upgrading the Walgett restricted line to branch line status. Next in line is the Coonamble restricted line. The Government is spending \$285 million per year for the next five years upgrading country rail. That is consistent with the Booz Allen Hamilton report into country rail, which recommended spending \$285 million per year for the next five years to upgrade country rail.

In relation to the green paper of the Farmers Association, I know that the Minister for Transport is always willing to consider ways to improve the logistics chain from farm gate to our cities, ports and export markets. He has asked the Director-General of Transport to look closely at the recommendations and how the Government can respond. I make it clear that the Carr Labor Government has been the saviour of country rail in New South Wales. If the Coalition had not lost office in 1995, by today there would be no such thing as country rail. The Coalition closed 17 lines. If it had remained in government, the whole service would have been closed down. It is in good shape under Labor.

SUTHERLAND SHIRE YOUTH SERVICES

The Hon. AMANDA FAZIO: My question without notice is directed to the Minister for Community Services. What action is the Government taking to provide services to disadvantaged young people in Engadine and Sutherland?

The Hon. CARMEL TEBBUTT: I am pleased to inform the House about how we are supporting young people in Engadine and Sutherland. I have recently approved funding of \$28,900 for a year for the Buzz Youth Cafe in Engadine, which is run by the Engadine District Youth Service. This is additional funding for the cafe; it brings the total of New South Wales Government funding up to \$78,500 a year. The funding is provided by the Department of Community Services under the Community Services Grants Program. The youth cafe is an important part of the youth network of services in Engadine and Sutherland, particularly for disadvantaged young people, and it provides vital services.

Young people in the area use the cafe as a link to services such as counselling, intensive programs, recreational activities and even food. The cafe provides meals from time to time. The service is especially significant to Engadine, where the percentage of young people aged between 12 and 24 years is one of the highest in Sutherland shire—21.5 per cent of that age group. A survey of young people who frequently used the service showed that it was a place where they felt safe. They felt that it was a valued alternative to hanging around the street. The Buzz Youth Cafe is an outstanding success, and I congratulate the co-ordinator of the centre, Perry Young.

On average approximately 40 young people attend the cafe each day, which is double the number who attended two years ago. The service is clearly appreciated by young people experiencing difficulty in life. Not only does the cafe give them somewhere safe to go; it provides them with many supports, as well as important life skills such as classes as broad ranging as computer skills, how to react to domestic violence, self-defence and art classes. The youth cafe workers are highly professional people who are helping young people realise their full potential.

It is no exaggeration to say that since the service was established in 1999 thousands of young people in Engadine and Sutherland have benefited. I am advised that the Sutherland Shire Council youth service unit has stated that all unemployed young people with learning difficulties who attend the cafe benefit. Many have gone on to take TAFE courses or some other kind of training. So the cafe is performing an important role. Not only does it provide somewhere for young people to go now; it ensures that they link up to education and training opportunities, giving them a much greater chance of making a successful transition to adulthood. The additional funding will enable the Engadine District Youth Service to build further on that success.

MUSLIM WOMEN CLOTHING

The Hon. RICHARD JONES: My question is directed to the Treasurer, representing the Minister for Citizenship. Is the Minister aware that a member of the public in the gallery today was wearing the chador? Does the Minister regard this as a terrorist threat to the people of New South Wales? Will the Minister reassure the Muslim community that wearing the chador is perfectly acceptable in this State?

The Hon. MICHAEL EGAN: As I indicated on a previous occasion, it most certainly is.

ELECTRICITY INDUSTRY CONTESTABILITY

The Hon. JOHN RYAN: My question is directed to the Treasurer, and Vice President of the Executive Council. Now that the Energy and Water Ombudsman has confirmed that a large number of complaints about full retail competition have been received by her office, including difficulties in finding a provider offering negotiated contracts and misleading marketing practices, will the Treasurer commit to a full, independent review of full retail competition? If a review will be held, can the Treasurer guarantee that it will not be conducted by his highly paid consultants, Frontier Economics, because of the role it played in setting up full retail competition in this State?

The Hon. MICHAEL EGAN: If members of the community have any concerns with the way in which full retail contestability is being implemented, they have avenues to make complaints and to have their complaints investigated.

GOVERNMENT LAND RELEASES

Reverend the Hon. Dr GORDON MOYES: I ask the Treasurer, and Minister for State Development a question without notice. Is it a fact that Sydney developers will be forced to pay a \$15,000 levy on newly released blocks of land to help fund roads and infrastructure? Is it a fact that this levy will primarily target young families which, in general, are struggling to afford a block of land and home in outer Sydney suburbs such as Camden and Kellyville? Will the Treasurer explain why the State Government intends to burden young struggling families with this additional tax, rather than spread the cost across the broader community, which can help share the burden of funding roads and public transport? How much is paid to the State Government from land purchases in the form of surcharges, sales tax, stamp duties, et cetera, per every \$100,000?

The Hon. MICHAEL EGAN: I will refer the question of Reverend the Hon. Dr Gordon Moyes to the Minister for Planning for a detailed response. Suffice it to say the infrastructure costs associated with the release of urban land are substantial. In decades gone by it was virtually the practice of governments to enable land to be developed for housing without any infrastructure being provided. Indeed, some areas in Sydney that have been well established for 40 or 50 years still require some of the infrastructure which these days would be regarded as basic and essential, such as public transport. Certainly, I remember that in the 1950s and 1960s young home buyers moved to the area in which I lived in Sutherland shire to build their homes; in those days there were no tarred roads, no permanent gutterings and no sewerage but there was water and electricity. I remember that when my family moved from Coogee to the Sutherland shire in 1954 there was no street lighting in the major shopping centres in Sutherland.

In those days when young couples bought their block of land the first thing they did was clear it of every blade of anything that looked remotely green; they would then build a garage and live in the garage as they built their house stick by stick, brick by brick, depending on how much they could afford every weekend on their visit to the local hardware shop or local timber merchant. Generally, even if they were flush with money after working a lot of overtime during the fortnight, what they bought depended on whether they had a car to carry their purchases home from the hardware shop or the timber merchant.

The Hon. Duncan Gay: You sound more and more like John Howard.

The Hon. MICHAEL EGAN: I am not as old as John Howard. There are a lot of things that John Howard and I do not have in common. We come from entirely different backgrounds.

The Hon. Michael Gallacher: Yes, he comes from a working-class background.

The Hon. MICHAEL EGAN: No, he does not, in fact. I do not want to get into any sort of class warfare, but let me assure honourable members that John Howard does not come from what I regard as a working-class background. I do not want to cast any aspersions on John Howard, although once upon a time I might have done. However, I have become much more tolerant.

The Hon. Tony Kelly: You're an elder statesman now.

The Hon. MICHAEL EGAN: I am an elder statesman now. I believe in cultural diversity, and as far as I am concerned John Howard comes into that category of cultural diversity. We have very little in common. I assure Reverend the Hon. Dr Gordon Moyes that the Government is doing what it can to ensure an availability of residential land so that the price of blocks of land does not go through the roof any more, unfortunately, than they have during my lifetime. I remember that in my first election pamphlet in 1971 I complained about the price of land. The pamphlet had a photograph of me with two young home buyers under the caption, "What? \$7,000 for that?" That particular block of land would probably cost about \$700,000 today. I only regret that perhaps rather than financing my 1971 State election campaign I did not put the proceeds into buying the \$7,000 block of land.

WESTERN SUBURBS HOSPITAL SITE

The Hon. JOHN JOBLING: My question without notice is addressed to the Treasurer, representing the Minister for Health. Will the Minister confirm that the development of the former Western Suburbs Hospital site at Croydon will involve the sale or lease of parts of the site? How much of the land will be sold or leased and when will this occur? When will the Government's proposed new development of the site be commenced?

The Hon. MICHAEL EGAN: I am not familiar with the site that the honourable member has mentioned. I will find out the details and provide them to the House.

The Hon. John Hatzistergos: They closed it down.

The Hon. MICHAEL EGAN: They closed it down, did they? Of course, Labor built the magnificent new Canterbury Hospital. It is very difficult to go anywhere in the State where the Carr Labor Government has not built a hospital or is about to build a new hospital.

The Hon. Dr Brian Pezzutti: Point of order: The honourable member might recall that construction on the new Western Suburbs Hospital was stopped by his Government.

The PRESIDENT: Order! On numerous occasions I have warned the Hon. Dr Brian Pezzutti not to take a points of order to debate an issue.

AUSTRALIAN COUNCIL OF TRADE UNIONS WORKING HOURS SUMMIT

The Hon. JOHN HATZISTERGOS: My question is to the Minister for Industrial Relations. Will the Minister inform the House about the Government's ongoing commitment to providing reasonable hours of work and establishing a better balance between family and work?

The Hon. JOHN DELLA BOSCA: Yesterday in Melbourne, the New South Wales Government attended the Australian Council of Trade Unions [ACTU] working hours summit, which brought together high profile leaders from business, politics and unions—

The Hon. Duncan Gay: And their families.

The Hon. JOHN DELLA BOSCA: There were. Tony Abbott, the Federal Minister, was there as was the brother of his doppelganger, the Federal Treasurer. Tim Costello, was there as a guest of the ACTU, advocating a very different position from that which I would think Tony Abbott would advocate and probably also different from the one his brother would advocate. Siblings and spouses have different points of view, and they are quite happy to advocate their different interests publicly. I am giving honourable members a lesson in family relations. As well, industry academics were there to debate issues surrounding long hours of work and family balance. The summit follows the decision of the Australian Industrial Relations Commission in July on the ACTU's reasonable hours test case, which gives employees the right to refuse to work overtime where to do so would result in unreasonable working hours.

In that case the commission accepted evidence that there had been a change in working arrangements and patterns of hours over the past 20 years. It was also accepted by the commission that working hours for full-time employees have shown an upward trend over this period. At the summit there was a broad recognition of the problems of unreasonable working hours in Australia, including long-term consequences for family and personal life and, importantly, health and safety issues. Proposals from the summit relating to enterprise bargaining, rostering practices and health and safety indicate that the parties are willing to advance the debate in a positive manner. This is particularly timely and appropriate considering the recent release of the latest snapshot from the Australian Bureau of Statistics and Research in the forms of employment survey, which highlight the magnitude of long working hours in the Australian workplace, where one in four permanent employees, or 27.1 per cent overall, are working at least 45 hours a week. Statistics reveal that 18.8 per cent of all permanent employees are working 49 hours or more and another 8.3 per cent are working between 45 and 48 hours a week.

There is a very real and substantial level of dissatisfaction with long working hours among full-time workers. Unfair and excessive working hours have a negative impact on workplace safety, productivity and a worker's ability to balance work and family responsibilities. The Government's support for the flow-on of the Federal decision to New South Wales State awards in the current proceedings before the Industrial Relations Commission is indicative of the Government's responsible position on the issue and consistent with the Government's policies to achieve a better work-life balance. The Government will continue to contribute to the debate over reasonable working hours in Australia through continued participation in further summits and conferences, ensuring that consultation with all stakeholders takes place in the pursuit of the best possible outcome.

TOBACCO ADVERTISING PENALTIES

Reverend the Hon. FRED NILE: I ask the Treasurer a question without notice in his own right and also as representing the Minister for Health. Is it a fact that the Phillip Morris tobacco company deliberately

flouted provisions of the Tobacco Advertising Prohibitions Act—legislation that I introduced—when it sponsored a rave and fashion show at Fox Studios? Is it a fact that Phillip Morris was fined only \$9,000 for decorating the venue with Phillip Morris logos and publicity? What action will the Government take to ensure that million dollar tobacco companies will be hit with a million dollar fine in the future? Will the Government introduce legislation with million dollar penalties?

The Hon. MICHAEL EGAN: I should be in a position to get an answer to the honourable member's question because I know the Minister for Health made a statement about the matter in the lower House yesterday. I was listening to the broadcast in the background, as it were, and I did not pick up the full details. I am advised that a million dollar fine will be introduced. I undertake to get full details for the honourable member.

YARRAMUNDI BRIDGE

The Hon. DON HARWIN: My question is to the Minister for Mineral Resources, representing the Minister for Transport, and Minister for Roads. What action has the Government taken to address serious safety concerns raised by local residents who use the Yarramundi Bridge, which has been reduced from two lanes to one lane for several years? What is the Minister doing to secure funding for the replacement of this bridge to address these legitimate safety concerns?

The Hon. EDDIE OBEID: I am very happy to get a detailed answer for my colleague, because this is a safety issue and the Government takes safety issues very seriously.

AQUACULTURE INDUSTRY

The Hon. PETER PRIMROSE: My question is to the Minister for Fisheries. What has been done to encourage the future growth of aquaculture in the State?

The Hon. EDDIE OBEID: The Opposition does not have any policies on aquaculture and it has never encouraged aquaculture, but the Government is very serious about supporting the industry and making sure that every avenue is available to those who want to enter this very important regional business. The Government will continue to support the growth of this industry. With the Carr Government's support, New South Wales aquaculture is developing at a healthy 10 per cent a year. Annual production of oysters, fish, prawns and yabbies is now worth more than \$44 million a year, and I look forward to further growth in this sector.

The Government's support includes planning for the future. That is why we have developed a five-year plan for aquaculture. The new aquaculture strategy 2002-2006 will help our State aquaculture industry reach its potential. It will help this dynamic industry continue to grow and be environmentally sustainable. The strategy outlines the Carr Government's vision for the future of aquaculture in the State. Over the next five years we will focus on industry investment by promoting new business opportunities and supporting existing aquaculture ventures. To ensure successful growth of the industry we will continue our world-class research and development.

The Government is determined to provide this important regional industry with policies and regulations that provide security and certainty. New compliance programs will improve safeguards for the environment. The Government's \$3 million aquaculture initiative has already delivered practical support to the industry. Regional aquaculture strategies are being prepared to streamline the process for issuing permits and leases and undertaking environmental assessments. New South Wales Government agencies will work with the aquaculture industry and local communities to implement this important five-year plan.

The Hon. Greg Pearce: Point of order: The Minister is clearly misleading the House with this fabricated answer that he is giving. He has confused his answer today with the answers that he has been preparing for his appearance at the Independent Commission Against Corruption on Monday.

The PRESIDENT: Order! I have asked members on numerous occasions not to make debating points in the form of points of order. There is no point of order.

The Hon. EDDIE OBEID: I just do not want to enter into a slinging match. It is not just members on this side of politics who see the Hon. Greg Pearce as a very ineffective member of this House; members on his own benches see him in that way. He has demonstrated time after time that he truly is an absolute dope.

The Hon. John Jobling: Point of order: My point of order relates to Standing Order 81 and relevance. First, the Minister is out of order. He must not attack another member unless by way of substantive motion. Second, the answer that the Minister is giving now bears absolutely no relevance to the question that was asked. In relation to the second part of the point of order, I ask you to direct the Minister to bring his remarks back to the question.

The PRESIDENT: Order! Members must not make imputations against other members of the Chamber. I remind members that interjections are disorderly, and I remind the Minister that the sessional orders require that answers be relevant to the questions asked. The Minister's time for speaking has expired.

The Hon. MICHAEL EGAN: If members have further questions, they might like to place them on notice.

ST MATTHEW'S CATHOLIC PRIMARY SCHOOL, WINDSOR, PESTICIDE EXPOSURE

The Hon. JOHN DELLA BOSCA: On 17 September 2002 the Hon. Alan Corbett asked me a question without notice concerning St Matthew's Catholic Primary School. I now provide the following response in addition to the information I provided the honourable member on 22 October 2002:

Further to the advice provided about the incident in which staff and students of St Matthew's Catholic Primary School reportedly entered a classroom that had been treated with the pesticide *Chlorpyrifos*, I can now advise that the Catholic Education Office have since provided additional information to WorkCover.

The new information indicates that WorkCover officers provided verbal advice to the Catholic Education Office about how best to deal with matters of this kind in July this year.

WorkCover does not generally keep records of telephone requests for information and advice where no complaint is lodged. It was for this reason that the original answer to the Honourable Alan Corbett did not refer to this advice.

WorkCover's Government Industry Team is conducting enquiries into the matter in order to determine, among other things, whether the contractor that applied the pesticide, acted in accordance with safety laws.

In the event that evidence of a breach of the legislation is discovered appropriate action will be taken. However, at present there is no evidence to suggest that the Catholic Education Office's response to the incident was inadequate.

With regard to the tests processed by WorkCover's Laboratory Services Unit, I must advise that privacy and confidentiality issues prevent WorkCover from releasing test results other than to the medical service providers that requested them. Under the *Occupational Health and Safety Regulation 2001* however, medical practitioners have a responsibility to notify WorkCover of any adverse results. No such notification has been received.

DEPARTMENT OF COMMUNITY SERVICES HELPLINE

The Hon. CARMEL TEBBUTT: Further to a question asked earlier during question time by the Hon. Patricia Forsythe with regard to faxes at the Helpline, I am advised that all the faxes currently awaiting final processing would have been initially assessed when they were received. I can also advise the House that there are no level one or level two matters in this group of faxes: those matters are referred on after the initial assessment. While there is currently a backlog of information only, level three and level four reports at the helpline, they are constantly being worked through and they are not being ignored. The department has advised me that it is implementing a strategy to remove the backlog.

WYONG CHILD ABUSE PREVENTION SERVICE

The Hon. CARMEL TEBBUTT: On 31 October the Leader of the Opposition asked me a question about the Wyong Child Abuse Prevention Service [CAPS]. On 20 November the Hon. Patricia Forsythe also asked me a question on the subject. The response to the questions is as follows:

On 31 October the Hon Michael Gallacher asked me a Question without Notice in relation to the Wyong Child Abuse Prevention Service. The question also made mention of the recently released Child Death Review Team Report.

At the time, I responded to the Leader of the Opposition's comments about the Child Death Review Team Report.

I also indicated that I would be happy to follow up the aspect of the Honourable Member's question which related to the funding of the CAPS service at Wyong.

It is my understanding that the CAPS organisation, which is based at Ashfield, operates a crisis telephone line, and Parent and Child Stress Centres at Wyong, Umina Beach, Liverpool and Orange.

CAPS receives core funding from the Commonwealth, \$141,758 in 2002/03, which is administered through the Department of Community Services (DoCS). I understand that local fundraising assists in meeting the costs of the local centres, which are mainly staffed by volunteers.

These volunteers provide comfort and support to families who are experiencing stress. DoCS appreciates that any assistance they provide to stressed families may help reduce the incidence of child abuse. In many instances, with support from the staff of DoCS, CAPS on the Central Coast has provided a useful collaborative service that has enhanced case management for DoCS clients.

In July this year my colleague, the Hon John Della Bosca, Minister Assisting the Premier for the Central Coast, and the then Minister for Community Services, the Hon Faye Lo Po', provided a joint one-off grant of \$16,000 to the Umina Beach branch of CAPS to assist with operational and training costs.

I have been advised, Madam President, that an officer from the Department of Community Services has initiated contact with Wyong CAPS about its needs.

Secondly, I would like to clarify the role that Wyong CAPS plays in child protection on the Central Coast by providing information about the child protection services in that region.

The protection of children who are at risk of abuse, or who have already experienced abuse, is a complex matter involving interventions in highly personal and private family matters. Primarily, it involves the need to ensure the safety of children. The work of child protection therefore requires the reliable and effective use of a range of professional forensic and clinical skills.

The importance of providing a timely and professional response in the situations is underscored by the findings of the Child Death Review Team, and, as I said in this place on 31 October, the Government intends to address any systemic weaknesses that the Team's Report has identified.

On the Central Coast, the Government currently provides, through DoCS, a professional child protection service employing 45 trained caseworkers as well as other specialists and managers. The Government also provides funding, through DoCS, for a number of non-Government agencies providing professional support services for families on the Central Coast. These services include an amount of \$601,158 per annum for Family Support services, \$268,514 for other family information and support projects, \$160,367 for Adolescent and Family Counsellors and \$512,000 for Families First projects.

Central Coast based Families First projects, which aim to help parents before they reach crisis point include:

- The Wyong "Schools as Community Centres";
- six supported playgrounds in Wyong and Gosford;
- a pilot universal home visiting project;
- funding to develop better linkages between pre-school and school attendance;
- a feasibility study to establish two additional Schools as Community Centres;
- an additional Parenting Support Worker outreaching from the Chertsey School as Community Centre to Wyoming Public School;
- improvements to service access and to provide supported playgroups for children with disabilities.

The facts about this funding, Madam President, fly in the face of Opposition claims that nothing is being done to support local families.

The Department of Community Services is continuing to provide information and training for the volunteer staff at CAPS. The professional staff of the Department appreciate that the assistance provided by CAPS volunteers to families who are experiencing stress may help reduce the likelihood of child abuse. Lines of communication are open between the Department and Wyong CAPS about the service's needs.

Questions without notice concluded.

ELECTRICITY INDUSTRY

Personal Explanation

The Hon. DUNCAN GAY, by leave: During question time the Treasurer selectively quoted to mislead the House by misrepresenting the position of the Opposition on customer protection.

The Hon. Michael Egan: This is not a personal explanation; it is a policy statement. Leave is withdrawn.

The PRESIDENT: Order! Leave is withdrawn. I call the Deputy Leader of the Opposition to order.

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

ELECTRICITY INDUSTRY

Personal Explanation

The Hon. DUNCAN GAY, by leave: During question time my reputation was impugned because the Treasurer, the Hon. Michael Egan, claimed that, if elected, the New South Wales Coalition will remove an important price protection mechanism for household electricity consumers. That is not true. During debate on the legislation to establish the Electricity Tariff Equalisation Fund [ETEF] in late 2000 I expressed some concerns about the impact the fund would have on the market—concerns echoed by financial institutions and industry experts ever since. More importantly, I detailed alternatives to the ETEF that would provide consumer price protection. That is on the record for all members, including the Treasurer, to see.

Yes, as I indicated today, a Coalition Government will dismantle the ETEF and remove the artificial barrier it creates. However, it will continue to offer appropriate price protection for each and every household electricity consumer in New South Wales. No, it will not do away with consumer price protection. Contrary to the spurious claims made by the Treasurer in his media release of 15 November and despite the blatantly inaccurate claims he made in the House earlier today, the Coalition will not remove price protection. The Treasurer is wrong and he knows it. My reputation has been impugned and I welcome the opportunity to correct the record.

TABLING OF PAPERS

The Hon. Ian Macdonald tabled the following papers:

Annual Reports (Departments) Act 1985—Reports for year ended 30 June 2002:

- (1) Department of Land and Water Conservation
- (2) Department of Fair Trading

Ordered to be printed.

COMMITTEE ON CHILDREN AND YOUNG PEOPLE

Report

The Hon. Peter Primrose, on behalf of the Chair, tabled report No. 18, entitled "Review of the New South Wales Child Death Review Team Legislation—An Examination of a Report for the Minister for Community Services", dated November 2002.

Ordered to be printed.

GAMING MACHINES FURTHER AMENDMENT BILL

Second Reading

Debate resumed from an earlier hour.

The Hon. IAN COHEN [2.34 p.m.]: The Greens support the Gaming Machines Further Amendment Bill. Last year the Government introduced a poker machine freeze by legislation and then continued the freeze by legislation. The overall legislated State cap is 104,000 machines. The 2001 Gaming Machines Act also legislated the maximum number of gaming machines allowed in individual pubs and clubs. The Act specifies that hotels are entitled to a maximum of 30 gaming machines, and clubs, 450. Clubs with more than 450 poker machines must reduce the number over five years until they reach the 450 mark. The Act also set up the tradable poker machines entitlement scheme, which enabled clubs and pubs to trade poker machine entitlements.

Among other things, this bill makes a number of amendments to the poker machine entitlement scheme, particularly in respect of the transfer of entitlements. There was some confusion about the move to decrease the social impact assessment threshold when entitlements are transferred from a club or pub in a shopping centre. I said that the Greens support that move. However, Reverend the Hon. Fred Nile was concerned that the legislation would have a negative effect. I understand that the move is designed to reduce the

number of machines in shopping centres gradually and to increase the range of circumstances in which social impact assessments must be carried out. Will the Minister address that confusion? If this legislation is designed to increase utilisation of the social impact assessment, the Greens are happy to support it.

The Hon. IAN MACDONALD (Parliamentary Secretary) [2.37 p.m.], in reply: I thank honourable members for their contributions to this debate. I will respond briefly to the points they have raised. The Hon. John Jobling asked about research into the gaming machine shutdown period. The shutdown requirement is part of the Government's harm minimisation and responsible gambling strategy. It was part of the gaming machine reform package introduced in April 2002 as amendments to the Gaming Machines Act 2001. It is designed to provide a forced break for gaming machine players that is consistently applied in venues across New South Wales. Prior to the decision to introduce this requirement concerns were expressed by club and hotel industry associations, individual clubs and hotels, club members, members of Parliament and other citizens.

The concerns expressed included persuasive arguments about the impact on the operation of clubs and hotels of an immediate six-hour daily closure. It is important to understand that in introducing the daily closure the Government did not wish to put the jobs of club and hotel employees at risk, nor did it want suddenly to inconvenience club and hotel patrons who may need some time to adjust to the proposed limitations. The Hon. John Jobling asked a question about research into the shutdown period. The Government is commissioning an evaluation of the effectiveness of the shutdown and its impact on problem gamblers, clubs and hotels and the broader community. The honourable member also asked a range of questions about the proposed amendment to section 15 of the Act. He asked how many cases will be affected by this amendment.

I have been advised that the Liquor Administration Board believes that up to 10 hotels could be affected by the proposed amendment. However, the precise number will not be known until the circumstances of each case have been examined. The amendment is aimed at addressing the most extreme cases of hotels that tried to circumvent the widely predicted gaming machine freeze that commenced in April 2001. In their rush to have gaming machines approved before any freeze was announced, some hoteliers went to extraordinary lengths. Examples of the more extreme cases involve two hotels that had been demolished. One had burnt down and the other was no more than a hole in the ground. Despite that, the hoteliers applied for authorisation to install machines.

In another case a hotel licence was subject to a condition that had been imposed by the court that it could be held only in dormant capacity—that is, it could not be legally operated as a hotel until the Licensing Court was satisfied that it was appropriate to operate again. Notwithstanding this obvious restriction, the hotelier applied for authorisation to install gaming machines. In relation to the inquiry about whether the board would be issued with ministerial guidelines on when not to allocate a poker machine entitlement or when to request forfeiture of entitlements, I am advised that there is no power to issue ministerial guidelines in that case. However, I understand that the board will consider each case based on the relevant facts. As a general principle, the board will consider whether at the date nominated by the hotelier for installation of the gaming machines the hotel premises existed at the address for which the licence was issued and, if so, whether the hotelier had the right to exercise the licence at the site at the time.

With regard to whether any appeal mechanism will be available, there is always a capacity to lodge a formal appeal to the Supreme Court. However, the board has established an internal appeal mechanism that allows for parties to request a review by the full board of decisions that have been made by a single board member. A question was asked as to whether hotels or clubs will be able to submit hardship applications for poker machine entitlements if they lose their initial entitlements as a result of this amendment. I am advised that the legislation as it stands only allows for hardship applications to be submitted within three months of the commencement of the legislation. While there is provision to extend this period by regulation, I am advised that there is no intention to reopen the hotel and club hardship processes.

The Hon. John Jobling asked whether the Government envisages that new section 62A will have an impact on the competitiveness of gaming machine manufacturers. Section 62A removes any doubt that may have existed about the relevance of gambling harm minimisation considerations to the exercise of the board's power to approve gaming machines. It has long been recognised that gambling harm minimisation can play an important role in gaming machine design. At the request of the Minister for Gaming and Racing in late 2000, the Liquor Administration Board conducted a review of its technical standards for gaming machines. As a consequence, the board has determined to implement key harm minimisation measures in relation to the design of gaming machines.

For example, it has determined that harm minimisation and player-related gaming information must be displayed on gaming machine screens. The proposed amendment merely seeks to put beyond doubt that the

board has the power to consider harm minimisation and related measures when it exercises its power to approve gaming machines. The board-approved technical standards apply equally to all gaming machine manufacturers, so the amendment to section 62 will not have an impact on their competitiveness. In short, they will all have to play by the same rules.

Reverend the Hon. Fred Nile sought clarification as to whether the amendments would change the level at which a class 2 social impact assessment [SIA] will be required. I am advised that the bill does not change the point at which a class 2 SIA will be required. The cut-off point, which is presently provided in the Gaming Machines Regulation, is four. That means that a hotel or club that wishes to install four or fewer additional gaming machines will still only have to do a class 1 SIA. A hotel or club that wants to install five or more additional gaming machines will still have to do a class 2 SIA.

The bill introduces a new term: "SIA threshold". The SIA threshold identifies the maximum number of poker machines that any particular club or hotel is already permitted to install. This number generally reflects the number of gaming machines that hotels and clubs had at the time the relevant freeze was imposed. The bill also provides that in some circumstances the SIA threshold for a particular club or hotel will be reduced. In those cases, clubs or hotels that want to install any additional gaming machines will have to go through the SIA process. This does not mean that it will be easier for those venues to get by with just a class 1 SIA. In fact, the bill makes the SIA conditions more onerous because it removes any doubt that venues will have to go through the SIA process in these circumstances.

I place on record the Government's intention to also examine the need for any further amendment to the legislation in regard to the provisions relating to large-scale clubs. In particular, the bill imposes new requirements on clubs that have more than 450 gaming machines. The Government will consider removing those further restrictions once the large-scale clubs have shed their surplus machines as required by the legislation. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

LAW ENFORCEMENT (POWERS AND RESPONSIBILITIES) BILL

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [2.44 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 granted.

The Government is pleased to introduce the *Law Enforcement (Powers and Responsibilities) Bill 2002*. The Bill represents the outcome of the consolidation process envisaged by the Royal Commission into the NSW Police Service to help strike a proper balance between the need for effective law enforcement and the protection of individual rights.

This Bill constitutes significant law reform. It radically simplifies the law in relation to law enforcement powers, setting out in one document the most commonly used criminal law enforcement powers and their safeguards.

Previously complex and diverse law enforcement powers and responsibilities once buried in numerous statutes and casebooks have been consolidated into the Bill, so that the law is now easily accessible to all members of the community.

Matters included in the Bill represent either a codification of the common law, a consolidation of existing statute law, a clarification of police powers, or a combination of these.

In acknowledgement of the significance of this legislation, the Government has consulted widely in the preparation of this Bill. Stakeholders and other potentially interested parties were afforded an opportunity to comment on an Exposure Draft of the Bill.

The majority of amendments to the Exposure Draft were made in response to the 29 submissions received.

While generally the Bill simply re-enacts existing legislation, it does in some circumstances make amendments intended to more accurately reflect areas of the common law or to address areas in the existing law where gaps have been identified. Unless expressly stated, the Bill is not intended to change the common law.

I do not propose to address each clause of the Bill separately. Unless otherwise stated, the effect of the provisions are intended to reflect the current meaning already provided in the statute books.

I will however address the areas where there has been substantive reform, in particular:

- Revised powers of entry
- Simplification of personal search powers, and related safeguards
- New provisions regarding notices to produce
- New provisions regarding crime scenes
- Revised powers of arrest
- Revised powers in relating to property in police custody
- New, general safeguards that apply broadly to the exercise of all police powers.

Powers of Entry

Part 2 of the Bill codifies the existing common law powers of entry.

Clause 9 provides that a police officer may enter premises if the police officer believes on reasonable grounds that a person has suffered significant physical injury or that there is imminent danger of significant injury to a person.

This power to enter premises to prevent death or significant injury represents a clarification of police powers at common law and reflects legitimate community expectations of the role of police.

Clause 9 also enacts the common law power of police to enter premises where a breach of the peace is being or is likely to be committed and it is necessary to enter immediately to prevent the breach of peace.

The Bill deliberately does not define the term 'breach of the peace'; this is a well-established concept at common law, and will remain so.

A police officer who enters a premises by virtue of the powers in clause 9, may remain on the property only as long as is reasonably necessary in the circumstances.

Clause 10 of the Bill codifies the existing powers of police

- to arrest a person,
- to detain a person under another Act, or
- to arrest a person named in a warrant,
- where the officer believes on reasonable grounds that the person is in the premises.

Search & Seizure without warrant

Part 4 of the Bill details the powers of search and seizure without warrant.

Police powers to conduct personal searches have been significantly simplified without reducing or increasing existing powers, so that police are able to readily understand the types of search that they may undertake, and the community can understand more readily the powers that police have in this respect.

A regime of 'three tiers of searches' has been adopted, and safeguards have been introduced to ensure that civil liberties are upheld and that the integrity of the police process is not compromised. I will address the new regime and safeguards in greater detail shortly.

Clause 23 (2) addresses a gap in the law identified in the course of consolidation: While at common law police have the power to search a person who has been arrested **on suspicion of committing an offence**, it is not clear whether police have the power to search a person arrested otherwise than for an offence, for example, where a person has breached a bail condition.

Clause 23 (2) provides that police will have the power to search a person arrested other than for an offence in limited circumstances, that is, where the arresting police officer has a **reasonable suspicion** that the arrested person who is being taken into custody is carrying something which she or he may use in a way that could **endanger** a person, or assist a person to **escape from custody**.

This provision addresses concerns about safety of police and others in custody and is a justifiable law enforcement power.

The search powers set out in Clause 23 are powers that may be exercised at or after the time of arrest. These powers should be distinguished from those set out in Clause 24, which sets out the search powers that may be exercised by a police officer after a person has been arrested and taken into custody, for example, at a police station.

Division 3 of this Part consolidates the existing police power to search for knives and other dangerous implements. The existing provisions have been substantially redrafted to ensure that the applicable powers and safeguards are consistent with the three-tiered search regime detailed in Division 4 of this Part, which I shall come to shortly.

The redrafted provisions **do not extend or restrict** the powers police currently have to search for a knife or other dangerous implement in a public place or school. The existing safeguards have either been incorporated into the safeguard provisions which apply generally to all personal searches conducted under the Bill, or have been incorporated within the new definitions of the searches.

Division 4 of Part 4 details provisions that apply to all personal searches conducted under the Bill. In order to provide greater regulation of police search powers, the Bill substantially adopts the three-tiered personal search model contained in the *Crimes Act 1914 (Cth)*, which in turn is based on the Model Criminal Code.

The Bill introduces **a regime of frisk, ordinary and strip searches in respect of all personal searches** conducted under the Bill. The Bill details the circumstances in which each of the three levels of search may be warranted and **provides safeguards to protect the privacy and dignity of persons being searched**. The Bill provides specific safeguards for any person subjected to a strip search and specific safeguards for children and persons with impaired intellectual functioning who are subjected to a strip search.

A **frisk search** is defined as a search of a person conducted by quickly running the hands over the person's outer clothing or by passing an electronic metal detection device over or in close proximity to the person's outer clothing AND a examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

An **ordinary search** is defined as a search of a person or articles in the possession of a person that may include requiring the removal and examination of specified items of outer clothing.

A **strip search** is defined as a search of a person or of articles in the possession of the person that may include requiring the person to remove all of his or her clothes (but only those clothes necessary to fulfil the purpose of the search) and a visual examination of the person's body and a search of those clothes. A strip search may only be carried out where the police officer suspects on reasonable grounds that it is necessary for the purposes of the search and that the seriousness and urgency of the circumstances require a strip search.

The Bill requires that the least invasive kind of search practicable in the circumstances should be used.

The Bill introduces **safeguards** intended to preserve the privacy and dignity of all persons subjected to personal searches under the Bill.

Clause 32 incorporates a number of safeguards intended to ensure that a police officer conducting **any search** has regard to the searched person's right to privacy and maintenance of dignity throughout a search.

The police officer must comply with the safeguards set out in section 32, unless it is not reasonably practicable in the circumstances to do so. What is reasonably practicable in the circumstances will of course be dependent on the individual circumstances.

These safeguards require the officer

- to **inform the person of the nature of the search**,
- request their **cooperation**,
- conduct the search **out of public view** and as **quickly** as possible.
- not to **question the person searched** at that time in relation to a suspected offence.

Clause 33 provides specific safeguards for a person subjected to a **strip search**. The safeguards in subclauses 33 (1)-(3) which relate to privacy, the absence of people not necessary for the purpose of the search and the presence of support persons, **must be complied with unless it is not reasonably practicable in the circumstances**.

Clause 33 (3) provides for the presence of **a support person for children aged between 10 and 18, and persons who have impaired intellectual functioning** who are subject to strip searches. This provision has been included to protect the interests of those people who may not be able to protect their own interests, and may also assist police in the conduct of the strip search.

The safeguards in subclauses 33 (4) to (6) are, without exception, **mandatory** and clarify that a strip search is, in fact, a **visual search** and **not an examination of the body by touch**.

Clause 34 provides that **a child under 10 may not** be strip-searched.

The safeguards in Division 4 are **in addition to safeguards in Part 15** that apply generally across the Bill. The safeguards better define what a police officer can do when conducting a search, and ensure the integrity of the criminal justice processes.

Search and Seizure with warrant or other authority

Part 5 repeals and re-enacts existing powers set out in *Search Warrants Act 1985* and sections 357EA and 578D of the *Crimes Act 1900*.

The provisions in this Part regarding **notices to produce** clarify and provide a legislative basis for the practice of obtaining documents held by financial institutions. Search warrants, in this context, are considered a 'blunt instrument': a search warrant may authorise police to search the entire premises for documents held by the financial institution, when only a specific customer's records are sought.

In practice, banks produce the documents sought when presented with a search warrant, rather than have police search through all of their records.

The Bill will allow a police officer who believes on reasonable grounds that an authorised deposit-taking institution holds documents that may be connected with an offence (such as fraud or money laundering) committed by someone else to apply to an authorised officer for a notice to produce the relevant documents.

The Notice to Produce provisions in the Bill do not replace search warrants. The intention of the provision is that police may apply for either a Notice to Produce or a search warrant, depending on the circumstances.

Although the new power imposes a duty on financial institutions to produce particular documents which do not now exist, the change is largely one of process. As the provision will not alter the type of documents that can be obtained (a document, for example, can include a document in electronic format), but merely the process in which the documents are obtained.

Consistent with the existing *Search Warrants Act 1985*, the Bill provides that the penalty for failure to comply with a notice to produce, without reasonable excuse, is the same as the penalty for obstructing or hindering a search warrant.

Crimes Scenes

It is important that the community has confidence that evidence at a crime scene will not be interfered with, contaminated, lost or destroyed.

This Bill takes the opportunity to unequivocally clarify the powers that police currently exercise when establishing and undertaking certain actions at crime scenes.

Part 7 of the Bill outlines when police may establish a crime scene and the powers that may be exercised at a crime scene.

The Bill creates a two-tiered approach for crime scenes. If police are lawfully on the premises and establish a crime scene, certain basic powers to preserve evidence may be exercised in the first 3 hours without a crime scene warrant. The powers that may be exercised in the first 3 hours are aimed primarily at the preservation of evidence and include directing people to leave a crime scene and preventing persons entering a crime scene.

The remaining crime scene powers are investigatory, and search and seizure powers. These powers may generally only be exercised once a crime scene warrant has been obtained. The application procedures for, and safeguards relating to, crime scene warrants are the same as those for a search warrant. The authorised officer may issue a crime scene warrant authorising a police officer to exercise all reasonably necessary crime scene powers at, or in relation to, a specified crime scene. Police may, however, exercise **any** of the crime scene powers in the first 3 hours (that is, without a warrant) if the officer or another officer applies for a crime scene warrant **AND** the officer suspects on reasonable grounds that it is necessary to immediately exercise the power to preserve evidence.

The exception to the requirement for a warrant before the exercise of certain powers is vital. For example, police may need to immediately take a photograph if a crime scene is being flooded, or gain access to a room that is on fire and which police suspect contains evidence of an offence. In these circumstances, waiting for a crime scene warrant to be issued would not be practicable, as the evidence would be destroyed.

The Bill provides for a number of safeguards for the use of crime scene powers, such as providing time limits on the establishment of a crime scene and specified powers available to use at a crime scene.

The Bill does not interfere with the ability to establish a crime scene in a public place.

The Bill does not prevent an officer from exercising a crime scene power or doing any other thing if the occupier consents. Nor does the Bill provide police with a new power of entry. Police will only be able to exercise crime scene powers if they are already lawfully on premises or have been granted a crime scene warrant.

The range of offences for which crime scenes may be established is limited to serious indictable offences and where there is an offence committed in connection with a traffic accident causing death or serious injury to a person.

The officer must be of the opinion that it is reasonably necessary to establish a crime scene to preserve or search for or gather evidence of such offences

As with notices to produce, these powers are not intended to detract from the search warrants powers. Consistent with the existing *Search Warrants Act 1985*, the Bill provides a penalty for obstructing or hindering a police officer exercising crime scene powers, without reasonable excuse.

Powers relating to arrest

Part 8 of the Bill substantially re-enacts arrest provisions of the *Crimes Act 1900* and codifies the common law.

The provisions of Part 8 reflect that arrest is a measure that is to be exercised only when necessary. An arrest should only be used as a last resort as it is the strongest measure that may be taken to secure an accused person's attendance at Court.

Clause 99, for example, clarifies that a police officer should not make an arrest unless it achieves the specified purposes, such as preventing the continuance of the offence. Failure to comply with this clause would not, of itself, invalidate the charge.

Clauses 107 and 108 make it clear that nothing in the Part affects the power of a police officer to exercise the discretion to commence proceedings for an offence other than by arresting the person, for example, by way of caution, or summons, or another alternative to arrest. Arrest is a measure of last resort.

The Part clarifies that police have the power to discontinue arrest at any time.

The application of the **safeguards** contained in Part 15 of the Bill represents a codification of the common law requirement that a person must be told of the real reason for their arrest, and a clarification of the additional requirements that an officer must provide their name, place of duty and a warning.

Powers to give directions

Part 14 repeals and re-enacts without amendment legislative provisions in relation to police powers to give reasonable directions. It is intended that under **clause 197**, which sets out the powers of police officers to give directions in public places, that a police officer may be "a person affected by the relevant conduct" for the purposes of issuing a direction.

Property in police custody

While substantively re-enacting the relevant provisions of the *Criminal Procedure Act 1986* and the *Police Service Regulation 1990*, the Bill makes a number of minor amendments to address concerns raised by operational police concerning the disposal of property lawfully in police custody.

Overarching safeguards

Part 15 of the Bill incorporates generic safeguards applicable to the majority of powers exercisable under the Act.

When, for example, police exercise powers of entry, search and arrest, police must, before exercising the power:

- provide the person subject to the exercise of the power with evidence that the officer is a police officer, his or her name and place of duty,
- provide the reason for the exercise of the power and
- warn that failure or refusal to comply with a request of the police officer in the exercise of the power may be an offence.

The Bill recognises, however that police may not always reasonably be able to comply with these safeguards prior to using their powers, such as in an emergency situation. Accordingly the clause requires in such circumstances, that the safeguards should be exercised as soon as reasonably practicable after the power has been exercised. Even in emergency situations, however, police should strive to comply with all safeguards set out in the Bill.

The existing law has been preserved in the case of a power

- to request disclosure of identity,
- to give a direction or
- to request a person to produce a dangerous implement,

where these requirements must be met before the power is exercised.

Review

The Bill provides that the Ombudsman will monitor for two years from the commencement of the proposed Act the newly enacted provisions of the Bill, including the personal search provisions, the safeguards, crime scenes, notices to produce and other minor changes to police powers.

The Attorney General and myself will undertake a review of the proposed Act three years after its assent.

Conclusion

With power comes responsibility. This Bill represents ideals of transparency, accountability, and legitimacy.

This Parliament, as representatives of the community, and the Courts have over time given Police certain powers required to fulfil their role in law enforcement effectively. In return for these powers, however, police are required to exercise them responsibly, particularly where these powers affect the civil liberties of members of the community whom police serve.

The *Law Enforcement (Powers and Responsibilities) Bill 2002* balances these two ideals admirably.

I commend the Bill to the House.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [2.44 p.m.]: The Opposition does not oppose the Law Enforcement (Powers and Responsibilities) Bill. However, I reiterate that, as was indicated during debate on the bill in the Legislative Assembly, the Opposition has concerns about police officers' practical application of the bill. The Opposition's concerns were clearly outlined by the shadow Minister for Police, who, in a few months' time, will be the New South Wales Minister for Police. The shadow Minister represented many rank and file police officers in expressing his concerns about the practical implications of the legislation on them.

The objects of the bill are to consolidate, restate and clarify the law relating to police and other law enforcement officers' powers and responsibilities; set out the safeguards applicable in respect of persons being investigated for offences; and make provision for other police powers, including powers relating to crime scenes, production of bank documents and other matters. The Royal Commission into the New South Wales Police Service envisaged a consolidation of the powers of police and law enforcement officers. The objective of this consolidation is to provide for effective, efficient law enforcement and protect individual rights. The intent of the bill is to simplify current legislation.

Currently police powers are found in many different Acts; it is therefore desirable to incorporate them into one piece of legislation. The Opposition supports the general thrust of the bill. However, when we endeavoured to amend the bill in the Legislative Assembly, all Government members voted against each and every Opposition amendment, which, I reiterate, were put forward to assist police officers. The Opposition's amendments came about as a result of discussions with rank and file police officers.

The Coalition in the other place proposed a number of amendments to the bill, and the Government opposed each of those amendments. The Coalition believes that one police warning is sufficient. We sought to remove the double-barrelled warning requirement with respect to the police power to search for knives. Each and every member of the Government voted against this sensible amendment. The Coalition also sought to provide police with powers to search vessels and aircraft that contain a person believed to be in possession of a prohibited plant or prohibited drug—powers similar to the police powers in respect of motor vehicles—except when there is no correlation between a vessel and an aircraft or a motor vehicle, and put those powers on an equal footing. Again, the Government was not prepared to accept this very sensible amendment.

The Coalition was also concerned that the bill did not provide police with the power to arrest when there is a reasonable suspicion that an indictable offence is about to be committed. This amendment was put forward to clarify the difficulties posed by legislation with respect to the commission of an indictable offence. However, the Government was not prepared to support the amendment. I am sure that down the track it will be shown that the Opposition was right in the position it took.

The Coalition takes the view that because police officers need the power to arrest without warrant, an appropriate provision needs to be included in the bill. Yet again, the Government members voted against the Opposition's proposals. Fundamentally, the Opposition disagrees with the Government's view that police problems will be solved by the issuing of penalty notices for serious offences under the Crimes Act. We believe that the Government must put in place a better system of police powers of arrest in relation to different classes of offences. As a person with some knowledge of how the system works, I believe that the issuing of infringement notices for serious offences, particularly section 61 assaults and motor vehicle theft, is an absolute disgrace and the provision should be withdrawn.

The Hon. RICHARD JONES [2.48 p.m.]: The Law Enforcement (Powers and Responsibilities) Bill repeals and re-enacts provisions contained in various Acts. It sets out the powers of police to enter premises, require identity to be disclosed, search and seize with and without a warrant, arrest, investigate and question, detect for drugs using dogs and medical imaging, and give directions to persons in public places. Some provisions of the bill expand existing powers, change existing laws, create new powers and create new offences. Clearly, it is important legislation. I have concerns in relation to a number of provisions, which I will outline shortly, and I intend to move amendments in Committee to address them. Proposed section 26 (3) refers to police officers' powers to search for knives and other dangerous implements. It reads:

... the fact that a person is present in a location with a high incidence of violent crime may be taken into account in determining whether there are reasonable grounds to suspect that the person has a dangerous implement in his or her custody.

This provision is problematic. The fact that a location has a high incidence of violent crime is irrelevant. The New South Wales Ombudsman's report entitled "Policing Public Safety" recommended that the incidence of violent crime in an area should be taken into consideration only in combination with other factors. The bill

expresses this in vague terms and invites stereotypical suspicions. That provision should be removed. The Police Association has argued that such terms lack certainty and clarity. Officers will be left open to criticism for the misuse of the provision. The Ombudsman's report notes that police officers have expressed confusion about the definition of "violent crime". One police officer said:

When you target someone, why are you targeting someone in a high crime area?... If you have three or four Asians sitting together, what's the possibilities? OK, they could be part of a gang, or they could just be four blokes from the North Shore come down to have a couple of games in Timezone. All of a sudden you're turning them over saying they're Asians, they're in a high crime area. We're searching for knives.

Police officers are also uncertain about the extent to which the crime hot spots provision can be relied upon to form the basis of a search. They expressed concern that the phrase "area with a high incidence of violent crime" was being interpreted too broadly. As the Ombudsman's report suggests, there is some confusion about the extent to which the provision can be relied upon, what determines and defines a location with a high incidence of violent crime, and what powers can be used with it is an element. Accordingly, to ensure that the hot spots provision does not result in the inappropriate use of the search power, it may be better to require NSW Police to define those locations with a high incidence of violent crime that it assesses as warranting special application of the powers. This would assist in the consistent application of the powers and would clearly define those areas in which location can be taken into account in determining whether to search a person.

I am also concerned about the provisions that relate to the new regime of three-tiered searches: frisk, ordinary and strip searches. With regard to strip searches, provision must be included that provide for safeguards that are included in the comparable consolidated legislation such as the Commonwealth Crimes Act 1914. For example, section 3ZH of that Act provides that a strip search may be conducted if an officer of the rank of superintendent or higher has approved the conduct of the search and a person who gives or who refuses to give an approval must make a record of the decision and the reasons for the decision. Neither of these provisions has been contained within the New South Wales bill, and they should be. In addition, privacy provisions should be strengthened in relation to all searches. Searches must simply not be conducted in the presence or view of a person whose presence is not necessary for the search. Also a parent, guardian or personal representative of the person searched may, if reasonably practicable in the circumstances, be present during the search.

I understand that it may not be reasonably practicable to have another person present in all circumstances, but it is important that the provisions are strengthened to enable another person—such as a parent—to be present. That is particularly important in relation to children and persons with impaired intellectual functioning. It is absolutely essential that strip searches conducted on children and people with impaired intellectual functioning are provided for in their own section of the legislation. Children and intellectually impaired people are amongst the most vulnerable in our society and thus must be afforded special consideration. In relation to the rules for conduct of strip searches of children and persons of impaired intellectual functioning, the bill provides that the search must "as far as it is reasonably practicable in the circumstances" be conducted in the presence of a parent or guardian of the person being searched. It is simply not good enough to insert into both provisions "as far as it is reasonably practicable". Quite clearly, as far as possible we should avoid the situation where children or persons with impaired intellectual functioning would be strip searched without a parent, guardian or other person representing their interests present. The failure to do so would be a travesty of justice.

I intend to move an amendment in Committee to provide that a parent, guardian or other person must "unless there is no other alternative in the circumstances" be present. The amendment strengthens the existing provision without making it unworkable. It is anticipated that in some circumstances—for example, if the person is 17 years old, almost an adult—having a parent, guardian or other person present may not be workable or even desirable for the person being searched. We do not want to make the provision mandatory, otherwise it may work against the person being searched. Therefore, the provision that another person must be present unless there is no other alternative and that is acceptable to the person is a reasonable and important measure. The bill creates significant new laws with regard to crime scenes. The new powers are modelled on provisions contained in the Queensland Police Powers and Responsibilities Act 2000. However, the various safeguards that are afforded in the Queensland legislation have not been reproduced in this bill. For example, the Queensland Act provides, in relation to an officer's powers to enter the crime scene, investigate, open anything, remove anything, that:

... if it is necessary to do anything at the place that may cause structural damage to a building, the thing must not be done unless a Supreme Court judge issues a crime scene warrant for the place before the thing is done and the warrant authorises the doing of the thing.

The bill should be amended to include a similar provision. In addition, the officer must exercise those powers in a way that causes the least amount of damage to property. I am not saying that an officer would wish to cause more damage than is necessary; I am merely stating that the restriction to cause "the least amount of damage as possible" should be more important than time, financial circumstances, resources or any other constraints. Proposed section 100 relates to powers of arrest. However, it is inadequate and should be amended to reflect current practice. The bill requires persons conducting a citizen's arrest to take the arrested person before an authorised officer—being a magistrate, clerk of the court or authorised Attorney General's Department officer. In reality, citizens making arrests call the police or another appropriate authority and deliver the arrested person into police custody.

Proposed section 119 provides that when applying for a detention warrant a person may make an application in person. However, there is no requirement that this must be accompanied in writing. Quite clearly, it is important that if an officer makes an application in person it is accompanied with something in writing—just as the warrant provisions outlined in proposed section 60 require written advice. I will move an amendment in Committee to make clear that these provisions will also apply in relation to detention warrants. Another important aspect of this legislation is the power of a medical practitioner, acting at the request of an officer, to examine persons in custody.

The provisions that are included in this bill should be in accordance with what is provided for in the New South Wales Crimes Act 1900. The Act states that a legally qualified medical practitioner may make such an examination of the person so in custody "as is reasonable in order to ascertain the fact which may afford such evidence". Clearly, the bill should be amended to include a provision that an examination must be limited to what is reasonable for the purposes of the examination. In addition, a medical examination should take place only if there are reasonable grounds for believing that an examination of the person will provide evidence. I repeat: it says "will" provide evidence, not "may" provide evidence. The Crimes Act 1900 provides:

When a person is in lawful custody upon a charge of committing any crime or offence which is of such a nature and is alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his or her person will afford evidence as to the commission of the crime or offence, any legally qualified medical practitioner acting at the request of any officer of police of or above the rank of sergeant, and any person acting in good faith in his or her aid and under his or her direction, may make such an examination of the person so in custody as is reasonable in order to ascertain the facts which may afford such evidence.

The provisions contained in this bill should reflect the current provisions. Therefore, the wording of proposed section 138 should be changed from "may" to "will". Part 11 deals with drug detection powers. Regulation-making powers with respect to record keeping, particularly as they relate to drug detection powers, should be preserved. It should be a requirement that police keep records of the results of all drug dog searches conducted—whether or not pursuant to warrant—including where the dog has alerted and no prohibited drugs or plants have been found in possession or control of the person; the outcome—warning, caution or prosecution—for any person found with prohibited drugs or plants in their possession or control; and the cost of general drug detection operations using dogs—whether or not pursuant to warrant—by reference to the number of police, dogs and other resources deployed, events of operation, et cetera.

The Police Powers (Drug Detection Dogs) Act 2001 provides that the Governor may make regulations "for or with respect to the keeping of records relating to the exercise of powers conferred on police officers by this Act". Clearly, similar and tighter provisions are necessary in this instance. Under this bill police are given the power, under proposed section 189 (3), to take action to prohibit a person from driving. This provision is not included in section 30 of the Road Transport (Safety and Traffic Management) Act. The proposed section allows the police officer to act to require a driver to hand over keys or for police to immobilise a vehicle before breath-testing a person if the officer reasonably suspects the person is likely to abscond. For example, a police officer could reach in and grab someone's keys. Given that the police officer must reasonably suspect that the driver is going to drive off, this would be a rather dangerous thing for a police officer to do. Certainly this type of thing should not be encouraged.

The draft exposure of this bill provided, pursuant to the Queensland Act, that nothing in the legislation affects the right of a person to refuse to answer questions unless required to do so under an Act. However, the bill now makes no such provision. This is an essential safeguard relating to powers that must be included. In addition, provisions in part 17 relating to property in police custody expand the current statutory provisions by incorporating various parts of the Queensland Act. However, a number of accompanying safeguards have been omitted. In particular, the Queensland Act provides that when a item is seized a receipt should be left or given and, upon request, a police officer should provide certified copies of documents seized from the person entitled to possess that document. Such provisions must be included in the bill, and I shall move amendments in

Committee to this effect. The New South Wales Ombudsman's report entitled "Police in Public Safety" recommended that police should be provided with guidance by way of regulated codes of practice in their use of reasonable directions powers.

The report noted that the records of incidents of reasonable directions in New South Wales from July 1998 to June 1999 showed a steep increase in the reported use of the reasonable directions powers. A high number of teenagers and a high proportion of people from indigenous backgrounds were given directions. Police are given a broad discretion as to the kinds of directions they may lawfully give. The report noted that by far the most common direction reported was a direction to move on, with no further detail. It was noted that the breadth of the power had been somewhat obscured by the tendency to refer to the power as simply the move-on power. The Ombudsman recommended that the police use their discretion to tailor directions to solving the particular problem at hand. He recommended that the legislation be reinforced in future police training because of the narrow emphasis that has been placed on directions to move on and confusion as to the scope of the power expressed by police in focus groups and interviews conducted during their review. The bill must be amended to provide that the commissioner must issue instructions and guidelines in relation to these move-on powers.

Proposed section 238 allows for regulations to create offences punishable by penalty. While this provision is consistent with provisions in other legislation, the penalties provided exceed what is necessary—they are too high. In fact, many legal organisations, such as the Law Society of New South Wales, have argued that all offences should be contained in the Act and none should be prescribed by way of regulation. However, in anticipation of the need for flexibility I do not propose to do this; rather, I intend to provide that the maximum penalty units be reduced from 20 to 10 and 50 to 25 respectively. Monitoring of this important legislation by the Ombudsman is essential. Proposed section 242 provides that only parts of the bill shall be scrutinised. This is unacceptable. Part 4—the search and seizure powers without warrant—should be included in the Ombudsman's review, given that the new safeguards apply across the entire part, not just to division 2 and division 4.

Similarly, part 11, which relates to drug detection powers, contains provisions that were included in the Police Powers (Drug Detection Dogs) Act, the Police Powers (Drug Premises) Act and the Police Powers (Internally Concealed Drugs) Act. These Acts specifically provide for scrutiny of the exercise of powers by the Ombudsman and an obligation to report. The same provisions must be included in this legislation. The Minister's briefing note on the bill noted that the Ombudsman will monitor the newly enacted provisions of the bill. I would argue that the aforementioned Acts constitute newly enacted provisions as they came into force only late last year. The concerns I have outlined are serious and I will move amendments in Committee to address them.

The Hon. HELEN SHAM-HO [3.03 p.m.]: The long title of the Law Enforcement (Powers and Responsibilities) Bill is:

A Bill for an Act to consolidate and restate the law relating to police and other law enforcement officers' powers and responsibilities; to set out the safeguards applicable in respect of persons being investigated for offences; to repeal certain Acts and consequently amend other Acts; and for other purposes.

The draft bill was released for comment on 8 June 2001. According to the Law Society of New South Wales, this bill is a considerable improvement on the draft bill, and I agree with that view. I am sure all honourable members would agree that the consolidation of statute law and common law relating to police powers is an important and symbolic step for New South Wales. For some years there have been calls for this to occur, the most significant being the Wood Royal Commission into the New South Wales Police Service in May 1997. As the Attorney General stated in his second reading speech, the royal commission proposed a consolidation of laws relating to police powers in order to reach a balance between effective law enforcement and the protection of individual rights. I agree with the statement that the bill will simplify the law in relation to police powers and responsibility. It does so by bringing under one piece of legislation the most commonly used police law enforcement powers, including powers of entry, search and seizure powers, powers relating to arrest, and drug detection powers.

This significant improvement is to be commended because it enables the law to be more accessible to the public. Having studied and practised law, I am only too aware of the obstacles that prevent the community in general from accessing, let alone understanding, the law in all its complexity and technicality. However, I note that the bill is not totally comprehensive. Other police powers—such as to carry out forensic procedures, and to conduct controlled operations and surveillance—will generally remain under separate Acts. Previously, I have spoken in the House on the Police Powers (Drug Detection Dogs) Bill 2001 and the Police Powers (Drug Premises) Bill 2001, which was cognate to the Police Powers (Internally Concealed Drugs) Bill 2001.

Honourable members will recall that the Police Powers (Drug Premises) Act and the Police Powers (Internally Concealed Drugs) Act were introduced by the Carr Government in response to the problems exposed by the Cabramatta policing inquiry early last year. In particular, the Police Powers (Drug Premises) Act was introduced to close the drug houses that were prolific in 1999 at Cabramatta.

In March 2001 the Premier announced in a ministerial statement in the other place a three-step package of reforms at Cabramatta designed to combat drug and crime problems in the suburb. The Police Powers (Drug Premises) Act and the Police Powers (Internally Concealed Drugs) Act have been a major part of this package and have comprised the criminal justice strategy to be undertaken by the Government. According to the Government's progress report on Cabramatta policing, released by the Premier in April, since the drug house law came into effect in July 2001 15 drug houses have been shut down. Also, Cabramatta police have issued 2,487 directions under the new move-on powers, which commenced on 1 July.

As chair of the Cabramatta policing inquiry, I am pleased that the Government has taken decisive action in Cabramatta and has implemented many of the committee's recommendations. However, there is still a long way to go in Cabramatta. A most disturbing sign that things are going backwards in Cabramatta relates to trust and communication problems between front-line police and management at the Cabramatta Local Area Command [LAC]. I have been approached by Mr Peter Starr from the Cabramatta Chamber of Commerce, who has been championing the rights of local front-line police to speak out when there are problems. More than two weeks ago Mr Starr delivered several questions to my office and a letter signed by him on behalf of a number of front-line police at Cabramatta. I placed eight of those questions on notice and two weeks ago I asked one question without notice. Each relates to the Cabramatta Local Area Command. I hope that the Minister for Police will respond to those questions as soon as possible. I shall quote selective parts of the letter that I believe sum up the concerns of officers who deal with drug crime at Cabramatta. The letter stated:

We have had to live and work in an environment where we saw our courageous, honest and hardworking colleagues of the past suffer and be subjected to the harshest forms of vilification and persecution because they dared to raise their concerns and speak openly and honestly about what was taking place in the Cabramatta Police Station and the Cabramatta Community ...

We will continue to fight from within to expose the lies and deceit that is being waged upon this community by the current management regime at the Cabramatta LAC ...

We can no longer close our eyes and remain silent to the blatant politicisation of the management at the Cabramatta LAC ... Our only desire is to make Cabramatta a safe and better place for the community which we serve.

In my opinion this letter, which is lengthy, is disturbing evidence that the problems with management still exist, despite the changes instituted since the Cabramatta policing inquiry. The Government, to its credit, has tried hard to combat the problems. I turn to the substantial issues in the bill. In particular, I will focus on the issue of safeguards. On this matter, as Justice Michael Kirby of the High Court has been quoted as saying, it is a question of the balance which "our society is prepared to strike between its need for effective law enforcement and the protection of individual rights".

Last year when I spoke on three bills relating to police powers I raised the issue of appropriate safeguards for civil liberties, given that each of the bills increased police powers quite extensively. At the time the Law Society and the New South Wales Council for Civil Liberties were worried about the encroachment of police powers on the rights of individuals. As a lawyer I am only too aware of the conflict between the rights of individuals and the enforcement of laws. When it comes to personal searches, the balance between these two opposite aims can become very contentious. This is because personal searches can be seen as intrusive and invasive, denying privacy for the person being searched.

Personal searches can be embarrassing and shameful for the person being searched, particularly if they are not undertaken with sensitivity and understanding. For many people, police officers in uniform are intimidating, and to be forced to be searched by a police officer can be a frightening experience, especially if the person being searched is from a different cultural or linguistic background. Yet, on the other hand, these searches allow police to fight crime effectively and to protect the community. I believe that searches undertaken in an appropriate manner, with the necessary safeguards, are not an invasion of civil liberties but should be seen as an important crime-fighting tool.

The bill reflects this argument. It sets out three new categories of personal searches: frisk search, ordinary search and strip search. These are based on the Commonwealth Crimes Act 1914, and in doing so it also provides crucial safeguards. In my view this bill attempts to achieve the delicate balance to which Justice Michael Kirby referred. It provides safeguards to individuals being searched. For example, clause 32 deals with

the preservation of privacy and dignity during searches. This ensures that the person being searched is informed of whether clothing will need to be removed and why it is necessary to remove the clothing. The police officer must undertake the search in a way that gives reasonable privacy, and it must be done as quickly as is reasonably practicable.

Clause 33 provides rules for the conduct of strip searches. It provides that a parent, guardian or personal representative of the person may be present during the search. Importantly, it also provides the safeguard that a strip search of a child who is at least 10 years old but under 18 years of age or of a person who has impaired intellectual function must be conducted in the presence of a parent or guardian unless not reasonably practicable in the circumstances. While I approve of these safeguards, I agree with the Law Society that clause 33 should apply to all personal searches, not just strip searches. This would provide stronger safeguards to ensure that young people or people with impaired intellectual function are not vulnerable when a frisk or ordinary search takes place.

The Law Society believes that strip searches will be carried out only on a person who has been arrested. This is to provide yet another safeguard for the rights of the individual, and I have no problem supporting it. The Law Society further recommends that section 3ZH of the Commonwealth Crimes Act 1914 be included in clause 33 of the bill. Section 3ZH sets out the power to conduct an ordinary search or a strip search. I agree with the Law Society that these provisions would ensure further safeguards for strip searches. A strip search would have to be approved by a police officer of the rank of superintendent or higher, and reasons would need to be given for approval or refusal for the search to take place. This seems to be a sensible addition to the safeguards already provided in the bill. The Hon. Richard Jones will move an amendment to that effect, and I will support the amendment.

I turn to accountability. This bill provides for monitoring by the Ombudsman of the operation of certain parts of it. However, these provisions only cover searches of persons on arrest or while in custody in part 4, notices to produce documents in part 5 and crime scenes in part 7. I do not understand why the Ombudsman's monitoring cannot be extended to the whole of the search and seizure powers without warrant in part 4, the drug detection powers in part 11, the safeguards in part 15 and property in police custody in part 17. Again, the Hon. Richard Jones will move an amendment to that effect, and I will support the amendment. I hope that the Government and the Opposition will agree to the amendments as the Ombudsman's monitoring role is important as an accountability mechanism. I commend the bill to the House.

Ms LEE RHIANNON [3.15 p.m.]: This bill restates and consolidates the laws relating to the powers and responsibilities of the police and law enforcement officials. In some areas it codifies the existing common law, and in other areas it restates, with a few changes, the relevant provisions of other Acts, including the Crimes Act. Given the Greens considerable and well-documented concerns about certain powers given to police in New South Wales and the frequently unjustified increases in those powers that the Government has enacted, my colleague Ian Cohen and I have problems with many aspects of this bill. For example, the broad move-on powers that have been given to police are abusive, unnecessary and used often to harass Aboriginal people.

Labor's law and order agenda has failed to make New South Wales a safer place, it has failed to address issues of police corruption, and it has certainly failed to protect the rights of ordinary people. Ian Cohen will move a number of Greens amendments in Committee that cover a range of concerns about the powers given to law enforcement officials in New South Wales. We are concerned about proposed section 26 (3), which allows police to take into account the fact that a person is present in a location with a high incidence of violent crime in determining whether there are reasonable grounds to suspect that the person has a dangerous implement in his or her custody. This is commonly known as a hot spot provision, and the Greens have consistently opposed such provisions.

During the review conducted by the Ombudsman, significant problems with this particular provision were identified, even by the police. It is vague and confusing, and gives police far too much discretion. The incidence of violent crime in a particular location is a separate question to the criminality of any given individual. How are police supposed to determine how much violent crime is enough to trigger this provision? The provision results in discriminatory policing, with individuals targeted in an unfair manner. It also gives police far too much discretion, which was identified by the Wood royal commission as a key factor in corruption, and the Greens are opposed to it remaining in the bill in its current form.

When one sees that provision one must reflect on how much the recommendations of the Wood royal commission have slipped in New South Wales. We are concerned about proposed section 26 (2), which gives

police the power to search school lockers and any bags that are found in lockers. We believe that this section does not contain sufficient safeguards. Police should have to advise a student of the grounds for a belief that a dangerous knife or weapon is in the locker, the student should be present during the search, and the student should not be required to expose the contents of the locker in front of other students or teachers.

Similarly, the Greens are concerned that there are insufficient safeguards in the bill relating to the strip searching of children aged between 10 and 18 years and persons suffering incapacity. Children should only be searched in the most exceptional circumstances. That is not provided for in the bill. The only safeguard for such people is that the search must be conducted in the presence of a parent, a guardian or similar person. That is simply not good enough. It is not tight enough and does not provide the necessary safeguards. Additional safeguards are required, such as the requirement that the person has been arrested and charged with an offence or that the search has been ordered by a magistrate. It is ironic that the Crimes (Forensic Procedures) Act contains far more safeguards, despite the fact that forensic sampling is less intrusive than strip searching. The law must make a point of protecting the rights of children and those suffering incapacity, because they are not in a position to protect themselves.

We are concerned also that the definition of domestic violence in part 6 of the bill is too narrow. Proposed section 81 fails to include the situation in which a child, who is not a permanent resident of a dwelling but who is visiting, is a victim of domestic violence. In split families, such a scenario is quite common. The scope of domestic violence in the bill needs to be broadened to include that situation. We are also concerned that the crime scene powers contained in proposed section 95 (1) (a) to (d) do not make adequate provision for unaccompanied children. Where police direct an unaccompanied child to leave or not enter a crime scene where the child lives, the police should be obligated to ensure that the child has a safe place to go to and should assist the child to get to that safe place. We cannot assume that that will happen. As has often been said to us, the provision needs to be put in place.

The Greens believe this bill sets unreasonable maximum detention periods for certain categories of people. For vulnerable people, such as children, Aboriginal people, non-English-speaking people and the mentally ill, the Greens believe it is reasonable for the maximum investigation period to be two hours with an extension to a maximum of four hours if a detention warrant is required. This would be half the maximum period of detention that the bill currently stipulates. These vulnerable categories of people are at greater risk of being intimidated into making false confessions if detained for long periods. The law should protect their rights. It is our duty to ensure we get it right.

The Greens believe that when applying to an authorised justice for a detention warrant the police should be required to include in the application important details regarding the detainee in order to give the authorised justice an informed basis upon which to make a decision. Factors such as age, the total length of time the detainee has been held since arrest and the detainee's physical and mental condition should be fully taken into account. Otherwise, the authorised justice, with the best of intentions, is incapable of coming to a fully informed decision. The Greens strongly oppose proposed section 197 (1) (c). We are opposed to this broad move-on power, as we always have been. The recent view of the Ombudsman confirms our concerns, and those of so many others, that this power would be used primarily against young people, indigenous people and the homeless. This shameful provision should not be included in the bill.

Use of this provision effectively amounts to police harassment of categories of people who are generally doing no harm and who are intending no harm but who may not engage in what many in this Chamber—and probably many in society—regard as so-called normal behaviour. It is a discretionary power that is wide open to abuse, is being abused and will continue to be abused as long as it remains on the books. The Ombudsman found that the use of this power is geographically concentrated, and in country areas it is clearly being used in a systematic way against Aboriginal people. It is extraordinary that in 2002 we are keeping this provision on the books. It is a discriminatory provision that is wide open to abuse and we are strongly opposed to it remaining in the bill.

The Greens have a number of other concerns about the bill that my colleague Ian Cohen will address in detail during the Committee stage. The Government has embarked on an eight-year program of expanding police powers, and it has done that without justification. It has no evidence to justify this expansion of powers. In the process, many important civil rights are being eroded, just as gains won by many in our society working against police corruption and the arbitrary and discriminatory use of police powers are being eroded. We congratulate those people because often they work in difficult circumstances, they are under-resourced and find it difficult to get anyone to listen to their concerns. It is only through their persistence that we will eventually get the changes that must come.

Many of these powers are highly discretionary and open to abuse. As such, they run contrary to the spirit, if not the letter, of the Wood royal commission. Many improvements won by that royal commission have been lost. For almost eight years the Greens have questioned Labor's law and order agenda. We have articulated principled positions that seek to make our communities safer, to reduce police corruption and to protect the rights of ordinary people. We will continue to do so for as long as Labor and the Coalition continue to pursue their dangerous and futile law and order obsession.

Reverend the Hon. FRED NILE [3.27 p.m.]: The Christian Democratic Party supports the Law Enforcement (Powers and Responsibilities) Bill, which will consolidate, restate and clarify statutory and common law relating to police and other law enforcement officers' powers and responsibilities. It provides for safeguards for those being investigated for offences. As some honourable members may know, our party drew up a police authority bill, the aim of which was to restore the authority of police in New South Wales, which, through successive laws, has been undermined and weakened. Confusion has been created in the minds of police, as they have become uncertain about what they could do, and when one is not sure, one does not do anything.

Police officers have said to me that they would only react to a crime warning; they would not take any preventative action for fear they broke a law or got into trouble with the Ombudsman. During their 12-hour shifts they simply respond to calls as they come in—for example, domestic violence or perhaps a robbery. There is no effort by the majority of police to try to prevent crime—to question a person who is seen acting suspiciously—because they would be in trouble with their superiors or put before the Ombudsman for harassment. The nerve of police in New South Wales has been cut. Police officers no longer act as they did in the past. I acknowledge that on some occasions police in the past went overboard and got carried away with their authority, but the majority of police carried out their responsibilities carefully and according to the law. But once they reach that grey area where they no longer know what to do, in order to avoid sitting outside the office of the Ombudsman or a senior officer, they do nothing but react to orders to investigate specific matters.

We are pleased that the bill has been introduced. It relates back to the Royal Commission into the New South Wales Police Service, which recommended a consolidation of police powers. The bill brings together the powers contained in six Acts: the Intoxicated Persons Act 1979, the Police Powers (Drug Detection Dogs) Act 2001, the Police Powers (Drug Premises) Act 2001, the Police Powers (Internally Concealed Drugs) Act 2001, the Police Powers (Vehicles) Act 1998 and the Search Warrants Act 1985. Some members speak as if the police have been given draconian powers, but it is a matter of consolidating into one bill existing powers in six Acts of Parliament. I will monitor the operation of this bill with the police officers I know and the Police Association, with which we work closely. The Government wishes to encourage the police to carry out their duties, and I believe this bill has the full support of the Police Association. But often in practice a different interpretation is put on a part of the legislation. We will monitor it to make certain that this does not occur.

We have always said that police should have the power to demand the name and address of people they stop. I have never understood why that was a grey area and people have not had to provide their names and addresses. If we want police to combat crime and prevent the abuse of children or teenagers at risk on the street, they must have those powers. It is only to assist the individual they are questioning and, in the long run, perhaps to prevent harm to other citizens. The bill will pick up all those powers to stop, detain and search. The powers of police in relation to locating drugs carried by dealers are maintained, and rightly so. Dealers are very clever and usually have a stack hidden away somewhere in Kings Cross, Cabramatta or Bankstown. They keep going back to that as they sell the small quantities of drugs they carry on their person. Sometimes the drugs are carried in their mouth, and this makes it very difficult for police to get evidence that the person is a drug dealer and not simply a drug user.

The bill also deals with police powers relating to regulation of vehicles and traffic—a very important area. I urge the Government to consider clarifying the position so that when police are conducting random breath tests and they have a suspicion about a particular person, they can go further than merely asking for the production of a driver's licence and require the production of registration papers and other documents. As far as I know that is not normally done; I have never heard of that being done. I gather from comments made when I raise this issue that there is some doubt about whether police have the power to act in that way under the random breath-testing legislation. There have been reports of bodies being found in boots of motor vehicles that have been stopped for the purposes of random breath-testing. Police may not have any idea that there is a body in the boot, but police sometimes have a sixth sense. For instance, the person stopped may be perspiring and agitated. In such cases police may find a person in the boot of the car who has been kidnapped and who is still alive, thus saving the life of the person.

We also support the police powers that relate to personal searches for dangerous implements, including guns. The liability of police officers exercising search warrants needs to be sorted out. A number of very clever lawyers can exploit the present situation. The best at this is John Marsden, who always seems to be able to find an error in a search warrant. The error may be only minute, but a finicky judge will reject the search warrant and, as a consequence, disallow the evidence gathered under the search warrant, thus blowing the whole police case out of the water. That happened in the very important Burrell case in which two women—a Mrs Whelan and a Mrs Davis—seem to have disappeared off the face of the earth and Mr Burrell has been charged with their murders.

There was a dilemma in the court case. The police identified and located what clearly appeared to be diagrams on notepaper of the plan to kidnap Mrs Whelan and another plan with points on how to conduct the ransom proceedings, the amount of money and so on. But because the police warrant had not specified, I gather, "notepaper"—it referred to "other things" or "other material"—the judge ruled that the evidence could not be used in the case and it was removed from the prosecution case. Yet it is essential to the case. A plan of the kidnapping and a plan of the ransom proceedings would virtually convict Mr Burrell. The charges are going ahead.

At question time I have asked the Government to request the court to review the decision. Hopefully, that evidence will be allowable in the new case proceeding against Mr Burrell. If it is not, it will be very difficult to get a conviction. I hope there is some way in which search warrants are regarded as a human activity, as it were. A minor technical error should not invalidate a search warrant or the material found as a result of it. It is most important that provisions in this regard be strengthened. I hope that the bill will bring that about. We are pleased to support the bill.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [3.36 p.m.]: Not working in the legal profession, it is difficult for me to get an overall view of police culture. When we legislate on a very big picture it would be useful to have some idea of day-to-day concepts. Apart from the odd parking fine or speed camera infringement, one has very little to do with the police if one is not in legal practice. A huge part of police work is a result of the criminalisation of drugs, with ever-increasing powers being introduced towards that end. I believe that strategy is fundamentally wrong. The criminalisation of drug use and the obsession of the Government with a policing approach to drugs affects the conduct of policing, the priorities of policing and the norms of policing in a destructive way. As a result of this cultural difference, the police function becomes increasingly adversarial and less reflective of community attitudes. Now that we have this foolish and belligerent foreign policy that is leading to fears of terrorism, civil liberties are being threatened. People are so scared of terrorism they give up civil liberties. Consequently, one asks the practitioners in this area—the Law Society and others—for advice. The Government, ever-optimistic, in its briefing notes on the bill stated:

Main purpose of the proposal

- To consolidate, restate and clarify the law (statutory and common law) relating to police and other law enforcement officers' powers and responsibilities; and
- To set out the safeguards applicable in respect of persons being investigated for offences.

...

In its Final Report, the Royal Commission into the NSW Police Service recommended the legislative consolidation of police powers. The Law Enforcement (Powers and Responsibilities) Bill 2002 reflects the consolidation process envisaged by the Royal Commission.

The draft Bill was released for public consultation in mid-2001.

I expressed concern about defining the powers of search. I note the establishment of a new regime of three-tier searches: frisk search, ordinary search and strip search. Apparently safeguards have been established to apply to all personal searches and the regime has been introduced without reducing or increasing police powers. In speaking to the crossbench, the Government said that the bill provides clarification and routine and that if honourable members support the legislation everything will be fine. However, it bothers me that we have spent an extraordinary amount of time clarifying and generally increasing police powers in response to accused persons getting off lightly because of precedent.

I do not know whether Parliament has historically spent its life obsessed with tightening up police powers. My instinct is that that is not the case and that this obsession with drugs and now terror is leading to a distortion of the way police are used in society and the relationship between police and society. Reverend the Hon. Fred Nile's benign view of the police trying to be good but being tied down by red tape is one interpretation, but the civil libertarians would say that if police do not need to interfere they should not do so. It

is a question of exercising goodwill in their operations. Terry Connolly did a great deal of work on restorative justice and had an impact on the operations of police officers. However, he did not get much real support in New South Wales compared to that afforded him in Britain, and that is cause for concern. I consulted the Law Society of New South Wales on this legislation and I received a detailed response, which has had a significant impact on my thinking. I thank Sherida Currie for her work in this regard. The Law Society states:

The exposure draft Law Enforcement (Powers and Responsibilities) Bill 2001 was released for consultation on 6 June 2001. The draft bill was presented as a consolidation and codification of "the majority of widely used law enforcement powers and their accompanying safeguards."

A thorough analysis of the draft by the Law Society's Criminal Law committee and experienced practitioners representing a number of agencies and stakeholders in the criminal justice system revealed that the draft bill was neither simple, clear nor consistent:

- Several current statutes conferring police powers had not been incorporated into the draft bill and, notwithstanding the aim to codify the law, the common law was specifically retained in a number of instances.
- There were many instances where the draft bill:
 - expanded existing powers;
 - changes the existing law;
 - created new powers; and,
 - created new offences.
- The draft bill also drew on legislation from other jurisdictions as a model but the supporting safeguards deemed necessary by those other jurisdictions had not always been incorporated.

Law Enforcement (Powers and Responsibilities) Bill 2002.

The Law Enforcement (Powers and Responsibilities) Bill 2002 was introduced into the Legislative Assembly and had its Second Reading on Tuesday, 17 September 2002. The Bill is much improved from the draft bill in that:

- Provisions relating to personal searches and safeguards relating to police powers will apply in relation to all searches and situations authorised by the legislation.
- Concerns about extensions of certain powers have been addressed.
- Various other powers have been incorporated, principally powers under the Drug Misuse and Trafficking Act, Police Powers (Drug Premises) Act, Police Powers (Drug Detection Dogs) Act, Police Powers (Internally Concealed Drugs) Act, Intoxicated Persons Act.

OUTSTANDING MATTERS NOT ADDRESSED and SUGGESTIONS FOR FURTHER AMENDMENT

The Law Society recommends the following further amendments and corrections to the Bill:

Omissions:

- The Bill should be amended to include:
 - police powers to grant bail,
 - requirement to caution in the broad range of circumstances under common law and New South Wales Police Service CRIME code of conduct,
 - police powers regarding the conduct of identification parades,
 - powers under the Crimes (Forensic Procedures) Act.

The Law Society goes on to refer to:

- Previous clause 149 Right to remain silent ... people have the right to defer answering questions pending the obtaining of legal advice.

The Law Society also suggests amendments to part 4, division 4 and the provisions relating generally to personal searches. It is concerned that part 7 creates significant new law. It is modelled on the Queensland Police Powers and Responsibilities Act 2000, but the various safeguards that are provided in the Queensland legislation have not been reproduced in this bill. The Law Society also refers to regulation-making powers with regard to record keeping that should be preserved. It goes on to state that the powers under proposed section 242 relating to the monitoring of operation of certain provisions of the Act by the Ombudsman should be extended. The Law Society believes that part 4, division 3, which relates to additional search and seizure powers in public places and schools, should be deleted. It goes on to express concern about parts 5, 8, 10, 14, 15, 17 and 19.

Many of the Law Society's proposed amendments have been taken up by the Hon. Richard Jones and the Greens. They constitute a detailed raft of amendments. Given that they came from the Law Society, my inclination is to support them. We must have balance with civil liberties. If Parliament does not support these amendments, we will suffer. The Australian Security Intelligence Organisation raids on people in the Dee Why area who offered to co-operate with authorities making inquiries about their discussions at a mosque with an Indonesia Muslim cleric were very worrying. If such action was possible under existing police powers, I wonder whether we should increase them. I am inclined to support the amendments and will examine the bill when that process is concluded.

The Hon. IAN COHEN [3.47 p.m.]: This bill was comprehensively covered by my colleague Ms Lee Rhiannon. I will go into more detail during the Committee stage. I have some significant concerns. The bill will have a huge impact and the Greens take it very seriously. It sets apart the Government's attitude to law and order. The Greens accept some aspects of the bill, but we have concerns about the provision relating to "reasonable grounds to suspect people in an area with a high incidence of violent crime". We oppose this hot spot provision.

The Greens also believe that the police discretion provisions are broad and vague and open to abuse. Insufficient safeguards have been provided for strip searching people between the ages of 10 and 18 years. We will move amendments to the relevant clauses. The bill sets unreasonable maximum detention periods for certain categories of people—Aboriginal people, minors, people from a non-English speaking background and the mentally ill. Under the circumstances, a period of two hours with an extension to a maximum of four hours should be sufficient. The Greens have concerns about detaining people without charge.

The bill is too general and gives too much power to the police. I will repeat some of the things that I said in the debate on the Crimes Legislation Amendment (Police and Public Safety) Bill 1998. It is interesting that the Government is developing police powers and responsibilities. As Ms Lee Rhiannon said, we have some grave concerns about significant aspects of this bill and will go into detail about those concerns in the Committee stage.

The Hon. IAN MACDONALD (Parliamentary Secretary) [3.49 p.m.], in reply: I thank the honourable members who made substantial contributions to this debate. I do not thank the Leader of the Opposition, whose contribution to this debate was extremely brief. One could hardly call it a significant contribution. Some of the criticisms of honourable members are so wild and off the mark that I will not waste the time of the House responding to them. In making that comment, I do not refer to the contribution of the Christian Democratic Party. I will deal with honourable members' wild assertions and misconceptions about the impact of the bill and how it will operate when I respond to the various amendments to be moved by the Hon. Richard Jones and the Hon. Ian Cohen in Committee. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Parts 1 to 3 agreed to.

The Hon. RICHARD JONES [3.54 p.m.], by leave: I move my amendments Nos 1 to 20 in globo:

No. 1 Page 17, clause 26, lines 17-21. Omit all words on those lines.

No. 2 Page 19, clause 31. Insert after line 15:

- (2) A police officer may not conduct a strip search without the oral or written approval of a senior police officer.
- (3) A senior police officer who approves or refuses to approve a strip search must record particulars of the decision, including the reasons for the decision.

No. 3 Page 19, clause 32, lines 27-30. Omit all words on those lines. Insert instead:

- (4) The police officer or other person must conduct the search as quickly as is reasonably practicable.
- (5) The police officer or other person must comply with the following:

- (a) the search must be conducted in a private area and in a way that provides reasonable privacy for the person searched,
- (b) the search must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search.
- (6) A parent, guardian or personal representative of the person being searched may, if it is reasonably practicable in the circumstances, be present during a search if the person being searched has no objection to that person being present.

No. 4 Page 20, part 4. Insert after line 27:

33 Searches of children and persons with impaired intellectual functioning

- (1) A search of a person who is under 18 years of age, or of a person who has impaired intellectual functioning, must, unless there is no other alternative in the circumstances, be conducted in the presence of a parent or guardian of the person being searched or, if that is not acceptable to the child or person, in the presence of a person (other than a police officer) who is capable of representing the interests of the person and who, as far as is practicable in the circumstances, is acceptable to the person.
- (2) In this section:
impaired intellectual functioning means:
 - (a) total or partial loss of a person's mental functions, or
 - (b) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction, or
 - (c) a disorder, illness or disease that affects a person's thought processes, perceptions of reality, emotions or judgment, or that results in disturbed behaviour.

No. 5 Pages 20 and 21, line 29 on page 20 to line 15 on page 21. Omit all words on those lines. Insert instead:

- (1) A police officer or other person who strip searches a person must not, as far as is reasonably practicable in the circumstances, conduct the search in the presence or view of a person who is of the opposite sex to the person being searched.

No. 6 Pages 21 and 22, line 29 on page 21 to line 3 on page 22. Omit all words on those lines.

No. 7 Page 52, clause 92. Insert after line 4:

- (5) Despite any other provision of this section, a police officer who establishes a crime scene and who reasonably suspects that the exercise of a power set out in section 95 (1) may cause structural damage to a building may exercise that power only if a Supreme Court judge issues a crime scene warrant in respect of the crime scene and the warrant authorises the doing of the thing.
- (6) This Part applies to an application for a crime scene warrant under this section in the same way as it applies to an application made to an authorised officer for a crime scene warrant.

No. 8 Page 52, clause 92. Insert after line 4:

- (5) A police officer who exercises crime scene powers under this Part must exercise those powers in such a way as to cause the least amount of damage to property that is consistent with achieving the purpose of exercising those powers.

No. 9 Page 56, clause 100, line 17. Insert ", or to a police officer" after "law".

No. 10 Page 67, clause 119, line 24. Insert "in writing in a form prescribed by the regulations" after "person".

No. 11 Page 81, clause 138, line 10. Omit "may". Insert instead "will".

No. 12 Page 81, clause 138. Insert after line 19:

- (5) An examination under this section must be limited to what is reasonable for the purposes of the examination.

No. 13 Page 87, Part 11. Insert after line 21:

151 Records relating to dog drug searches

The Commissioner must cause a record to be kept of the following matters:

- (a) the result of any search conducted in the course of carrying out general drug detection of under this Division, including any instance where a dog has indicated the presence of prohibited drugs or plants and none have been found,

- (b) the action, if any, taken against any person as a result of general drug detection under this Division,
- (c) the costs of general drug detection under this Division, including particulars of the number of police and dogs used and other resources used.

No. 14 Page 109, clause 189, lines 22-24. Omit all words on those lines.

No. 15 Page 116, Part 15. Insert after line 26:

205 Right to remain silent not affected

Nothing in this Act affects the right of a person to refuse to answer questions, unless required to answer the question by or under an Act.

No. 16 Page 129, Part 17. Insert after line 32:

Division 3 General

230 Receipts for seized objects

- (1) A police officer who seizes property under this Act must give a receipt for the property.
- (2) The receipt must:
 - (a) be given to the person from whom the property was seized or the occupier of any premises at which the property was seized, or
 - (b) if no such person is present, be left at the premises.

231 Copies of seized documents

A police officer who seizes documents under this Act must, at the request of a person entitled to possession of the documents, provide to the person certified copies of the documents.

No. 17 Page 133, clause 237. Insert after line 5:

- (2) Without limiting subsection (1), the Commissioner must issue instructions and guidelines under the *Police Act 1990* with respect to the exercise of powers to give directions under Part 14.

No. 18 Page 133, clause 238, line 16. Omit "20". Insert instead "10".

No. 19 Page 133, clause 238, line 17. Omit "50". Insert instead "25".

No. 20 Page 133, clause 242, lines 27-32. Omit all words on those lines. Insert instead:

exercise of the functions conferred on police officers under Part 4, Division 3 of Part 5 and Parts 7, 11, 15 and 17.

Amendment No. 1 removes the provision that a police officer may take into account the fact that a person is in "a location with a high incidence of violent crime" in determining whether there are reasonable grounds to suspect that the person has a dangerous implement in his or her custody. Amendment No. 2 provides that provisions relating to safeguards for strip searches that are included in the Commonwealth Crimes Act 1914 are also included in this legislation. I note that the Commonwealth Government is, in fact, less conservative than the Carr Government. In particular, the Commonwealth Act provides that a strip search may be conducted only if a constable of the rank of superintendent or higher has approved the conduct of the search; and a person who gives or refuses to give an approval must make a record of the decision and the reasons for it.

Amendment No. 3 strengthens the privacy provisions in relation to all searches, ensuring that searches are not conducted in the presence or view of someone whose presence is not necessary, and providing that a parent, guardian or personal representative of the person may be present during the search. Amendment No. 4 strengthens the provisions relating to strip searches conducted on children and persons with impaired intellectual functioning. It provides that a parent, guardian or personal representative "must, unless there is no other alternative in the circumstances" be present. Amendment No. 4 strengthens the existing provisions without making them unworkable. Amendments Nos 5 and 6 are consequential amendments.

Amendments Nos 7 and 8 provide for safeguards in relation to police powers at crime scenes. Amendment No. 7 provides that a police officer may only cause structural damage to a property if that officer is in possession of a warrant to that effect. Amendment No. 8 makes it clear that an officer must exercise those powers in a way that causes the least amount of damage to property. Amendment No. 9 allows a person conducting citizens arrests to take the arrested person to a police officer—which is, in reality, what people do.

Amendment No. 10 provides that when applying for a detention warrant, a person who makes an application in person must also provide a written application. Amendments Nos 11 and 12 provide that a medical practitioner may make such an examination of a person in custody "as is reasonable in order to ascertain the facts which may afford such evidence". Additionally, a medical examination should only take place if there are reasonable grounds for believing that an examination of the person "will provide evidence".

Amendment No. 13 provides that the commissioner must cause a record to be kept of the result of all drug dog searches conducted, the outcome of those searches, and the cost of general drug detection operations. Amendment No. 14 removes the provision that would allow a police officer to reach into a person's car to grab their keys in order to immobilise the vehicle before breath testing a person, if the officer reasonably suspects that the person is likely to abscond. Amendment No. 15 provides that nothing in the Act affects the right of a person to refuse to answer questions, unless required to answer the questions by or under an Act. Amendment No. 16 provides that in relation to property in police custody, when an item is seized a receipt should be left or given and, upon request, a police officer should provide certified copies of documents seized from the person entitled to possess the document.

Amendment No. 17 provides that the commissioner must issue instructions and guidelines in relation to the move-on powers. Amendments Nos 18 and 19 reduce the maximum penalty units for offences prescribed by regulation from 20 to 10, and from 50 to 25 penalty units respectively. Amendment No. 20 provides that the Ombudsman monitor part 4, division 3 of part 5, and parts 7, 11, 15 and 17. These amendments are not far-reaching but reasonable. Regrettably, the Carr Government is far more conservative than the Commonwealth—as is the Opposition, I suspect. It makes me wonder why people who used to vote Labor would still vote Labor when the present Government is so conservative.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [3.57 p.m.]: I congratulate the Hon. Richard Jones on acknowledging the number of matters listed on the notice paper for debate by dealing with his detailed amendments in globo. However, unfortunately, the Opposition will not support his amendments. To assist the carriage of this legislation through to finality this afternoon, I also take this opportunity to indicate to the Greens that the Opposition will not support any of the amendments they propose to move in Committee.

The Hon. IAN MACDONALD (Parliamentary Secretary) [3.58 p.m.]: I seek leave to incorporate my detailed reply to the amendments moved by the Hon. Richard Jones.

Leave granted.

The Hon. Richard Jones has also proposed a number of amendments to the Bill. The Government does not support these proposals.

As previously mentioned, the Law Enforcement (Powers and Responsibilities) Bill 2002 is a consolidation Bill. The Bill reflects existing law and does not extend police powers.

The Parliament has already taken its decisions on the matters included in the Bill. It is simply not appropriate to reconsider these matters in the context of this Bill.

Reverend the Hon. FRED NILE [3.59 p.m.]: The Christian Democratic Party supports the bill and hopes that it will progress through the Parliament in its current form. Therefore we do not support the amendments moved by the Hon. Richard Jones and those proposed by the Hon. Ian Cohen. As the Hon. Richard Jones highlighted, there are two views here. One can stand in the civil libertarian corner or on the side of the community, which wants to see police performing their duty—which is to protect the community. And, indeed, that is the purpose of the legislation.

The Hon. IAN COHEN [3.59 p.m.], by leave: I move Greens amendments Nos 1 and 3 in globo:

No. 1 Page 17, part 4, clause 26, line 21. Insert "However, this fact cannot be used as the sole basis for a request that a person submit to a search and must be used in combination with any other relevant factors." after "custody".

No. 3 Page 18, part 4, clause 26. Insert after line 4:

- (7) For the purposes of this section, a location is not to be taken as a location with a high incidence of violent crime unless a Local Area Commander of Police has, after taking into account violent crime statistics, defined and documented the area as such and communicated this to police officers in his or her command.

Amendment No. 1 will amend clause 26 (3) of the bill. Clause 26 provides a power to search for knives and other dangerous implements. Subclause (3) specifies:

For the purpose of this section, the fact that a person is present in a location with a high incidence of violent crime may be taken into account in determining whether there are reasonable grounds to suspect that the person has a dangerous implement in his or her custody.

The Greens were critical of the hotspot provision when it was first introduced in the Police and Public Safety Bill in 1998. In Committee on that bill I said:

How will it be determined what locations have high incidences of crime? Who will decide which areas are areas with high incidences of crime—the Minister for Police, the Commissioner of Police, individual police stations or officers? There are no such criteria in the bill. Police will have enormous discretion in the decision-making process. It appears that the "reasonable grounds to suspect" test will be somewhat reduced if an area is designated as a hotspot. That a person is found in a hotspot is only one consideration. What weight will be given to this factor by the magistrates who will be required to determine the issue? Will it be given extra weight because of this provision? How the courts will construe the provision is unclear.

The clause as currently drafted may lead to a whole suburb or area being blacklisted. People, perhaps tourists, may be told not to go there because police have the power to search anyone, whenever they want to, for knives and dangerous implements.

At the time the bill was being debated publicly, the Council for Civil Liberties outlined its concerns in a letter to the Premier dated 4 May, stating that the bill:

... seeks to maintain the established "reasonable suspicion" principle, but then subverts it by suggesting that a person's mere presence in a particular location...may create a "reasonable suspicion" that a person is carrying a weapon. This is clearly an abuse of the notion of "reasonable suspicion".

Since the bill has been enacted the Ombudsman has undertaken a review of the Police and Public Safety Act, the provisions of which are now contained in this legislation. The Ombudsman was critical of the Act, in particular the hotspot provision. A submission from the New South Wales Young Lawyers summarises the problem with regard to the hotspot provision. Parts of that submission are reproduced in the report. The New South Wales Young Lawyers found it offensive:

That a person's right not to be subjected to a strip search is undermined by the location in which they encounter a police officer. The mere fact that a person finds oneself in a location in which there has historically been a high incidence of violent crime, is not a fact that is related to the criminality of the individual. It is a factor which should not be taken into account to arbitrarily validate what would otherwise be an illegal search founded on no or little suspicion.

Even the police had difficulties with the provision. The Police Association in its submission to the review specified:

The legislation does not provide any guidelines as to what constitutes this type of area and because of this, police are required to determine such locations.

One local area commander said, during the Ombudsman's review, that he left it up to individual officers to determine what the provision meant. The report stated:

One constable said that it meant the whole of the town, while another officer said that he would be "scratching for a place round here with a high level of violent crime", while a third officer nominated specific locations. Such uncertainty about the practical effect of the provision has the potential to impede the proper use of the powers.

One submission to the Ombudsman found that "police were using the location grounds to justify searches 'in areas as innocuous as Springwood, Riverstone and Richmond'". This issue was addressed by the Greens in an amendment to the bill in 1998 which was rejected by the Government. The Greens sought the deletion of the word "location" and the insertion of the words, "an area declared by the Minister for the purposes of this subsection to be an area". The amendment specified that the area must be made only on the recommendation of the Commissioner for Police. The Minister was to issue guidelines to be followed by the Commissioner for Police making a recommendation, setting out the criteria for determining whether an area should be declared as an area with a high incidence of violent crime. This would have ensured that everyone, including the police, were aware of which areas were areas with a high incidence of violent crime. The Ombudsman pointed out that some police were interpreting the section to mean that it may be the only grounds for a search—that a person's presence in such a location is, of itself, sufficient to justify a search. The Ombudsman's report specified:

Some of the records that we looked at indicated that people were being searched solely because of their presence in a particular area. The fact is that the Act does not permit this, but it is possible that such use is encouraged by singling out the hotspot element in its legislative reform.

That is not all. There is evidence that the section is being applied in other areas of the Act, despite only being relevant to search for knives and other dangerous implements. The report specified further:

The hotspots provisions apply only to the search power created by the Police and Public Safety Act, but there is evidence of the use of hotspots as the justification for the use of the "reasonable directions" power.

The review found that there is confusion as to the extent to which the hotspot provision can be relied on, what determines and defines a location with a high incidence of violent crime; and the powers in the Act that can rely on it as an element. The Ombudsman pointed out that a location that is categorised as a hotspot area is often a place that is frequented by a large number of law-abiding citizens. For instance, the five hotspot areas identified by the Bureau of Crime Statistics and Research [BOCSAR] in 1997 were all areas that attract significant numbers of people conducting lawful business or other pursuits. The Ombudsman's report argued:

To allow a practice where people are searched purely or largely on the basis of their presence in such a location effectively establishes a random or arbitrary search power.

The Ombudsman made recommendations regarding legislative changes to the hotspot provision. The recommendation specified:

If presence in a location with a high incidence of violent crime is to be retained as a factor police may take into account in determining whether to search for knives and other implements:

- the section should be amended to make it clear that this factor can only be used in combination with other factors; and
- based on their analysis of violent crime, local commanders should be required to define and document locations in their command where this provision would have effect and advise others accordingly.

Greens amendments Nos 1 and 3 simply implement the recommendation of the Ombudsman regarding the hotspot provision, and I commend them to the Committee.

The Hon. IAN MACDONALD (Parliamentary Secretary) [4.08 p.m.]: The Government opposes these amendments. With regard to amendment No. 1, the Minister's office has opposed any change to this provision. The matter is being addressed through the New South Wales police knowledge map. Amendment No. 3 relates to a recommendation the Ombudsman made in its review of these powers. All local area commanders are required to complete analysis of crime environment [ACE] reports. These ACE reports are a detailed analysis of crime committed within each local area command [LAC] and highlight areas of high incidence of violent crime. The information contained in these reports is widely distributed amongst the LACs and the reports themselves are made available to all officers.

The Hon. JAMES SAMIOS [4.09 p.m.]: The Opposition does not support the amendments.

The Hon. IAN COHEN [4.10 p.m.], by leave: I move Greens amendments Nos 4, 5 and 6 in globo:

No. 4 Page 21, part 4, clause 33, lines 8-15. Omit all words on those lines.

No. 5 Pages 21 and 22, part 4, clause 33, line 29 on page 21 to line 3 on page 22. Omit all words on those lines.

No. 6 Page 22, part 4. Insert after line 5:

34 Strip searches of children between 10 and 18 years and persons suffering incapacity

- (1) A strip search of a child who is at least 10 years of age but under 18 years of age, or of a person who is incapable of managing his or her affairs, may be conducted only if:
 - (a) the child or person has been arrested and charged with an offence, or
 - (b) a Magistrate orders that it be conducted.
- (2) A strip search of any such child or person must be conducted in the presence of a parent or guardian of the person being searched or, if that is not acceptable to the child or person, in the presence of another person (other than a police officer) who is capable of representing the interests of the person and who, as far as is practicable in the circumstances, is acceptable to the person.
- (3) The requirements of this section are in addition to any other requirements of this Part.
- (4) In deciding whether to make an order under this section, a Magistrate must have regard to the following:
 - (a) the seriousness of the circumstances surrounding the offence,
 - (b) the age of the person,
 - (c) any disability of the person,
 - (d) in the case of a child:

- (i) the best interests of the child, and
 - (ii) the child's ethnic and cultural origins, and
 - (iii) so far as they can be ascertained, any wishes of the child with respect to whether the order should be granted, and
 - (iv) any wishes expressed by the parent or guardian of the child with respect to whether the order should be granted,
- (e) any other matters the Magistrate thinks fit.

These amendments relate to strip searches of children aged between 10 and 18 years and persons suffering incapacity. The Greens believe there are insufficient safeguards contained in the provisions relating to strip searching of children aged between 10 and 18 and persons suffering incapacity. Indeed, many of the safeguards contained in the exposure draft of the bill have been stripped in the bill. Clauses 1, 2 and 3 of the exposure draft specify that a strip search of a child between 10 and 18 years of age or a person who is incapable of managing his or her affairs may be carried out only if the child or person has been arrested and charged with an offence or a magistrate orders that it be conducted.

In deciding whether to make the order the magistrate is to have regard to the seriousness of the offence, the age or disability of the person and any other matter the magistrate thinks is relevant. The only safeguard remaining in the bill is that, if the person is aged between 10 and 18 years or has impaired intellectual function, the search must be conducted in the presence of a parent, guardian or person acceptable to the child, and the person must be capable of representing the interests of the child. This requirement can be waived if it is not reasonably practicable in the circumstances. The Greens are of the view that additional safeguards should be in place in situations where the person is aged between 10 and 18 or has an intellectual disability.

Strip searching is a most intrusive form of intervention. It involves the use of force or threat of force and has the additional element that the person being searched is required to remove his or her clothing and have his or her naked body closely examined by a police officer. Most adults would feel embarrassed about exposing their naked body to an outsider. For children it is likely to be a particularly frightening, embarrassing and humiliating experience. Many cultures place great emphasis on personal modesty. Some cultures require women and girls to keep their faces and bodies concealed from public gaze. Laws that require individuals to undress and appear naked in front of a stranger are particularly offensive to people from such cultures.

Older children, and particularly adolescents and children approaching puberty, are often self-conscious about their bodies and are likely to be greatly distressed by strip searches. The Crimes Forensic Procedures Act 2000, which allows the taking of samples from 10 to 17 year olds, has far more safeguards for strip searches than are provided for in this bill, despite the fact that forensic sampling is less intrusive than strip searching. Forensic sampling of 10 to 17 year olds can only take place with a magistrate's order and the magistrate must take into account the best interests and wishes of the child. These requirements have been completely stripped from the bill. The Greens are of the view that a 10 to 17 year old or a person with an intellectual disability can only be strip searched if the person has been arrested or charged with an offence or by order of the magistrate.

In deciding whether a magistrate should make the order, the magistrate should have regard to the seriousness of the events, the age or disability of the person, the best interests of the child, the child's ethnic and cultural origins, the wishes of the child and any wishes expressed by the parent or guardian, and any other matter that the magistrate thinks fit. That is set out in amendment No. 6. Amendments Nos 4 and 5 are consequential. I commend the amendments to the Committee.

The Hon. IAN MACDONALD (Parliamentary Secretary) [4.13 p.m.]: The Government opposes the amendments. I seek leave to have my reasons incorporated in *Hansard*.

Leave granted.

The matters raised by the Greens have already been appropriately addressed in the bill. The Government does not support these amendments. The bill contains appropriate levels of safeguards which, in turn, are supported by internal police guidelines on the exercise of the relevant powers.

The Hon. JAMES SAMIOS [4.13 p.m.]: The Opposition opposes the amendments.

The CHAIRMAN: Order! As a number of the amendments conflict, I propose first to put the question in relation to all the amendments of the Hon. Richard Jones that do not conflict. I will then put separate questions in relation to the remaining amendments.

Amendments Nos 2, 3, 4 and 7 to 20 inclusive of the Hon. Richard Jones negatived.

Amendment No. 1 of the Hon. Richard Jones negatived.

Amendment No. 5 of the Hon. Richard Jones negatived.

Amendment No. 6 of the Hon. Richard Jones negatived.

Question—That Greens amendment No. 1 be agreed to—put.

The Committee divided.

Ayes, 6

Mr Cohen
Mr R. S. L. Jones
Ms Rhiannon
Mrs Sham-House
Tellers,
Mr Breen
Dr Chesterfield-Evans

Noes, 22

Ms Burnswoods	Mr Hatzistergos	Mr Samios
Mr Colless	Mr M. I. Jones	Mr Tingle
Mr Dyer	Mr Lynn	Mr Tsang
Ms Fazio	Mr Macdonald	Mr West
Mrs Forsythe	Reverend Nile	
Miss Gardiner	Mr Oldfield	<i>Tellers,</i>
Mr Gay	Mrs Pavey	Mr Jobling
Mr Harwin	Mr Pearce	Mr Primrose

Question resolved in the negative.

Greens amendment No. 1 negatived.

Greens amendment No. 3 negatived.

Greens amendment No. 4 negatived.

The CHAIRMAN: As Greens amendment No. 5 is the same as an amendment of the Hon. Richard Jones that was negatived, there is no requirement to put a question in relation to it.

Greens amendment No. 6 negatived.

The Hon. IAN COHEN [4.23 p.m.]: I move Greens amendment No. 2:

No. 2 Page 17, part 4, clause 26. Insert after line 25:

- (5) In conducting a search of a student's bag or locker under this section, a police officer must:
- (a) invite the student to be present during the search, and
 - (b) if reasonably possible to do so, allow the student to nominate an adult who is on the school premises to be present during the search, and
 - (c) ensure that the search is conducted in such a way that the student is not required to expose the contents of the bag or locker to a teacher or other employee of the school or to another student except for a person that the student has nominated to be present during the search.

The Greens are extremely concerned about the powers to randomly search school lockers. Such powers can constitute a breach of students' personal privacy. While the Greens accept that it may be necessary to search a

student's locker if there are reasonable grounds to suspect that a student has a dangerous knife or weapon hidden in the locker, the search should be carried out in a way that does not embarrass the student and is sensitive to the student's privacy. Clause 26 (2) states:

If the person is in a school and is a student at the school, the police officer may also request that the person submit to a search of the person's locker at the school and an examination of any bag or other personal effect that is inside the locker.

The only restraint on this power is that when conducting the search the police officer must, if possible, allow the student to nominate an adult who is on the school premises to be present during the search. As well as that, the Greens believe that the search should be conditional upon the police advising the student of the grounds of their belief that a dangerous knife or weapon is concealed in the locker, and the student should be invited to be present during the search. There should also be a proviso that a student should not be required to expose the contents of a bag in view of teachers or other students. Students can be extremely embarrassed and later be teased if they must display personal items such as private letters, sanitary products, contraceptive lubricants and other personal items such as photographs, jewellery and make-up.

The amendment will ensure that the police inform the student of the ground for their belief that a dangerous knife or weapon is concealed in the student's locker. This is set out in Greens amendment No. 21, which I will move later. The amendment will also ensure that the police invite the student to be present during the search, and that the student will not be required to expose the contents of a bag or personal effects contained in a locker in view of teachers and other students. I commend Greens amendment No. 2 to the Committee.

The Hon. IAN MACDONALD (Parliamentary Secretary) [4.25 p.m.]: The Government opposes this amendment. I seek leave to incorporate my comments in *Hansard*.

Leave granted.

The matters raised by the Greens have already been appropriately addressed in the bill. The Government does not support these amendments.

The Bill contains appropriate levels of safeguards, which in turn are supported by internal police guidelines on the exercise of the relevant powers.

The Hon. JAMES SAMIOS [4.25 p.m.]: The Opposition opposes the amendment.

Amendment negatived.

Part 4 agreed to.

Part 5 agreed to.

The Hon. IAN COHEN [4.26 p.m.], by leave: I move Greens amendments Nos 7 and 8 in globo:

No. 7 Page 45, part 6, clause 81. Insert after line 20:

- (e) a child under the age of 18 years present in the dwelling, or

No. 8 Page 48, part 6, clause 85. Insert after line 13:

- (b) to protect any child under the age of 18 years present in the dwelling from being subjected to violence or from being a witness to violence, and

Part 6 sets out the search, entry and seizure powers relating to domestic violence offences. A "domestic violence offence" is defined as a personal or violent offence committed against certain persons. These are set out in clause 81 and include the person's spouse, a de facto partner, people in an intimate personal relationship and people living in the same household. However, it does not include the situation when, for example, the mother lives in the house and the mother's daughter and boyfriend are visiting. The boyfriend commits a personal violent offence against the mother and the daughter witnesses an incident of domestic violence. The mother is covered but the daughter is not. In the Greens' view the definition of "domestic violence offence" should be broadened to include violence against any child and any child who witnesses violence and the child is present on the premises at the time entry is sought. As well as the search, entry and seizure powers, the police should also have the power to take any necessary steps to protect a child present in the dwelling from being the subject of violence or being a witness to violence. Greens amendments Nos 7 and 8 seek to deal with these two issues. I commend the amendments to the Committee.

The Hon. IAN MACDONALD (Parliamentary Secretary) [4.27 p.m.]: These amendments are not supported. The provisions in the bill reflect existing law and adequately provide for the protection of children.

The Hon. JAMES SAMIOS [4.27 p.m.]: The Opposition does not support the amendments.

Amendments negatived.

Part 6 agreed to.

The Hon. IAN COHEN [4.28 p.m.], by leave: I move Greens amendments Nos 9 to 15 in globo:

No. 9 page 54, Part 7. Insert after line 7:

96 Unaccompanied children at crime scene

If a police officer exercises any of the crime scene powers contained in section 95 (1) (a)-(d) in relation to a child under the age of 18 years who is not under the care or custody of a responsible adult and the exercise of the power prevents the child from entering or staying in the child's normal place of residence, the police officer must take reasonable steps to ensure that the child is able to go or be taken to a safe place.

No. 10 Page 64, part 9, clause 115, line 1. Insert "(or 2 hours in the case of a person of a class referred to in section 112 (1))" after "4 hours".

No. 11 Page 66, part 9, clause 118, line 33. Insert "(or 2 hours in the case of a person of a class referred to in section 112 (1))" after "4 hours".

No. 12 Page 67, part 9, clause 118, line 2. Insert "(or 4 hours in the case of a person of a class referred to in section 112 (1))" after "8 hours".

No. 13 Page 67, part 9, clause 118, line 16. Insert "(or 2-hour period in the case of a person of a class referred to in section 112 (1))" after "4-hour period".

No. 14 Page 67, part 9, clause 118. Insert at the end of line 16:

, and

(e) an extension of the period is justified in all the circumstances after consideration of the information provided under section 120.

No. 15 Page 68, part 9, clause 120. Insert after line 10:

(e) the age of the person,

(f) the total time the person has been held since the person's arrest,

(g) the person's physical and mental capacity and condition.

Greens amendment No. 9 deals with unaccompanied children at crime scenes. We are of the view that if the police direct an unaccompanied child to leave or not to enter a crime scene that is the child's normal place of residence, they should be obliged to ensure that the child has a safe place to go and, wherever possible, assist the child to get there. The Greens amendment would ensure that if a police officer, in exercising any of the crime scene powers contained in proposed section 95 (1) (a) to (d)—the provisions relate to directing persons to leave or removing persons from crime scenes; and removing vehicles, vessels or aircraft from crime scenes—prevents a person from entering a crime scene and the person is under 18 years of age and not in the care of a responsible adult, and if the exercising of the power prevents the child from staying in the child's normal place of residence, the police officer must take reasonable steps to ensure that the child is able to get to a safe place.

With regard to amendments Nos 10, 11, 12 and 13, the bill specifies that an arrested person can be held for a reasonable time to allow investigation of an offence or other offences as long as the time does not exceed four hours unless a detention warrant is obtained from an authorised officer. An authorised officer may issue a warrant that extends the maximum investigation period up to eight hours. The maximum investigation period cannot be extended more than once. The Greens believe that for vulnerable persons—such as children, indigenous persons, persons from non-English-speaking backgrounds, persons with a disability and people with a mental illness—the maximum investigation period should be two hours, to a maximum of four hours if a detention warrant is required. The Greens believe that there is more likelihood that false confessions may be obtained from these people if they are interviewed too long or they will experience considerable stress, especially if there are language, cultural, age and disability barriers.

With regard to amendments Nos 14 and 15, police officers are currently allowed to detain individuals for a maximum of four hours to investigate a person's involvement in the commission of the offence for which the person has been arrested. If a longer period of time is required the police officer must apply to the authorised justice for a detention warrant. The Greens believe that when applying to an authorised justice for a detention warrant police should be required to include in the application the age of the detainee, the total length of time the detainee has been held since arrest, and the detainee's physical and mental capacity and condition. This will give the authorised officer more information to decide whether to grant the detention warrant. Accordingly, the amendments specify that applications for a warrant must include the information set out in proposed section 120 of the bill and the age of the person, the total time the person has been held since arrest and the person's physical and mental condition.

Proposed section 118 sets out when a detention warrant to extend the investigation is warranted. The authorised officer must be satisfied of the various things set out in proposed section 118 (5) before he or she can issue a detention warrant. However, all the factors focus on the police and the investigation. There is no focus on the detainee and there is also no requirement that the authorised officer consider the information that must be supplied by the police officer to the authorised officer in order for him or her to make his or her decision. Amendment No. 14 specifies that the authorised justice can also look at whether an extension of the period is justified in all the circumstances, given the accommodation provided under proposed section 120. This ties the clause back to the information that is required to be supplied when applying for a detention warrant. In the Greens view the officer should consider the information contained in the application to help him or her decide whether to grant the extension. I commend the Greens amendments to the Committee.

The Hon. IAN MACDONALD (Parliamentary Secretary) [4.32 p.m.]: The Government does not support Greens amendments Nos 9 to 15. I seek leave to incorporate my reply in *Hansard*.

Leave granted.

The matters raised by the Greens have already been appropriately addressed in the Bill. The Government does not support these amendments.

The Bill contains appropriate levels of safeguards, which in turn are supported by internal police guidelines on the exercise of the relevant powers.

The Hon. JAMES SAMIOS [4.32 p.m.]: The Opposition does not support these amendments.

Amendments negatived.

The Hon. IAN COHEN [4.33 p.m.]: by leave, I move Greens amendments Nos 16, 17, 18 and 19 in globo:

No. 16 Page 70, part 9, clause 123. Insert at the end of line 12:

, and

- (c) in the case of a person of a class referred to in section 112 (1), provide reasonable assistance to enable the person to make the communication.

No. 17 Page 72, part 9, clause 124. Insert at the end of line 6:

, and

- (c) provide reasonable assistance to enable the person to make the communication.

No. 18 Page 81, part 10. Insert after line 19:

139 Medical examinations of children

- (1) A medical examination of a child in lawful custody who is under 18 years of age may be conducted only if a Magistrate orders that it be conducted.
- (2) A medical examination of any such child must be conducted in the presence of a parent or guardian of the child being examined or, if that is not acceptable to the child, in the presence of another person (other than a police officer) who is capable of representing the interests of the child and who, as far as is practicable in the circumstances, is acceptable to the child.
- (3) The requirements of this section are in addition to any other requirements of this Part.

- (4) In deciding whether to make an order under this section, a Magistrate must have regard to the following:
- (a) the seriousness of the circumstances surrounding the offence,
 - (b) the best interests of the child,
 - (c) the child's ethnic and cultural origins,
 - (d) so far as they can be ascertained, any wishes of the child with respect to whether the order should be granted,
 - (e) any wishes expressed by the parent or guardian of the child with respect to whether the order should be granted,
 - (f) any other matters the Magistrate thinks fit.
- (5) Before ascertaining the wishes of the child with respect to whether the order should be granted, a person other than the medical practitioner who is to conduct the examination, must inform the child of the nature of the examination and its effects.

No. 19 Page 109, part 12, clause 189. Insert after line 29:

- (5) If a police officer exercises a power under subsection (1) in relation to a person under the age of 18 years who is not under the care or custody of a responsible adult, the police officer must take reasonable steps to ensure that the person is able to go or be taken to their place of residence or another safe place.

With regard to amendments Nos 16 and 17, 123 specifies that detained persons have a right to communicate with a friend, relative, guardian or independent person and a legal practitioner before any investigation procedure occurs. Similarly, proposed section 124 specifies that if the detained person is a foreign national he or she has a right to communicate with a consular official before any investigation procedure starts. The Greens are of the view that these provisions should be made more workable for young people, Aborigines or Torres Strait Island people, people from non-English-speaking backgrounds, people with a disability or foreign nationals. The amendment specifies that for these people the police must provide any assistance necessary to enable the person to communicate with a friend or, in the case of a foreign national, a consular official. A child may be unfamiliar with the use of phones or may need help to contact a lawyer who is willing to assist. Similarly, foreign nationals, especially those who are unable to speak any or little English or who may be unfamiliar with how the Australian system operates, may need help to achieve this right.

Amendment No. 18 deals with the medical examinations of children. The Greens are of the view that a child should not be required to undergo a medical examination where the purpose is to provide evidence of the commission of an offence, except in certain circumstances and when certain procedures and processes have been followed. In the Greens view the medical examination must be ordered by a magistrate, and the child's welfare, culture and wishes must be taken into account by the magistrate. In addition, the child's parents or other nominated adult must be present with the child while the medical examination is being performed, and the child should be counselled by a person other than the medical practitioner about the nature of the examination and its effects.

Amendment No. 19 deals with the situation arising when police take the keys of a vehicle or immobilise a vehicle and children are involved. A child in a car immobilised by a police officer in a remote location or some distance from his or her home or public transport may be at risk. Where this power is exercised in relation to a person under the age of 18 years the police should be required, if the child is not accompanied by a parent, relative or responsible adult, to deliver the child to his or her home or the nearest public transport terminal from which the child can travel by public transport to his or her normal place of residence or to some other place. If the child is delivered to a public transport terminal the police should ensure that the child has the necessary fare for the journey home. The Greens' amendment specifies that a police officer who exercises a power under proposed section 189—the power to prevent driving by persons who are under the influence of alcohol or other drugs—and the person is under the age of 18 and is not in the care or custody of a responsible adult, the police officer must take reasonable steps to ensure that the person is able to get to his or her place of residence or another safe place. I commend these amendments to the Committee.

The Hon. IAN MACDONALD (Parliamentary Secretary) [4.37 p.m.]: The Government does not support Greens amendments Nos 16 to 19. Again, I seek leave to incorporate my reply in *Hansard*.

Leave granted.

The matters raised by the Greens have already been appropriately addressed in the Bill. The Government does not support these amendments.

The Bill contains appropriate levels of safeguards, which in turn are supported by internal police guidelines on the exercise of the relevant powers.

The Hon. JAMES SAMIOS [4.37 p.m.]: The Opposition does not support these amendments.

Amendments negatived.

Parts 7 to 13 agreed to.

The Hon. IAN COHEN [4.38 p.m.]: I move:

No. 20 Page 113, part 14, clause 197, lines 12-14. Omit all words on those lines.

This amendment deletes proposed section 197 (1) (c). The Greens are strongly opposed to the move-on powers, as we were in 1998 when the original legislation was introduced. We opposed these powers mainly because we predicted that they would be used primarily on young people, indigenous people, homeless people and those who for cultural, social or economic reasons spend a lot of time in public places. The predictions made by me and other crossbench members, such as the Hon. Richard Jones, have proved to be correct. The Ombudsman's review of the police and public safety Acts contains some alarming statistics and observations regarding the move-on powers. The review found—as was predicted by the Greens—that a high proportion of those given directions under the Act were from indigenous backgrounds. The review found that 3,194 people, or 22 per cent, of the 14,555 people given directions between 1 July 1998 and 30 June 1999 were Aboriginal or Torres Strait Islander people. However, they comprise only 2 per cent of the general population. In addition, 48 per cent of people given directions were under 17 years of age and a further 31 per cent were aged between 18 and 25. Almost 80 per cent of people were under 25 years of age.

Another question that the Greens would like answered is: How many homeless people, people with intellectual or physical disability, or people with a mental illness were given directions? Even going by age and Aboriginality, one can see from the statistics that the legislation is being used disproportionately on these people. This is an outrage and general police harassment of indigenous and young people. The review also found that the power is being used more in certain areas of the State than in others. Four local area commands—Darling River, Castlereagh, Barwon and Barrier—were many times more likely to use the powers than other areas of the State. The highest recorded use of the police direction power was in the Darling River local area command, which takes in Bourke, Brewarrina and Cobar in western New South Wales. This was followed by Castlereagh, which is centred at Walgett; Barwon, centred at Moree; and Barrier, which takes in Broken Hill, Wilcannia and Menindee. What is common to all the country towns mentioned is that they have large indigenous populations. It is well documented that in these towns many Aboriginal people are charged with summary offences, particularly offensive language and conduct. This bill provides yet another opportunity for police to harass Aboriginal people in areas where they are already subjected to harassment and often charged with many other minor offences.

The amendment seeks to remove proposed section 197 (1) (c). Currently the bill specifies that a police officer may give a direction to a person in a public place if the police officer believes on reasonable grounds that the person's behaviour or presence in the place "is causing or likely to cause fear to another person or persons, so long as the relevant conduct would be such as to cause fear to a person of reasonable firmness". This provision should be removed from the bill as it is being used to unfairly harass certain groups of people, particularly young people and indigenous people. For example, a group of young people may be noisy or may be involved in skateboarding or other recreational activities which may startle some people, but this is not a valid reason for requiring them to leave a public place. While we still oppose the whole of the part relating to the power to give directions, removal of proposed section 197 (1) (c) may reduce the incidence of this power being used disproportionately on certain groups of people. I commend Greens amendment No. 20 to the Committee.

The Hon. IAN MACDONALD (Parliamentary Secretary) [4.42 p.m.]: The Government cannot support this amendment: it is already existing law. I seek leave to incorporate my further comments in *Hansard*.

Leave granted.

The matters raised by the Greens have already been appropriately addressed in the bill. The Government does not support these amendments.

The bill contains appropriate levels of safeguards, which in turn are supported by internal police guidelines on the exercise of the relevant powers.

The Hon. JAMES SAMIOS [4.42 p.m.]: The Opposition does not support the amendment.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 6

Dr Chesterfield-Evans
Mr R. S. L. Jones
Ms Rhiannon
Mrs Sham-House
Tellers,
Mr Breen
Mr Cohen

Noes, 23

Mr Colless	Mr M. I. Jones	Mr Tingle
Mr Dyer	Mr Lynn	Mr Tsang
Mr Egan	Mr Macdonald	Mr West
Ms Fazio	Reverend Dr Moyes	
Mrs Forsythe	Reverend Nile	
Miss Gardiner	Mr Oldfield	
Mr Gay	Mrs Pavey	<i>Tellers,</i>
Mr Harwin	Mr Pearce	Mr Jobling
Mr Hatzistergos	Mr Samios	Mr Primrose

Question resolved in the negative.

Amendment negatived.

Part 14 agreed to.

The Hon. IAN COHEN [4.50 p.m.], by leave: I move Greens amendments Nos 21, 22 and 23 in globo:

No. 21 Page 115, part 15, clause 201. Insert after line 16:

- (2) In providing the person with the reason for the exercise of the power under subsection (1) (c), the police officer must provide the information in sufficient detail to enable the person to understand the basis for the exercise of the power and must include in any reason given:
 - (a) the particular offence that is being used as the basis for the exercise of the power, and
 - (b) in relation to a search conducted under Part 4, except for a search conducted under Division 3 of Part 4:
 - (i) the nature of the article or thing being searched for, and
 - (ii) the reason why the police officer believes the article or thing is in the possession or control of the person or in the place or thing that is the subject of the search, and
 - (iii) the reason why the police officer believes that the article or thing is related to the commission of an offence or will be used in the commission of an offence, and
 - (c) in relation to a search conducted under Division 3 of Part 4, the reason why the police officer believes that person has a dangerous implement in his or her custody or school locker.

No. 22 Page 116, part 15. Insert after line 26:

205 Written record of exercise of power

- (1) A police officer must keep a written record of any request made under Part 3 requiring a person to disclose his or her identity or the identity of another person or of any search conducted under Part 4.
- (2) The record must be kept in sufficient detail to enable a person to understand the basis for the exercise of the power and must include:
 - (a) the particular offence that was used as the basis for the exercise of the power, and
 - (b) in relation to a request to provide identification details under Part 3:
 - (i) the identity (if known) of the person to whom the request was made, and
 - (ii) the identity of any other person whose details were obtained, and
 - (c) in relation to a search conducted under Part 4, except for a search conducted under Division 3 of Part 4:
 - (i) the identity (if known) of the person or identifying details (if known) of the place or thing that was the subject of the search, and
 - (ii) the nature of the article or thing being searched for, and
 - (iii) the reason why the police officer believed the article or thing was in the possession or control of the person or in the place or thing that was the subject of the search, and
 - (iv) the reason why the police officer believed that the article or thing was related to the commission of an offence or was to be used in the commission of an offence, and
 - (d) in relation to a search conducted under Division 3 of Part 4:
 - (i) the identity (if known) of the person that was the subject of the search, and
 - (ii) the reason why the police officer believed that the person had a dangerous implement in his or her custody or school locker.

No. 23 Page 132, part 19, clause 235. Insert after line 24:

- (c) prescribe different amounts of penalties for offences committed by a child under the age of 18 years, and

The Greens believe that before exercising the power to provide identification details under part 3, the power to search and seize without a warrant and the power to conduct a personal search and seize in relation to places and schools under part 4, the police officer should provide enough information to enable a person to understand the exercise of the power. With regard to exercising the power to provide identification details, the police should be required to specify the particular indictable offence that is being used as the basis for the exercise of the power. In relation to a search conducted under part 4, the police officer should specify the nature of the article believed to be concealed on the person and the grounds of the suspicion that it has or will be used for the commission of an offence. In relation to a search of a person, his or her bag or, in the case of a school, a student's locker, for a dangerous implement, the police officer should specify the reason he or she believes that person has a dangerous implement in his or her custody or in the school locker. This information and the reasons should be recorded in writing.

The Greens believe that standard penalties impact unfairly on many young people who are often in full-time education without a regular source of income. They are often less able to pay fines than their adult counterparts. This amendment enables different amounts to be prescribed as penalties for offences committed by a child under the age of 18 years. I commend the amendments to the Committee.

The Hon. IAN MACDONALD (Parliamentary Secretary) [4.51 p.m.]: The Government opposes these amendments. Again, I seek leave to incorporate my reply in *Hansard*.

Leave granted.

The matters raised by the Greens have already been appropriately addressed in the bill. The Government does not support these amendments. The bill contains appropriate levels of safeguards, which in turn are supported by internal police guidelines on the exercise of the relevant powers.

The Hon. JAMES SAMIOS [4.52 p.m.]: The Opposition opposes these amendments.

Amendments negatived.

Parts 15 to 19 agreed to.

Schedules 1 to 5 agreed to.

Title agreed to.

Bill reported from Committee without amendment and report adopted.

Third Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [4.54 p.m.]: I move:

That this bill be now read a third time.

The House divided.

Ayes, 24

Mr Colless	Mr Kelly	Mrs Sham-Ho
Mr Dyer	Mr Lynn	Mr Tingle
Mr Egan	Mr Macdonald	Mr Tsang
Ms Fazio	Reverend Dr Moyes	Mr West
Mrs Forsythe	Reverend Nile	
Miss Gardiner	Mr Oldfield	
Mr Gay	Mrs Pavey	<i>Tellers</i>
Mr Hatzistergos	Mr Pearce	Mr Jobling
Mr M. I. Jones	Mr Samios	Mr Primrose

Noes, 5

Dr Chesterfield-Evans
Mr Cohen
Ms Rhiannon
Tellers
Mr Breen
Mr R. S. L. Jones

Question resolved in the affirmative.

Motion agreed to.

Bill read a third time.

TERRORISM (COMMONWEALTH POWERS) BILL

DRUG MISUSE AND TRAFFICKING AMENDMENT (DANGEROUS EXHIBITS) BILL

Bills received.

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

Bills read a first time.

Declaration of urgency agreed to.

SPECIAL ADJOURNMENT

Motion by the Hon. Ian Macdonald agreed to:

That this House at its rising today do adjourn until Tuesday 3 December 2002 at 11.00 a.m.

CRIMES (SENTENCING PROCEDURE) AMENDMENT (STANDARD MINIMUM SENTENCING) BILL**Second Reading**

Debate resumed from 20 November.

The Hon. DAVID OLDFIELD [5.00 p.m.]: The Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill pretends to introduce a kind of standardised or prescribed minimum sentence. The bill would have the public believe that such legislation would enshrine a situation where dangerous criminals were assured of receiving a particular gaol term as a bare minimum. However, due to what the bill describes as mitigating factors, that is simply not the case. The overview of the bill states that one of its principal objectives is "to establish a scheme of standard minimum sentencing for a number of serious offences". It is a scheme all right—in the sense of being artful and deceitful—though perhaps in the interests of making it clearer some might prefer to substitute the word "scheme" for clearer terminology such as "scam". In many respects, the mitigating factors simply entrench what the courts already take into account.

Whilst it is appropriate to have mitigating factors that explain why a criminal should not receive the maximum sentence or something higher than the minimum sentence, it is a sick joke to have mitigating factors so as to create a way of not imposing at least the minimum sentence expected by the public. This bill is supposed to be about giving the public an understood minimum sentence. However, in many respects it establishes that principle and then completely undermines it. Some of the mitigating factors are downright offensive, and would be considered especially so in the case of surviving victims or friends and family of victims. For example, paragraph (f) in the list of mitigating factors states that "the offender was a person of good character" as being a consideration for imposing a sentence below the stated minimum. People of good character do not commit gang rape; people of good character do not sell drugs; people of good character do not murder children; and people of good character are not car-jackers or home invaders. Are we to believe that these criminals were people of good character until they happen to become rapists, drug peddlers or child murderers?

The mitigating factors should refer to an explanation as to why a serious offender receives only the minimum sentence, rather than being an excuse to impose a lesser sentence than the public would be led to believe was the minimum. Such considerations should be made in the Committee stage; certainly I will be seeking to make amendments of that kind. Like all debates in this House, those of certain social persuasions raise lunacy that the average Australian would find discriminatory and abhorrent. I note in particular the nonsense of the Greens' Ms Lee Rhiannon, who was concerned that being Aboriginal was not a mitigating factor. How much Aboriginal do the Greens suggest people need to be to qualify to receive a lesser penalty than everybody else? Do they suggest that they need to be full-blooded Aborigines, or perhaps half casts or quarter casts, or do they suggest such people need to be one-eighth or one-sixteenth Aborigines?

Will the strength of the mitigating circumstances in such cases be based on a level of Aboriginality? Will the lowest sentences be handed to full-blooded Aborigines, with the time being taken off the sentence in proportion to the level of a person's Aboriginality? Would it simply be a matter of professing to be an Aborigine, so that we could then simply rely on the Aboriginal community to fight it out as to who should get a lesser sentence? I ask that last question because no doubt members are aware that there is a considerable fight within the Aboriginal community over who really is Aboriginal. There is a great deal of concern amongst the Aboriginal community that many who claim to be Aboriginal—and hence are rorting significant advantages that are not available to other Australians—are in fact not Aboriginal at all. Aboriginal communities in Tasmania claim that 9,000 out of the 15,000 residents purporting to be Aboriginal are simply liars stealing from the system.

My wife, Lisa, is one-eighth Sioux Indian. Perhaps Ms Lee Rhiannon would like to take that into account as a mitigating factor for sentencing—after all, Lisa's ancestors suffered and she sometimes gets quite upset when reading about it. My mention of Lisa's partial indigenous background merely highlights the nonsense raised by Ms Lee Rhiannon in suggesting that Aborigines should receive lesser sentences simply because they are Aboriginal. If Ms Lee Rhiannon were to look at crime statistics she would learn that Aboriginal people rob, assault, rape and murder at a significantly higher rate than any other group in the community. But, of course, such facts would not matter to Ms Lee Rhiannon as she is of the school that believes there is no such thing as right and wrong, only circumstances.

I do not believe that any system should advantage or disadvantage anyone on the basis of race. Rather, I believe that all Australians should be treated equally, and the way in which people are treated in the eyes of the

law should be a shining example of equal treatment. For Ms Lee Rhiannon to want mitigating factors to reduce sentences on the basis of Aboriginality is one of the most offensive and discriminatory suggestions I have ever heard. Whilst there is much in the bill that I disagree with, I congratulate the Government on not including in its mitigating factors such bunk as has been brought before the House by the unsustainable views of the Greens' Ms Lee Rhiannon.

True minimum sentencing means a period in gaol from which there will be no deviation. True minimum sentencing must be a publicly understood period that will be as it sounds—that is, that it will be the very least time of incarceration that can be expected as the penalty for those proven to be guilty. I remind the House that I was the first to attempt to introduce minimum penalties. I did so in an amendment to the Sexual Assault in Company Bill, during the heated debate surrounding the horrific actions of Muslim gang rapists who had been on the rampage throughout the Bankstown area. At that time the Opposition and the Government voted against minimum sentencing but, as predicted by me and recorded in *Hansard* last year, both Liberal and Labor have since adopted forms of minimum sentencing. For the benefit of the House, *Hansard* records me as saying on 26 September 2001:

I foresee a time when one of the major parties will come to its senses and produce law and order policies that include the principle of a minimum prescribed sentence. Considering Labor ideology, I suspect it will be the Coalition that will ultimately adopt such policies—or maybe it will just be first.

It is amazing how quickly the bidding war on law and order, and the looming State election, made my prediction come true. Whilst both Liberal and Labor have a long way to go in adopting minimum sentencing policies that are appropriate and accepted by the majority of the people of New South Wales, I am pleased that they have at least in principle adopted longstanding One Nation law and order policies. For the betterment of the people of New South Wales, I look forward to the Government and the Opposition adopting more of the One Nation platform.

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.07 p.m.], in reply: As my remarks in reply are detailed and lengthy, I seek leave to incorporate them in *Hansard*.

Leave granted.

I thank all honourable members for their contribution to this debate.

The scheme of sentencing being introduced by the Government in this Bill provides further guidance and structure to judicial discretion and promotes consistency and transparency in sentencing. It also promotes public understanding of the sentencing process.

The Government's Bill establishes a new sentencing scheme by setting standard non-parole periods for a number of specified serious offences set out in a Table in the Bill. Under the Bill, the court is to set the standard non-parole period as the non-parole period for the offence unless the upper part for a court determines that there are reasons for setting a non-parole period that is longer or shorter than the standard non-parole period for the offence.

By introducing a regime of standard non-parole periods for a specified number of serious offences the Government will ensure not only greater consistency in sentencing but also that proper regard is given to the expectation of the community that punishment is imposed which is commensurate with the gravity of the crime.

The requirement in the proposed section 21A for a court to take into account aggravating and mitigating factors and other matters applies in sentencing for all offences, not just to offences that are subject to a standard non-parole period under proposed Division 1A of Part 4 of the Principal Act.

In conjunction with this new scheme of sentencing the Government will continue its support of the use of guideline judgments given by the Court of Criminal Appeal. Guideline judgments are another extremely useful tool in achieving consistency in sentencing and in taking into account community expectations as to the appropriate penalty to be imposed.

The issuing of guideline judgments has had, with respect to a number of offences, a significant impact in achieving both increases in the penalties imposed by the courts as well as overall consistency in sentencing. In particular, guideline judgments with respect to the offences of armed robbery, dangerous driving causing death/grievous bodily harm and break enter and steal have had a very positive impact in these areas.

It is proposed that the guideline judgments already promulgated by the Court of Criminal Appeal should continue to be used by the courts when sentencing for these offences.

Guideline judgments will also continue to play an important role with respect to offences that are not part of the standard non-parole period scheme.

Two applications for additional guideline judgments have been submitted to the Court of Criminal Appeal, for (i) assault Police matters dealt with in Local Courts; and (ii) high-range drink driving. Any suggestion that the Government's regard for guideline judgments has been diminished, as has been suggested by several Members, is therefore misplaced.

The Table to the Bill does not include the offence of manslaughter. This is because the kinds of criminal conduct captured by this offence vary greatly in culpability. For example, both intentional and non-intentional homicide can constitute the crime of manslaughter.

The Government has therefore decided that an independent inquiry be conducted to consider questions relating to the offence of manslaughter including whether the *Crimes Act 1900* should be amended to include a structured scheme of offences and penalties for manslaughter. The inquiry is also to consider the question of whether there should be different grades of manslaughter with standard non-parole periods to reflect the different circumstances and culpability involved.

As the Attorney General recently announced, the inquiry is being conducted by retired Justice of the Supreme Court, The Hon M. D Finlay QC. Mr Finlay is an eminent and highly regarded criminal lawyer.

The Bill also inserts a new Part 8B into the Principal Act. The proposed Part constitutes New South Wales Sentencing Council.

The Sentencing Council is, in part, to have the following functions:

advising and consulting with the Attorney General in relation to offences suitable for standard non-parole periods and their proposed length; and
advising and consulting with the Attorney General in relation to offences suitable for guideline judgments and the submissions to be made by the Attorney General on an application for a guideline judgment.

The Government looks forward to establishing the Council. Such bodies have been successful in other jurisdictions in ensuring that the legislature is fully informed of the views of the community.

I trust that the views of the NSW community, together with the views of the legal and law enforcement bodies that perform a critical day-to-day role in our justice system, will be given a more significant voice in sentencing practice and reform through this new body.

I commend the Bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 3 agreed to.

The Hon. JAMES SAMIOS [5.09 p.m.], by leave: I move Liberal Party amendments Nos 1 to 6 in globo:

- No. 1 Page 3, schedule 1 [2], proposed section 21A, line 21. Omit "mitigating".
- No. 2 Page 3, schedule 1 [2], proposed section 21A (1) (b), lines 27 and 28. Omit all words on those lines.
- No. 3 Pages 5 and 6, schedule 1 [2], proposed section 21A (3), line 12 on page 5 to line 4 on page 6. Omit all words on those lines.
- No. 4 Page 6, schedule 1 [2], proposed section 21A (4), lines 5 and 6. Omit "or mitigating".
- No. 5 Page 6, schedule 1 [2], proposed section 21A (5), line 8. Omit "or mitigating".
- No. 6 Page 6, schedule 1 [2], proposed section 21A (5), line 10. Omit "or reduce".

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.10 p.m.]: The Government does not support these amendments, for the reasons that were comprehensively outlined in the other place. Several important points, however, need to be restated. The proposed aggravating and mitigating factors set out in the bill represent factors that are already taken into account on sentencing, whether they are in the existing sentencing legislation or in the common law. We have made an effort to spell out what these factors are. It should interest those opposite to learn that not only would the proposed amendments seriously damage the justice system in this State, they are incompatible with the Oppositions own policy.

These mitigating factors will apply to all offences, not just those attracting a standard minimum sentence. It is the case that the policy is presently comprised of a small number of offences attracting mandatory sentences. The remainder of offences, which constitute about 99 per cent of all crime, will be subject to ordinary sentencing considerations. That is Coalition policy. The Coalitions policy is that a judge should be able to take mitigating factors into account in these cases. These amendments not only represent an incompetent attempt to modify the criminal law, they represent a massive shift in Coalition policy.

In effect, the Coalition is seeking to eliminate circumstances of mitigation for every crime, including manslaughter—the crime it continuously asserts will miraculously catch all crimes requiring a compassionate sentence. What is being proposed is unworkable. It will cause injustice, mistrials, uncertainty and mayhem. It needs to be clearly understood that these amendments are directed at eliminating discretion a court may exercise in considering all offences, irrespective of whether they attract a standard minimum sentence or not. Every judge in this State who has to consider an appropriate manslaughter sentence would be unable to reduce the penalty under these proposals. It is that simple.

Let us have a look at some of the factors needing to be eliminated from consideration in sentencing an offender for any crime: assistance by the offender to law enforcement authorities; provocation; the offender was acting under duress; guilty pleas—which resolve about 70 percent of all criminal trials; the offender has made reparation for any injury, loss or damage arising from the offence; and disclosure of information before a trial. Under these proposals no offender would disclose any information of any weight to the police or other authorities. No-one would plead guilty. Victims of crime would be forced to endure days in the witness box, and in the court more generally, reliving their pain. These are unfortunate amendments and, indeed, they are definitely not supported.

The Hon. JAMES SAMIOS [5.12 p.m.]: In moving the deletion of proposed section 21A (3) and the ancillary amendments covered in amendments Nos 1 to 6, the Opposition would state that the purpose of this amendment is to delete Labors 13 excuses. These vary from saying sorry to special pleading about character. They are simply a device whereby the judge can ignore the standard minimum sentence and give a lesser sentence. The existence of the 13 excuses makes a mockery of the concept of minimum sentences. The Coalition is determined to show up the Labor Party for its hypocrisy. We will vote on this and we will vote whether it has genuine minimum sentences or 13 excuses.

The Hon. IAN COHEN [5.13 p.m.]: Despite the temptation to support the Opposition to show up Labors hypocrisy, I must say the Greens strongly oppose Coalition amendments Nos 1 to 6. The amendments take out all references to "mitigating" and remove all the mitigating factors set out in the legislation that the Court can take into account. The Coalition leaves in all the aggravating factors that the court can take into account. The effect of the amendments would be to turn the legislation into mandatory sentencing legislation, as there would be no mitigating factors that the court could utilise. The Greens have spoken in the House previously about the impact of mandatory sentencing. We have seen the disgusting situations that were uncovered in recent times in the Northern Territory when mandatory sentencing had hold.

To use an example, if a woman killed her husband after years of domestic violence and torture inflicted by her husband on her and her children she could be charged with murder—which, in the table in the bill, carries a standard non-parole period of 20 years without the benefit of the mitigating factors that the court could take into account. Those mitigating factors could include that the woman was provoked by the victim, that she was acting under duress, that she had no prior convictions, and that she was of good character and was unlikely to reoffend. Under the Coalition's amendments the woman could be gaoled for 20 years. This is a totally inappropriate situation, and there are many cases in which it would be equally inappropriate. The Greens have always argued for discretion on the part of the judiciary and we believe that any movement away from that discretion—whether it be minimum or, in particular, mandatory sentences as proposed by the Opposition—is completely inappropriate.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.15 p.m.]: These shocking amendments make a silly and unjust bill even sillier and more unjust. The idea that circumstances cannot be taken into account in crimes is simply outrageous and the Opposition should be ashamed of itself. I do not know what more can be said about this. If one thinks this Government is arrogant and stupid one should take a look at the Opposition. It has come to a pretty pass in this State when that is the choice we are offered.

The Hon. RICHARD JONES [5.16 p.m.]: I have to defend the reputation of the Hon. James Samios. I am quite sure it was not his idea that these amendments be moved, because he is an honourable gentleman and would not dream of moving them on his own account.

The Hon. Dr PETER WONG [5.16 p.m.]: I also wish to defend the Hon. James Samios. He is a wonderful person with a very good heart and an impeccable record. It could not come from him.

Question—That the amendments be agreed to—put.

The Committee divided.

Ayes, 14

Mrs Forsythe
Mr Gallacher
Miss Gardiner
Mr Gay
Mr Harwin

Mr M. I. Jones
Mr Lynn
Mr Oldfield
Mrs Pavey
Mr Pearce

Mr Samios
Mr Tingle
Tellers,
Mr Colless
Mr Jobling

Noes, 22

Mr Breen
Dr Burgmann
Ms Burnswoods
Dr Chesterfield-Evans
Mr Cohen
Mr Della Bosca
Mr Dyer
Mr Egan

Mr Hatzistergos
Mr R. S. L. Jones
Mr Macdonald
Reverend Dr Moyes
Reverend Nile
Mr Obeid
Ms Rhiannon
Ms Saffin

Mrs Sham-Ho
Ms Tebbutt
Mr West
Dr Wong
Tellers,
Ms Fazio
Mr Primrose

Pairs

Dr Pezzutti
Mr Ryan

Mr Costa
Mr Tsang

Question resolved in the negative.

Amendments negatived.

The Hon. RICHARD JONES [5.24 p.m.]: I move my amendment No. 1:

No. 1 Page 5, schedule 1 [2], proposed section 21A (3) (j), lines 30-32. Omit all words on those lines. Insert instead:

(j) the young or old age or any disability of the offender,

The amendment provides that the court will be required to take into account the offenders age and disability when determining an appropriate sentence. The bill allows an offenders age or disability to be taken into account only in relation to whether or not the person was aware of the consequences. It is possible that an offender of a young age or an offender with a mental illness may have some awareness of the consequences of their actions but not realise, for example, that the action is wrong.

It is a major problem that men and women with intellectual disability or with a mental illness are significantly overrepresented in New South Wales prisons. Although the prevalence of intellectual disability in the general population is somewhere between 1 per cent and 3 per cent, the percentage of those in prison is much higher. In a submission to the Select Committee on the Increase in Prisoner Population, the Department of Corrective Services advised that 13 per cent of the inmate population has an intellectual disability—a very high incidence indeed. Academics from the University of Sydney have advised that amongst adult prisoners the prevalence is sometimes as high as 19 per cent. That is why this amendment is so important.

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.25 p.m.]: The Government opposes the amendment. I seek leave to incorporate my reasons in *Hansard*.

Leave granted.

The fact that a person is young or old or suffers from a disability does not of itself require that a sentence be reduced by way of mitigation. The common law makes it clear that the mitigation which may result from the presence of such factors relates to the fact that because of such a factor the offender may not have been "fully aware of the consequences of his or her actions". The proposed amendment seeks to remove these important qualifying words from the provision.

The Hon. IAN COHEN [5.26 p.m.]: The Greens strongly support the amendment, which adds a very important mitigating factor, that is, the youth, old age or disability of an offender, in particular, mental disability. As the Greens have always said in similar debates, mitigating factors should be judged by the judiciary and set sentences are very dangerous. This amendment is worthy of support.

The Hon. Dr PETER WONG [5.26 p.m.]: I strongly support the amendment. I am amazed at the Labor Party, which is supposed to support the underprivileged. What happened to its policies?

The Hon. JAMES SAMIOS [5.27 p.m.]: The Opposition does not support the amendment.

Amendment negatived.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.27 p.m.]: I move the Democrats amendment as circulated:

Page 6, schedule 1 [2], proposed section 21A (3). Insert after line 4:

- (n) the offender has completed a program in the nature of a restorative justice program (such as a program that gives a victim an opportunity to present the victim's perspective on the offence to the offender, or a program that gives a victim or member of the community an opportunity to influence the penalty imposed on the offender for the offence).

This amendment adds the fact that an offender has completed a restorative justice program as a further mitigating circumstance. The object of restorative justice is to seek to restore a more harmonious situation that existed immediately following the crime. It allows the victim to come to terms with what has happened and gain some understanding of why the crime was perpetrated. The first reaction of a victim might be revenge, but this process will provide some closure. It will help victims to get on with their lives. Victims may wonder why they were attacked for no apparent reason, or perhaps why a loved one may have been killed.

The restorative justice program may give victims who otherwise may not have been aware of the alienation of the perpetrator some insight into the reason for the disturbed or nasty nature of the perpetrator. They may then gain some understanding of why the crime was committed. If a perpetrator shows remorse, this may be some consolation to victims that something good has come out of the unfortunate event. It is often the case that young offenders are headstrong and silly when they commit crimes. However, perpetrators can see the adverse effect their actions have had on the lives of other people and they may change their ways. This measure has been particularly effective with young offenders. It is also effective with people with a personality disorder, who tend to depersonalise.

Personality disordered people are exquisitely sensitive to their own pain but exquisitely insensitive to other people's pain. They depersonalise the people they are hurting, calling them old fogies or fossil farming, if they are taking things from old people in a very dehumanising way. When they realise that they are dealing with a human being, when they are confronted with the human face, hopefully they change their behaviour and do not reoffend. That is what this is about. People are not put in gaol forever, and it will not happen under this regressive legislation. We must encourage the Government to look at restorative justice as a component of our justice system. If we can reduce sentences as a means of encouraging it, so be it. We will end up with a better and more just society. Victims are generally seen only in terms of their rights, and victims' rights are generally seen in terms of what they want, which is the maximum punishment possible. We must get beyond that sort of thinking if we want a better quality of justice, a more harmonious society and less money spent on gaols. I commend this amendment to the Committee as a reasonable step towards the progress I have defined.

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.30 p.m.]: The amendment moved by the Hon. Dr Arthur Chesterfield-Evans proposes that the courts, in sentencing, also take into account as a mitigating factor the fact that an offender has completed a program in the nature of a restorative justice program. The amendment is opposed; it is unnecessary. Proposed section 21A (1) provides that in addition to the aggravating and mitigating factors referred to in subsections (2) and (3), the court make take into account other matters that are required or permitted to be taken into account under any Act or rule of law. Should an offender successfully complete a restorative justice program, then that fact could, by the operation of section 21A (1), be taken into account by the court when imposing a final sentence.

The Hon. JAMES SAMIOS [5.31 p.m.]: The Opposition does not support the amendment.

The Hon. IAN COHEN [5.31 p.m.]: The Greens support this amendment as it simply adds a valuable mitigating factor that the court can take into account, for instance, the offender has participated in a roundtable conference or restorative justice program such as that allowed in the young offenders legislation, such as a youth conference. As I understand it, the Hon. Ian Macdonald is saying that this facility is already available. Did he say, effectively, that completion of a restorative justice program will be acknowledged as a mitigating factor?

The Hon. Ian Macdonald: Yes.

The Hon. IAN COHEN: The Greens are pleased if that is the case. However, we still support the amendment moved by the Hon. Dr Arthur Chesterfield-Evans.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.32 p.m.]: I dispute that this matter is covered in proposed section 21A. Although section 21A (c) provides that any other objective or subjective factor that affects the relative seriousness of the offence may be considered by the court, a restorative justice program does not affect the seriousness of the offence. It is a mitigation after the offence is committed. If these are the only mitigating factors restorative justice programs should be added to the list.

Amendment negatived.

The Hon. DAVID OLDFIELD [5.33 p.m.], by leave: I move my amendments Nos 2 to 20 in globo:

No. 2 Page 7, schedule 1 [4], proposed Division 1A, line 3. Omit "Standard ". Insert instead "Minimum ".

No. 3 Pages 7 and 8, schedule 1 [4], proposed sections 54A-54C, line 4 on page 7 to line 10 on page 8. Omit all words on those lines. Insert instead:

54A Minimum non-parole periods

For the purposes of this Division, the minimum non-parole period for an offence is the non-parole period set out opposite the offence in the Table to this Division.

54B Minimum sentencing procedure

- (1) This section applies when a court imposes a sentence for an offence set out in the Table to this Division.
- (2) The court is to impose a sentence of imprisonment.
- (3) When determining the sentence of imprisonment, the court must not set a non-parole period for the offence that is shorter than the minimum non-parole period for the offence.
- (4) The court must make a record of its reasons for imposing a non-parole period that is shorter than the maximum penalty for the offence. The court must identify in the record of its reasons each factor that it took into account.
- (5) If this section requires a court to impose a minimum non-parole period, nothing in section 21 (or any other provision) of the *Crimes (Sentencing Procedure) Act 1999* or in any other Act or law authorises a court to impose a lesser or alternative sentence.
- (6) Nothing in this section affects the prerogative of mercy.

No. 4 Page 8, schedule 1 [4], proposed Table, line 19. Omit "Standard". Insert instead "Minimum".

No. 5 Page 8, schedule 1 [4], column heading in proposed Table, line 21. Omit "Standard". Insert instead "Minimum".

No. 6 Page 11, schedule 1 [5], proposed section 100J (1) (a), line 26. Omit "standard". Insert instead "minimum".

No. 7 Page 12, schedule 1 [5], proposed section 100J (1) (c), line 3. Omit "standard". Insert instead "minimum".

No. 8 Page 13, schedule 1 [6], proposed section 106, line 4. Omit "Standard".

No. 9 Page 13, schedule 1 [6], proposed section 106, line 6. Omit "standard". Insert instead "minimum".

No. 10 Page 13, schedule 1 [6], proposed section 106, line 8. Omit "Standard".

No. 11 Page 13, schedule 1 [6], proposed section 106, line 10. Omit "standard". Insert instead "minimum".

No. 12 Page 13, schedule 1 [6], proposed section 106, line 14. Omit "standard". Insert instead "minimum".

No. 13 Page 18, schedule 3.1 [3], proposed heading to Part 9, line 15. Omit "Standard".

No. 14 Page 18, schedule 3.1 [3], proposed clause 12 (1), line 18. Omit "Standard".

No. 15 Page 18, schedule 3.1 [3], proposed clause 12 (2), line 23. Omit "Standard".

No. 16 Page 20, schedule 3.2 [8], line 10. Omit "Standard".

No. 17 Page 20, schedule 3.2 [9], proposed heading to Part 7, line 16. Omit "Standard".

No. 18 Page 20, schedule 3.2 [9], proposed clause 45, line 19. Omit "Standard".

No. 19 Page 21, schedule 3.2 [9], proposed clause 46, line 4. Omit "Standard".

No. 20 Long title. Omit "standard".

As I said in my contribution to the second reading debate, this bill is almost a smoke and mirrors approach to a pretence of minimum sentencing. These are not minimum sentences; they are a list of periods of time that a person might have as a minimum, except for a series of mitigating circumstances. As I said, those mitigating circumstances are offensive in many respects. Victims of assaults, victims of burglaries, people involved in crime generally who survive as victims, and the friends and family of victims would be incensed at many of the mitigating factors described in the Governments bill. This series of amendments seeks to remove the prospect of mitigating factors being able to be used by the courts to impose a period less than the expressed minimum in the bill. For example, in the case of attempted murder, the bill expresses a standard non-parole period of 10 years. However, mitigating factors may reduce that.

My series of amendments will change the bill so that that 10 years is 10 years and cannot be less than 10 years, and the only thing the mitigating factors will be used for is to explain why the minimum 10 years has been used rather than a higher figure. For example, if the maximum sentence was 25 years and only a 10-year minimum was imposed, the mitigating factors would only be used to explain why the criminal, the perpetrator, the low-life creature who caused great difficulty for victims in society, had only the minimum period imposed. So mitigating factors would have that specific impact under the circumstances of my amendments. Mitigating circumstances would only be used to explain why a person received the minimum sentence as opposed to reducing the minimum sentence, as the bill currently proposes.

Anyone who believes in minimum sentencing in a prescribed—that is, mandatory—manner, in every which way one may wish to describe it or have it described, and anyone who believes that society should have in law a true minimum sentence, a true standard non-parole period that people understand will be the very least that a criminal will be incarcerated for, should support these amendments because they will enshrine in law that a person will go to gaol for a specific period. There will be no parole. There will be no mitigating factors that make any difference. The only difference a mitigating factor will make will be in the court using it to explain why a person received only the minimum sentence. Those who support this bill support true prescribed minimum sentencing.

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.36 p.m.]: The Hon. David Oldfield has moved 19 amendments after the Committee proceedings commenced. That means that the Government cannot fully assess the proposals. It seems, upon brief examination of the amendments, that the Hon. David Oldfield is seeking to impose a mandatory sentencing scheme that would even make the New South Wales Coalition blush. That being the case, the amendments are opposed.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.37 p.m.]: This is even sillier than anything else. This is just an extremely bad joke that is even worse than the Opposition.

The Hon. JAMES SAMIOS [5.37 p.m.]: The Opposition has just received these One Nation amendments. Because of the shortage of time, the Opposition is unable to properly consider the amendments and consequently is unable to support them.

The Hon. IAN COHEN [5.37 p.m.]: Although time is short, I have confidence that the Greens comfortably oppose what is a draconian mandatory sentencing regime by One Nation.

The Hon. JOHN RYAN [5.38 p.m.]: The Hon. David Oldfield has created something of a difficulty in that he has placed before the Committee a series of amendments at fairly short notice. The impact of the series of amendments appears to be to change the Government's legislation from a position whereby the courts will have the opportunity to consider a number of mitigating factors—they have been largely described in other places as "13 excuses"—for which they may decide not to impose the sentences set out by the Government. For example, in the instance of a person being proven to have assaulted a police officer occasioning bodily harm, the bill provides for a sentence of three years, of which the judge can exercise his or her mind to a number of mitigating circumstances. They may well decide to set a lesser non-parole period.

The impact of the Hon. David Oldfield's amendments would be to take away that discretion. That would mean that once the offence had been proven it would be virtually impossible for the judge to exercise any discretion at all and this would then become the Crimes (Sentencing Procedure) (Minimum Sentencing) Bill. It

would implement in New South Wales a minimum sentencing procedure such as exists in places like the United States of America. It would be somewhat expansive in its operation in that it would apply to everything from attempted murder through to offences such as car-jacking and offences involving the Firearms Act, including imposing a minimum sentence of three years for the unauthorised possession and use of firearms.

When the Opposition was considering our minimum sentencing proposals we were not necessarily considering making it that wide. However, the Hon. David Oldfield has given the Committee some interesting points to consider, and the Opposition is turning its mind to them right now. The biggest difficulty we have is that these amendments have been tabled only recently and it is important for us to fully assess their impact.

The Hon. JOHN JOBLING [5.41 p.m.]: The Opposition has, in the short time available to it, attempted to consider and examine in detail the 19 amendments that have been moved. A number of the amendments are attractive to the Opposition. However, I seek clarification from you, Mr Chairman, as to the status of the amendments. I would like an assurance from you that the amendments are within the leave of the bill. If they are not, we will have a different approach. I seek your guidance.

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.42 p.m.]: Obviously the Opposition is getting stirred up with potentially having to vote against these amendments moved by the Hon. David Oldfield. It would have been good if the Committee saw the Opposition vote on these issues. We rely on your good guidance, Mr Chairman, in relation to the question that has been raised, but it is a pity that the Opposition is not putting its hand up for the policy it is taking around the State.

The Hon. JOHN JOBLING [5.43 p.m.]: In response to the inflammatory comments by the Parliamentary Secretary, the Opposition would be happy to deal with these amendments and vote on them. However, before we do that we have to ascertain whether they are within the leave of the bill.

The Hon. DAVID OLDFIELD [5.43 p.m.]: Leave was granted. Surely they are within the leave of the bill.

The CHAIRMAN: Order! These amendments have only just become available, although they were with Parliamentary Counsel at 1.17 p.m. today. That makes it difficult to completely assess them and get instructions from the Committee of the Whole. Some of them are questionable. I therefore rule them out of order.

Amendments of the Hon. David Oldfield ruled out of order.

The Hon. JAMES SAMIOS [5.44 p.m.]: I move Opposition amendment No. 7:

No. 7 Page 8, schedule 1 [4], proposed section 54C, lines 1-10. Omit all words on those lines.

This amendment relates to proposed section 54C, which is an extraordinary measure. It allows a judge not to impose a prison sentence at all so long as the judge states reasons. In other words, even for murder a judge can let a criminal go free. So much for minimum sentences. All that is required is that the judge gives reasons but—and this is the height of hypocrisy—if the judge does not give reasons the sentence still stands. So under Labor's much flaunted standard minimum sentences a criminal can be convicted of crime and walk out of court with no reason given and no redress.

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.45 p.m.]: The Government does not support this amendment. The Coalition continues to massively distort this provision, as it has done all the way through this debate and with its deceptive behaviour towards the Hon. David Oldfield this afternoon. Subsection (1) of proposed section 54C provides that if a court does not impose a custodial sentence for an offence set out in the table in the bill, the court must provide written reasons for not doing so and identify each mitigating factor that was taken into account. Judges already have an obligation to provide reasons for sentencing. This provides a further statutory obligation to provide reasons why a custodial sentence was not imposed.

Subsection (2) of proposed section 54C provides that the failure of a court to comply with the section does not invalidate the sentence. The purpose of this provision is not to allow judges not to comply with the obligation to give reasons; it is to preserve the legality of a sentence pending an appeal court hearing. Otherwise, an offender may argue to the Supreme Court in its supervisory jurisdiction that the failure of the judge to provide reasons makes the sentence wholly invalid and that he, therefore, should be released from the obligations of the sentence imposed upon him. In short, this provision is about keeping crooks in prison who

might otherwise be released on a technicality. Subsection (2) should be read with proposed section 101A; it should not be read in isolation. When read in conjunction with section 101A it is abundantly clear that an appeal court can consider failure to comply with the Act without the sentence that has been imposed being rendered invalid.

The Hon. RICHARD JONES [5.46 p.m.]: I oppose this amendment. It is cruel and unusual punishment for the Hon. James Samios to have to move this amendment on behalf of that hardliner, Chris Hartcher.

The Hon. HELEN SHAM-HO [5.47 p.m.]: I strongly support the Government's stance and denounce what the Hon. James Samios has said. It is ludicrous to suggest that judges cannot give a reason for their sentences. When a sentence is imposed on a criminal the community expects to be told the reasons. It is logical that the Government opposes the amendment, and I oppose it strongly.

The CHAIRMAN: Order! I apologise to the Committee. I neglected to call the Hon. Peter Breen to move his amendment. I do not intend to put the question on the Hon. James Samios' amendment until the Hon. Peter Breen has had a chance to move his amendment.

The Hon. PETER BREEN [5.47 p.m.]: I move Reform the Legal System amendment No. 1:

No. 1 Page 7, schedule 1 [4] (proposed section 54B (3)), lines 22 and 23. Omit "are only". Insert instead "include".

The purpose of this amendment is to explain what I believe is an ambiguity in the bill. Proposed section 54B provides that the list of so-called excuses, the mitigating factors, are only those referred to in proposed section 21A. Other mitigating factors are part of common law that judges presently have the right to take into account when considering a prison sentence. Some of these include particular harm or danger that the prisoner may be in as a result of going to prison, or the prisoner's family and dependent commitments, and so forth. If the Committee passes the current provision, section 54B, without this amendment, it is my view that the legislation will be more vulnerable to a challenge because it seeks to exclude the opportunity that judges have to take into account certain factors that are not listed in section 21A. So, I ask the Committee to support this amendment on the basis that it gives the bill more strength and greater protection in the event that it is subject to a challenge.

All the Government's sentencing legislation is vulnerable to a challenge, not just this bill but other legislation that it has passed. The Government is trying to take over from the courts the role that they have under the Commonwealth Constitution to make decisions about prisoners and about the mitigating factors that might be taken into account in determining sentences. The Government has taken a bold stand on these issues. This amendment would be one way in which the bill would be given some protection in the event of a challenge. I ask honourable members to support it.

The Hon. HELEN SHAM-HO [5.50 p.m.]: I strongly support the amendment. The mitigating factors should be made much broader. Although I do not support the bill, the amendment would provide a small safeguard.

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.50 p.m.]: The Government opposes the amendment. It is understood that the amendment has been proposed to allow a court to take into account on sentence any other relevant mitigating factor under the law that is not specifically referred to in proposed section 21A (3). Section 21A (1) provides that in determining the appropriate sentence for an offence the court is to take into account the aggravating factors referred to in section 21A (2), the mitigating factors referred to in section 21A (3) that are relevant and are known to the court, and any other objective or subjective factor that affects the relative seriousness of the offence. Section 21A (1) concludes with the following words, "The matters referred to in this subsection are in addition to any other matters that are required to be taken into account." The Government is of the clear view that section 21A captures the issues that are of concern to the Hon. Peter Breen. Therefore, the amendment is unnecessary.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.52 p.m.]: If the Government considers that under proposed section 21A (1) all wisdom is revealed and all common law is then included, why would it restrict to the list of things in section 21A (3) the only things to be considered as mitigating factors, in that it knocked back my amendment on that section? The amendment would allow other mitigating factors not in the mitigating factors list to be included. Parliament may not be able to think of them at the moment but they could be valid mitigating factors. While the list may appear quite good, it may not be comprehensive. We want to allow the courts to have flexibility if such a situation arises. The amendment clarifies the situation and should be supported.

Amendment of the Hon. Peter Breen negatived.

Question—That Opposition amendment No. 7 be agreed to—put.

The Committee divided.

Ayes, 14

Mrs Forsythe	Mr M. I. Jones	Mr Samios
Mr Gallacher	Mr Lynn	Mr Tingle
Miss Gardiner	Mr Oldfield	<i>Tellers,</i>
Mr Gay	Mrs Pavey	Mr Colless
Mr Harwin	Mr Ryan	Mr Jobling

Noes, 22

Mr Breen	Mr Hatzistergos	Mrs Sham-Ho
Dr Burgmann	Mr R. S. L. Jones	Ms Tebbutt
Ms Burnswoods	Mr Macdonald	Mr West
Dr Chesterfield-Evans	Reverend Dr Moyes	Dr Wong
Mr Cohen	Reverend Nile	
Mr Della Bosca	Mr Obeid	<i>Tellers,</i>
Mr Dyer	Ms Rhiannon	Ms Fazio
Mr Egan	Ms Saffin	Mr Primrose

Pairs

Mr Pearce	Mr Costa
Dr Pezzutti	Mr Tsang

Question resolved in the negative.

Amendment negatived.

The Hon. RICHARD JONES [6.00 p.m.]: I move my amendment No 2:

No. 2 Page 8, schedule 1 [4], proposed section 54D. Insert after line 18:

- (3) This Division does not apply to the sentencing of an offender if the offender was under the age of 18 years at the time the offence was committed.

This amendment is directly in line with Coalition policy. It provides that the bill does not apply to persons under 18 years of age. It is clearly inappropriate that minimum sentencing applies to juveniles. Some members have raised with me the concern that my amendment is not necessary because the Government bill will not apply to children because they are tried by the Children's Court. Unfortunately, this is not the case. Although the Children's Court deals with the majority of matters regarding children, children who commit a serious children's indictable offence are tried by the District Court or the Supreme Court. A serious children's indictable offence includes offences punishable by imprisonment for 25 years and offences arising under section 61J of the Crimes Act 1900. These offences are subject to standard minimum sentence provisions. In the District Court or the Supreme Court children will therefore be subject to standard minimum sentences. Until yesterday, this amendment had the Coalition's support because it is in line with its policy that standard minimum sentences or compulsory minimum sentences should not apply to juveniles. In a media release of 9 June 2002, John Brogden said that the Coalition would not apply compulsory minimum sentences to people under the age of 18. He stated:

We must also give young people the chance to get back on track, before facing compulsory jail, through our second chance programs and getting parents more involved through our parental responsibility orders.

On 12 November 2002 the Liberal Party's web site carried a media statement entitled "Brogden Proposes Compulsory Sentencing" detailing that policy. Until yesterday the Coalition intended to vote according to its policy. It appears that Chris Hartcher has rolled John Brogden on this without consulting him.

The Hon. John Jobling: Point of order: With a great deal of respect, the standing orders are very specific about the Committee stage. I can find no reference to either member of the lower House in the matter before the Committee. Mr Chairman, I ask you to draw the member back to the amendment before the Committee.

The Hon. RICHARD JONES: It is clear there is a degree of sensitivity on the part of the Hon. John Jobling and the Coalition generally. I noticed Chris Hartcher wandering the Chamber earlier today.

The CHAIRMAN: Order! That has nothing to do with the clause.

The Hon. RICHARD JONES: As I said, it was Coalition policy until yesterday. Today that has changed. The shadow Attorney General told my office yesterday that the Coalition would not support this amendment, which is in line with its policy, but would not give any reasons despite repeated requests. Is this Coalition policy or not?

The Hon. IAN MACDONALD (Parliamentary Secretary) [6.03 p.m.]: The Government does not support this amendment. The scheme of standard non-parole periods in the bill relates to a number of serious criminal offences. The Government does not support excluding juveniles from that scheme. It is appropriate that our court system can impose standard minimum penalties on juvenile offenders in appropriately severe cases, for example, gang rape cases. There is no choice presently but to refer serious children's indictable offences, such as murder and aggravated sexual assault, to be dealt in the adult court system.

The Government's proposal reflects community opinion. It is a consistent policy and is at odds with the Coalition's policy. The Opposition's mandatory sentencing proposals do not apply to those under 18 years of age. However, the member for Gosford is on record as making statements such as, "The time has come for juvenile criminals who are murderers to be treated as murderers; any suggestion they should get some form of review when they turn 18 is appalling." He made that statement on 1 September 2002. More recently he was reported in the *Central Coast Express* on 20 November 2002 as saying that the Coalition was proposing draft legislation to reduce the criminal age. He said that his proposal was aimed at ensuring that all violent offenders are gaoled. The Coalition is deeply confused about this matter. It should be noted that the Children's Court will retain the discretion to deal with indictable offences under the Children (Criminal Proceedings) Act. Because the Children's Court exercises summary jurisdiction, the standard non-parole scheme in this bill will not apply to a sentence imposed in that jurisdiction.

Although the Government understands the concerns raised by the Hon. Richard Jones and others on this matter, it should be pointed that proposed section 21A (3) of the bill permits a court to take into account the fact that the offender was not fully aware of consequences of his or her actions because of the offender's age or any disability. Courts will also retain the ability to consider prospects of rehabilitation "whether by reason of the offender's age or otherwise". These are appropriate considerations. As I indicated, the Government does not support the amendment.

The Hon. JAMES SAMIOS [6.05 p.m.]: The Opposition does not support the amendment.

Amendment negated.

The Hon. IAN MACDONALD (Parliamentary Secretary) [6.05 p.m.], by leave: I move Government amendments Nos 1 to 5 in globo:

No. 1 Page 9, schedule 1 [4], proposed Table. Insert after line 13:

9A	Section 61M (1) of the <i>Crimes Act 1900</i> (aggravated indecent assault)	5 years
9B	Section 61M (2) of the <i>Crimes Act 1900</i> (aggravated indecent assault - child under 10)	5 years

No. 2 Page 9, schedule 1 [4], proposed Table. Insert after line 26:

15A	Section 203E of the <i>Crimes Act 1900</i> (bushfires)	5 years
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No. 3 Page 18, schedule 3.1 [3], proposed clause 12, lines 21-25. Omit all words on those lines. Insert instead:

- (2) Part 7 of schedule 2 to the *Crimes (Sentencing Procedure) Act 1999* also has effect for the purposes of the application of the *Crimes (Sentencing Procedure) Act 1999* to offences dealt with under Division 4 of Part 3 of this Act.

- No. 4 Page 20, schedule 3.2 [9], proposed clause 45, line 18. Omit "The amendments". Insert instead "Except as provided by subclause (2), the amendments".
- No. 5 Page 20, schedule 3.2 [9], proposed clause 45. Insert after line 21:
- (2) Sections 3A and 21A of this Act, as inserted by the *Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002*, apply to the determination of a sentence for an offence whenever committed, unless:
 - (a) a court has convicted the person being sentenced of the offence, or
 - (b) a court has accepted a plea of guilty to the offence and the plea has not been withdrawn, before the commencement of the section concerned.
 - (3) Section 21A of this Act, as in force immediately before its repeal by the *Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002*, continues to apply as if it had not been repealed to the determination of a sentence for an offence in respect of which:
 - (a) a court has convicted the person being sentenced of the offence, or
 - (b) a court has accepted a plea of guilty to the offence and the plea has not been withdrawn, before that repeal.
 - (4) In this clause:

convict includes make a finding of guilt.

I seek leave to incorporate my comments in *Hansard*.

Leave granted.

The effect of amendments numbered 1 and 2 is to include in the Table of standard non-parole periods in Schedule 1 to the Bill three additional offences, namely, the offence of intentionally causing a bushfire under section 203E of the *Crimes Act 1900* and the offences of aggravated indecent assault under sections 61M(1) and 61M(2) of the *Crimes Act 1900*.

These are further serious criminal offences which the Government considers should be included in the Table to the Bill which will require that they be dealt with by the courts under the standard non-parole sentencing scheme under proposed Division 1A of Part 4 of the *Crimes (Sentencing Procedure) Act 1999*.

The offence of intentionally causing a bushfire under section 203E of the *Crimes Act* was recently introduced by the Government in response to the devastating bushfires that ravaged the State last summer. This new offence is modelled upon the Model Criminal Code developed by the Model Criminal Code Officers' Committee of the Standing Committee of Attorneys-General.

It is of the greatest concern that a number of the fires, which raged across the State last summer, were deliberately lit. It would also be known to Honourable Members that police hold suspicions that a number of the recent very serious bushfires in the State were also deliberately lit.

The offence of intentionally causing a bushfire carries a maximum penalty of 14 years imprisonment. Under the Government amendment it is proposed that the offence, when dealt with on indictment, will carry a standard non-parole period of 5 years imprisonment.

The amendment does not, however, remove the discretion from the Children's Court to deal with juveniles charged with this offence under that Court's summary jurisdiction. As is provided in clause 54D(2) of the bill, the standard non-parole sentencing scheme in the Bill does not apply to offences dealt with summarily.

The offences of aggravated indecent assault under section 61M of the *Crimes Act* are particularly serious and abhorrent. The Government considers that these offences should also be included in the Table to the Bill. These offences will complement a number of offences of sexual assault and aggravated sexual assault already included in the Table. The offence of aggravated indecent assault under section 61M(1) (which includes as an aggravating factor that the victim was under the age of 16 years) carries a maximum penalty of 7 years imprisonment. Under the Government amendment it is proposed that an offence under section 61M(1) will carry a standard non-parole period of 5 years imprisonment.

The offence of aggravated indecent assault under section 61M(2) of the *Crimes Act* relates to indecent assault upon a child less than 10 years of age. This offence carries a maximum penalty of 10 years imprisonment. Under the Government amendment it is proposed that an offence under section 61M(2) will carry a standard non-parole period of 5 years imprisonment.

Amendments numbered 3, 4 and 5 relate to consequential and transitional provisions in the Bill. Amendment No. 3 relates to transitional provisions in the *Children (Criminal Proceedings) Act 1987* and amendments 4 and 5 relate to transitional provisions in the *Crimes (Sentencing Procedure) Act 1999*.

The Bill as presently drafted in clause 45 provides that the amendments made by the Bill to the *Crimes (Sentencing Procedure) Act 1999* do not apply to offences committed before the commencement of the amendments. However, the Government considers that it is appropriate to amend this transitional provision to provide that proposed new sections 3A and 21A of the *Crimes (Sentencing Procedure) Act 1999* will apply to sentencing for offences committed both before and after commencement of the amendments. This is because proposed new sections 21A and 3A are purely procedural in nature and they are to apply to all

sentencing exercises both by way of summary jurisdiction (in the Local Court and the Children's Court) and on indictment. It is therefore appropriate that proposed new sections 21A and 3A should apply to all offences whenever committed whether they are dealt with in the Local Court, in the Children's Court or on indictment.

However, the amendments ensure that proposed new sections 21A and 3A will not apply when sentencing proceedings are before the court at the time of commencement of those new provisions.

The Hon. JAMES SAMIOS [6.07 p.m.]: The Opposition supports the amendments.

Amendments agreed to.

The Hon. RICHARD JONES [6.07 p.m.]: I move my amendment No. 3:

No. 3 Page 12, schedule 1 [5], proposed section 100J. Insert after line 11:

- (4) In the exercise of its functions, the Sentencing Council may consult with, and may receive and consider information and advice from, the Judicial Commission of New South Wales and the Bureau of Crime Statistics and Research of the Attorney General's Department (or any like agency that may replace either of those agencies).

This amendment provides that the Sentencing Council may consult with and consider information from the Judicial Commission and the Bureau of Crime Statistics and Research [BOCSAR]. The Judicial Commission's principal function is to assist the courts to achieve consistency in sentencing, and BOCSAR's aim is to identify factors that affect the effectiveness, efficiency or equity of the New South Wales justice system. It is therefore essential that it is stated plainly in the legislation that the Sentencing Council has the opportunity to consider their expert advice and information.

The Hon. IAN MACDONALD (Parliamentary Secretary) [6.08 p.m.]: The Government supports this amendment with one important caveat. Although the Government foresees a constructive relationship being developed between the Sentencing Council, BOCSAR and the Judicial Commission, it does not believe that the ordinary priorities of those organisations should be unduly influenced by the demands of the new council. Both are organisations that enjoy a somewhat detached status from government. That is a principle that should continue to be observed.

The Hon. IAN COHEN [6.08 p.m.]: The Greens support this amendment. It simply allows the Sentencing Council to receive and consider information from a range of sources with expertise and statistical information on various sentencing matters. We believe that this amendment and the Hon. Richard Jones's other amendments are reasonable and supportable.

The Hon. JAMES SAMIOS [6.09 p.m.]: The Opposition does not support the amendment.

Amendment agreed to.

Schedule 1 as amended agreed to.

Schedule 2 agreed to.

Schedule 3 as amended agreed to.

Title agreed to.

Bill reported from Committee with amendments and report adopted.

Third Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [6.09 p.m.]: I move:

That this bill be now read a third time.

The House divided.

Ayes, 25

Mr Colless
Mr Della Bosca
Mr Dyer
Mr Egan
Ms Fazio
Mrs Forsythe
Mr Gallacher
Miss Gardiner
Mr Gay

Mr Harwin
Mr Hatzistergos
Mr M. I. Jones
Mr Kelly
Mr Lynn
Mr Macdonald
Reverend Dr Moyes
Reverend Nile
Mr Oldfield

Mrs Pavey
Mr Ryan
Mr Samios
Mr Tingle
Mr West
Tellers,
Mr Jobling
Mr Primrose

Noes, 6

Mr Cohen
Mr R. S. L. Jones
Ms Rhiannon
Dr Wong
Tellers,
Mr Breen
Dr Chesterfield-Evans

Question resolved in the affirmative.

Motion agreed to.

Bill read a third time.

WATER MANAGEMENT AMENDMENT BILL**Second Reading**

The Hon. IAN MACDONALD (Parliamentary Secretary) [6.18 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

On 8 December 2000 the Water Management Act was assented to, thereby ushering in a new era of water management in this State. That piece of legislation was the product of an extensive review of how we as a community manage water. It was also the product of close negotiations between government, water users, environmentalists, indigenous people and others. It represented a significant achievement. This bill continues the work of improving the legislative basis of water management. It introduces some new provisions to improve water planning and trading, as well as provisions to clarify a variety of technical matters. While largely machinery in their nature, these amendments to the Water Management Act are important because these will greatly improve its implementation.

Before I turn to the amendments, it is worth reminding ourselves of some of the major changes that the Water Management Act introduced. First, the new legislation heralded the recognition of the environment and sustainability in our water law. It incorporated a way of thinking, as well as a set of principles and practices, that acknowledge the environmental fragility of water systems. For example, it entrenched in law the objective of ecologically sustainable development in the area of water. Further, as fundamental objects and principles, it clearly specified the protection, enhancement and restoration of water sources and their associated ecosystems. In sharing access to water, it gave primacy to environmental health. It also gave legislative recognition to biodiversity, the protection of habitats and the avoidance or minimisation of land degradation as they relate to the use and management of water.

Another major change was the introduction of a broad-based and participatory water management planning system. This system was put in place to allow all parties, including farmers and irrigators, environmentalists, indigenous people and local councils, to jointly resolve crucial water management issues at the local level. To this end, water sharing advisory committees have been established around the State and have produced some 36 draft management plans. These have recently been released for public consultation. Many honourable members would have seen the newspaper advertisements calling for comments. Those comments have been received and reviewed. These plans are now being finalised and are expected to be made in the near future.

The Water Management Act also made major changes in the areas of water sharing and licensing. It introduced a simple concept: water to sustain the health of water sources as first priority; water for basic land-holder rights as next priority; then a framework

for sharing the balance between competing interests through the licensing system. The previous concept of a single licence containing three parts was replaced with an access licence, representing a share of the available water; a works approval, representing permission to use a pump or bore to take water; and a use approval, representing the authority to use the water on land. Related to this change was the separation of water rights from land, permitting rights to be more fully tradeable. In turn, free trading of water rights will lead to the re-allocation of water to its highest value and best use. Another important change was that the rights of indigenous people were embedded in the Water Management Act as basic land-holder rights.

The amendments contained in this bill fall into four main areas. Amendments relate to water sharing plans, the access licence register and trading, the access licences and approvals system, and definitional matters. The first group of amendments is very important to the water planning process. They enable water sharing plans to be made in the manner that the water sharing advisory committees have recommended. These plans—which are the practical basis of water management—must be implemented in a way that maximises their benefit and minimises the possibility of adverse effects. Experience to date with the work of the committees has been encouraging, but we need to secure in legislation the mechanisms that permit them to best carry out their path-breaking work.

The second group of amendments enables the arrangements for the access licence register and trading in water entitlements to be given best effect. They make the register more sophisticated and establish rules relating to the rights recorded in the register. These amendments also clarify the nature and rules relating to the various types of dealings with access licences. The third group of amendments concerns the access licences and approvals system and its introduction across the State. Amendments provide for the phased introduction of the new system as well as a more targeted approach to placing embargoes on water sources. Another change will extend the facility to place conditions on approvals to joint water management arrangements between neighbours, such as drainage and flood work schemes.

The fourth group of amendments deals with some of the Act's definitions. The amendments clarify a number of terms that appear throughout the Water Management Act and in its dictionary. These amendments have arisen from practical experience in administering the Water Management Act, in developing water sharing plans, and in consulting with water users and other interested parties. Several are the direct result of the Crown Solicitor's advice. Many have been developed in conjunction with water users and other interested groups. The amendments are needed so that the important work of managing this most valuable of resources can go ahead in a manner that is consistent and fulfils the objects and principles of the Water Management Act.

I will now deal with the specifics of each of the major amendments. I have already mentioned the committees that have worked so hard to produce draft water sharing plans. The bill contains several amendments to facilitate both their work and the operation of the plans. In making recommendations for water sharing plans, a committee must take into account a range of matters if the plan is to be realistic and meet the legislation's objectives. However, as the Water Management Act currently stands, there are some limitations that restrain committees in their work. For example, section 18 provides that a committee need only have regard to the socio-economic impacts of the proposals in the draft plan.

While clearly important in its own right, this alone is inadequate and out of touch with the full range of practical impacts that a plan can have. For the committees to do their work to best effect it is important that the matters for consideration fully cover real conditions. It is particularly important for the committees to recognise conditions and impacts from upstream and downstream of their area. This is because the area covered by a plan will generally be part of a broader, interconnected water system. Therefore, this bill introduces an amendment to section 18 to provide a more complete set of matters for consideration. Specifically, a committee can now have regard to the effect within the plan area of activities occurring, or likely to occur, outside the plan area. For example, activities upstream could have an impact on the availability and quality of water.

This change to section 18 will give the committees a better indication of what they need to consider when doing work. In turn, this will ensure that the plans are more reflective of the actual situation and consistent with the goals of the legislation. Additionally, a number of minor matters of a clarifying nature have been included in the bill to help committees do their work and for the plans to function. These include changes to ensure that provisions applying to a water management area can also apply to part of an area, ensure that discrepancies in the meaning of "land-holder" are removed and ensure that plans deal with certain core provisions. Further, the bill contains an amendment that provides a clear mechanism for the provisions of the plans to be reflected in existing licences. An amendment provides that matters addressed in a plan can be recorded on licences by way of mandatory conditions.

The next set of amendments I wish to address concern the access licence register. These amendments are very much needed if we are to achieve the objective of developing a market in access licences, thereby permitting them to be put to their highest value use. At present, section 83 of the Water Management Act provides for a register that shows the licences and also any subsidiary rights in them. Section 83 says little more because it was originally intended that the register would be nothing more than a simple list. However, following consultation with a variety of interested parties, it has become clear that a more sophisticated register would provide many benefits. In particular, a system is needed that would, firstly, facilitate a variety of transactions; secondly, ensure priority of interests based on their order of registration; and, thirdly, provide safeguards against fraud. The amendments in this bill deliver the legislative means to meet those objectives.

Dealing firstly with the register, it will be a computerised system with a separate entry for each licence. The entry will show the licence details, such as category, water source, date of expiry and entitlements. The entry will then show the owner's name and any charges, leases, reversionary rights or other interests affecting the licence. It will also contain the licence conditions and useful general information for licence holders, professionals and the public. Licence holders will be able to enter into a variety of transactions and have them recorded in the register. A set of simple forms will be used to modify or assign the licence and to create, vary, assign or extinguish subsidiary interests.

The transactions made on these forms will be stored and available for anyone to examine, as is the case with other public registers in this State. The public will also be able to search the entry for each licence. In other words, the register will be a searchable repository. People will be able to do this in person or through the Internet. To fund this expanded and more sophisticated register, those who use it—to register a document, search a licence, or obtain a copy of a document—will pay a fee. The fees will be set at the same level as the public currently pays in relation to the land register. I note that the fees for land are

amongst the lowest in Australia for this kind of registration service, so those using the access licence register will not be unduly burdened.

Next, the bill provides for a system of priorities. A brief but very significant change is the introduction of new section 83C. It provides for a system of priorities that follows the one used in the General Registry of Deeds, which is maintained by Land and Property Information, formerly the Land Titles Office. The amendments alter the common law position by providing that a registered interest has priority over an unregistered interest, no matter when the documents were signed; and the order of priority amongst registered interests is based on the order in which they were registered. Under this system people are rewarded for registering their interest. Through prompt registration they gain priority over other people's unregistered interests even if they are aware of earlier, but unregistered, interests. Honourable members should note that, unlike the Torrens system, this is not a guaranteed system nor does registration cure defects in documents. The validity of documents is based on the common law and registration will not give documents any greater validity than they already have.

As to fraud protection, this will be achieved through the issue to each licence holder of a licence certificate. It will be a requirement for the certificate to be produced to allow a variation, change of ownership or new interest to be imposed on the access licence. In this way it will be more certain that the licence holder has given his or her permission to the document's registration. This approach is modelled on the certificate of title that is used in the Torrens system, which is based on the title deeds that exist in common law or old system title. As we all know, you cannot legislate against fraud but you can introduce mechanisms that make fraud that much more difficult. This is one of those mechanisms.

The capacity to trade in access licences is one of the fundamental tenets of the Water Management Act. Accordingly, the provisions of the Act relating to the transfer of access licences must be clearly spelt out. There has been some confusion to date over the terminology employed in the Water Management Act in relation to transfers. Chapter 3 uses "transfer" to mean not just assignment—in the sense of change of ownership of a licence—but also the transfer of the exercise of the licence from one stretch of river to another. Further, "transfer" is used to cover the splitting of licences, changes to the water source and changes to the category of licence. The overuse of "transfer" needs to be corrected so that we have a clear and accurate way of describing the many changes that can, on application, be made to an access licence.

This bill introduces a new division 4 to chapter 3 to provide that clarity. Each of the many changes to an access licence is clearly specified. Section 71A, for example, deals with the change of ownership. Section 71B covers the conversion of an access licence to a new category. Section 71C provides for the splitting and reforming of access licences, which are to be known as subdivision and consolidation. Section 71D covers the transfer of part of an entitlement from one licence to another. The new division 4 also deals with the interstate transfer of access licences and what used to be known as "temporary transfers"—the sale of the actual water. A further change is the introduction of the concept of the nominated work. This is the pump, bore or other water management work that is used to actually take the water specified on the access licence. A new section 71J provides a clear means of changing from one pump or bore to another. These amendments are not departures from the original terms of the Water Management Act; rather, they are an elaboration and clarification of those terms. They bring more certainty to the nature of the changes to licences and their administration.

Related to transfers of licences are the subsidiary rights that can be created. Specifically, access licence holders will be able to charge for and lease their licences in accordance with the common law rules and these arrangements will be recorded in the register. I draw the attention of honourable members to a set of consequential amendments flowing from the redrafting of the transfer provisions. These concern some of the offence provisions in chapter 7 of the Act. Changes to the wording of some of the offences were necessary due to the new terminology introduced by the new division 4 and the introduction of the concept of nominated work. However, the redrafts do not change the nature of the offences; they simply make the words consistent with division 4.

The Water Management Act contains transitional provisions in schedule 9 that require the new access licence and approvals system to be introduced throughout the State on the same "appointed day". The system will replace the system run under the Water Act 1912. Changing licences from the Water Act to the Water Management Act is a major task. Amongst other things, it involves the making of numerous water sharing plans and the reviewing of tens of thousands of licences. As I have noted, plan making is well under way for priority areas and an administrative process has been implemented to progressively convert the licences associated with these plans. However, it is clear that both the plan making and licence conversion processes will take a number of years to finalise for the entire State.

If we were to wait until these processes were fully complete the commencement of the new system would be significantly and undesirably delayed. Conversely, if the access licence and approvals system were to be started before the processes were complete there would be great confusion and, possibly, loss of entitlements for some licence holders. As neither of these options is acceptable, this bill amends the Water Management Act to permit the staged introduction of the access licence and approvals system across the State. In particular, the Water Management Act is to be amended to permit the phased introduction of the Act by reference to water source, geographic area or licence category. It would then be phased in as the water sharing plan and data for each water source or group of licences is finalised. This amendment will ensure the earlier, as well as smoother and more systematic, change from the old to the new.

The next amendment that I would like to discuss is the one dealing with the preservation of existing rights in relation to Water Act licences and other forms of entitlements. The amendment provides for the continuation of existing rights and also the preservation of their priority against newly created interests. The amendment is necessary because water rights are no longer to be attached to land. I point out that this amendment fills a gap in the transitional provisions of the Water Management Act. Schedule 9 deals with the conversion of existing entitlements, such as licences under the Water Act, but it fails to address the many types of rights that can exist in relation to those entitlements. These may include things such as mortgages, leases and reversionary rights, as well as trusts and other types of agreements.

As the Act is currently drafted, the rights of the mortgagees and others could cease to exist on conversion of the water licence to an access licence. This is because the nature of the right is changed but, more importantly, the licence is no longer attached to the land that is the subject of the agreement. It would be wrong to deprive the interest holders of their rights due to an oversight in

drafting. It would cause not only a clear and significant loss to them but also an unjust windfall to the licence holder. However, as the Water Management Act currently stands, this is precisely what could happen. To avoid this result, an amendment corrects the situation and states what has always been the Government's position—namely, that existing rights over Water Act licences and other entitlements are preserved. This change appears in new section 9A to schedule 9.

The amendment also provides that any priorities between existing rights are preserved. Further, it gives the right holders 12 months from the date of conversion in which to register their rights in the new access licence register without losing any priority to newly created interests. This will permit people who have entered into agreement with licence holders to become aware, through the publicity that is planned, of the changes and the need to register their interest. The final amendments that I wish to outline are those concerning the Act's definitions. Anyone taking even a brief glance at the Water Management Act would see that it uses a variety of terms that have a particular meaning. Many of these meanings appear in the dictionary at the back of the Act. Since the Water Management Act commenced, practical use of the definitions has revealed some anomalies in their drafting. Of particular concern are the definitions of "commercial activities", "estuary", "flood work", "water source", "water supply work" and "waterfront land".

In relation to town water supplies, a number of words also need to be clarified. In response to the shortcomings of the current definitions, they are to be amended by this bill to make them clearer and more accurate. In this way, the legislation will be a more precise tool for managing this most valuable of resources. In summary, this bill contains a number of important amendments covering various aspects of the Act. They represent refinements, elaborations and articulations of an impressive and leading-edge bill. While largely mechanical and technical in nature, the amendments will ensure the smooth functioning of the Act and an efficient transition from the old system to the new. They will also extend important facilities to licence holders. I commend the bill to the House.

The Hon. RICK COLLESS [6.18 p.m.]: I lead for the Opposition on the Water Management Amendment Bill. The wide-ranging amendments in the bill have come about following the first two years of the operation and practical implementation of the Water Management Act 2000. The Opposition will not oppose the bill. The amendments contained in the bill are essentially of a clarifying and technical nature with regard to water sharing plans, registration and transfer of access licences, and access licence and work approvals. The bill will also clarify a number of definitions in the Act. The amending legislation will permit water sharing plans to consider activities outside the plan area, and it will permit plans to apply to only part of a water management area. They are reasonable amendments, and the Opposition will support them. In addition, the bill will allow for the clarification of the mechanisms for changing access licence components and imposing mandatory conditions. The legislation provides for a more robust access licence register and enhances its operation, including a Corporations Law displacement provision to ensure the register's priority.

The amendments will provide for increased financial business confidence in the system and will ensure greater security for irrigators. The Water Management Act originally separated land and water titles to facilitate water trading, and while this legislation provides for a more robust register, it is not as robust as the Torrens Title register, which guarantees land title. Now that the land and water titles have been separated, it is essential that owners of water titles be given the same guarantee and surety that owners of freehold land enjoy in New South Wales, and as the system develops it would be appropriate to ensure that such guarantee of water title is allocated to owners of water titles.

The legislation also clarifies the method of dealing in access licenses, including the transfer, conversion and assignment of rights. The Minister will be empowered to develop overarching principles for different types of trading in water access licenses and water allocations. It appears that these principles will be able to dictate conditions in plans or amending provisions in plans, including draft water sharing plans that have just gone through the public exhibition phase.

Stakeholders must have the opportunity to co-operate with the Government during the process of establishing the trading principles, and such principles must be consistent with current trading rules that are a component of draft water sharing plans, in particular in situations where those rules have been operational for some time. One of the concerns I have about this bill is that the access licence dealing principles are not defined in the bill. Proposed section 71L allows for the preparation of licence dealing principles as regulations, but I would like to see the Government be more up-front about its intentions in this regard and to reveal to the Parliament a draft set of such principles.

I must say that new sections S71A to 71L as proposed in item [20] of schedule 2 are an improvement on the original Act. The clarification of water transfers between water utilities is an important improvement, and many local government councils in regional areas that have reserves of water in their entitlements to allow for future industrial and residential development will be relieved to learn that their entitlements cannot be resumed and reallocated to other sections of the community.

I am concerned also about the imposition of additional conditions on access licences following a dealing under the redrafted sections 71A to 71L of the Act. One would assume that a process for trading access

licences will develop over time and will be a component of the licence dealing principles, including matters relating to advertising, water estate agents and procedures for the transfer. Should additional conditions be imposed upon a licence after it has been advertised and before it is sold, then the value of that licence could be eroded by the imposition of such conditions. I ask the Government to clarify this point and consider making an arrangement to ensure that the Minister is required to apply those discretionary conditions prior to the valuation of the licence. If the licence has been valued and advertised, then it is inappropriate to apply further conditions at that stage.

The legislation permits a phased introduction of the revised licensing and approval system, including legislative protection of existing regulations during the phase-in period. As my colleague the honourable member for Ballina and the shadow Minister for Land and Water Conservation said in the other place, the Coalition considers this to be a sensible amendment, giving the Government time to address each water management area in detail without rushing communities through the process of developing plans. With only a few of the water sharing plans drafted to date, many areas are still to begin the planning process. Having greater flexibility through being able to gazette plans as they come on line and giving those communities that require it more time to resolve the issues confronting them will improve the overall performance of the Act.

A phased-in planning process will also allow the Government to consult fully and openly with the key stakeholder groups on the implementation process and the development of regulations and administrative processes—something the current Government does not have a good track record on in relation to any of the resource management legislative areas. The bill also expands the concept of joint land-holder schemes and allows for supplementary access licences in all types of water sources. I am a little confused by the insertion of proposed section 55A, which will apply the Act to each part of the State, each water source within that part of the State and each category or subcategory of access of licence in that part of the State and the water source that is proclaimed to be part of the State. What does this mean? Does it mean that water sources outside New South Wales can be impacted by the New South Wales legislation? Will it impact on Queensland rivers and Queensland irrigation operations such as Cubbie Station?

I have other concerns. The potential for the emergence of water traders is of concern where such traders could operate with their core business speculating on the rising price of entitlements rather than trading in water based on a needs basis. I am aware the Minister can veto any trade, but it would be preferable to have on the table the principles to be used by the Minister when making decisions on approving water trading deals. Water trading should be supported as a principle, as it allows water to be traded up to its most efficient and most financially rewarding use, but there are some constraints on this general principle. Any water traded, and in particular the benefits accruing from any such trades, must remain in the region where the water is traded. This is particularly important if speculative water trading ultimately leads to entitlements moving away from the area where the original entitlement was developed, with implications for wealth creation of those local communities under threat.

The philosophy of water trading should be that trading should occur for the benefit of wealth creation by local communities rather than providing a passive wealth accumulating business for persons whose core business is not agriculture. I must also make some general comments with respect to environmental flows, particularly given the current drought. Drought means a prolonged absence of rain, a deficiency of rainfall, a deficiency of water. In times of drought, mighty rivers are reduced to mere trickles; in severe droughts they can stop flowing altogether. The Darling River has stopped flowing, with the only water now available to local communities contained in weir pools, such as the Wilcannia Weir. There is twelve months water supply for the people of Wilcannia held in the weir pool, and if this drought continues for longer than that, Wilcannia will be in serious trouble with respect to stock and domestic water.

The Gwydir River has also stopped flowing above Copeton Dam, with water holes drying up, placing aquatic biodiversity at risk. Below Copeton Dam, the Gwydir is flowing, as a result of the regulated flow being released from the stored waters of Copeton Dam for irrigation of crops further west. The health of the river has benefited by these flows released for irrigation during dry times—released not as a pulse down the river, but as a continual base level flow. To those who claim to have a monopoly on the environmental debate, and whose misguided ideology says that these great rivers should not be regulated, all weirs should be removed, and that all water diversions should be returned to the environment, I suggest they travel out to the Darling River and assess the biodiversity in and adjacent to the weir pools. They should also take the time to carry out a similar assessment in unregulated sections of the river, where it is but a few shallow holes without the teeming bird and animal life that lives adjacent to the weir pools.

These same people want releases of very valuable water down the rivers as a pulse in the name of environmental flows—effectively putting artificial water into a river in the middle of a natural drought. This

would not have happened in the days before the rivers were regulated, so why would they want to interfere with the natural flow now? It is my view that environmental flows should be released into the river when the river is basically running bank full.

The justification for this is to ensure all the billabongs, water holes and flood plains with the river red gum forests and other riverine ecosystems they support, receive the proper watering they require to guarantee their continuing survival and production of wealth creating primary products. Releasing water for environmental purposes at other times, particularly if it is released as a pulse flow, does not necessarily achieve the environmental objectives it sets out to achieve. If drought is a natural part of the ecosystem, releasing large amounts of valuable water as a pulse is questionable at best and grossly irresponsible from a social, economic and environmental perspective.

The honourable member for Lachlan in another place said in his speech in debate on this bill that since the early part of last summer the Lachlan river system would have naturally been a chain of waterholes. In January this year the decision was taken to release a pulse of 125,000 megalitres of water as an environmental flow down the Lachlan river system. That was an absolutely artificial flow and in no way does that replicate the normal natural flow. Water from this flow flooded the creek system below Forbes, creating an artificial series of environmental events and inconveniencing farmers, who had to pull their pumps from waterways for fear that they would be washed away.

That was an event totally out of tune with nature—an unnaturally occurring pulse of water going down the river as an environmental flow. The release was a waste of water. It did not achieve its environmental objectives because the environment did not expect it. If some of the environmentalists, who promulgate some of these ideas, had any working knowledge of the bush, they would know that the animals and plants in the bush know when it is going to rain and that plants and animals know when there will be a flush of water coming down the river system long before it happens. They would be able to read the signs written all over the bush, but they cannot do that. They would be able to read the message on the trees, and the messages of the birds, the animals, the cattle and the ants, just as people who live and work in the bush read those signs every day. I am sure that the Hon. Tony Kelly would be able to read those signs in the bush, unlike some of the environmentalists, who claim they know everything in this debate. Those who promulgate environmental flows cannot read these signs, they simply send off the pulse of water based on some ridiculous bureaucratic formula that bears no resemblance to nature.

The honourable member for Lachlan explained that in this process about 125,000 megalitres of water were discharged from Wyangala Dam. If that 125,000 megalitres of water were still in the dam today, it would be very useful for the environment and productivity within the Lachlan Valley. The honourable member for Murrumbidgee in another place noted there is a great deal of concern amongst irrigators that the water management planning process is being subverted by some organisations that are not members of river management committees. These organisations have sought to work outside the process established by the Water Management Act to influence the Government to further allocate water to supposedly improve the environment. The member for Murrumbidgee quoted Matt Linnegar, Executive Director of the Ricegrowers Association of Australia, when he issued a press release echoing those concerns. Mr Linnegar said:

Our communities through representatives on Water Committees had in good faith developed Water Sharing Plans in partnership with government through their agencies. In some cases this process has been developed over a number of years with all parties reaching an agreed position that fairly reflects the diverse views of the community.

Whilst we are unaware of the final outcome of government deliberation on these Plans what has become all too clear is a last ditch effort to influence government from groups with no real connection to our communities in an eleventh hour grab for water.

The honourable member for Lachlan further commented on the environmental outcome of too much water being a negative environmental outcome. Upstream of Narrandera there is something like a 25 per cent increase in the flow in the river since the Snowy hydro scheme was introduced, because of the additional water from the Snowy River that comes down the Murrumbidgee River. This section of the river is regarded as the most degraded stretch of the Murrumbidgee River. The fact that the river at that point has more water flowing through it has not improved it environmentally.

Despite the importance and relevance of the issues raised by my colleagues in the other place, the matters raised by the Leader of the National Party in that debate are more important and serious. They relate to the social and economic impacts of the implementation of the Water Management Act 2000. Some groundwater management zones in the Namoi Valley have had their allocations reduced by up to 90 per cent without any compensation being offered by this Government. This was essentially based on questionable information, to say

the least. The social impacts on communities such as Gunnedah are enormous, and Gunnedah Mayor Gai Swain has constantly been at the Government's throat to try to make it understand the implications of its actions on her community—all to no avail. The Government simply will not listen.

The Irrigators Council and other farm peak bodies have estimated that up to 4,500 jobs statewide will be lost as a result of the implementation of the Water Management Act 2000. This loss of jobs equates to lost income of \$1.7 billion throughout New South Wales, merely from the implementation of the Water Management Act 2000. When that is combined with the impact of other overregulatory legislation being imposed on the rural communities, such as the Wilderness Act, Threatened Species Conservation Act, Native Vegetation Conservation Act, National Parks and Wildlife Act and now this Resource and Conservation Assessment Council [RACAC] process, the cumulative effect will be that many billions of dollars each year will be stripped from rural and remote communities in New South Wales.

Rural communities cannot afford this. They will be annihilated by overregulation, and the communities within the Bragalow Belt South Bioregion are feeling particularly vulnerable this week as the Government procrastinates over announcing the outcomes of the RACAC process in that region. If this announcement is held over until after the election, it will send a very clear message to the people in that bioregion that the worst possible result for local communities should be expected, and it will send a shiver down the spine of all communities in the next bioregions to be assessed—Nandewar and Riverina.

The Nature Conservation Council [NCC] has circulated a propaganda document promoting the Water Management Act 2000 as a document that gives priority to environmental water over basic land-holder rights and the extractive regime. It is correct that one of the objects of the Act is to protect, enhance and restore water sources and ecosystems, but it is also an object of the Act to recognise and foster significant social and economic benefits to the State. For the NCC to interpret this as giving environmental water priority over stock and domestic, harvestable rights, and the extractive use of water is a dangerous and misleading interpretation of the Water Management Act 2000. It demonstrates the NCC's complete disregard for the billion-dollar result the irrigation and grazing industries contribute to the economy of New South Wales.

Under the Water Management Act 2000 local water utilities, major water utilities and stock and domestic access licences have priority over all other access licences. I am pleased that the bill clarifies the priorities between different categories of access licences, with high-security licences for permanently planted crops, such as the 700 hectare pecan farm between Moree and Gravesend, having priority over other access licences, and the new category of supplementary licences having the lowest priority. It is unfortunate the Government did not take this bill further, to rectify some of the philosophical inadequacies that my colleagues in another place and I have brought to the Parliament's notice.

The improvements to the Water Management Act are essentially of a mechanical nature, rather than of a water management nature. They will streamline the administrative procedures of the Act, but they will not solve the many problems being faced by many communities throughout New South Wales. The Government has lost the opportunity to make some dramatic improvements to water management in New South Wales, but this may prove to be less of a problem given the timing of this bill, as the Water Management Act 2000 and many of the other natural resource management Acts in New South Wales are scheduled for review after March 2003 by the first Brogden-Souris Government.

The Hon. IAN COHEN [6.37 p.m.]: I express concern about the comments of the previous speaker. His understanding of the provisions of this bill is vastly different from mine. I could be said that the chasm between us is wide and deep—I only wish that there was water flowing in that chasm. But alas, there is no water anywhere at the moment. The Greens will seek to amend the bill. We do not support its intent, as the Government has failed to impose reasonable checks and balances, particularly with respect to catchment water trading. The bill will not adequately address the problems this State is experiencing with water management.

There is little doubt that water is the key land-use issue of our time. In many parts of the world water already is the cause of major conflict. In years to come some of these disputes may escalate into fully-fledged wars. In Australia the conflict manifests itself in other ways. Increasingly, the problem is bubbling to the surface, and the tension from that is disturbing. Still more disturbing is the lack of acceptance of what are now considered scientific facts when it comes to the acceptance of many of our land-use practices on water. Logging, land clearing, burning, irrigation and mining all have serious negative impacts on water quality and the availability of water supply.

On the second driest continent on Earth, we ignore this at our peril. We are literally sewing the seeds of our own demise. Civilisations come and go. Our existence in this land of harsh climates is more tenuous than many may think. Each year thousands of hectares of arable land are becoming too saline to grow anything. It is in this context that I make these comments on the Water Management Bill. More and more this Government is making claims about its environmental performance. Unfortunately, its boasts do not accord with reality. It claims that it is taking environmental sustainability on board, that water to sustain the health of our water sources is now the first priority. If only that were true.

The Water Management Act heralded the recognition of the environment and sustainability in water law, but it seems that someone forgot to tell the department charged with administering the law—something for which the Minister must take ultimate responsibility. The functioning of the regional stakeholder committees has been problematic. Unfortunately, the primary task for which these committees were originally prepared, that is, to address the full range of issues relating to water management and to prioritise the environment and determine adequate environmental flows for our rivers, has been subverted. Early in the process the committees were asked to shift their priorities and turn instead to bulk access rules. That is the amount of water that can be extracted by access licence holders. The environment has become the last priority.

This has been a classic exercise of the cart being put before the horse. Instead of first determining what amount of water the river needs to stay healthy, and thus be able to service communities and industries into the future—a primary objective of the Water Management Act—the stakeholder committees have been asked to make determinations about extraction volumes. Basic information about the volumes of water that flow down unregulated rivers has still not been collected and no effort has been made to install adequate monitoring mechanisms. Of the water required for the sustenance of healthy rivers even less is known, due in no small part to the stifling of farsighted research and monitoring programs advised by scientists and water committee members.

This lack of knowledge was recognised in the hopeful Interim Flow Objective project, which advised a set of minimum flows to serve until better knowledge could be gained. It was not. With few exceptions, the water management committees have been unable to maintain those precautionary flow levels, due largely to the failure of the Department of Land and Water Conservation [DLWC] to provide adequate guidance as to the ecological needs to the riverine communities. Unless this failure is faced up to and swiftly acted on, we will be in a similar state of near total ignorance in five to 10 years, when the water plans are to be reviewed.

Committee members who sought access to the DLWC modelling were denied it. Instead, they have been asked to take something on face value from a department that has stymied every attempt to see adequate environmental flows committed to our rivers. By failing to start from the point of determining environmental flows, committee members were denied the opportunity of understanding the environmental dynamics and imperatives of the river systems they were considering. Water sharing plans are meant to be consistent with the State water management outcomes plan, yet this still has not been finalised and released for consideration.

Once again stakeholder committees are not being given appropriate guidance about the parameters between which their deliberations must fall. I note that the Opposition has also raised concerns about this cart before the horse approach. The decision-making process for the committees was also unsatisfactory. The original notion was a balance of interests. Water users, environmental advocates and bureaucrats were meant to have equal representation. In some committees additional irrigators were appointed. Committees were informed that decision making was to be by consensus. However, it soon became apparent that this was not to be the case. Basically, the bureaucrats determined the agenda, being able to side with one interest group and get the numbers.

The Government is poised to sign off on 10-year water sharing plans for many of our coastal and inland rivers, which are already severely stressed from inadequate flows. Across New South Wales these plans add approximately 0.5 per cent additional flow to our rivers. That is a fairly paltry gain for the \$200 million plus that has been expended on water reform. What is worse, they deny any real opportunity to save our inland rivers. There are several serious issues that need to be addressed in this bill. The first should be that the Water Management Act 2000 should supersede the Water Act 1912. Already, the department has had two years to implement the provisions of the Water Management Act 2000, yet it still seeks to have significant parts of the Act lie on the table for an unspecified period. The Government is wasting everybody's time if we are passing laws that do not get enacted.

However, probably the issue of greatest concern to the Greens is that of the transfer of water entitlements between catchments. The notion that water that was allocated in one water source can be removed

from another is totally absurd. It is something that Monty Python would be proud of. Stakeholder committees, which have laboured mightily to try to reach consensus on water allocations, have not been told to consider that someone may buy a water entitlement from another river catchment but seek to extract it from yet another catchment. Most of our river systems are already heavily overallocated. There is almost no provision for guaranteed environmental flows; yet with no impact assessment and no provision, notional water can be traded and actual water extracted. This is truly bizarre. I challenge people in the farming community to say that it is a reasonable concept.

I am surprised that the National Party is not furious about this idea as it completely undermines any concept of certainty or security that it may have thought it had when it comes to water extraction. Let me be clear here: The Government's proposal is not to pipe water from one catchment to another, which the Greens would also oppose. It is to trade water between catchments, when an entitlement from one river can be extracted from another. Well, excuse me! Surely this takes the idea of market forces beyond any kind of rational debate. The Coalition has said that it is concerned about these intercatchment and interstate trading provisions. I will give members opposite an opportunity to vote against the provisions. The Coalition wants to see water trading provide a benefit for people in regional areas and those benefits stay in those regional communities.

The Hon. Duncan Gay: You weren't listening. The Hon. Rick Colless referred to that matter.

The Hon. Rick Colless: I did talk about that.

The Hon. Duncan Gay: You share our concerns.

The Hon. IAN COHEN: In fairness, while the Hon. Rick Colless was speaking I was sidetracked by other matters. I will certainly undertake to read the honourable member's speech. That is the least I can do, and I will do it. The way to do that is either to oppose the trading of water across catchments outright or, at the very least, support the amendment of my colleague the Hon. Richard Jones, which will require a socioeconomic and environmental impact statement to be done before such trading can occur. I must admit that I turned off when the Hon. Rick Colless started attacking the Greens, I think quite unreasonably. I got a little bored, but I should have paid attention.

The Hon. Rick Colless: I didn't mention the Greens.

The Hon. IAN COHEN: The honourable member mentioned the Nature Conservation Council and the conservation movement. Guess what? In some way the Greens are part of that movement. The Greens also intend to move amendments relating to supplementary licences. The Government seems hell-bent on continuing to overallocate our stressed rivers. One mechanism by which this will continue is through trading in supplementary licences. One would think that a supplementary licence was just that—a licence that supplemented an existing licence. In a year in which there has been heavy rainfall and dams are at high levels it may be possible for a licence holder to obtain supplementary water. To suggest that this water should be regarded as a right and that it can be independently tradable undermines the concept of "supplementary" and builds reliance on water that needs to be going to the environment if communities in rural Australia are to have a future at all.

Finally, I address property rights in water, because this bill continues down the path of creating property rights in water. I acknowledge the very important work of the Australian Conservation Foundation in researching the paper entitled "Rights and Responsibilities in Land and Water Management", to which I will refer. As demand for land and water resources has grown in Australia, the ecological limits of sustainable development have invariably been reached or exceeded. Evidence of environmental degradation continues to mount. The need for improved protection of the environment has led to growing conflict over the extent to which land and water use and management are subject to regulation. Farmer organisations have called for greater legal recognition by Federal and State governments of land-holders' property rights, and for full financial compensation when environmental laws and policies remove or diminish these rights. It is unfair, they argue, that farmers have to bear the full financial cost of these policies and regulations—changes that they claim are made solely in the broader public interest. Right now, progress on the regulation of land clearing, and in achieving a balance between water use and river health, and even in the protection of threatened species, is being held up by this debate around private rights versus responsibilities.

There is an urgent need to resolve this debate. A great deal is at stake. The direct financial costs of degradation, not to mention the repair bill, are already high, and rising fast. Environmental health is a key factor

in the future viability and growth of agriculture, as well as of many industries, including the water industry, tourism, recreational and commercial fishing and mariculture, and real estate. Environmental and resource management tensions are a factor in the rising political volatility and unpredictability in regional Australia. Given the failure of many public policies and funding programs to deliver targeted outcomes in the absence of regulation, their future credibility is at risk.

While private rights to land and water resources are already well defined in our legal system, the rights of the environment remain poorly defined. In our view any increase of farmers' rights to land and water resources can come only at the expense of the natural environment. While private rights are well defined, very few legal obligations apply to land-holders in terms of their responsibilities to protect and sustain the environment. It would be incongruous to consider strengthening farmers' rights in the absence of any debate about environmental responsibilities. Few would question a government's right to regulate to protect the quality of the air we breathe without compensating polluters, or to regulate buildings and land uses under planning laws. Similarly, we should not question the rights of governments to regulate activities that degrade soils and rivers, or that threaten biodiversity and ecosystems.

While structural adjustment funding is appropriate in some cases, we oppose any general requirement to compensate farmers for changes to environmental policies and regulations. Rights to access water resources, and to use and manage the land, should also carry with them responsibilities to leave a healthy environment and a productive natural resource base for future generations. These responsibilities include the management of wider impacts of farming such as salinity, soil erosion, pollution and regional biodiversity decline. The public should not be expected to compensate land-holders who, because of environmental regulation, are prevented from using resources in an unsustainable way and causing long-term damage. An analogy would be a claim for compensation by factory owners who, as a result of regulation, are no longer able to discharge effluent into nearby rivers.

Historically, Australia's legal system has provided compensation only when property is acquired, rather than when land or water use is limited or qualified by regulation. If a compensation precedent was set, this would not only make it extremely hard for governments to apply environmental regulations, but would also set serious precedents for areas such as occupational health and safety, land and water pollution, and land-use planning controls. In some circumstances, particularly where rapid and large-scale change is required, transitional, one-off financial assistance may be warranted. For this taxpayer-funded assistance to work, it must be applied in tandem with strong regulations at State and national level, and linked explicitly to a rapid, unambiguous and irreversible shift towards sustainable land and water management.

In contrast to entrenching rights to compensation, qualified financial assistance represents a public-private partnership approach to achieving real environmental outcomes in a cost-effective manner. Given that this scale of environmental change is in the wider national interest, both Commonwealth and State governments should contribute. Around a quarter of this country's water management areas—comprising most of the rivers in southern and eastern Australia—are close to or have exceeded sustainable extraction limits. Meanwhile, water use pressures are increasing and the condition of rivers and surface waters continues to deteriorate. The CSIRO predicts that surface flows for the east-central Murray Darling Basin will decrease by up to 20 per cent by 2030 and up to 45 per cent by 2070. This is no time to be entrenching access to water we may not be able to spare.

This private property debate has been fuelled by three incorrect assumptions: first, laws that regulate land and water use amount to a removal of property rights; secondly, such laws therefore require full compensation; and, thirdly, water rights must be permanent and non-reviewable. If we are going to have a debate about property rights it is important that these incorrect assumptions are cleared up. There has never been any form of private property or resource access right that is absolute and immune from government interference. Our society has always recognised the authority of governments to regulate the use of both public natural resources—such as water—and private or leasehold land. Water law in Australia has evolved from early English common law in which water and rivers were regarded as public and common to all. In this regard, water and rivers were traditionally viewed as things that could not be privately owned and in which there could be no property.

At this time water was, in a practical sense, restricted to those who had access to it as a consequence of being the owners of riparian land. However, with the increasing demands placed on our water resources by industry, agriculture and urban users, particularly following the industrial revolution, problems soon emerged with the English common law system of riparian rights. One such problem was the ability of some riparian landowners, who built large weirs and mills on rivers, to acquire enormous water reserves to the detriment of

downstream users. Accordingly, commencing in the late nineteenth century Australian jurisdictions began implementing regulatory regimes governing the use of water. These regulatory regimes vested use and control of water resources in the Crown but retained the common law's reluctance to acknowledge property rights in water.

Current water legislation in most Australian jurisdictions still maintains this notion of Crown use and control. In all but a few limited instances, those wishing to gain access to water can do so only by obtaining a licence or approval from the State. Viewed in their historical legal context, it is incorrect to view current laws that regulate water use as the removal of a property right. Instead, it is more appropriate to view such laws as providing an individual with rights to access a resource that has traditionally been viewed by our legal system as something in which no property exists.

Our legal system has not typically recognised a right to compensation when property use is merely regulated by environmental law. Compensation is generally only paid when property has been acquired. There are good reasons for this. The payment of compensation for regulating land use or water access would be an unreasonable burden on the public purse. The high cost of compensation would leave governments in a position in which they could no longer afford to enforce environmental laws or social responsibilities. The primary function of environmental laws is to prevent environmental degradation and the consequential social and economic costs to the community. It is unfair and almost ludicrous to expect the public to compensate landowners who, as a consequence of environmental protection laws, are no longer permitted to undertake environmentally destructive land or water use practices.

As with any area of public natural resource management, the management of water resources involves some crucial areas of uncertainty that demand an adaptive approach to management and regulation. These uncertainties include, but are not limited to, uncertainties in the freshwater-related requirements of freshwater, estuarine, subterranean and even coastal ecosystems; uncertainties and statistical error in the monitoring, accounting, modelling and auditing of both the global water resource in a catchment, and of its storage, delivery and use within that system; the temporal variability in the availability of surface and ground water resources, including consideration of long-term global climate change; the as yet untested nature of native title to water; and changing public policies, priorities and management requirements. Collectively, these uncertainties demand flexibility in the allocation and management of public water resources.

Water users, on the other hand, are demanding resource security; permanent tenure that arguably is required to secure their investments and raise finance to develop and maintain their enterprises. Whilst arguments around resource security may have some validity, the very fact that debt financing of irrigation enterprises in Australia has been undertaken over the past century under much less secure water allocation regimes substantially undermines this argument. These questions will not disappear. Government inaction, no matter which party is at the reins, seems to be a feature of management. Each day it becomes clearer to me the open window which Sir Humphrey Appleby gave us to government decision making. It is tragic that this indecision is costing us the earth. I am concerned that after all the discussion about the Government's water reforms, irrigators will lobby the weak-kneed Minister responsible for land and water conservation, who has let an opportunity pass him by. The so-called water reforms of the Government are absurd.

Debate adjourned on motion by the Hon. Peter Primrose.

NATIONAL PARK ESTATE (RESERVATIONS) BILL

Bill received and read a first time.

Declaration of urgency agreed to.

[The Deputy-President (The Hon. Janelle Saffin) left the chair at 7.00 p.m. The House resumed at 8.30 p.m.]

CRIMES LEGISLATION AMENDMENT BILL

Bill introduced and read a first time.

Declaration of urgency agreed to.

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [8.31 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The Government is pleased to introduce the *Crimes Legislation Amendment Bill 2002*. The Bill sets out a series of reforms to criminal legislation, concerning matters of both procedure and principle and is designed to facilitate the efficient delivery of criminal justice in this State.

I do not intend to address each proposed amendment in great detail, with one exception: detention of arrested persons for the purpose of carrying out a search warrant. I will return to this shortly.

For other matters, I provide the following short explanation of some of the Government's proposals:

BAIL ACT CHANGES

The Government seeks to remove the presumption in favour of bail where a person is charged with an offence alleged to have been committed while that person is an inmate of a correctional centre.

CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987

The Government seeks to add firearms offences to the list of 'serious children's indictable offence.'

CONFISCATION OF PROCEEDS OF CRIME ACT 1989

The Government seeks to ensure that a court, in making a pecuniary penalty order, may order the forfeiture of proceeds derived from the commercial exploitation of an individual's criminal past.

CRIMES ACT 1900

The Government seeks to clarify the original legislative intent that self-defence is available – in certain circumstances - where excessive force that causes death has been used; and allow health care workers who apply for an apprehended personal violence order not to supply their residential address in their application.

CRIMES (SENTENCING PROCEDURE) ACT 1999

The Government seeks to allow a Local Court to exceed its 3 year accumulated sentencing cap in circumstances where a prisoner has assaulted a prison officer. In other words, the Court may impose an additional consecutive sentence.

CRIMINAL PROCEDURE ACT 1986

The Government seeks to clarify that Magistrates can issue warrants for the arrest of accused persons who abscond or otherwise are not present in the course of court proceedings.

And important reforms to the *Mental Health Act 1990* and the *Mental Health (Criminal Procedure) Act 1990* aimed at improving the efficient management in this area.

For further explanation of these and other matters, I refer Honourable Members to the comprehensive Explanatory Note to the bill.

I encourage honourable members to examine the explanatory note and the Bill prior to the commencement of debate on the Bill.

I now turn to the matter of detention of arrested persons for the purpose of carrying out a search warrant.

Currently, where police are executing a search warrant, they may lawfully arrest a person on suspicion of having committed an offence in relation to a thing named in the search warrant or found at the premises in the course of executing the warrant.

The Crown Solicitor has advised that where a person is arrested at the scene of a search warrant he or she must either be brought before a justice as soon as is reasonably practicable, otherwise Part 10A of the *Crimes Act 1900* will apply. If police wish to continue to involve the person in the investigation at the scene of the search warrant, police must therefore take the person before a custody manager at a police station immediately so that the person can then be advised of his or her custody rights, and then return the person to the scene of the execution of the search warrant. Part 10A must be complied with in order for the detention to be lawful.

The amendments contained in the Bill ensure that police are able to execute search warrants in the presence of an arrested person without delaying the search by having to take the person before a custody manager at a police station and then returning to continue executing the search warrant. The amendments also ensure that, as far as is reasonably practicable, the arrested person receives the rights that he or she would otherwise be entitled to under Part 10A of the *Crimes Act 1900*.

These powers of detention may only be used where a person is lawfully arrested under section 8 of the *Search Warrants Act 1985* on the premises where a search warrant is being executed **and** the person's continued detention at the scene is related to the execution of the search warrant. It is important to note that

This proposal sets out no new powers of arrest.

These powers of detention are not intended to allow police to detain a person at the scene for questioning that would otherwise be subject to Part 10A; police may only question a person at the scene to facilitate the execution of the search warrant provided the person has been properly cautioned.

A person may be detained at the scene only if that detention is in connection with the execution of the search warrant, for example, where the arrested person's presence may assist the execution of the search warrant, or if the arrested person wishes to observe the execution of the search warrant.

The basic principle reiterated by the High Court of Australia and NSW Court of Criminal Appeal remains unaffected: the duty to bring an arrested person before a judicial officer as soon as reasonably practicable is one of the foundations of a democratic and just society.

Under this proposal, police have the power to detain a person:

who is arrested under section 8 of the *Search Warrants Act* 1985, and where that detention is in connection with the execution of the search warrant, for a period of time that is reasonable.

The question of reasonableness always needs to be considered on a case by case basis. For example, in the great majority of cases it is not expected that execution of a search warrant will take longer than 4 hours. There may be some situations however, where a longer period of time is reasonable. What is reasonable includes those matters set out under clause 23G.

Part 10A of the *Crimes Act* 1900 is amended to take account of the period of custody under Part 3A of the *Search Warrants Act* 1985. When determining what is a reasonable detention period under Part 10A, a police officer, justice or Court must consider the circumstances and time that a person was detained under Part 3A of the *Search Warrants Act* 1985.

Neither the Scheme set out under Part 3A of the *Search Warrants Act* 1985 or under Part 10A of the *Crimes Act* 1900 permit police to detain a person unreasonably or excessively.

Importantly, clause 356FA of the *Crimes Act* 1900 requires police officers, justices and Courts to have regard to the total period of continuous custody under both Part 10A and the *Search Warrants Act* 1985. Not only must there be regard to the reasonableness of each individual period of custody, but also to the reasonableness of the total 'real' time that a person is deprived of his or her liberty, before having to be brought before a justice.

In conclusion, the Bill contains a number of changes that are necessary for the continuing development of an efficient and equitable criminal justice system in New South Wales. This Bill represents the Government's ongoing commitment to the review and improvement of the administration of justice in this State.

I commend the bill to the House.

Debate adjourned on motion by the Hon. John Jobling.

RETAIL LEASES AMENDMENT BILL

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [8.32 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The major part of the amendments in this Bill, today, arise from the application of the Retail Leases Act to Sydney Airport.

Until 30 June 1998, retail leasing at Sydney Airport was subject to Commonwealth legislation.

On that date the Commonwealth Government withdrew its legislative coverage of retail leases at the airport.

As a result, Sydney Airport became subject to the provisions of the New South Wales Retail Leases Act (as well as several other New South Wales Acts).

That change had the potential to have a significant impact on three areas associated with airport activities: Retail activities at the airport:

- Sydney Airport and related construction work; and
- Sydney 2000 Olympics.

To address these issues and to ensure an orderly transition from Commonwealth coverage to State coverage, this Government introduced the Retail Leases (Sydney Airport) Regulation in 1999.

The Regulation:

- Exempted from the operation of the Act, premises at the airport that are not used for retail businesses (and so would not be covered by the Act were they not in a retail shopping centre complex);
- Exempted from the operation of the Act, premises within a "master concession" that has a total aggregate lettable area greater than 1,000 square metres;

- Conferred exemptions from various provisions of the Act in their application to Sydney Airport, which impacted on existing construction agreements and commitments in relation to the Sydney 2000 Olympics;
- Exempted Sydney Airport from provisions of the Act, or modified those provisions, to the extent that they inhibited application of the then current commercial tendering and rent determining processes applied to retail shop concessions at the Airport; and
- Was an interim measure and ceased to operate on 31 December 2000 in respect of leases entered into after that date.

Sydney Airport Corporation Limited (SACL) sought protection from some provisions of the Act going forward from 30 December 2000.

Under the auspices of this Government, a Committee comprising representatives from SACL, Property Council of Australia (NSW Branch), the Australian Retailers Association and the Real Estate Institute negotiated their way through the issues raised by SACL.

These negotiations dealt with resolving the tensions between Sydney Airport as an operational airport with the need to meet stringent operational requirements - including safety and security - and Sydney Airport as a shopping centre complex.

These amendments to the Act dealing with the Sydney (Kingsford Smith) Airport, flow from the negotiations after due consideration was given to ensure the amendments were good public policy.

The amendments give a definition of "airside" at the international terminal.

"Airside" being that part of the international terminal to which access is limited to persons (other than authorised persons) who hold a boarding pass.

This definition flows through to other amendments, some of which apply only to "airside" tenancies.

Approximately 70% of retail sales are made on the "airside" of the international terminal.

The amendments provide that consent to an assignment of an 'airside' retail shop lease can be withheld if the proposed assignee has inferior skills to the existing tenant.

Airside retailers at Sydney Airport need to be able to respond quickly to international changes because its competitors are other major airports such as Heathrow, Los Angeles, Singapore and Auckland—not local off-airport shopping.

An assignment of an "airside" shop lease at Sydney (Kingsford Smith) Airport may be withheld if the proposed assignee's "skills for competing in the international airport retail market", are inferior to those of the existing (assigning) tenant.

The amendments exempt from the operation of the Retail Leases Act, (the Act) leased premises in which non-retail activities are conducted at the airport terminals.

Retailing at the airport is only an adjunct to the main business of the airport—which involves passenger movement—unlike shopping centres where the emphasis is retail selling.

The amendments exempt some leases of one or more areas within the airport passenger terminal leased by the same lessee, aggregating 1000 square metres, or larger area.

Leases of shops with lettable areas totalling 1000 square metres or more are presently exempt from the operation of the Act.

The amendment is designed to exempt smaller sized areas forming part of a "Master Concession" (at the airport) aggregating 1000 square metres or more, which are leased by the same lessee.

The Master Concessions are the food concession and the duty free concession.

The amendments exempt airport lessors from paying compensation to lessees for interruptions to their businesses necessitated by airport or airline safety and security or by regulatory requirement.

Airport lessors who are required to implement airport and airline safety and security measures and satisfy regulatory requirements—which are not known when leases are entered into—need protection from compensation claims made by lessees whose businesses are adversely affected because of the imposition of such measures.

The amendments exempt lessors of "airside" retail shop leases from the confidentiality constraints of section 50 of the Act.

Section 50 of the Act provides penalties for lessors who divulge turnover figures provided by tenants except in defined circumstances.

Airside tenancies are put to tender.

To ensure equality in the tendering process the previous tenant's trading figures are disclosed.

The Bill contains some other minor amendments.

The first of these deals with the amendments to the Retail Leases Act made under the Intergovernmental Agreement Implementation (GST) Act, 2000.

These amendments included a provision that required an agreement between a retail lessor and lessee—for the recovery of GST from the lessee—comply with the ACCC Price Exploitation Guidelines.

These Price Exploitation Guidelines were a transitional measure and they expired on 30 June 2002, which was the completion date for the New Taxation System transition period.

As a result of the expiry of this transitional period, the reference to the guidelines is removed by these amendments.

The second minor amendment is to make clear that where the lessor and the lessee have agreed that the GST will be recovered as an outgoing, the outgoing is assessed as a percentage of the rent and not on a square metre basis.

This amendment will ensure that a lessee will only pay the appropriate amount of GST on the rent.

The third minor amendment is to ensure that the Registrar of Retail Tenancy Disputes can use a wide range of alternative dispute processes to resolve retail shop lease disputes—and that the protections of the Act apply to the person conducting the alternative dispute resolution process.

As a package, this amending Bill ensures that the Retail Leases Act will continue to meet the needs of the retail leasing industry.

I commend the Bill to the House.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [8.32 p.m.]: As the Deputy Leader of the Opposition stated in the other place, the Coalition does not oppose the bill. I thank the Sydney Airports Corporation Ltd and the Australian Retailers Association for their persistence in discussing the matter with the Opposition. I am sure they have also had discussions with other members of the Legislative Council. I congratulate the Government on the forthright way in which it has dealt with the bill. The Opposition does not oppose the bill.

The Hon. IAN MACDONALD (Parliamentary Secretary) [8.33 p.m.], in reply: I thank the Leader of the Opposition for his comments, which were, as usual, erudite.

Motion agreed to.

Bill read a second time and passed through remaining stages.

SECURITY INDUSTRY AMENDMENT BILL

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [8.35 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The Government is pleased to introduce the *Security Industry Amendment Bill 2002*.

The Government introduces this Bill in order to strengthen the security industry—an industry of 38,000 guards protecting icons and infrastructure across the State.

This Government has identified, with the hard work and diligence of NSW Police, opportunities for organised criminals and terrorists to manipulate the current security licensing process.

As part of the Government's enhanced counter-terrorism capability, we are seeking to minimise such opportunities, decrease the risk of criminal activity within the security industry and to increase enforcement of current licensing requirements.

It is considered that improvements must be made in the proof of identity procedures employed for the issue of security licences.

The authority conferred by a security licence permits the holder to engage in security activities with access to a wide range of high risk facilities including banks, airports and government buildings.

This enables fraudulent licence holders to develop "inside knowledge" which may then be used against the employer. Also, the holding of a certain security licence gives some in the industry the ability to be licensed for and have access to firearms.

Given the level of trust placed in licensed security personnel, the Government believes it must be in a position to ensure all possible measures are taken to guarantee the identity and bona fides of licence holders.

NSW Police have identified a need for frontline police to be able to instantly identify when a licensed security guard is carrying a firearm without the proper authority.

Under the current law, embodied in the *Firearms Act 1996* and Part 7 of the Firearms (General) Regulation 1997, only those security personnel with a licence for guarding premises or property are permitted to obtain a firearm licence for the genuine reason of security.

Firearms are not able to be owned by individual security personnel, but must be owned by the security company which must store the firearms safely and keep precise records of usage.

Security personnel who are licensed to carry firearms are only authorised to do so for the purposes of their work, and must return firearms to their place of safe storage after the period of duty.

Arrangements for off-duty possession of pistols by security personnel can be made only with written authorisation of the Commissioner of Police.

Despite these laws, in practice it is difficult for frontline police to determine whether carriage of a firearm by a security guard in public is bona fide.

Individual guards, if questioned by police, may simply claim that they are on their way to their place of work.

It is therefore proposed to require that security personnel must be wearing their security uniform whilst carrying their security firearm.

The penalty for breaching this requirement will be seizure of the firearm, suspension of the individual's security licence, and the issue of a "show cause" notice on the master licence holder as to why the master licence should not be suspended due to unlawful issue of a firearm to an off-duty security officer.

There are very few circumstances where security personnel need to be out of uniform to perform their duties. In these few cases, such as the covert delivery of large sums of cash or jewellery, it is proposed that the Commissioner may issue special authority for the carriage of firearms when not in uniform. Such personnel must carry this authority with them when going armed.

The bill introduces a power for the random ballistic testing of security industry firearms by NSW Police to identify those which have been used in firearm crime.

The NSW Police Integrated Ballistics Identification System (IBIS) is a computer system which allows police to match cartridge cases, bullets, and bullet fragments to the firearm from which they were shot, enabling police to solve firearm related crimes.

It is proposed that Police be provided with the power to randomly test security industry firearms against the IBIS system to ascertain whether the firearms have been used in the commission of a firearm crime, and to store details of the test for future reference.

This will bring the security industry into line with the requirements for police. All police firearms are progressively being tested using IBIS and the data stored for reference purposes.

The principles and objects of the *Firearms Act* in section 3 of the Act include "to confirm firearm possession and use as being a privilege that is conditional on the overriding need to ensure public safety, and to improve public safety by imposing strict controls on the possession and use of firearms."

Possession of a firearm by a security company or a security guard should therefore only be granted, or continue, on the condition that the controls in place balance the needs of public safety.

The unlawful loaning of a firearm is an offence under section 7 of the *Firearms Act 1996*, which provides that a person must not possess or use a firearm unless authorised to do so by a licence or a permit.

In addition, a person who uses a firearm for any purpose other than in connection with the genuine reason for which their licence was issued, or who contravenes any condition of the licence, is guilty of this offence. Persons who provide their licensed firearm to an unlicensed individual may therefore be prosecuted for an offence under section 7.

Under current law there is no clear power for police to enter security company premises and test the company firearms for compatibility with evidence which has been left at the scene of the crime. This enables police to potentially link security guns which had been loaned out or used by a member of the company to a crime which had been committed with that gun.

This would at the very least provide police with sufficient grounds to query from the licence holder why the security licence should be permitted to continue if sufficient control is not being exercised over weapons held under that licence.

Currently, security companies cannot be assured that the firearms used by their employees are not being used by those employees to commit crimes. Test firing of security guns into the IBIS would allow for comparison with the shell casings were left at the scene of the shooting.

The ability to randomly test security company firearms using the IBIS would allow police to identify any guns which have been used in crime. Police, with the cooperation of the security company, can then investigate further to identify those guards within the company who are involved in the commission of criminal acts.

The instigation of a random testing regime by NSW Police would mean that all security companies would be subject to testing of their firearms.

Currently, a search warrant is required to perform forensic testing of security industry firearms. However this alerts the principals of the company to police interest and provides time to destroy or "lose" relevant firearms. A general power to test security firearms at any time is less likely to have such a specific impact.

In addition, testing of all new firearms entering the industry will have a preventative effect.

It is therefore proposed to amend the *Firearms Act 1996* to require that security industry master licence holders must allow IBIS testing of all firearms held subject to their security licence.

The testing of security industry firearms will be phased in over 18 months, commencing with targeted and random testing of companies and testing of all new firearms entering the industry; and progressing to testing of all security industry firearms.

In addition, it is proposed to ensure that any modifications which are made to an IBIS tested security industry firearm which would change the characteristics of any firing occurring post the change, such as a barrel or firing pin change for example, must be reported to police.

A re-test will then be required to ensure that the ballistics record retained by police matches any future firings from the gun.

In order to facilitate such testing on a random basis, Police should also be provided with a power of inspection of security company firearms and firearm safe storage facilities at any time and without notice.

Currently, police may only inspect firearm safe storage upon arrangement with the licence holder [*Firearms Act* section 19(2)(c)].

The risk of the firearms being utilised for criminal purposes is higher in circumstances where there is increased access by different persons to the firearms.

To assist with enforcement, Police should also be provided with the ability to remove from company premises those records required under law to be kept for the purposes of copying them.

Currently, although provided with the power to examine and copy such records, police are not able to remove the records for external copying where the company denies them the use of company photocopiers.

Similar to section 110(3A) of the *Liquor Act 1982*, police should also be able, where they consider it necessary to do so for the purposes of obtaining evidence of the commission of an offence, seize any registers, books, records or other documents relating to the business conducted by a security master licence holder and require any person to answer any question relating to any such registers, books, records or other documents or any other relevant matter.

Currently section 18 of the *Security Industry Act 1997* allows the Commissioner to take fingerprints of security licence applicants in order to confirm the applicant's identity. However this power only applies where there is a reasonable doubt as to the applicant's identity and proof of the applicant's identity cannot be confirmed by any other means that are available in the circumstances. Fingerprints obtained via this power are also required to be destroyed as soon as they are no longer needed in connection with the application to which they relate.

These provisions were included in the Act in an attempt to balance the public interest of ensuring that licence applicants were identified, against the personal privacy interests of the applicant.

However, NSW Police has advised that this provision is failing to prevent fraudulent applications for licences, and failing to identify those persons who apply for a licence utilising fake identification documents. As it currently stands, the section acts against the greater public interest in favour of the interests of licence applicants who are fraudulently applying for licences.

At least one security company has been involved in producing false security licences and training certificates, as well as false identification documents.

In addition, NSW Police has identified a pattern for applications to be made by persons who have legally changed their name, in order to circumvent the criminal records checks.

For example, a person with a disqualifying criminal history may change his/her name with the Register of Births, Deaths and Marriages, obtain identification documents in this name and then apply for a security licence without reference to the previous name.

Similarly, a licence holder who has a licence revoked can legally change their name and make application for licence under a different name, thus legally obtaining another security licence.

Administrative mechanisms to address this are being discussed with the Register of Births, Deaths and Marriages. However indications at this stage are that the Register will not release the contents of its database to Police on privacy grounds, and Police are similarly restricted from releasing the contents of the security licensing database.

In any case, whilst name changes made within NSW could theoretically be identified via reference to the NSW Births Deaths and Marriages records, this would only pick up persons who have changed their name within this state. Persons with a disqualifying criminal history who change their name outside NSW could not be identified without reference to all state and territory registries.

Establishment of identity is a significant problem for police. For example, Police records indicate that to March 2002, 22,971 offenders had been fingerprinted as part of the implementation of the new LiveScan electronic fingerprinting technology. Of those, 1,438 have been identified as providing false particulars. That is, 1,438 people lied to police about their identity when they knew they were to be fingerprinted. This constitutes 6% of the offenders fingerprinted.

Police suspect that identity fraud is being perpetrated within the security industry licensing system. Identity fraud amongst security licence holders is a high risk situation, as it is an indicator of propensity towards criminal activity which poses both a financial and a public safety threat to the industry and to the public.

Security guards are employed to protect large sums of cash and expensive merchandise, as well as property and persons. Access to security systems which ensure the safety of goods, as well as physical access to the goods themselves, provides significant opportunity for theft.

The recovery of a RTA licence production machine from a crime syndicate highlights the likelihood that the industry is being targeted by organised crime as a means of obtaining easy access to premises and goods. Licence production machines are used by the RTA to produce driver licences; security industry licences; and firearm licences.

There is clearly considerable risk for the industry from the illegal manufacture and sale of fake security licences, as they would enable criminals to gain access to premises and goods under the guise of legitimate employment as a security guard.

NSW Police has advised that the only means of reducing this risk to manageable levels is to provide for mandatory fingerprinting and photographing of all security licence applicants.

Without fingerprinting and photographing of all security licence holders, the high financial risk to industry and to public safety will continue.

It is therefore proposed to adopt similar requirements for security personnel as for police, by amending section 18 of the *Security Industry Act 1997* to provide for the mandatory fingerprinting and photographing of all security licence applicants and licence holders. All police are fingerprinted and their records retained during the course of their employment.

Upon cessation of employment, police officers can make a written request to have their records removed, at which time this application is assessed and either granted or denied.

As an interim measure until such time as the new LiveScan digital fingerprint technology is installed state-wide, fingerprints of applicants will be taken manually at police stations.

Once the roll-out of the PhotoTrac digital photograph capacity is complete, the applicant will also be photographed at the police station. The photograph will then be attached to the NSW Police issued photographic advice form, which is sent to the successful applicant.

The applicant then takes this form to the RTA, who will check the photograph against that on the advice form and then issue the licence. As an interim measure it is proposed that a copy of the digital image stocks held by the RTA of security industry licence holders be transferred to NSW Police.

This will allow operational police access to the images to verify the identities of security guards, and assist with identifying where a licence has been forged or the photograph substituted.

Retaining fingerprints and photographs of security licence applicants and licence holders will allow them to be checked against unsolved crime databases, as well as allow future applications to be verified against both criminal records and previous applications for security licences.

This will mean police can easily identify where a person has changed their name after being refused a licence in order to apply under the new name.

Currently section 15(1) of the *Security Industry Act* provides that the Commissioner of Police must refuse a security licence application if the Commissioner is satisfied that the applicant is not a fit and proper person to hold the class of licence which is being sought. However there is no definition of "fit and proper person" in the legislation.

As a result, the current security licensing system allows persons who are not fit and proper persons, because they are suspected *but not charged or convicted* of criminal or terrorist links, access to sensitive information and premises as a result of being granted a security licence.

The difficulty from a licensing perspective is that such persons of concern have not been subjected to a charge which would automatically preclude them from obtaining a security licence.

This may be due to the fact that victims are afraid to lay charges against the person, or that they withdraw charges following threats against them. The only basis the Commissioner could refuse a security licence under these circumstances would therefore be on the grounds that the applicant is "not fit and proper" or it is "not in the public interest" that he/she receive a licence.

The intention of the *Security Industry Act* is to ensure that high standards of integrity and conduct are maintained within the security industry. Entry to the industry is restricted by the licensing system in order to protect the public interest by diminishing the likelihood of criminal activity within the industry. For this reason, persons convicted of specified offences are barred from working in security.

It is the view of NSW Police that persons who are known to have extensive links to organised crime figures, who are members of an Outlaw Motor Cycle Gang linked to organised crime, or who are suspected of offences relating to drug trafficking, murder or other violence offences, should be regarded as "not fit and proper" to hold a security licence.

However, the determination of whether a person is "fit and proper" is contextual, as has been recognised in common law. For example, in *Australian Broadcasting Tribunal v Bond*, Justices Toohey and Gaudron found that:

"The expression "fit and proper person" standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of "fit and proper person" cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of those activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question"

The Deputy President of the Administrative Decisions Tribunal has also held that there should be some 'nexus' between the conduct complained of and the activities to which the licence relates. This would apply, for example, in the case of a security guard who is reported to be associated with criminals with convictions for the armed robbery of banks.

It is therefore considered that there is insufficient direction within the *Security Industry Act* to ensure that the balance is maintained between the interests of public safety in ensuring a crime free security industry, and the interests of individual licence holders in retaining their licences to work within the industry.

To this end, it is proposed to clarify the definition of "fit and proper person" in section 15 of the Act such that it can be clearly seen to include, but is not limited to, circumstances where:

criminal intelligence is held on a licence applicant/holder which has a relationship to the duties performed under the licence applied for/held;

which cause the Commissioner of Police to conclude that improper conduct is likely to occur if the person were to be granted/continue holding a security licence; or
which cause the Commissioner of Police to not have confidence that improper conduct will not occur if the person were granted/continued to hold a security licence.

Clearly it is in the public interest that persons thought by police to present a public safety or a criminal risk are not given special access to premises, persons or goods under the security licensing system. This should apply even where the person has yet to be charged with a specific criminal offence.

Currently, section 16 of the *Security Industry Act* provides that the Commissioner must refuse to grant an application for a licence if he is satisfied that the applicant, has been convicted in the preceding 10 years or been found guilty (but with no conviction being recorded) in the previous 5 years, of a prescribed offence, or has been removed or dismissed from a Police Force in the preceding 10 years.

The disqualifying offences are prescribed in the Regulation in clause 11 and include:

- (a) Offences relating to firearms or weapons
- (b) Offences relating to prohibited drugs
- (c) Offences involving assault
- (d) Offences involving fraud, dishonesty or stealing
- (e) Offences involving robbery
- (f) Offences involving industrial relations matters - In the case of an application for a master licence only

Under section 16(3-4), the Commissioner must also refuse to grant an application for a licence if:

- he is of the opinion that the applicant is not suitable to hold a licence because the applicant has been involved in corrupt conduct;
- or he is of the opinion that a master licence applicant (or, if the applicant is a corporation, any person who is a director or who is concerned in the management of the corporation) has, within the period of 5 years before the application was made, been declared bankrupt.

However, despite the Commissioner being required by the legislation to refuse all applications for a security licence which meet these disqualifying provisions, there is no similar requirement in relation to revocation of existing licences.

Section 26 (1)(a) of the Act currently states that a licence may be revoked under these same conditions. This means that the decision is at the discretion of the Commissioner, and open is to being overturned on appeal.

It is necessary that section 26 is amended to render it consistent with section 16 and to make it mandatory that the Commissioner revoke a licence for any reason for which a person would be refused a licence of that class.

The current situation not only represents a risk to public safety, it is inequitable and anti-competitive for persons seeking to enter the security, and is unfair on the licence holder who, at the time of re-application following expiry of the licence term, must be refused a new licence under the provisions of section 16.

It is therefore proposed to amend section 26(1)(a) of the Act to provide that the Commissioner must revoke the licence under the conditions.

The Bill includes amendment of the *Firearms Act 1996* to provide for the mandatory revocation of firearm licences for security guards who fail to undertake required firearm safety training.

NSW Police has advised that there are currently a large number of security guards who are licensed to carry security firearms who have failed to attend an annual firearms safety training course.

Clause 69(2) of the *Firearms (General) Regulation 1997* requires that a security guard who possesses a firearm must undertake, at least once a year, an approved firearms safety training course.

It is vital to public safety that all security guards who are authorised to carry firearms as part of their work complete safety training. Like police, security guards carry firearms in public places, and may be called upon to use them in pursuit of their duties.

In order to avoid endangering the general public, security guards should therefore be required to pass an annual firearms safety re-accreditation course.

The bill will make it mandatory for the Commissioner to revoke a security guard firearm licence where the holder has failed to undertake annual safety training.

The effect of this will be to ensure that a security guard automatically loses the authority to possess and use a security firearm if he/she does not attend mandatory safety training.

There will not be an avenue of appeal in relation to the revocation, however the security guard's security licence will not be affected and the guard may thus continue to work within the industry, albeit without access to a firearm. If the guard requires a firearm for his/her duties, he/she may attend safety training and reapply for a security firearm licence.

Currently proceedings for offences under the security legislation must be commenced within 6 months of the date of the alleged offence, as section 56 of the *Justices Act 1902* provides that:

an information or complaint may, unless some other time is specially limited by the Act dealing with the matter, be laid or made at any time within six months from the time when the matter of the information or complaint arose.

However, a separate, longer period is required in relation to offences against the Security Industry Act, to allow for the enforcement of breaches of the Act and Regulations which are identified close to the period of six months from the time of offence or outside this time.

It is therefore proposed to adopt the 3 year time limit for initiating proceedings for offences which currently applies in respect of certain offences in the *Liquor Act 1982*.

The offences specified in section 145(2A) of the *Liquor Act* as qualifying for the 3 year time limit are of the same nature as those within the security industry licensing regime, and are directly relevant to maintaining the integrity of the licensing scheme.

Without the ability to enforce breaches of licensing conditions which are discovered after a reasonable period of time has elapsed, the aims of the licensing scheme to increase safety, integrity, ethical conduct and the quality of service provided to the public cannot be upheld.

NSW Police have identified a high risk that persons who are not permanent residents of Australia who obtain a security licence may be more easily targeted to be involved in criminal activity or activity which otherwise poses a threat to the public.

There is currently no legislative restriction on granting a licence to persons who are not permanent residents of Australia. In consequence, people who are temporary residents or who hold overseas student visas are not restricted from obtaining licences.

When granting a security licence to a person other than a permanent resident, Police rely on the production of a visa to satisfy the mandatory integrity requirements required under the security legislation.

The administrative cost associated with obtaining criminal history checks on all overseas applicants is prohibitive, as is the timeframe for obtaining relevant record checks from overseas law enforcement agencies.

However NSW Police has found that it cannot rely on the understanding that visas are only issued to persons without an overseas criminal record.

In addition, the requirements for obtaining a visa do not include the extensive criminal record checks that are required of Australian permanent residents who apply for a security licence. NSW Police is concerned that a number of overseas persons with records which would exclude them if they were permanent residents are potentially being issued with a licence.

Not obtaining criminal history checks is inconsistent with the requirements imposed on permanent Australian residents, and presents both a criminal threat to the industry as well as a threat to public safety. This is particularly the case as, once licensed, a security guard may obtain access to firearms in order to perform his/her security duties.

To reduce this threat it is proposed that legislation be amended to provide for the issue of security licences only to persons who are citizens or permanent residents of Australia.

This is consistent with the requirements for police officers. Section 94 of the *Police Act 1990* provides that a person is eligible to be appointed as a member of NSW Police only if the person is an Australian citizen or a permanent Australian resident.

A permanent Australian resident is defined as a person resident in Australia whose continued presence in Australia is not subject to any limitation as to time imposed by or in accordance with law.

To ensure the integrity of the licensing system, it is proposed to adopt similar requirements for security industry licence holders.

It is proposed that the permanent residency requirement would be phased in over time. Those persons who are not currently permanent residents would be allowed to continue until their licence expires, and no new licenses would be issued to non-residents.

Currently the *Security Industry Act* does not allow for the issue of infringement notices. Enforcement of the Act and Regulations is by way of summons or court attendance notice, both which require court attendance by the offender and police, or by way of suspension of licence which may be appealed to the Administrative Decisions Tribunal. This is both uneconomical and inefficient.

The practical effect detracts from enforcement of minor breaches, due to the perception by officers that the minor nature of the breach is outweighed by the impost on police and court resources currently required to enforce it.

The ability to issue infringement notices allows police to use their discretion to deal with minor matters in an appropriate way. In the case of minor offences which do not impact adversely on public safety, it is appropriate to use penalty notices.

A penalty notice system is an ideal way of enforcing minor breaches of the less serious conditions or some regulatory type offences in the Act. It provides a simple and effective method of encouraging licence or permit holders to comply with the letter of the law.

The availability of penalty notices will result in a higher level of enforcement and compliance. This will benefit both the industry and the consumer, by ensuring that standards are maintained and safety measures obeyed.

It is proposed that the Bill provide that police be permitted to issue infringement notices for certain offences. The relevant offences and penalty levels for the notices are to be determined following consultation with industry and then placed in the Regulation.

As is the case with other penalty notices, the Infringement Processing Bureau will be responsible for initial enforcement of the penalty notice. The *Fines Act 1996* is also being amended to apply its enforcement provisions to the new infringement notices, if payment is not made to the IPB.

The *Fines Act 1996* provides that a penalty reminder notice may be served on a person who has not paid the penalty amount. Continued failure to pay results in service of a fine enforcement order. Enforcement action that may then take place by the State Debt Recovery Office.

I commend this bill to the House.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [8.35 p.m.]: The Opposition does not oppose the bill, which was called for by the Leader of the Opposition in the other place on 15 October following the appalling attack upon Australians in Bali. Private security industry guards outnumber New South Wales Police Force officers by between three and four to one. The bill makes a number of changes in relation to firearms and the storage of firearms. It deals with mandatory fingerprinting of applications, and the keeping of records of fingerprints and photographs. Although the Opposition does not oppose the bill, it is important to put onto the record that the Government has not consulted with the security industry on this bill. Larry Circosta, President of the Australian Security Industry Association Ltd, the peak body of the security industry, in a letter dated 14 November, stated:

Despite assurances to the Security industry only recently by the Police Minister there has been no Industry consultation. ASIAL only learnt of the proposal last Friday from the press release.

This lack of consultation is typical of the Government—it still has a lot to learn. Despite those comments, the Opposition does not oppose the bill. However, I suggest to the Government that it should have had more consultation during its last four years of government. The Coalition gives a commitment to the security industry to do exactly that when it takes office next year.

Ms LEE RHIANNON [8.36 p.m.]: The Greens support this bill, although we have concerns with some aspects of it. It represents a long overdue overhaul of the security industry in this State. It is a damning indictment of the 1997 review of the security industry that such a comprehensive bill has had to be put together in 2002. There are around 38,000 security guards in New South Wales, which is a remarkable figure. The industry has between three and four times the number of police officers in this State. For some years the Greens have been concerned that this too rapid growth in the security industry has not been matched by adequate regulation. In particular, the almost unrestricted ownership and use of firearms by security guards is something

to which the Greens have referred on many occasions. The Greens welcome the provisions in the bill that stipulate that security personnel must be in uniform when carrying a gun. We support this provision, but we believe that it does not go far enough. We do not accept that security guards should be allowed to carry firearms. Security guards are not police, they are not public servants and they are not directed by the public's representatives. They are not accountable to the public in the same way and they do not receive adequate training to justify carrying a gun.

Part of the Government's justification for this bill is an admission that security industry guns have been misused and put to illegal purposes. This bears out one of the Greens' key contentions with regard to firearms—that once they are present in society it is inevitable that someone will misuse them in the commission of crimes, suicides or tragic accidents. The Government has validated one of our central themes on gun control. Similarly, the Greens support the introduction of ballistic testing by police of all security industry guns, and the retention and use of such information for investigation of crime and future crime. Once it is accepted that a percentage of legal guns will inevitably be used to commit crimes, as the Government now accepts, it is a logical step to undertake ballistic testing of all available firearms. No doubt it will assist police greatly in solving crimes committed with guns that are legally owned. For the same reasons, the Greens also support the provisions to require security companies to report to police any modifications to firearms, to allow for police inspection of firearms and firearms storage facilities, and to provide for the mandatory revocation of firearms licences for security guards who fail to undertake the required firearms safety training. It seems to be the most basic thing that if security guards fail to undertake gun safety training they should not get a gun. It is hard to believe that that is not already a requirement in law.

We are concerned that some provisions in the bill seem a little extreme—. For example, the provision to allow police to seize and copy registers, books, records or other documents and to require any person to answer any question appears excessive. The Greens have a consistent position of questioning the removal of warrant requirements. We do not believe that the removal of the requirement to obtain a warrant is justified in this situation. Similarly, the possibility of mandatory fingerprinting of security licence applicants and the retention of the photographs and fingerprints of applicants appears to be an unwarranted invasion of privacy. It could result in an enormous database of photographs and fingerprints being created. We can accept the argument that compulsory fingerprinting of applicants may be necessary to verify identity, but we do not see why the records should be retained. To retain the records is effectively to say that security guards are inherently more prone to criminal activity than other people are. We do not believe that such an assertion can be supported. Notwithstanding these concerns, the Greens believe that this bill represents a worthwhile reform of an industry that badly needs reforming.

Reverend the Hon. FRED NILE [8.40 p.m.]: The Christian Democratic Party is pleased to support the Security Industry Amendment Bill. Given the problems that confront security officers it is necessary to tighten the legislation. We are pleased that the Government has introduced this bill to tighten up the requirements for security industry licensees. For example, security officers must be Australian citizens or permanent Australian residents. Because of the terrorist threat we are now experiencing in Australia, I emphasise that there must be an even closer examination of security officers and their backgrounds and whether they have any association with terrorist organisations such as the Jamaah Islamiah group, which has now been put on the list of prescribed terrorist organisations in Australia.

Obviously, criminal records must be thoroughly checked, and I agree that regulations concerning the use of firearms have to be tightened. I understand that there are 38,000 security guards in New South Wales. I wonder how many of them actually have firearms. From my observations, very few bank guards and other security guards have firearms, although they all carry mobile phones. I often wonder what they are supposed to do in the event of a raid or robbery. Do they simply ring the police or someone else to raise the alarm? The Hon. Ian Macdonald is supposed to be listening to our contributions, not to the Hon. John Jobling.

The Hon. Ian Macdonald: Point of order: I always listen to the words of members contributing to debate.

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

Reverend the Hon. FRED NILE: I asked the question: How many of the 38,000 security officers in New South Wales have been issued with firearms? I was making the point that most security officers I see do not have firearms. It may be that only the security guards who undertake a more dangerous role in a location where there is an expectation of robbery or an attack carry firearms. While not all carry firearms, they all seem to carry a mobile phone.

The Hon. Ian Macdonald: I am advised that about 25 per cent carry firearms.

Reverend the Hon. FRED NILE: To my observation, most bank security guards do not have firearms—unless the firearm is so small they can hide it in their pocket. They certainly do not all wear a firearm that can be seen. Obviously, we also support the provisions that will enable police officers to inspect firearms, that is, the security and safe storage of firearms held by the security industry master licensees who are armed as security guards or employed armed security guards. Certainly, security guards must undergo more training both in relation to firearms and in relation to the role they perform.

The Hon. IAN MACDONALD (Parliamentary Secretary) [8.44 p.m.], in reply: I thank honourable members for their comments. I have a reply dealing with some aspects that have been raised. I seek leave to incorporate the reply in *Hansard*.

Leave granted.

I thank Honourable Members for their contribution to this debate.

This Bill will provide more rigorous scrutiny of people within the security industry and increase enforcement of current licensing requirements.

The provisions of this Bill will directly impact on the ability of NSW Police to work with legitimate operators in the security industry to ensure that the public can have confidence in the industry.

The Bill responds to concerns raised by NSW Police and recent international terrorist events.

The authority conferred by a security licence permits the holder to engage in security activities with access to a wide range of high risk facilities including banks, airports and government buildings.

This enables fraudulent licence holders to develop "inside knowledge" which may then be used against the employer or the general community.

Also, the holding of a certain security licence gives some in the industry the ability to be licensed for and have access to firearms.

Given the level of trust placed in licensed personnel, the Government believes it must be in a position to ensure all possible measures to guarantee the identity and bona fides of licence holders and that access to firearms is controlled.

The Government would like to acknowledge the role of the Security Industry Council. The members of the Council have contributed greatly over the last few years to assist the Government in raising standards in the industry.

Some of the issues relating to amendments in this Bill have been discussed as part of the Council's program to improve the industry.

The proposals are consistent with the objectives of the Council in that they raise professional and ethical standards within the industry and are aimed at removing undesirable elements from the industry. I welcome the support for them that the Government has received from the Council.

I commend this Bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

TABLING OF PAPERS

The Hon. Ian Macdonald tabled the following reports:

- (1) Annual reports (Departments) Act 1985, for the year ended 30 June 2002:

Department of Local Government
Department of Mineral Resources
Environment Protection Authority
New South Wales Fire Brigade

- (2) Annual Reports (Statutory Bodies) Act 1984, for the year ended 30 June 2002:

Legal Aid Commission
Lord Howe Island Board
Mine Subsidence Board
NSW Coal Compensation Board

Office of the Protective Commissioner
Sydney Catchment Authority

- (3) Community Justice Centres Act 1983—Report of Community Justice Centres for year ended 30 June 2002
- (4) Legal Profession Act 1987—Report of Office of the Legal Services Commissioner for year ended 30 June 2002

Ordered to be printed.

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (No 2)

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [8.45 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The Statute Law (Miscellaneous Provisions) Bill (No 2) continues the well-established statute law revision program that is recognised by all members as a cost-effective and efficient method for dealing with amendments of the kind included in the bill.

The form of the bill is similar to that of previous bills in the statute law revision program. Schedule 1 contains 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 31 Acts. I will mention some of them to give honourable members an indication of the kind of amendments that are included in the schedule.

Schedule 1 amends the Adoption Act 2000 in a number of respects. The amendments remove references to approved "Aboriginal adoption consultative organisations" and replace them with references to persons approved by the Director-General of the Department of Community Services to provide advice and assistance to Aboriginal families or kinship groups in relation to care options for Aboriginal children. These amendments are made because it is difficult to locate "Aboriginal adoption consultative organisations". The concept of adoption is traditionally unknown in Aboriginal societies. It has also acquired offensive historical connotations to many Aboriginal people through the removal and placement of Aboriginal children in non-Aboriginal families.

For consistency, the same amendments are made in relation to Torres Strait Islander adoption consultative organisations.

Schedule 1 also amends the Real Property Act 1900 so as to give statutory force to the Registrar-General's current administrative arrangements in relation to the lapsing of certain caveats. As many honourable members will know, in this context a caveat is a notice on a certificate of title for land that prevents the taking of certain specified action in respect of the land (for example, the registration of a transfer of ownership of the land) if that action would affect the rights relating to the land that are claimed by the person who lodged the caveat (the caveator). At present, the Act requires a person seeking the lapsing of a caveat to serve on the caveator a notice (prepared by the Registrar-General) warning that the caveat will lapse unless the caveator, within a specified time, obtains an order of the Supreme Court extending the operation of the caveat. The amendments to the Act require lodgment with the Registrar-General of evidence of service of the warning notice on the caveator. The Registrar-General may refuse to take any further action in relation to the proposed lapsing of the caveat if evidence is not provided.

A further amendment relates to the lodgment of certain caveats. The Act requires the caveat to specify an address in New South Wales at which notices may be served on the caveator. Frequently, caveats are lodged by solicitors on behalf of their clients, and the solicitors provide a document exchange number as the address for service of notices. However, persons who are not members of the document exchange cannot use the exchange to serve a notice. The amendment ensures that, if a document exchange number is specified as the address, an alternative, non-document exchange address must also be specified.

Schedule 1 also amends the Ombudsman Act 1974. The amendments will permit "relevant agencies" (which are specified in a schedule) to refer complaints among themselves and to share information held by them. However, information may be shared only to the extent that the sharing is reasonably necessary to enable the agencies concerned to carry out their functions. The initial relevant agencies are the Community Services Commission, the Health Care Complaints Commission, the Legal Services Commissioner, the Ombudsman, the president of the Anti-Discrimination Board and the Privacy Commissioner. The schedule of relevant agencies may be amended or replaced by proclamation.

Schedule 1 also amends the Unlawful Gambling Act 1998. Section 15 of that Act creates the offence of possessing, or permitting the use or operation of, a "prohibited gaming device". The Act is amended so as to permit State-owned museums and similar institutions to hold, display and demonstrate the operation of such gaming devices in certain circumstances without being guilty of an offence under section 15.

Schedule 1 also changes the name of the Education (Ancillary Staff) Act 1987 to the Education (School Administrative and Support Staff) Act 1987 and makes consequential amendments to that Act and to the regulation made under it. The changes give statutory recognition to terminology that has been used by both the Department of Education and Training and the Public Service Association since late 1996. The new name more accurately reflects the range of work undertaken by the staff concerned.

Schedule 1 also amends the Public Trustee Act 1913. At present, the person appointed to the position of public trustee is appointed for an indefinite term. The amendment provides that the appointee is to be appointed for a specified term (which is not to exceed 5 years). However, there is no limit on the number of times that the appointee may be reappointed (if otherwise qualified) to the office.

The last schedule 1 amendments that I will mention are the amendments to the Occupational Health and Safety Act 2000 and the Passenger Transport Act 1990, which are both amended in relation to penalty notices. The Passenger Transport Act 1990 is amended so as to permit the regulations under that Act to prescribe different amounts of penalties for different offences or classes of offences, and to prescribe different amounts of penalties for the same penalty notice offence (for example, according to whether the offender is a corporation or a natural person, or according to the circumstances in which the offence is committed). The amendment to the Occupational Health and Safety Act 2000 makes the second amendment only, since that Act already provides that the regulations made under it may prescribe different amounts of penalties for different offences or classes of offences.

Schedule 2 deals with matters of pure statute law revision consisting of minor technical changes to legislation that the Parliamentary Counsel considers are appropriate for inclusion in the bill. Examples of amendments in schedule 2 are those arising out of the enactment or repeal of other legislation, those updating terminology, those inserting missing words or omitting superfluous words, those correcting typographical errors and those correcting numbering.

Schedule 3 repeals a number of Acts, provisions of Acts, and statutory rules. The schedule repeals Acts (including amending Acts) enacted in 2001 or earlier that contain no substantive provisions that need to be retained or that are no longer of practical utility. The schedule also repeals certain uncommenced provisions of Acts.

The Acts that were amended by the Acts being repealed are up-to-date on the legislation database maintained by the Parliamentary Counsel's office and are available electronically.

Schedule 4 contains provisions dealing with the effect of amendments on amending provisions, savings clauses for the repealed Acts and a power to make regulations for savings and transitional matters, if necessary.

The various amendments are explained in detail in explanatory notes set out beneath the amendments to each of the Acts concerned. Rather than repeat the information contained in those notes, I invite honourable members to examine the various amendments and accompanying explanatory material and, if any concern or need for clarification arises, to approach me regarding the matter. If necessary, I will arrange for Government officers to provide additional information on the matters raised. If any particular matter of concern cannot be resolved and is likely to delay the passage of the bill, the Government is prepared to consider withdrawing the matter from the bill.

I commend the bill to the House

The Hon. PATRICIA FORSYTHE [8.46 p.m.]: I shall make a few remarks about the provisions relating to the exemption under the freedom of information [FOI] legislation for the Child Death Review Team and the transfer of the powers of the Child Death Review Team to the New South Wales Ombudsman. The Opposition has concerns about this part of the bill, as it did in 1995 when it was first proposed that the Child Death Review Team would be exempt from FOI applications. At that time we expressed concern but we agreed not to oppose the bill being considered; we indicated that we would keep the issue under review. Although I indicate that the Opposition will not oppose those provisions in this bill, I advise that one of the first acts of a Coalition government will be to review the process and introduce FOI provisions with appropriate ancillary provisions to protect Child Death Review Team investigators from defamation.

The Opposition believes that there needs to be some access for families seeking information in relation to the death of children. It is clear to us that transparency has not always been a feature of the work of the Child Death Review Team, because the Government has interfered in the process. We know that the Government has interfered in the process because in the past a member of the Child Death Review Team went public in a major media review of the work of the Child Death Review Team as part of an investigative journalist's report into the Department of Community Services. On that occasion Pam Greer, a member of the Child Death Review Team, spoke publicly about alleged ministerial interference in the publication of the Child Death Review Team's report.

Two years ago it seemed that details of child deaths when the children had previously been reported to DOCS or were known to DOCS more generally were deliberately left out of the report after the then Minister, the Hon. Faye Lo Po', allegedly interfered and sought removal of the data. One of the most important aspects of freedom of information is transparency. That is not a feature that one would associate with the Carr Government and the work of many of its Ministers, but it is appropriate. So while we will not oppose the provisions exempting the functions of the Child Death Review Team from freedom of information and transferring the functions of the Child Death Review Team to the Ombudsman's Office, we have the same concerns we had in 1995, that is, they remove transparency and enable interference to occur.

Our evidence in support of that contention has come from people who have been involved in the process. In the absence of being able to obtain further information through FOI, it is clear that matters such as

ministerial interference have been covered up. While statute law (miscellaneous provisions) legislation is usually non-controversial, this bill is marginal. However, as this is probably one of the last bills to be dealt with before the end of the session, the Opposition will not seek to excise those provisions at this time. The Coalition has given the commitment that in government it will review this provision.

Reverend the Hon. FRED NILE [8.49 p.m.]: The Christian Democratic Party has no concerns about the Statute Law (Miscellaneous Provisions) Bill (No 2) and we support it.

The Hon. IAN MACDONALD (Parliamentary Secretary) [8.50 p.m.], in reply: I thank honourable members for their contributions to this important debate and commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 6 agreed to.

Schedule 1

The Hon. IAN MACDONALD (Parliamentary Secretary) [8.51 p.m.]: I move Government amendment as circulated:

Page 13, schedule 1.9 [2], lines 12-21. Omit all words on those lines.

Insert instead:

- (1) Following a determination under Division 5 of Part 5 of the EPA Act, the Minister is to revise the draft fishery management strategy for the designated fishing activity concerned and make any amendment that is necessary to reflect the result of the determination.

As honourable members will be aware, proposed amendments in statute law bills are removed if a member opposes them. The Hon. Richard Jones has expressed a concern about this amendment. Accordingly, the Government is happy to remove it from the bill.

The Hon. GREG PEARCE [8.51 p.m.]: The Opposition supports this amendment. Any amendment that removes extra powers from the Minister for Fisheries is to be applauded.

The Hon. JENNIFER GARDINER [8.51 p.m.]: For the reasons advanced by my colleague, and other equally good reasons, we do not oppose this amendment. We have no objection to the other amendments to the Fisheries Management Act in the bill.

Amendment agreed to.

Schedule 1 as amended agreed to.

Schedules 2 to 4 agreed to.

Title agreed to.

Bill reported from Committee with an amendment and passed through remaining stages.

STRATA SCHEMES MANAGEMENT AMENDMENT BILL

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [8.53 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

This Bill makes some significant refinements to the NSW strata schemes management laws which will have a beneficial impact on strata lot owners and owners corporations generally.

NSW pioneered the concept of ownership of individual parcels of floor and air space in high rise buildings in 1961. Before then the only way to have any form of possession of an apartment type accommodation was to own shares in the company which owned the company title building. This gave rise to a right of occupation of a unit in the building. The NSW strata system has since been adopted around Australia and in a number of other countries. Even today, delegations from overseas come to NSW to examine our strata system to see how it may be used and adapted for their own situations.

In 1973, management and dispute resolution provisions for strata schemes were passed by Parliament enabling the more efficient administration of strata schemes to take place. The *Strata Titles Act 1973* stood the test of time as strata schemes continued to appear across the State and a great variety of strata complexes were developed. The original drafters of the legislation had in mind fairly standard 3 or 4 storey red brick blocks of flats but it didn't take long for a wide range of strata developments to appear in our city and regional areas. While high rise residential schemes are still the predominant form of strata scheme, other forms like townhouses, villas, simple 2 lot schemes, commercial, industrial and retirement village developments have also arisen.

There are now in excess of 62,000 strata schemes in NSW and 40-45 new ones are being registered every week. It is estimated that one in four of the State's population are connected with strata schemes through owning a lot or by working or living in a strata scheme. It is certainly a major form of building development in Sydney.

The strata laws were continually updated to take account of new issues and in 1996 a total overhaul took place with the passing of the *Strata Schemes Management Act 1996*.

This latest round of amendments has arisen following a National Competition Policy review of the legislation. The review, which found that the small number of anti-competition provisions of the *Strata Schemes Management Act* were justified and that the benefits of the legislation outweighed the costs, also enabled a number of emerging trends and concerns in the strata scheme area to be examined.

This Bill comprises stage 1 of the recommendations that arose from the National Competition Policy review. Stage 1 is limited to the more pressing matters associated with caretaker management contracts and proxy and priority voting arrangements. Stage 2 will cover a wide range of miscellaneous management matters that became evident during the public consultation process associated with the review. The Government proposes to introduce a Bill comprising the Stage 2 reforms in 2003.

I wish to move on to the specific detail of the Bill.

The Bill will, for the first time, ensure that strata building caretaker management rights, often sold by developers, are regulated as will be the associated contractual arrangements. Concern has arisen over the fact that owners corporations are sometimes tied up for 25 years to a contract entered into by the developer before there were any other individual owners in the scheme. A number of provisions are included in the Bill to provide some relief to owners corporations in situations where they are not satisfied with the contracts they have been locked into by the developer.

While it is recognised that many on-site caretaker managers, some of whom also have the rights to the letting of units owned by investors, conduct honest and appreciated businesses, there is a minority who are the cause of much unhappiness among owners. This area of caretaker management rights is a relatively new activity attached to some of the more recent large strata developments in Sydney and the north coast. It is particularly common in developments where the majority of units have been bought by investors for letting either to tourists, perhaps as serviced apartments, or for longer-term occupation. While the caretaker manager industry has existed in Queensland for a number of years, its emergence in NSW has been more recent.

It is important to recognise that this Bill's provisions directed towards caretaker/managers are not referring to the role and responsibilities of strata managing agents. Licensed strata managing agents may be delegated either some or all of the financial and administrative functions of the owners corporation. In other words they stand in the place of the owners corporation to the extent of their delegation. Caretaker managers cannot be given such extensive powers nor is that the purpose of their existence.

This group of people are in fact engaged to assist the owners corporation in its oversight of common property, and in repairs to and maintenance of common property. Cleaning, garden and grounds maintenance, acceptance of deliveries and security functions are the types of functions carried out by caretaker managers. They help to oversee the operation of the scheme and use of common property but in a clearly limited way. They have no power to handle owners corporation financial matters or enforce by-laws. While there are some caretaker managers who also hold strata managing agents' licences I understand that this is not the customary situation.

Caretaker managers usually own a lot in the scheme. They may have exclusive use of some part of the common property for the purpose of an office in the foyer. They are on-site to deal with issues as they arise, from coordinating the maintenance of contractors carrying out work on the lifts or the swimming pool to giving access to owners who have lost their keys, and receiving deliveries from suppliers. Caretaker managers do all of these things but again, I stress, they are not strata managing agents. The Bill goes a step further than the 1996 legislation in clearly separating the role of the strata managing agent from that of a caretaker or building manager assisting in the carrying out of certain owners corporation functions.

The main concern that has arisen over the appointment of caretaker managers by developers is that an owners corporation may be tied to a 25-year contract with little opportunity to challenge its terms. The developer has in effect decided, before there are individual owners within the scheme, what is in the best interests of the owners for the next 25 years. However it is the developer who has received the financial benefit, as the sale of caretaker management rights can be quite a lucrative transaction.

The Bill provides that no future caretaker management contract will be able to exceed a total period of 10 years. Contracts already in existence, which may have periods in excess of 10 years to go, will be allowed to run their course but from the day this Bill becomes law 10 years will be the maximum contract period for new arrangements. If after the 10-year period the parties wish to renew for a further 10 years, that is in order. The important thing is that it will be the owners corporation, with input from individual owners, both investors and owners-in-residence, making a decision on what is desirable rather than a developer with little ongoing interest in the operation of the scheme.

A major feature of this Bill is the provision included for review of caretaker management contracts where a dispute arises over its harshness and fairness. The Bill provides that in such circumstances an owners corporation may make an application to the Consumer, Trader and Tenancy Tribunal for review of the contract. The Tribunal will have a range of powers to deal with the contract ranging from cancellation of a contract or nullifying of individual clauses to variation of the contract or confirming its existing terms. This provision provides the circuit breaker that aggrieved owners corporations have been looking for. No longer will they have to endure another 15 or 20 years of a contract they believe is not in their interests. There will be a very accessible and low-cost opportunity for review through the Tribunal. As this is new territory and as complex contractual arrangements could be under challenge, the Tribunal may decide to have a panel of up to 3 Tribunal members hear the case or utilise the Tribunal's powers to have expert assessors assist it in its deliberations. Depending on the nature and outcome of the case, the Tribunal will have the power to award compensation to either of the parties involved.

Applications to the Tribunal will only be able to be made by the owners corporation concerned and individual lot owners in the scheme will not be able to launch such an application. This is in recognition of the fact that one disgruntled owner should not be able to pursue a personal beef against an on-site caretaker manager and that an application should only arise when it is clear that a majority of owners are dissatisfied. I will shortly explain how the proxy voting provisions of the legislation are being overhauled to ensure that proxies are not mis-used to block an owners corporation from lodging an application in respect to a caretaker management contract.

In the consultation process leading to the introduction of this Bill, caretaker managers pointed out that many contracts already have clauses providing remedies to situations where an owners corporation seeks to terminate the arrangement. This Bill does not interfere in that process and if the parties wish to use contractual provisions to pursue a dispute or to seek cancellation of a contract, that is their prerogative. However, if an owners corporation, despite a dispute resolution clause in a contract, wishes to access the Tribunal under the provisions of this Bill, that will be available to them. Importantly, this particular provision of the Bill will apply to contracts already in existence.

One of the most common complaints over caretaker management contracts is that people buying into a scheme are not always aware of the length or nature of contracts already in existence. The Bill addresses this aspect by requiring owners corporations to declare this information in the section 109 certificate provided during the conveyancing process. A second provision will require owners corporations to make these contracts available for inspection. These two measures should ensure that there is much less likelihood that a purchaser of a strata unit will be unaware of an existing long-term caretaker management contract when he or she buys into the scheme. Of course, in some situations, the existence of a caretaker contract may have positive implications as an investor who does not intend to occupy the premises may be comforted by the fact that there is someone on-site to look after his or her interests more closely.

A new provision is created by the Bill to further limit decisions made in the initial period of a strata scheme. The initial period is the time between registration of the scheme and the stage when one third of the lots have been sold. During the initial period the developer, if the building is a newly erected one, is still largely in control and some consumer protections are included to lessen the possibility that the minority lot owners will be disadvantaged. A caretaker management contract entered into during the initial period will only be able to last for a period extending to the first annual general meeting of the owners corporation. However, at that first AGM the owners corporation will be free to ratify a longer contract if that is its desire. The important thing is that there will be input from the people who live in the scheme, or who own lots in it, in determining who will be engaged for any long term caretaking contracts. It will be the owners corporation deciding who helps to look after their building rather than being dictated to by a developer who eventually goes off the scene.

I referred earlier to some changes to the proxy voting provisions of the *Strata Schemes Management Act*. The Bill limits the way in which proxy votes held by caretaker managers or strata managing agents will be able to be used on resolutions which, if passed, would give a pecuniary or other material benefit to the caretaker manager or strata managing agent. This provision deals with another matter which the consultation process revealed to be an area of much consumer dissatisfaction. This concern arises over the issue of some persons in management or caretaking positions using a bundle of proxies to make decisions which financially or otherwise benefit themselves. An example would be a managing agent or caretaker using proxy votes to extend a term of appointment or to grant an increase in remuneration. The Bill will prevent the use of proxies in this way. They would also not be able to be used to delay, impede or withdraw an insurance claim or to prevent legal proceedings in regard to a caretaker agreement.

While an ethical person would not use a proxy vote in the manner described, the Bill puts beyond doubt that not only is it unethical but also void. The fact that managing agents commonly say that they would never use a proxy vote on a matter that gave them a financial or material benefit will clearly mean that they will not be troubled by this new provision.

The Bill also removes uncertainty over proxies issued prior to the commencement of the 1996 Act. That legislation placed a limit on the life of a proxy to 12 months or 2 consecutive annual general meetings whichever is the longer. Advice received is that the effect of the provision on proxies issued prior to the commencement of the 1996 Act on July 1, 1997 was somewhat uncertain and that some very old proxies may still be valid. This was clearly not intended and the Bill will put beyond doubt that all proxies have a limited life.

The Bill also makes some changes to provisions regarding priority voting in strata schemes. Priority voting rights are given to mortgagees of strata units under the current legislation. It is a long-standing provision to ensure that the financial institution's security is protected. The financial institution providing the loan has a right to vote in place of the borrower should the circumstances warrant it. Historically, the traditional lenders like the banks have rarely, if ever, used the priority voting rights they have had. While the legislation requires that mortgagees be notified of meetings where more important issues are on the

agenda, it is understandable that a bank with thousands of loans connected with strata schemes throughout the State would be reluctant to have staff attending meetings of various owners corporations on a continuing basis. However, the provision has been there for them to cast a vote at a meeting of an owners corporation if they considered that the security attached to the loan, that is the strata unit itself, was at any risk.

Loans for the purchase of strata units are now provided by a much wider range of sources and mortgagees are now sometimes the developers of schemes. Priority voting is in some circumstances more vigorously utilised and lot owners are now sometimes in the position of having no input at all into the affairs of the owners corporation. The Bill modifies the way in which priority voting may be used. A priority vote will only be able to be used for the more significant types of matters. This will ensure that lot owners who have mortgages will not be excluded from the general day to day decision making of their owners corporation. Priority voting rights will only be able to be exercised for resolutions on insurance, budgeting, fixing of levies, expenditure above a specific amount and on any matter requiring a 75% or unanimous vote to pass. The prescribed level of expenditure will be included in the Regulations that are to be drafted after the passage of the Bill through Parliament. The Department of Fair Trading will consult with interested parties on this issue before the figure is finalised.

The other change in relation to priority voting is that the mortgagee will be required to give the lot owner concerned 2 days' notice of an intention to exercise the vote before it can be used. Failure to give notice will render the priority voting right void. Consequently, a lot owner will know before the start of a meeting whether they can vote in their own right or whether the priority voter will vote in their place.

In conclusion I wish to state that the Bill overcomes some unintended impact on strata schemes solely owned by the Crown and in particular the NSW Land and Housing Corporation. Exemptions will be provided for the meaningless requirements of the legislation where, for instance, a whole building is owned by the Department of Housing and is used for public housing. The requirement to have regular meetings with lot owners, to appoint office-bearers, keep minutes, fix budget estimates and levy contributions are all superfluous where 100% of the units are owned by the Crown. It is the height of absurdity to require a Government authority to have a meeting with itself each year and to document the business of such a meeting. The Bill will overcome this obvious anomaly without removing any of the rights of occupants who will continue to have access to all of the provisions of the legislation which benefit them.

There is no doubt that this Bill will further improve the effectiveness of the legislation in dealing with issues arising in modern strata schemes. Stage 2 of the amendments to be introduced in 2003 will augment the changes contained in this Bill with a further round of improvements.

I commend the Bill to the House.

The Hon. JOHN RYAN [8.53 p.m.]: The Opposition does not oppose the bill, the main impact of which is to impose a cap on the length of time a contract of management of a strata unit can last. The bill suggests a limit of about 10 years. This issue, among others, was raised with the Select Committee on the Quality of Buildings. This is a sensible move. However, the shadow Minister in the other place raised two issues that were new to the Minister, about which the Minister said he would seek advice and provide additional information when the bill was debated in the Legislative Council. The first issue was a question from the Institute of Strata Title Management, which had taken exception to clause 40 because it calls for new contracts to have the caretaker live on the site, and that seemed anomalous. The second problem that the honourable member for Vacluse raised was that the bill restricts the establishment of concierge-style management arrangements. Again, the Minister agreed to provide some information in response to that. Other than making those two comments, the Opposition does not oppose the bill.

The Hon. IAN COHEN [8.54 p.m.]: The Greens support the Strata Schemes Management Amendment Bill, which puts in place reforms regarding caretaker manager contracts. On-site caretaker managers perform tasks such as cleaning, gardening and ground maintenance, taking care of security and accepting deliveries. They are different from strata managing agents and have different functions. Caretaker managers usually own a lot in the strata scheme. Developers have been allocating these contracts to caretaker managers before they sell any or many lots. Developers have been granting up to 25-year contracts. In return they get a good price for a particular lot. As individuals buy into the scheme they may be unaware of the contracts and are then unable to challenge the contract.

The bill sets a maximum of 10-year caretaker manager contracts. From the Greens' perspective this is still too long. It should be five years. The bill allows for the 25-year contracts to be challenged in the Consumer, Trader and Tenancy Tribunal although compensation will have to be paid in the event of termination of contract. Caretaker manager contracts will also be made available through the search process when people are buying properties. This will enable them to be warned before they purchase of any long-term contracts impacting on their lot. The Greens commend the bill.

The Hon. IAN MACDONALD (Parliamentary Secretary) [8.56 p.m.], in reply: I thank honourable members for their comments and commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

ELECTION FUNDING AMENDMENT BILL**Second Reading**

The Hon. IAN MACDONALD (Parliamentary Secretary) [8.57 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The Election Funding Act provides for the establishment of the Election Funding Authority. The authority administers the scheme that provides for public funding of elections in New South Wales. This scheme assists parties—both large and small—to participate fully in the democratic process. Under the scheme, funds are distributed in respect of elections to both the Legislative Council and the Legislative Assembly. The scheme also makes funding available for by-elections.

The Act establishes the Central Fund for the purpose of funding Legislative Council elections. About two thirds of all election funding is paid through this fund. Parties that endorse candidates for the Legislative Council and which receive 4 per cent of the vote are entitled to funding. This funding is paid directly to the party nominating the candidates, rather than the candidates themselves.

For the Legislative Assembly, the Act establishes the Constituency Fund, through which about one third of all electoral funding is paid. To be eligible for funding the candidate must either be elected at the election or receive at least 4 per cent of the total number of first preference votes polled in the candidate's electorate. This funding is paid directly to the candidate (or their agent). The party that endorses the candidate has no entitlement to the funding available in Legislative Assembly elections, even in circumstances where they incur expenditure on behalf of the candidate.

In contrast, the public funding provisions in the *Commonwealth Electoral Act 1918* (Cth) allow for all payments to be made to the party that nominates the candidate, whether for elections to the Senate or to the House of Representatives. While the Commonwealth system is not proposed for New South Wales, some minor amendments to the current Act are proposed to achieve a similar effect.

The Election Funding Amendment Bill 2002 proposes to amend the Act to permit candidates to direct the Election Funding Authority to pay any funds to which the candidate is entitled to the registered party that endorsed the candidate. Any funding payable to a party candidate who does not direct that payment be made to the party will still be paid directly to the candidate.

The bill also provides that once a direction has been made, the party and the candidate may agree to vary or revoke the direction. It is important to note that the bill will not compel candidates to direct that their funding be paid to the nominating party. This is a matter properly left to the party and the candidate. Administratively, the Government envisages that the authority will amend the forms for candidates to register for funding under the Act to include an option for the candidate to direct that the funds be paid to the party. A direction could, therefore, be made before any actual entitlement to funding has arisen. This system will streamline the number of payments to be made by the Electoral Funding Authority, resulting in improved claims processing and reduced administrative costs.

It is also worth noting that the bill does not change the provisions of the Act that require election expenditure to be properly verified. It does not increase or otherwise affect the amount of funding available for elections. Similarly, the bill provides that advance payments and pre-payments to which a party may become entitled are not to be increased or otherwise affected as a result of a direction made by a candidate.

I commend the bill to the House.

The Hon. DON HARWIN [8.57 p.m.]: We could discuss the role of money in politics all night. For example, we could talk about the fact that when, in the public interest a corporation decides to support the political process by making a donation, it passes over dollars on which taxes have been paid. That is certainly not the case with trade unions when they pass dollars over. There is far from a level playing field when it comes to money in Australian politics. This bill is a fairly simple one. It makes a change to which the Opposition has no objection. It is a sensible and timely change. The bill will allow a candidate who is entitled to public funding in relation to his election campaign to direct the Election Funding Authority to pay the funding to a registered political party, that being the party that endorsed the candidate.

My colleague the honourable member for Ku-ring-gai made a number of pertinent observations in the other place. He advised that the bill in no way increases the funding available to candidates. The honourable member also noted that it in no way reduced the accountability of candidates or political parties with regard to applying for funding. He concluded that it in no way weakened public interest in election funding in this State. I invite honourable members to consider all his remarks, because they certainly facilitated informed discussion on the bill. This change will also have the benefit of dealing with miscreant candidates. I am sure all political parties on occasion have a problem with the way that the Act passes public funding over to candidates rather than to parties, as the Federal Act does. So the change is very welcome. The Opposition does not oppose the bill.

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.00 p.m.], in reply: I thank honourable members for their contributions and commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

CRIMES AMENDMENT (SCHOOL PROTECTION) BILL

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.01 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

I am pleased to introduce the *Crimes Amendment (School Protection) Bill 2002*.

This Bill provides specific provisions under the *Crimes Act 1900* to protect school premises and premises being used for school purposes from intruders who may seek to harm staff or students.

This legislation has been developed in the context of two very important consultative meetings chaired by the Minister for Police and the Minister for Education and Training in April and August this year. It was also developed in consultation with the Attorney General's Department's criminal law experts.

The Community Parents and Police Forum was convened in April to canvass issues concerning how violence sometimes spills into our schools and disrupts the vital everyday role of teaching children.

Arising from the two meetings were a number of initiatives that have been completed. These included the creation of a Safety and Security Directorate in the Department of Education and Training.

This directorate is being headed up by former Assistant Commissioner of Police, Ike Ellis and is charged with the task of improving the physical and personal safety of our schools.

The Bill before the House today represents the implementation of another initiative supported by the Community, Parents and Police Forum.

Following the first Forum in April this year the Minister proposed new offences for assaults on staff or students to be inserted into the *Crimes Act 1900* to secure the special place all schools have in our communities.

The proposed offences focus on the status the community gives to schools as a place of education and learning that should be a sanctuary for students and staff to learn, teach and work in a safe environment.

School communities have become legitimately concerned about incidents where intruders enter school premises for the purpose of assaulting or intimidating a person working—either as staff or student—on the school site.

Schools across both the government and non-government school systems are introducing measures such as requiring visitors to report to the front office and obtain a visitor's tag.

Such measures compliment the legislative changes proposed here in this Bill and they have the Minister's full support.

The *Crimes Act 1900* provides numerous general assault provisions.

Just as schools are subject to requirements that those working in their communities be subject to working with children checks, the unique nature of a school will benefit from specific laws to discourage criminal activity on school premises.

Schools are special places and deserve special protection.

Already the law offers legislative protection from assault and guides the courts when passing sentence for criminal behaviour.

For instance the *Crimes (Sentencing Procedure) Amendment (General Sentencing Procedures) Act 2002* commenced on 15 April inserting a new provision (Section 21A) to guide courts on sentencing offenders where the victim is particularly vulnerable.

On 23 October this year, the Attorney General introduced the *Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill* which further amends s.21A to provide an aggravated circumstance where the victim is a teacher exercising a public function and the offence arose in the course of the victim's occupation.

The section also reinforces the circumstances of aggravation where a victim is vulnerable due to age, as in the case of a young student.

The existing and proposed new s.21A would apply in circumstances where schools are the venue for criminal activity that either directly or indirectly targets students or staff.

Whilst such a provision is of significant benefit, without a specific offence with an appropriate tariff, reflecting the value the community places upon school locations, the Minister remained concerned that the message should be unequivocal—intruders will be subject to harsh penalties if they enter schools to assault the people working and learning there.

Across the community, children are recognised and protected from harm where they are perceived to be at risk.

Whilst schools are statistically one of the safest places for children, there are still incidents of invasions onto school property which are particularly alarming.

The community will send the clear message in this legislation by stating quite clearly through the Parliament that incursions into schools will not be tolerated and we reiterate the fact that we cherish the safe environment that schools should be for children and young people.

The *Inclosed Lands Act 1901* provides for monetary penalties for unauthorised entry onto Government school property.

However, these *Crimes Act* reforms along with sentencing procedure principles will enhance the security of the school environment across the board.

With the existing suite of measures complemented by the Bill before the House today we will be in the best position ever to ensure that the message resonates throughout the community that schools are special places, and should be sanctuaries of learning.

The following offences are proposed by the Bill:

- (i) A person who assaults, stalks, harasses or intimidates staff or students on school property without causing bodily harm is guilty of an offence with a maximum penalty of 5 years imprisonment
- (ii) A person who assaults, stalks or harasses a member of staff or a student entering or leaving school property for the purposes of school work or duty is guilty of an offence carrying a maximum penalty of 5 years imprisonment.
- (iii) A person who assaults staff or students on school property causing actual bodily harm is guilty of an offence with a maximum penalty of 7 years imprisonment.
- (iv) A person maliciously wounding or inflicting grievous bodily harm on a teacher or student on school property is guilty of an offence that carries the significant penalty of 12 years imprisonment. This same penalty applies if the wounding occurs whilst a staff member or student is entering or leaving school premises.

These offences and penalties represent a significant new level of protection for schools.

The Minister wrote to the representatives of school bodies who were in attendance at the Forum on August with an advance copy of the Bill.

The Minister asked for the comments of the participants. These were addressed in his speech in reply in the other place and will be considered in amendments in committee in this House.

Those consulted include parent and student bodies, government and non-government school bodies and teacher representatives as well as representatives of support and administrative staff in schools.

The Minister have received input from more than one group.

Sue Walsh from the Public Service Association was quick off the mark with the concerns of her organisation. Sue contacted the Minister's office on Monday (28 October) on the draft Bill and canvassed the issue of the definition of a school.

She pointed out that proposed clause 60(D) sub clause (1) may be cast too narrowly and does not expressly include all the different types of school that are in existence such as distance education centres, schools for specific purposes and senior colleges.

As drafted this clause states;

School means

- (a) a primary or secondary school
- (b) a child care facility for pre-school age children

Section 29 of the *Education Act 1990* gives the Minister the power to create an array of different types of Government schools.

The kinds of schools that may be established include; infants schools, primary schools, secondary schools, composite schools (where both primary and secondary education are offered), schools for education of specific age groups, schools for children with disabilities as well as specific secondary schools such as senior campuses, selective schools, specialist schools and single sex schools.

It is certainly the intention of the Government that all these kinds of schools are covered by the legislation. The advice of the Parliamentary Counsel as to the need for amendment for the sake of clarity on this issue has been sought.

The PSA also pointed out that for clarity the term pre-school in the draft as circulated at clause 60(d) sub clause (2)(c) should be replaced with the term *before school* in order to ensure that a technical reading of the legislation does not prevent the higher tariff for a crime perpetrated where a victim is on the premises of a school for *before school care* rather than a pre-school.

This has now been changed in the First Print before the House.

I also thank Dr Brian Croke from the Catholic Education Commission who wrote to me on 24 September this year with a number of recommendations concerning the then proposed draft of a Bill.

The Minister met the CEC on Monday (28 October) to provide them with a response and further input was forthcoming.

Dr Croke raised an issue that will be of interest to members here today.

The CEC were concerned that the bill not be drafted so as to create unnecessary litigation in the school environment.

This is taken into account and I reiterate here that this is not the intention of this legislation. There should be no scope for anyone to find in this Bill the possibility of opening a door to some form of litigation against an education institution that did not already exist.

The Bill as drafted clearly states that reasonable disciplinary action is not impacted upon by the proposed law reform. I also reiterate that this clarification in no way re-introduces or condones forms of discipline such as corporal punishment in schools.

Rather this ensures that the day to day operation of the school is not disrupted by a vexatious student claiming this legislation somehow excuses them from appropriate disciplinary action for an infringement of legitimate school requirements.

The CEC also suggested the terms of the proposed offences extend to an assault upon a student waiting for a bus or a teacher in their home.

Both the CEC and the PSA questioned the scope of protection of the Bill for instances where the staff or student member is outside of the school grounds.

As drafted the scope is not limited to school property but includes property used for school purposes. However let me emphasise it does focus on place.

That will include playing fields and excursions to specific locations like school camps outside of the normal school grounds.

However, due to concerns about certainty it cannot include moveable activities such as bus stops and excursions to, for example, the botanical gardens or the public areas of the Zoo.

The offences must attach to the locus of the school to reinforce the message that schools are special places deserving of special protection, but more importantly to provide for certainty in prosecution and sentencing.

Existing assault provisions protect students outside of school who may or may not be in school uniform. An attempt to apply specific provisions such as these may fail in court due to lack of certainty as to the offender being aware the victim was in a special category. Whereas as far as a school is concerned, make no mistake a higher tariff applies with these very specific offences.

I emphasise that for reasons of clarity and certainty the Bill before the House focuses upon school locations and does so in order to better protect all members of school communities.

Let me re-emphasise these provisions in this new division of the Crimes Act complement existing criminal law. Where these provisions would not apply, normal assault provisions remain the law.

I commend the Bill to the House.

The Hon. PATRICIA FORSYTHE [9.01 p.m.]: The Opposition most certainly does not oppose the bill, which introduces penalties for four new offences: assaulting, stalking, harassing or intimidating a school student or member of staff on school property; assaulting or harassing a school student or member of staff entering a school; assaulting staff or students on school property; and wounding or inflicting grievous bodily harm on a teacher or student. A variety of penalties are provided for each of those four offences. In many ways the bill puts teachers in a similar position to that of police. In doing their work at school they will be protected at perhaps a higher level than other people in the community. The bill also provides a greater level of protection for students.

The bill arises out of some high-profile cases during the year when a number of gangs attacked teachers. I do not want to detract from the importance of the bill but I have to say that in many ways it does not go to the fundamental day-to-day issues in schools arising out of discipline problems. While the Government created a Safety and Security Directorate in the Department of Education and Training headed by a former assistant commissioner of police, Ike Ellis, it has not addressed many of the fundamental issues. Earlier in the

year by way of policy announcement we sought to give effect to a police in schools initiative. This has been totally misrepresented by the Government. I first learnt about this initiative from people from Western Australia and Queensland. That initiative has been in place in Western Australia since the mid-1980s. After a pilot program, it has been in operation for many years in many schools in southern Queensland.

On a trip to Canada last year I took the opportunity to visit the British Columbia Safe Schools Centre, which provides a support network for schools across British Columbia. The message I was given was that every high school in British Columbia has a police liaison officer attached, who also provides support to each of the elementary schools, which are the equivalent of our primary schools. People in Canada described that as the single most important crime prevention initiative that British Columbia has introduced. Police learn where the drug trade is at and where gang incidents will take place. Students have made friends with the police officers and are quick to inform them of problems. Let us deal with crime in a way that young people understand. They come to know the police attached to their school. It is not just about imposing penalties; it is about finding a proper preventive strategy.

We also have to deal with some of the discipline issues at schools that undermine safety for teachers. I well remember a meeting earlier this year with the deputy principal of a school who told me that as a consequence of suspending two year 10 students last year, preventing them from getting their School Certificate, she feared for her safety. She believed that one day she would walk out of her house or her school and find that her car had been damaged or that she or her family would be attacked. When teachers performing their ordinary duties within classrooms are subjected to that level of violence and fear we have not dealt with the underlying problems; we have dealt only with the symptoms. While the Opposition certainly does not oppose the bill and while we believe that it is appropriate that teachers and students be given adequate and additional support on school property, we believe that the Government could have done more. Police in schools is an issue which we have long promoted and which I have championed for a very long time. It is valued particularly in Western Australia and British Columbia, Canada. The Government has missed an opportunity to bring in a measure that would redress some of the fundamental problems that exist within our schools—safe as they may be.

Reverend the Hon. Dr GORDON MOYES [9.05 p.m.]: The Christian Democratic Party supports the Crimes Amendment (School Protection) Bill, the object of which is to amend the Crimes Act 1900 to include specific offences relating to the assault, harassment, stalking and intimidation of students and staff of schools on school premises or while entering or leaving school premises. The bill is very important. Providing a secure place for education is fundamental to the task of education. Growth by students involves not only educational understanding but also the emotional and psychological security of students—and less stress upon academic staff. The Christian Democratic Party supports the bill.

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.06 p.m.], in reply: I commend members for their energetic contributions, particularly the Hon. Patricia Forsythe. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 4 agreed to.

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.07 p.m.], by leave: I move Government amendments Nos 1, 2, 3 and 4 in globo:

No. 1 Page 3, schedule 1, proposed section 60D (1). Insert after line 7:

member of staff of a school includes a person who performs voluntary work for the school.

No. 2 Page 3, schedule 1, proposed section 60D (1), line 9. Omit all words on that line. Insert instead:

(a) an infants school, primary school or secondary school (however described), and

No. 3 Page 3, schedule 1, proposed section 60D (1). Insert after line 13:

school student includes a child attending a child care facility.

No. 4 Page 3, schedule 1, proposed section 60E, line 25. Omit "on school premises". Insert instead "at schools".

I seek leave to incorporate in *Hansard* my remarks in support of the amendments.

Leave granted.

Government Amendment Number 1

This amendment will change the wording to include a person who performs voluntary work for the school to be treated the same as a staff member for the purposes of offences prescribed under the Bill.

This amendment arises from a number of submissions stating that the Bill as drafted does not specifically protect persons legitimately on the school premises doing volunteer work at the same level as the proposed offences protect staff.

Government Amendment Number 2

This amendment ensures that all those premises currently recognised as schools are covered by the legislation.

The proposed provision is now drafted to include an infants, primary or secondary school "however described".

Parliamentary Counsel advise this amendment will capture all schools including those of a composite nature, stand alone senior or junior campus, schools for specific purposes and all other types of schools as now able to be established.

Government Amendment Number 3

The definition of a student is clarified to include those children attending child care facilities.

Government Amendment Number 4

This amendment ensures reference to "schools" is consistent and there should be no confusion as to what constitutes school premises. A school is "school premises" as are those things included in Clause 60D sub clause 1 whilst being used for the purposes of the school.

The Hon. PATRICIA FORSYTHE [9.08 p.m.]: The Opposition supports the amendments. They pick up concerns that the Opposition has raised.

Amendments agreed to.

Schedule 1 as amended agreed to.

Schedule 2 agreed to.

Title agreed to.

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

STATE REVENUE LEGISLATION AMENDMENT BILL

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.10 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 granted.

The State Revenue Legislation Amendment Bill contains amendments to the *Duties Act 1997*, *Land Tax Management Act 1956*, *Petroleum Products Subsidy Act 1997*, *Stamp Duties Act 1920* and *Taxation Administration Act 1996*.

I will deal with the amendments to each Act in turn.

Duties Act 1997

The *Duties Act 1997* is the product of an inter-jurisdictional project to rewrite stamp duties legislation. This project resulted in substantial changes to most forms of stamp duty to provide improved levels of uniformity between the States. Although many provisions relating to mortgage duty are uniform, agreement was not reached in relation to the treatment of mortgages over property in more than one jurisdiction.

Revenue offices in other States have undertaken a review of mortgage duty, and have developed a model for apportioning duty between the States on the basis of the property used as security at the time advances are made. Adoption of the model in the Bill represents a change from the current New South Wales mortgage duty provisions which apportion duty on the basis of the property used as security at the time of execution of the mortgage, subject to credits for duty paid in other States.

The model is currently used in Victoria, Tasmania, and Queensland. A similar scheme is already in place in South Australia and Western Australia. The Territories do not impose mortgage duty.

The model includes provisions intended to keep compliance costs to a minimum. For example, the model adopts a list of common reference points at which time the value of the property used as security is determined. The same point is used in each State to determine the value of the property for the purpose of apportioning duty.

The model also simplifies the method of stamping mortgages, by providing for the optional stamping of a single written statement, covering all mortgages in the package. The same statement can be used in each State, resulting in a reduction in the cost of compliance. To further avoid delays, the model allows mortgages or statements to be stamped prior to an advance being made.

Liability to stamp duty has historically been determined by the law in place at the time of execution of the document. Under the new model, all advances and further advances under mortgages that have been executed since mortgage duty was introduced in 1975 will be chargeable with duty under the new provisions. This approach will result in administrative savings and a reduction in compliance costs.

The Bill also extends a number of concessions and exemptions from mortgage duty.

Where a loan is refinanced, a duty concession applies to the new mortgage that is taken to secure the amount of the balance outstanding. The concession effectively puts the mortgagor in the same position as if the refinancing had not occurred by deeming the new mortgage to be stamped to the same extent as the earlier mortgage.

A "refinancing" is generally identified by reference to "the same property" and "the same borrower". The current provisions, however, identify circumstances where the borrower or borrowers under the new mortgage are not required to be identical to the original borrower, for the exemption to still apply. These only apply where the borrowers are natural persons and are usually where there has been a death or divorce.

However, loans to corporations can also involve changes to the borrowers over time.

It is consistent with the existing exemption to allow members of a corporate group to retain the benefit of stamp duty paid on an earlier mortgage after refinancing. The Bill provides that, where the borrower under the earlier mortgage is a corporation, related bodies corporate are taken to be "the same borrower" for the purposes of the refinancing exemption.

The Bill provides for another exemption in relation to mortgage duty. Employees who borrow from their employer to participate in an offer to acquire shares in their employer may be asked to enter into a mortgage to secure a loan to finance the share offer. These are usually small amounts where the mortgage duty involved is only \$5. In many instances the duty would not be paid, as neither party would be aware of the liability to duty.

The Bill will exempt these types of mortgage documents where the total advance does not exceed \$16,000.

To enhance Sydney's position as a global financial centre, an exemption from marketable securities duty has been provided for a range of public unit trust mergers. The exemption will allow trusts whose administrative costs are high to merge with larger or growing trusts without incurring a duty liability. Managers with unnecessary numbers of NSW trusts will be able to merge them to achieve better economies of scale and competitiveness without the additional cost of duty.

Chapter 2 of the Duties Act imposes duty on "dutiable transactions", which are a specified list of transactions in the nature of transfers. If there is a contract for sale, duty is payable within three months of the execution of that contract. Where no contract is entered into, duty is payable within three months of the transfer.

Where an agreement for the sale or transfer of dutiable property is cancelled, the purchaser under the agreement is entitled to a refund of duty (subject to certain limitations to prevent abuse of the provision). However, in cases where there is no contract, the Act currently does not contain any such provision for reassessment and refund of duty where a transfer instrument has been cancelled and the dutiable property has not been transferred.

The Bill provides that, where duty has been paid on a transfer document and the transfer of dutiable property does not proceed, the Chief Commissioner of State Revenue must reassess and refund the duty upon surrender of the transfer document to the Chief Commissioner.

The Duties Act provides for nominal duty to be paid on transfers of land arising from conversion of company title to strata title. This concession recognises that, while there is a change in legal ownership of the land (from the company to the individual shareholders), there is no change in the ultimate beneficial ownership of the property.

The Bill clarifies and strengthens this provision to apply concessional duty to all forms of conversion of title, provided the appropriate duty was paid on the original acquisition.

The Duties Act contains "land-rich" provisions that treat certain transactions over units in a unit trust as if the transaction were a dealing in the land directly. The provisions exclude unit trusts that are essentially publicly owned and traded. The definition of "public unit trust scheme" is therefore vital in determining which unit trusts are excluded from the tax base. The present definition does not clearly recognise unit trust schemes that are only accessible to wholesale investors (being superannuation and managed funds).

The Bill will clarify the definition and therefore exclude from the tax base trusts that have, as majority unit holders, public trusts.

The Bill will also clarify the definition to remove references to the Commonwealth Corporations Act so that the definition more clearly and directly identifies the type of arrangements that fall within the concept of a public unit trust scheme.

In determining whether a company or unit trust is "land-rich", the Duties Act includes land owned by subsidiaries as land owned by the parent entity. This is achieved by a notional winding up of the subsidiary so that the land and other assets of the subsidiary are included in the parent's balance sheet in place of the shares in the subsidiary.

There is an argument that the current provisions effect a "double counting" of the value of the shares, which could be used as a mechanism to avoid the land-rich provisions.

The Bill will amend these provisions to confirm that, when calculating the value of land "owned" by an entity, the proportionate value of land owned by a subsidiary is substituted for the value of the shares or units held by the parent entity.

The Duties Act does not bind the Crown in any capacity. Purchases of dutiable property by Crown bodies of any jurisdiction are therefore not subject to duty. In the past, this was the consistent policy position of all Australian States. However, most jurisdictions now impose duty on purchases by Crown bodies of other States.

The Bill will align the New South Wales position by binding the Crown in any capacity (to the extent that this is within the legislative power of the Parliament). Exemption has been retained for the New South Wales Crown unless other legislation expressly provides for liability.

Duty is imposed on transfers of specific items of "dutiable property", including certain business assets. This includes "intellectual property", which comprises business names, trading names, trade marks, industrial designs, patents, registered designs and copyright.

It is becoming increasingly common for sales of businesses to include separate consideration for the value of web sites, databases and domain names (internet addresses). Copyright may subsist in the matters contained on web sites and databases, which are therefore dutiable property. However, the domain name does not fall within any of the specified categories of intellectual property.

It is anomalous that a web site can comprise dutiable property, whereas the right to maintain an address for that web site is not dutiable property. The non-dutiability of domain names causes difficulties in apportioning consideration between the different items of property that are being sold.

The Bill will add domain names to the list of matters comprising intellectual property for the purposes of determining dutiable property.

The Duties Act contains a provision to ensure that ad valorem duty is not paid more than once on what is essentially the same transaction. The Bill amends this provision to clarify that this extends to a declaration of trust where duty has been paid on an earlier declaration of trust of that same trust.

Land Tax Management Act 1956

For land tax purposes, a special trust is defined as a trust in which none of the potential beneficiaries are regarded as owners, and includes a discretionary trust. The effect is that where the trustee of a trust is the only person who is liable for land tax on trust land, the trust is not entitled to the tax free threshold (currently \$220,000) and instead pays the flat rate of tax of 1.7% of the land value of trust land. None of the beneficiaries are liable to pay land tax on trust land. In contrast, beneficiaries of a fixed trust are assessed on their respective interests in the trust.

This method of taxing special trusts ensures that owners of land are not able to establish multiple trusts to hold various interests in land, and claim multiple tax free thresholds. It also simplifies the assessment process by avoiding the need to tax both the trust and the beneficiaries.

The Bill clarifies the definition of special trust by replacing the existing definitions of "special trust" and "discretionary trust" with a definition which would apply the special trust provisions to any trust in which no person other than the trustee is deemed to be an owner.

The Bill also includes a specific exemption for trusts that are created for the benefit a person with an intellectual or physical disability, or an under-age person, and retains exemption for charitable trusts and trusts created by a will.

A trustee of a fixed trust will be required to notify the Chief Commissioner of the beneficiaries of the trust, and to allow the Chief Commissioner to classify a trust as a special trust if the trustee does not do so.

The Bill closes a loophole in the current legislation which allows the exemption for a principal place of residence to be claimed where one of the joint owners of a home is a special trust, and the trustee is a natural person.

Under the current legislation, land used and occupied as the principal place of residence of an owner is exempt from land tax provided the owner, or all of the owners in the case of jointly owned land, is a natural person. The legislation does not allow an exemption where the owner-occupier is an owner simply in his/her capacity as a trustee.

Under the current provisions an owner/occupier could own one per cent of a home in his or her own right, and ninety nine per cent as trustee of a special trust and still be eligible for the exemption.

The Bill closes this loophole by removing eligibility for the exemption where a special trust has an interest in the land.

Petroleum Products Subsidy Act 1965

The Petroleum Products Subsidy Act regulates the payment of subsidies under the zoning scheme which applies along the New South Wales/Queensland border.

The subsidy scheme allows petroleum wholesalers and retailers located in northern New South Wales to compete on an equal footing with their Queensland counterparts, who receive a subsidy from the Queensland Government.

The Bill removes or modifies a number of provisions which have become redundant as a result of the transfer of responsibility for payment of off-road diesel subsidies from the States to the Commonwealth, in conjunction with the introduction of the GST in July 2000.

In addition, the Bill strengthens certain administrative and enforcement provisions.

For example, the Bill makes it an offence to sell or consume subsidised petroleum products in contravention of the legislation unless the relevant subsidy is repaid to the Chief Commissioner within a specified time frame.

Sellers of subsidised fuel other than service stations will be required to include details of the amount of the subsidy on their invoices.

The Bill makes it an offence for purchasers to falsely represent that they are entitled to purchase subsidised fuel.

The maximum penalties for these new offences is 100 penalty units, or \$11,000, which is the same as most of the penalties for existing offences.

The Bill replaces detailed and onerous record keeping requirements which are currently set out in the Regulation, with a general record-keeping requirement.

In addition, the Bill transfers from the Regulation to the Act, certain provisions relating to subsidy claims, the maximum subsidy payable and the Chief Commissioner's powers of investigation.

NSW currently pays an average of about \$3.3m per month in zone subsidies, of which about \$1.2m per month is for on-road diesel and \$2.1m is for motor spirit. The amendments contained in the Bill will minimise the risk of revenue loss due to fraud by sellers and consumers.

Taxation Administration Act 1996

The Revenue Laws (Reciprocal Powers) Act 1987 was part of legislation introduced in each State and Territory and the Commonwealth to enable the enforcement of the taxation laws of each jurisdiction by means of the exchange of information and the conduct of investigations.

At the time of its introduction, the reciprocal powers arrangements applied common provisions to all tax investigations by and on behalf of other jurisdictions. Since then, the Taxation Administration Act has adopted common provisions for each NSW taxation law in relation to investigations by NSW tax officers. However, the two Acts are not entirely consistent. In addition, there is some overlap between the information disclosure provisions in the two Acts.

Until now, the two Acts could not be merged as the reciprocal powers provisions also applied to some revenue laws that were not, at the time, under the administration of the Office of State Revenue. This problem has now been resolved by the transfer of the administration of betting tax and gaming machine tax to the Office of State Revenue.

Incorporating reciprocal powers for tax investigations in the Taxation Administration Act will eliminate the inconsistencies and overlap between the two Acts, and would be consistent with the arrangements in place or being adopted in other jurisdictions.

The Office of State Revenue currently undertakes compliance audits and investigations in relation to State taxation laws and other matters under the Office of State Revenue's administration, such as the First Home Owner Grant.

Undertaking compliance audits on behalf of other agencies would provide an opportunity for improved efficiency and effectiveness of the Office of State Revenue's operations, as it would involve joint audits for State taxation purposes as well as for compliance with other laws. It would also send a strong message about agencies working together to improve compliance levels.

There are potential benefits for efficiency and effectiveness in allowing different government agencies to cooperate in compliance audits. The Bill therefore authorises the Chief Commissioner of State Revenue to enter arrangements with other public authorities for the exercise of investigative and audit functions under non tax laws. The Bill will also authorise the Chief Commissioner to exercise such functions in conjunction with an investigation under a taxation law.

The exercise of this function would, of course, be subject to the other public authority being authorised to make such arrangements.

I commend the Bill to the House.

The Hon. JOHN RYAN [9.11 p.m.]: The Opposition does not oppose the State Revenue Legislation Amendment Bill. It is the product of an interjurisdictional project to rewrite the stamp duties legislation. It is incomprehensible but sensible legislation. Noting the Government's continuous appetite for taxation, the Opposition supports the bill.

Reverend the Hon. FRED NILE [9.11 p.m.]: The Christian Democratic Party supports the State Revenue Legislation Amendment Bill. This legislation re-emphasises the Government's—

The Hon. John Ryan: Commitment to taking money.

Reverend the Hon. FRED NILE: Yes, its anxiousness to take as much money as it can from as many people as possible. Many people are unhappy about the land tax measures and, even though amendments have been made to the payroll tax provisions, they are also causing concern. Stamp duty should be examined because of the building sales boom that is reaping the Government a huge increase in stamp duty income. That should be reviewed as a major priority to take pressure off young families trying to buy a first home.

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.12 p.m.], in reply: I thank honourable members for their comments on this bill. As usual, they were very erudite. The Government will take due consideration of them. I commend the bill.

Motion agreed to.

Bill read a second time and passed through remaining stages.

COURTS LEGISLATION MISCELLANEOUS AMENDMENTS BILL

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.12 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 granted.

This Bill proposes miscellaneous amendments to legislation affecting the operation of the courts of New South Wales.

Late last year, Parliament passed the Justices Legislation Repeal and Amendment Act 2001, the Criminal Procedure Amendment (Justices and Local Courts) Act 2001 (the CPA Act) and the Crimes (Local Courts Appeal and Review) Act 2001. This legislative package will replace the Justices Act 1902, a complex, disjointed, procedure orientated and difficult to understand piece of legislation, which sets out the procedures to be followed for criminal cases and statutory applications in the Local Court.

Given the magnitude of the changes brought about by the Justices Act reform package, it was necessary to delay commencement until new rules of court were prepared and agencies could make necessary preparations to implement the new procedures. The Local Court Rule Committee has now drafted the rules to support the package and other agencies are working on their implementation plans.

In the process of drafting the necessary rules, the Local Court Rule Committee has identified a number of minor areas where legislative amendment is required to facilitate the introduction of the new operational procedures, to clarify the requirements of a new section or to ensure consistency with the current regime.

Schedule 1 of this Bill makes a number of consequential amendments to the Crimes Act 1900, the Criminal Procedure Act, the Gaming Machines Act 2001, the Liquor Act 1982, the Local Courts Act and the Protection of the Environment Operations Act 1997.

Schedule 1.1 will amend section 562A of the Crimes Act 1900 to make it clear that those people who are currently authorised to issue a complaint and summons in relation to apprehended violence orders will continue to be able to do so. There was a concern that the Justices Act reform package may have inadvertently restricted the class of people who could issue such processes.

Schedule 1.2[1] and [5] will amend sections 50 and 175 of the Criminal Procedure Act which set out the requirements for the contents of a court attendance notice. The sections introduce new terminology which may be ambiguous. It was not intended that the Justices Act reform package change the law in relation to the contents of the initiating process therefore sections 50 and 175 will be amended to more closely reflect the language of the current law.

Schedule 1.2[2] will amend sections 51 and 176 of the Criminal Procedure Act which provide that a court attendance notice may not relate to more than one offence. This restriction will cause significant problems for the police when they issue Field Court Attendance Notices. The benefits of being able to issue Court Attendance Notices out in the field, without having to come to court to file the documents, would be lost if police had to issue multiple Notices where a person was being charged with a number of offences. The Bill will repeal these sections.

Schedule 1.2[3] will amend section 88 of the Criminal Procedure Act to make it clear that a deposition made by a dangerously ill person so that the person's evidence is not lost is an exception to the general rule that a written statement made by a person who has since died is not admissible in committal proceedings.

Schedule 1.2[4] will amend section 158 of the Criminal Procedure Act which requires transcripts of committal proceedings in Local Courts to be certified. The certification requirements are unnecessary and are an impediment to electronic transfer of transcripts to parties and between court registries. The amendment will remove the certification requirements and to include a discretionary power for the court to exclude a transcript if there is some doubt about the accuracy of the document.

Regulations can be made under the Justices Act to exempt the prosecution from serving a brief of evidence in minor matters commenced by penalty notice or where it would be unnecessary and impractical to prepare a brief of evidence. This saves prosecuting authorities from preparing and serving briefs of evidence in thousands of minor matters such as traffic infringement cases. There is currently no equivalent power under the Criminal Procedure Act. Schedule 1.2[7] will amend section 187 of the Criminal Procedure Act to allow regulations to be made to prescribe a class of actions where service of a brief is not required thereby making the new legislation consistent with the current law. A consequential amendment will also be made to section 183 to make it consistent with s.187.

Section 240 of the Criminal Procedure Act sets out a procedure for the recall of warrants. This section does not reflect what is intended to be the practice in this area. Schedule 1.2[8] to [10] will amend section 240 to enable the Local Court to cancel warrants if requested to do so by the person who originally requested the warrant or if it is appropriate to do so. It will then be the responsibility of the person holding the warrant rather than the Court to actually dispose of the warrant.

Section 313 of the Criminal Procedure Act was adapted from section 147 of the Justices Act 1902. Subsections (1) and (2) refer to "warrants issued under this Act". This terminology was suitable in the Justices Act 1902 because all warrants relating to proceedings in Local Courts were issued under the Justices Act. The Justices Act reform package will allow warrants to be issued under the Criminal Procedure Act 1986 and the Local Courts Act 1982. Schedule 1.2[11] to [15] will amend section 313 to make it clear that the provision applies to warrants issued under the Criminal Procedure Act or any other Act.

The amendments to the Liquor Act 1982 and Gaming Machines Act 2001 will address anomalies arising as a result of the Justices Act reform package.

Schedule 1.3 will amend section 196 of the Gaming Machines Act to remove references to "information" which is an antiquated term found in the Justices Act 1902 which is scheduled to be repealed when the Justices Act reform package commences.

Sections 14 and 15 of the Liquor Act respectively provide the Licensing Court with discretion to adjourn matters and amend applications in both criminal and civil matters. These sections are to be omitted by the Justices Act reform package. Schedule 1.4 will reinstate the effect of these sections in relation to non-criminal applications thereby ensuring that uniform procedures are adopted in the Local and Licensing Courts.

Court fees for matters in the Local Court are currently set out in the Justices (General) Regulation 2000. This regulation will be repealed when the Justices Act reform package commences. There is no provision in the Local Court Act 1902 to make regulation to set fees. Schedule 1.5[1] includes a regulation making power in the Local Court Act to allow fees to be set. In addition, Schedule 1.5[5] includes a transitional provision which will allow the current regulation to remain in force until a new regulation is made.

This Bill will also clarify the rule making power of the Local Court. Each of the Acts in the Justices Act reform package confer various rule making powers on the Local Court Rule Committee. It is preferable, for consistency with other courts, that the Local Court Rules be made under the Local Court Act 1982 rather than having separate rules made under each of the Acts. Schedule 1.5[2] and [3] will amend section 28A of the Local Court Act 1982 to make it clear that rules can be made under that Act even if the rule making power is conferred on the Local Court Rule Committee by another Act.

Schedule 1.5[4] will re-enact in the Local Courts Act, a provision currently contained in the Local Courts (Civil Claims) Act that makes Local Court practice notes subject to the disallowance and publication provisions applying to regulations. Schedule 1.6 makes the consequential amendment to the Local Courts (Civil Claims) Act to remove this provision from that Act. The amendments will make it clear that all practice notes and not just those relating to civil procedure are subject to disallowance and publication provisions.

The Justices Act reform package will amend s.268 of the Protection of the Environment Operations Act 1997 and in doing so, will inadvertently remove the reference which identifies against whom a noise abatement order may be sought. Schedule 1.7 clarifies against whom such an order can be sought.

Schedule 2 of the Bill deals with amendments relating to electronic case management for courts.

Two years ago, Parliament passed the Electronic Transactions Act. That Act formed part of a national scheme developed by the Standing Committee of Attorneys General which was designed to remove any doubts about the validity of electronic transactions and to facilitate the implementation of electronic commerce by both public and private sector agencies.

It was recognised, however, that the Act did not fully address the special issues which arise for judicial bodies in relation to electronic transactions. For this reason, the Electronic Transactions Regulation 2001 excluded transactions relating to judicial proceedings from the operation of Division 2 of Part 2 of the Act dealing with the giving of information in electronic form, the use of electronic signatures, the production of documents in electronic form and the retention of information in electronic form.

In the two years since the Electronic Transactions Act was passed, much work has been carried out on developing systems to enable the public to deal electronically with courts and tribunals.

Earlier this session, Parliament passed the Courts Legislation Further Amendment Act 2002 which amended the Land and Environment Court Act to facilitate the introduction of electronic filing of applications in Class 1, 2, 3 and 4 matters in the Court. The Court will shortly be implementing its new eCourt system to enable on-line lodgment of originating and other documents and fee payments, service of documents and remote case enquiries.

My Department is also working on a new computerised case management system for the NSW Supreme, District and Local Courts and the Sheriff's Office. The system will provide common software to all NSW courts, allowing information to be exchanged electronically between each court, justice agencies, the legal profession and court users in general. It will offer the facility for creating an electronic court file containing every item that would normally be held on a court's paper file.

As with the Land and Environment Court, there are legislative impediments to implementing an electronic case management system in the Supreme, District and Local Courts. Because the Courts operate under a number of different Acts, a slightly different approach has been taken to that taken for the Land and Environment Court, which operates under a single Act of Parliament.

Rather than specifically amending each Act to remove impediments to electronic commerce, the amendments in Schedule 2 create a separate legislative regime which can, by Order published in the Gazette, be applied to courts establishing an electronic case management system. Whilst the initial focus of this legislation is to enable an electronic case management system to be established in the Supreme, District and Local Courts, the legislation will permit any person or body that exercises judicial, magisterial or coronial functions to be established as an electronic case management court. Such an approach recognises the move towards electronic service delivery across Government.

The specific details about how an electronic case management system will operate in a particular court will be contained in rules of court or regulations under which the particular court operates. Proposed section 14N clarifies the rule and regulation making power of courts and the Executive in this regard.

Schedule 3 of the Bill deals with amendments relating to appeals to the Court of Appeal.

The Supreme Court Act 1970 requires a party to seek leave if they wish to appeal from consent, costs or interlocutory order of a Supreme Court judge. The Bill will amend the appeal provisions in various court and tribunal legislation to ensure that the same principle applies when parties seek to appeal against consent, costs or interlocutory orders.

Schedule 4 of the Bill deals with a number of miscellaneous amendments.

Schedule 4.1 repeals an unintended consequential amendment to the Coroners Act 1980. The Community Services Legislation Amendment Act 2002, once commenced, will amend s.14B of the Coroners Act to make it mandatory for the Coroner to hold an inquest into certain categories of deaths of vulnerable children and disabled persons in care. The Coroner would be required to hold an inquest even if the death is one where the Coroner would not ordinarily hold an inquest. The State Coroner has indicated that this requirement will have massive resource implications for the Coroner's Office. This was not the intent of the legislation.

The Bill will repeal s.14B of the Coroners Act. The Coroner will still be able to hold an inquest into the death of a vulnerable child or disabled person in care where one is warranted, using the existing powers available to that office.

Schedule 4.2 will amend the Costs in Criminal Cases Act 1967 to make it clear that a certificate under the Costs in Criminal Cases Act 1967 may be granted when the is given by the Director of Public Prosecutions gives a direction that that no further proceedings be taken. The amendment will remove a doubt that had arisen as to whether a certificate could be granted in such cases due to differences in terminology between the Costs in Criminal Cases Act and the Director of Public Prosecutions Act 1986.

Schedule 4.3 will amend the Interpretation Act 1987 so as to allow rules of court to provide for forms to be approved under the rules even though some other Act or statutory rule requires such forms to be prescribed by the rules. This provision will give courts greater flexibility to approve their own forms.

Schedule 4.4 makes a number of limited technical amendments to the cost assessment regime under the Legal Profession Act 1987. Cost assessment matters are handled through the Supreme Court. The amendments will enable these matters to be handled through the electronic case management system that is being developed for the Supreme Court.

I am aware that some issues have been raised about the cost assessment scheme, which has been operating for nearly ten years. For this reason, my Department will be conducting a review of this scheme next year. Comments will be sought from the public at that time.

I commend the Bill to the House.

The Hon. JAMES SAMIOS [9.15 p.m.]: The purpose of the Courts Legislation Miscellaneous Amendments Bill is to amend the legislation affecting the operation of the courts of New South Wales. Last year Parliament passed a package of justice reform bills designed to slowly replace the complex and difficult to understand Justices Act 1902. Further to that, amendments were needed to make the reform package workable in regard to the court system and various other Acts. The legislation proposes minor changes to various bills to allow the continued operation of the courts. The legislation will allow the courts to continue operation without delays due to minor matters being brought about by changes in the 2001 reform package. The Opposition does not oppose the legislation.

Reverend the Hon. FRED NILE [9.16 p.m.]: The Christian Democratic Party supports the Courts Legislation Miscellaneous Amendments Bill. It will replace the Justices Act 1902, which is now out of date and needs to be replaced with a modern piece of legislation. Justices of the peace are concerned about how they will be affected by this legislation. We hope their views will be taken into consideration in the operation of this legislation.

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.16 p.m.], in reply: I thank honourable members for their comments. Obviously the Hon. Fred Nile burnt the candle late last night working out the historical precedents of this bill. I thank him for that. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

CRIMES LEGISLATION AMENDMENT (CRIMINAL JUSTICE INTERVENTIONS) BILL

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.17 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 granted.

The Crimes Legislation Amendment (Criminal Justice Interventions) Bill provides a legislative framework for the operation of intervention programs. The legislation enables programs that have been developed to reduce causes of offending behaviour to be given a formal legislative basis. As honourable members would be aware, intervention programs, or diversion programs as they are sometimes known, currently operate in a number of settings across the State. At times such programs are funded by State agencies and are bound by strict conditions; in other instances they are run by committed local people with varying degrees of accountability and resources. Magistrates have referred offenders to a variety of such programs with much success, and they have a clear discretion to do so. Often they know of the existence of a program first hand; in other instances they must rely on the representations of legal counsel and prosecutors as to the suitability and existence of programs in any one location or region.

This Government acknowledges the value in providing an opportunity for a person to participate in a program that seeks to address the underlying causes of their offending behaviour. It is indisputable that there is an enormous benefit to both the offender and the community in attempting to stop a person from offending through addressing these underlying issues, rather than merely delaying their offending through temporary incarceration. This is particularly so when an offender receives a custodial sentence of six months or less. I am speaking here of people who have committed offences at the lower end of the scale, not serious violent offenders, sex offenders, murderers or drug importers.

Indeed, not only has the Government acknowledged the effectiveness of this approach to minor offenders; it has also been actively promoting this approach. The highly successful trial of circle sentencing, the establishment of the New South Wales Drug Court and the development of traffic offender programs are all examples of criminal justice intervention initiatives undertaken by this Government.

However, it has become apparent that there is a need to provide a formal legislative framework or basis for the operation of such programs; not just government-run programs but also community-based programs, such as community aid panels. A framework will promote consistency, accountability and confidence that programs are being conducted appropriately and for the right type of offenders. Referral to an intervention program will be available at a number of points in the criminal justice process: as a condition of bail after being charged with the offence; as a condition of bail during an adjournment in court proceedings but before any finding as to guilt has been made; as a condition of bail after the person has pleaded guilty or been found guilty by the court but before the person is sentenced; as a condition of being discharged from the offence; or as a condition of a good behaviour bond imposed as the sentence, or as part of the sentence, for the offence.

This is not a radical step. Referral to programs for treatment or rehabilitation is already available under section 36A of the Bail Act 1978. In addition, courts have long been able to exercise their discretion under section 11 of the Crimes (Sentencing Procedure) Act 1999—previously known as a Griffiths bond—to release an offender pending sentence in order to assess the offender's behaviour and capacity for rehabilitation before imposing the sentence. A court has also been free to impose conditions on a good behaviour bond under section 10 of the same Act. This legislation consolidates and refines these existing options and provides a comprehensive regulatory framework for the operation of intervention programs across the State.

I turn now to the key elements of the Crimes Legislation Amendment (Criminal Justice Interventions) Bill. Principally, the bill amends three Acts: schedule 1 amends the Criminal Procedure Act 1986, schedule 2 amends the Bail Act 1978 and schedule 3 amends the Crimes (Sentencing Procedure) Act 1999. Schedule 1 to the bill contains the amendments to the Criminal Procedure Act 1986 and inserts a new part 9, headed "Intervention Programs". The object of the new part is to provide a framework for the recognition and operation of programs of certain alternative measures for dealing with persons who are alleged to or have committed an offence, to ensure such programs apply fairly to all persons and the programs are properly managed and administered, and to reduce the likelihood of future offending behaviour by facilitating participation in such programs.

These objects clearly reflect the intention to provide a clear and certain structure for the operation of programs to ensure that such programs are applied equitably and address the underlying causes of offending behaviour. Proposed section 175 (2) lists the purposes that an intervention program may perform. These purposes give an indication of what types of programs are intended to be covered by the legislation, including treatment or rehabilitation programs, restorative justice programs and those programs that promote the reintegration of offenders into the community. This includes the current programs of circle sentencing, community aid panels and traffic offender programs. It is not intended to extend to those post-sentence programs being conducted by the Department of Corrective Services or those being supervised by the Probation and Parole Service.

Honourable members will note that these provisions reflect a fair balance between the need to promote respect for the law and to acknowledge the position of victims and the needs of the offender. This balance is further reflected in the acknowledgement of two important aspects of the criminal justice system: the rights of victims, and the positive impact that successful rehabilitation can have on making our communities safer and more peaceful places in which to live and work. I do not think that any member can argue with these two principles: the acknowledgment and protection of the position of victims in any criminal justice process is essential to all sense of fairness and decency. Similarly, to break successfully the cycle of criminal behaviour in which some people find themselves trapped has an undeniable benefit to the individual concerned and society as a whole in terms of human and social costs. Consequently, there is considerable value in enshrining these principles in legislation.

Not all offenders will have the opportunity to participate in such programs. Proposed section 176 states that offences in respect of which an intervention program may be conducted include summary offences and indictable offences that may be dealt with summarily. Section 176 (2) lists a number of exceptions. An offence involving malicious wounding or grievous bodily harm, under sections 35 and 35A (1) of the Crimes Act, cannot be dealt with through an intervention program. This reflects the Government's recognition of the community concern relating to violent crime. Similarly, offences involving sexual violence, such as offences under division 10 of the Crimes Act, and those concerning child prostitution and pornography, are not covered by this legislation for the same reasons. Other offences that are specifically excluded include an offence of stalking, any offence involving a firearm and offences involving drug supply. Proposed section 175 states that the regulations may declare a program an intervention program for the purposes of the legislation.

The regulations can also make provision for a range of other matters concerning the operation of an intervention program or programs, such as eligibility or restrictions on participation, applicable offences, the processes for assessing suitability of offenders, the provision of reports, the persons, bodies or organisations who may participate and the nature of their involvement, the objectives or guiding principles of an intervention program, how intervention plans may be developed and implemented, monitoring and evaluation of an intervention program, the issuing of guidelines, and so on.

The approach will not be one size fits all. Indeed, it cannot be. Intervention programs vary in purpose, in the types of offenders that they deal with and in the way they are conducted and managed. For example, the Traffic Offenders Program is conducted in a very different way to a sentencing circle. In providing for the regulations to make provisions for a range of matters concerning the operation of programs, the legislation ensures a flexibility of approach that accommodates a variety of programs and does not unduly restrict their development or stifle innovation.

The causes of crime are complex. The ways in which we address these causes are, by necessity, also complex, cutting across portfolio and agency boundaries. Under this bill, perhaps more than any other legislation, an interagency approach is required to prepare these regulations to ensure that they are considered, informed, and represent a whole-of-government approach to tackling crime. The Attorney General's Department will establish a Criminal Justice Interventions Unit that will be responsible for co-ordinating the preparation of the regulations. It will also establish mechanisms to ensure that judicial officers and legal representatives have greater access to information concerning intervention programs. It will work with both community groups and other government agencies in relation to standards for operation. This will promote greater certainty and consistency in the operation and application of programs.

I turn now to the machinery aspects of the bill, namely schedule 2 and schedule 3, which amend the Bail Act 1978 and the Crimes (Sentencing Procedure) Act 1999 respectively. The key amendments to the Bail Act 1978 concern sections 36A and 37. Section 36A already provides for bail to be granted on condition that an accused agrees to an assessment of his or her capacity and prospects for drug or alcohol treatment or rehabilitation, or actually participates in such a program. The bill simply includes the additional option of assessment for participation, or participation, in an intervention program to the section.

Section 37 currently relates to restrictions that may be imposed on bail conditions. This bill adds "reducing the likelihood of future offending being committed by promoting the treatment or rehabilitation of the accused person" to the list of purposes for which a condition can be imposed. A breach of a condition imposed under this amendment would be dealt with in the same way as a breach of a bail condition is currently dealt with. Schedule 3, which amends the Crimes (Sentencing Procedure) Act 1986, contains the amendments relating to participation in an intervention program as part of a conditional discharge or good behaviour bond.

Item [2] of schedule 3 amends existing section 5, which requires a court to provide reasons why no penalty other than imprisonment is appropriate when imposing a custodial sentence of less than six months. The bill amends that section by making it a requirement for the court also to provide reasons for not referring a person to an intervention program or other treatment or rehabilitation program. Through being required to provide reasons, the court will have to give careful consideration to the value of incarceration and rehabilitation. Its discretion to sentence as it sees fit is of course in no way impeded by the amendments.

The other key amendments refer to existing section 10 and section 11 of the Act, which relate to conditional discharge and to deferral of sentencing. The amendment to section 10 allows a court to make an order discharging the person on the condition that he or she participates in an intervention program. The court may make such an order only if it is satisfied that it would reduce the likelihood of the person committing further offences by promoting the treatment or rehabilitation of the person. If the person complies with the intervention order—that is, he or she completes the program and any plan that may be part of the program—the court can discharge without a conviction. If a person fails to comply, the court may re-sentence the offender for the original offence. In doing so the court may take into account any time spent in the program and any level of compliance with an intervention plan.

The types of matters that a court may take into account are outlined in the amendments to section 24 and are generally consistent with those already pertaining to good behaviour bonds. The mechanisms for informing the court of non-compliance and progress will generally be articulated in the regulations pertaining to the relevant program or programs. The procedural aspects of intervention orders as a condition of a good behaviour bond are contained in proposed sections 95A to 95D of the Crimes (Sentencing Procedure) Act 1999. Section 95 of the current Act specifies the conditions that must or can attach to good behaviour bonds.

The new sections regulate the circumstances in which participation in an intervention program is a condition of a bond, including referral of offenders for assessment as to suitability, the right of offenders not to participate in a program, and the consequences of not participating. Section 95A (3) makes it clear that the amendments do not limit the power of the courts to impose conditions concerning participation in rehabilitation and/or treatment programs other than those that are intervention programs. In other words, it does not interfere with current judicial discretion to refer for treatment and other rehabilitation that currently exists under the Act.

Item [5] amends section 11, which relates to the deferral of sentencing for rehabilitation or other purposes. The current section 11 is a legislative articulation of the court's discretion in relation to sentencing. The amendments make explicit that deferral of sentencing can occur for the existing purpose of rehabilitation or other purposes, but also for assessing an offender's capacity for participating in an intervention program or for his or her actual participation in such a program. The purpose of explicitly stating this is to make clear the Parliament's intention that it supports referral not just for rehabilitation—commonly thought to mean alcohol or other drug programs—but also for those interventions programs which address the underlying causes of a person's offending.

This amendment in no way detracts from the court's existing discretion to refer for treatment or rehabilitation that is not an intervention program. Clause 6 of schedule 2 makes that clear. Item [13] inserts a new part 8C, which is entitled "Sentencing procedures for intervention program orders". The part is procedural in nature, outlining the requirements relating to the court's satisfaction that the offender is suitable for the intervention program, the requirement that a court explain the obligations under the intervention program order to the offender, the non-compellability of participation in an intervention program and the offender's right not to participate, the consequences for an offender who does not proceed with an intervention order, and the circumstances in which a court may revoke an order.

In closing, I reiterate that this bill does not detract or fetter judicial discretion in any way. It simply articulates an option in relation to sentencing summary and indictable offences dealt with summarily. The bill does not create new programs; it will simply provide a framework for the effective operation of existing programs and trials that will provide greater certainty and clarity. I commend the bill to the House.

The Hon. JAMES SAMIOS [9.17 p.m.]: The purpose of Crimes Legislation Amendment (Criminal Justice Interventions) Bill is to establish the legislative framework for the purpose of allowing the operation of criminal justice intervention programs, or diversion programs as they are also known. The bill was drafted after consultation with the Attorney General, the Chief Magistrate and departmental officers regarding the use of diversionary programs within the New South Wales court system. It was decided that a legislative basis was required to monitor and co-ordinate the standards for the operation of diversionary schemes.

The bill allows such a framework to be created for programs that work to reduce offending behaviour, giving them guidelines, and provides for referral to an intervention program of assessment for suitability for participation in an intervention program as either a condition of bail during an adjournment in court proceedings as set out in amendments to the Bail Act contained in schedule 2 of the bill, or a condition of a conditional discharge for the offence or as part of a good behaviour bond imposed as part of the sentence. This is set out in schedule 3 of the bill in an amendment to the Crimes (Sentencing Procedure) Act. It also allows for the drafting of what is known as an intervention program order, which is an order agreed upon by both the criminal participants and the judicial system.

Regulations are to be created for the operation of particular programs, including eligibility for participation, eligibility for the creation and operation of such programs by particular organisations or bodies, and the continuation of reporting as to the progress of such programs. The offences listed in the Act as those disqualifying an offender from participating in an intervention program include, but are not limited to, as mentioned in the Act, serious violent crimes, sexual crimes, child sex offences, including pornography offences, drug supply offences and offences involving the use of a firearm. The Opposition does not oppose the legislation.

Reverend the Hon. FRED NILE [9.19 p.m.]: The Christian Democratic Party supports the Crimes Legislation Amendment (Criminal Justice Interventions) Bill. It arose as a result of complaints by Chief Magistrate Staunton, who was a member of this House. She retired from this place and moved to the justice system and finally became the Chief Magistrate. She suddenly announced she would stop diversionary programs with community aid panels because she claimed there was no legislative authority or framework. I was worried that her opposition was to the activity. I am happy that the Government has introduced a bill to ensure that these programs will continue. I am pleased to support this bill because those programs are very important.

Ms LEE RHIANNON [9.20 p.m.]: The Greens are pleased to support the Crimes Legislation Amendment (Criminal Justice Interventions) Bill. It is pleasant to speak in positive terms about a Government bill that amends crimes legislation. This bill goes some way towards addressing the issues that the Greens constantly raise, because 99 per cent of the time we raise them in lonely isolation. On this rare occasion the Government has adopted our language and is in keeping with our approach. Intervention programs are an attempt to address the underlying causes of crime. They are an important element of the total package that we

need to deliver community safety in New South Wales, along with drug law reform, proper resources to tackle mental illness, decent funding for public education and measures to tackle poverty, social alienation and lack of opportunity throughout New South Wales, particularly in Aboriginal communities.

The bill establishes a clear legal framework for the courts to be able to refer offenders or accused persons to programs declared by the Attorney General to be intervention programs. The need for the bill arose from a decision by the Chief Magistrate, Ms Patricia Staunton, that existing intervention programs lacked sufficient legal foundation. This decision has thrown some very important programs into chaos, and the Greens are certainly pleased that the Government is legislating to address it.

The purpose of intervention programs is to reduce the likelihood of future offending behaviour by addressing the underlying causes of offending. In itself, this is a tacit admission that only by addressing the underlying causes of crime can we make our communities safer. Longer sentences and additional offences cannot deliver safety for the public. The bill provides for several specific intervention programs. One program, known as circle sentencing, is an important and worthwhile attempt to address the significant issues faced by Aboriginal people in their interactions with the criminal justice system. In circle sentencing the magistrate, police, prosecuting authorities, the victim, the defendant and Aboriginal community representatives sit in a circle, outside a formal court, and jointly determine an appropriate sentence for the offender.

Given all we now know about the issues facing Aborigines—with the royal commission into black deaths in custody spotlighting the need to keep Aboriginal people out of prison whenever possible—initiatives such as circle sentencing are certainly to be applauded. Another form of intervention programs is known as community aid panels. The aim of these panels is to bridge the gap between police, the community and first-time offenders. These intervention programs are small but highly worthwhile attempts to address the underlying causes of crime. They are significant as an oasis of sanity against the tide of law-and-order futility. The Greens are pleased to support the bill. We only wish that Labor would exhibit these sentiments more frequently.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [9.24 p.m.]: It gives me great pleasure to support this bill. It is interesting that the Hon. Ian Macdonald is telling me to hurry up. This bill has gone through so quickly that when I became aware that it had been called on, I quickly left my office to hurry to the Chamber—

The DEPUTY-PRESIDENT (The Hon. Tony Kelly): Order! The member will confine his remarks to the subject matter of the bill.

[Interruption]

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I'll speak if I please.

The DEPUTY-PRESIDENT: Order!

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I ask the Hon. John Jobling to withdraw his comment.

The DEPUTY-PRESIDENT: Order! I have asked the member to confine his remarks to the bill.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I apologise, Mr Deputy-President. I was merely referring to the interjector. The point I am making is that we have spent the day—

The Hon. Ian Macdonald: I ask the Hon. Dr Arthur Chesterfield-Evans to withdraw that comment. The honourable member came into the Chamber late. I was about to commence my reply, and I then allowed him to contribute to the debate.

The DEPUTY-PRESIDENT: Order! The member should withdraw his comment.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The debate was between Ms Lee Rhiannon and the Hon. Ian Macdonald as I entered the Chamber.

The DEPUTY-PRESIDENT: Order! Are you canvassing my ruling?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: No, I am not.

The DEPUTY-PRESIDENT: Order! I ask you to withdraw the comment and confine your remarks to the bill.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I withdraw my earlier comment. The point I am making is that we have spent a day debating a huge increase in sentences. This bill was called on this evening, amongst a number of bills that are passing through the House very quickly. This bill almost passed through this House in the time it took me to run from my office to the Chamber. That demonstrates the lack of attention being given to preventive programs. The bill is to be praised because it provides a preventive program.

The Hon. Michael Gallacher: We don't know whether you're supporting it or opposing it.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: It does not make any difference. At this stage of my contribution, surely I am able to develop a theme before reaching that point.

The DEPUTY-PRESIDENT: Order! The member has the call. He should not stray from the bill. I remind members that interjections are disorderly.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The budget papers show that the full-time inmate population of correctional centres averaged 5,002 in 1990-91, that it increased to 7,700 in early April 2002, and that it is projected to exceed 9,600 by December 2005. I suggest that the legislation to be passed today will increase that spending to far beyond that figure. The budget papers also show that last year the cost of putting people in prison was \$602 million. The cost of alternatives to custody in 2002-03 was \$55,414,000, which is considerably less than one-tenth of the incarceration budget. The bill is welcome because it provides alternatives to incarceration; what is more, it seeks to educate judges.

Circle sentencing for Aboriginal groups and diversions are extremely important provisions. If the funding ratio continues such that it is less than 10 per cent for alternatives to prison, and legislation is rushed through the Parliament late at night, in a short space of time with very little fanfare, as occurred today with this bill, clearly our priorities are out of order in relation to court diversion programs. More attention must be given to the work of the Standing Committee on Law and Justice regarding crime prevention through social intervention, and the work of the Select Committee on the Increase in Prisoner Population. The Hon. John Ryan, as a member of that committee, did a lot of good work to reduce the number of people in prisons.

We must note the number of people in prison who are still on remand. A mental health report shows that 44 per cent of inmates are in gaol for fewer than 30 days. The administrative costs associated with such short sentences and the disruption to people's lives are of major concern. A person who lives in a flat may not be able to maintain the payment of rent for the period of his or her short sentence. It is an immense disruption to the person's life. They may have to move house, or perhaps even become homeless. These are very difficult issues to manage.

We totally support alternatives to putting people in gaol. We also support court diversion programs, which are highly cost effective. As well as passing this laudable legislation, I urge the Government to resource its programs to a level that is commensurate with the cost of keeping prisoners in gaol. I praise the Government for introducing the bill. However, it is simply not enough to put legislation on the statute books quietly; the programs must be adequately resourced and the orientation changed. But if today's legislative efforts are any indication, that is a big ask.

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.28 p.m.], in reply: I commend honourable members for their contributions. The Hon. Dr Arthur Chesterfield-Evans should realise that members of this House often do him favours. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

BUSINESS NAMES BILL

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.28 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The Bill I introduce today takes into account the dramatic changes that have occurred in the way that business is conducted across the globe and completely updates the existing legislation. The Bill will help Internet-based businesses in NSW to compete on a more level playing field in the international marketplace.

Business names have been regulated in NSW and across Australia for many years. In NSW, business names are regulated by the *Business Names Act 1962*. Registering business names allows people to identify business proprietors, thereby facilitating consumer protection. It also allows the Government to prevent businesses from using names that are offensive or misleading. It is therefore appropriate that the legislation is administered by the Department of Fair Trading.

The *Business Names Act 1962* allows consumers and traders to identify and locate those trading under a business name through the Register of Business Names. This is a publicly accessible record of the names and addresses of the registered users of a business name. It also provides information about the nature of the business itself.

To demonstrate the practical value of the Register, Members might consider the case where a consumer has received faulty goods and wishes to pursue a claim against the trader in a tribunal or court. If the trader's business has suddenly closed down or moved to an unknown location, the name and private address of the business proprietor may be obtained from the Register of Business Names, allowing the consumer to pursue legal action.

The Register of Business Names also helps safeguard the goodwill built up by a business.

Whether deliberately or accidentally, businesses sometimes "pass themselves off" as - and take customers from - more established firms, taking advantage of the reputation, or "goodwill" that has been painstakingly built up. The Register safeguards goodwill by allowing businesses to identify and avoid business names that are already in use. In this way, accidental 'passing off' is avoided.

The Department of Fair Trading has completed a review of the operation of the Act, consistent with the Government's commitments under the Competition Principles Agreement.

It is the Government's policy to ensure that the review process considers the full range of public benefits of legislation, and that all views are considered before any reforms are proposed. To achieve this, a Steering Committee, chaired by the Department of Fair Trading was established to conduct the Review. The Steering Committee comprised representatives from a number of Government Departments including the Department of Information Technology and Management, as well as industry associations like the Australian Retailers' Association and the Institute of Chartered Accountants.

The Review examined a range of issues relevant to the operation of the Act, notably the exponential growth in the use of electronic commerce and the Internet that has occurred over the past decade.

These issues were of particular importance because the emergence of electronic commerce over the Internet has introduced a new dimension to the NSW marketplace. Consumers and traders now conduct many transactions by electronic means, in the convenience of their homes and workplaces, crossing geographical borders into a global marketplace.

Undoubtedly, electronic commerce has triggered rapid improvements in productivity and has intensified competition. However, the electronic trading environment also raises valid questions about the effectiveness of State-based business names regulation.

It was with these questions in mind that the Review examined the costs and benefits of the Business Names Act.

The Review found any costs arising from the Act to be outweighed by the benefits delivered. The Act prevents the use of unsuitable words in business names and allows consumers to obtain relevant information about a good or service, namely, details about the trader's identity. Where a dispute develops, accurate information about the trader's identity is necessary if there is to be a speedy resolution of the dispute.

Because the Act produces a net benefit, the Review concluded that it should be retained. However, the Review recommended that the legislation be fine-tuned to remove those provisions that could not be shown to produce a public benefit.

This Bill gives effect to the Review's recommendations by maintaining the best features of the current legislation and removing provisions that are outdated or that could not be shown to produce a net public benefit. The Government has also taken this opportunity to completely redraft the existing legislation so that it is expressed plainly in contemporary English.

I now turn to the details of the Bill.

The first provision of the Bill that I will discuss is an important one. It exempts businesses that are based on the Internet from having to register and display a business name. In effect, Internet-based businesses will be permitted to carry on business under an unregistered business name. In order to be eligible for this exemption, a business must take orders for its goods or services only over the Internet.

As you can imagine, only a very small percentage of NSW businesses will be eligible for this exemption. This is because traders who conduct their business in NSW off-line as well, for example by setting up a shop to sell their products, will still be required to register and display a business name.

You may ask why we are exempting Internet-based businesses in this way. We are doing so because although there may not be many of them, their nature makes traditional methods of regulation clumsy and ineffectual.

Traditional methods for regulating business names tend to focus on locating where business is being carried on. Depending on where the 'place of business' is or where orders are being solicited from, the responsible jurisdiction can then apply the appropriate regulation.

Internet-based trade is characterised by complex, cross-boundary transactions that make it extremely difficult to determine which jurisdiction is responsible for regulating a particular transaction. Internet-based businesses may have no 'place of business' in the traditional sense of the word. Even if a place of business can be established, it may not be in Australia. Indeed, many Internet-based companies are only a part of the NSW marketplace because their web site can be accessed by NSW consumers.

An article in the October 7 online edition of the New York Times illustrates my point. The article concerns a music-swapping program called Kazaa. According to the article, Sharman Networks, the distributor of the program, is incorporated in the South Pacific island of Vanuatu and is managed from Australia. Its computer servers are in Denmark and the source code for its software was last seen in Estonia. Kazaa's original developers, who still control the underlying technology are thought to be living in the Netherlands but lawyers seeking to have them charged with violating US copyright law have been unable to find them.

The jurisdictional problems involved in trying to regulate Internet-based trade are reflected in the statistics.

Of the approximately 29,000 complaints received by the Department of Fair Trading in the 2001/2002 financial year, only 57 related to e-commerce. I have seen no evidence to suggest that the online marketplace is less problematic than other trading environments. In fact, the relatively low complaint statistics are in all likelihood due to the fact that many consumers are simply unsure about where to go for help when they get into trouble.

The Review noted that the current administration of the Act does not involve pursuing domain name operators who are not based in NSW but whose web sites may be accessed by NSW consumers. As such, the Review found that the requirement to register and display a business name disadvantages NSW Internet-based traders compared with other Internet-based businesses from around the world who are not required to comply with this requirement.

If all Internet-based businesses were required to register a business name it would mean that traders - potentially from any jurisdiction in Australia or indeed, any nation of the World - would have to register a NSW business name on the off chance that their web site may be accessed by a NSW consumer.

Accordingly, the Review concluded that the benefits of ongoing regulation in this area are outweighed by the anti-competitive effects of the legislation. The Review recommended that all Internet-based businesses be exempt from the requirement to register and display a business name. This Bill gives effect to that recommendation.

That is not to say that we have given up trying to ensure fair trading over the Internet. Far from it. Just because the Internet has a global reach does not relieve the Government of its responsibility to protect NSW consumers. What we are doing is recognising that the Business Names Act is not the place to regulate the Internet.

One important step that we can take is to make sure that the Business Names Act complements the mechanisms that are being put in place to regulate the Internet. To this end, the Department of Fair Trading will be asked to consult with AusRegistry, A.U. Domain Administration and the National Office of the Information Economy. The consultations will focus on minimising potential conflicts between the administration of the Act and those organisations' policies in relation to web site addresses (or 'domain' names) and the regulation of the Internet.

Another feature of the Bill is that it links the requirement to carry on business to the trader rather than to the business name.

As it stands, the Act only allows a trader to register a business name if the trader carries on business under that name. This Bill implements the Review's recommendation that the requirement to "carry on business" be linked to the trader. As long as a trader is carrying on or intends to carry on business - any business - in NSW within the immediate future, they will be able to register multiple business names.

At the time of the Review, traders applying for registration of a ".com.au" domain name had to provide proof of registration as a business name, company, association or other recognised body. Only one domain name could be licensed per registered commercial entity. As a result, traders operating a single business had an incentive to register multiple business names in order to secure multiple domain names (to increase their exposure on the Internet).

However, there are administrative and enforcement difficulties associated with traders registering multiple business names for the purpose of securing domain names. In certain circumstances it has been difficult to determine whether a trader is 'carrying on business' where multiple business names are linked to the one business entity.

In light of these factors, the National Competition Policy Review found that the cost of monitoring compliance with this aspect of the legislation outweighs the benefit of ensuring that each registered business name is being used.

The Review concluded that traders have legitimate commercial reasons for registering multiple business names to maximise their marketplace exposure and that allowing them to do so would not compromise the objectives of the legislation. In fact, the Review concluded that such an amendment would be pro-competitive and would not compromise consumer protection.

I should point out that A.U. Domain Administration, the agency responsible for administering Australia's domain space, subsequently amended its policy to allow multiple domain names to be derived from a single business name. This development strengthens the rationale for the proposed amendment. Just as A.U. Domain Administration has found that there is little reason to limit domain names to one per entity, the Government believes that the interests of consumers are not served by limiting the number of business names that a trader may register.

Some will suggest that allowing the registration of multiple names will allow traders to prevent other companies from entering the NSW market, or will allow traders to sell business names at exorbitant prices.

In response, I would like to make a number of points.

The most important protection stopping traders from registering a business name to frustrate another trader's entry into the market, or selling the name at a huge cost, is the fact that the Register of Business Names does not confer any exclusive rights to a name. If a trader wants to gain exclusive or proprietary rights to the use of a particular business name, then they should approach Intellectual Property Australia (IP Australia) - the Federal Government agency that grants rights to trade marks - rather than simply registering a multitude of business names under the Act. The Department of Fair Trading will be asked to explore the development of formal data sharing arrangements with IP Australia with a view to providing access to that agency's intellectual property registers at the time of registering a business name.

In addition, the Bill will prohibit the registration of a business name if it is identical to or closely resembles an existing registered business name under which business is being carried on, and if the public would be likely to be misled if business were carried on under both names.

The Bill will allow someone to apply to register a business name that is similar or identical to an existing registered business name if the existing name has not been used in the previous two months. In these circumstances, the Director-General may cancel the registration of the existing name if satisfied that the public would be likely to be misled if business were to be carried out under both names in NSW.

There are also consequences for misrepresentation and misleading conduct under the Fair Trading and Trade Practices Acts. These factors will further limit the ability of those wishing to register business names for vexatious purposes.

I would like to reiterate that the intention of the Act is allow the identification of the person or company using a registered business name. As long as a trader is carrying on or intends to carry on business in the immediate future, and that trader provides correct and up to date contact details, I can see no problems allowing them to register as many names as they like.

The fees charged to register and maintain the registration of a business name will impose a limit on the number of business names that any one trader will be willing to register.

The Bill will also abolish the requirement that inter-state traders must have a resident agent in NSW.

The Act currently requires traders based outside NSW that are carrying on business within the State, (defined as establishing a place of business in NSW and soliciting or procuring business from a person in the State) to have a resident agent in NSW who accepts on their behalf any notices served.

The Review found that since the introduction of the Act in 1962, advances in communication and database technology have made it easy to locate and contact businesses based outside NSW.

Having a contact address within the State and access to trader details in other State and Commonwealth registers would ensure that there are no significant costs associated with removing the requirement to have a resident agent within the State. Accordingly, the Review recommended that the requirement be removed.

The Bill provides the Administrative Decisions Tribunal with the jurisdiction to review determinations made by the Department in relation to the registration of business names.

Presently, should a trader object to the Department's determination, the only avenue of review is through internal re-assessment by a more senior officer. This is inadequate considering the significant commercial value that is often attached to business names, as well as developments in administrative law since the Act's commencement. This change will provide for a more equitable and contemporary review mechanism.

Finally, the Bill will improve the usefulness of the Register of Business Names by removing the fee to update details on the Register and doubling the penalty for failing to update details. I am sure that these changes will assist in achieving a higher level of accuracy.

In summary, the Bill brings the regulation of NSW business names into the new millennium. It unshackles the State's Internet-based businesses from anachronistic requirements, increases the integrity of the Business Names Register, and removes anti-competitive restrictions on the number of business names that a trader may register.

I commend the Bill to the House.

The Hon. JOHN RYAN [9.29 p.m.]: The Opposition does not oppose the bill.

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.29 p.m.], in reply: I thank the Hon. John Ryan for his stunning contribution.

Motion agreed to.

Bill read a second time and passed through remaining stages.

TERRORISM (POLICE POWERS) BILL**GUARDIANSHIP AND PROTECTED ESTATES LEGISLATION BILL**

Bills received.

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

Bills read a first time.

Declaration of urgency agreed to.

BILL RETURNED

The following bill was returned from the Legislative Assembly without amendment:

Public Health Amendment (Juvenile Smoking) Bill (No 2)

POLICE AMENDMENT (APPOINTMENTS) BILL**Second Reading**

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.32 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 responds to deficiencies in the current police appointment process identified in the Interim Report of the Ministerial Inquiry into Police Promotions, which is chaired by former Assistant Commissioner Geoff Schuberg.

The Inquiry is running for a year. The Police Association has called for this review period so that the new promotions system introduced at the beginning of 2002s can be properly assessed.

There is no doubt that the timeliness of appointments has been vastly improved, through officers being moved into their new jobs, pending integrity clearances and appeals action. Officers can now move into their new jobs within 3 to 4 weeks of selection, rather than up to 8 months as was previously the case. The introduction of one year eligibility lists for police promotions has also added to the speed and flexibility in filling positions.

I will now outline the provisions of the Bill.

The Ministerial Inquiry recommended that "*Appointment arrangements within the rank of superintendent need to be more flexible to promote command stability and to ensure the Commissioner can quickly fill sensitive command positions on a permanent basis*".

Clause 7 of the Bill responds to that recommendation and I would like to thank Superintendent Bruce Lyons, Superintendent Frank Hansen and Don Freudenstein of the Police Association for working on the superintendent reforms in the Bill.

NSW Police's 120 non Police Senior Executive Service superintendents occupy critical management positions in the Force, including the 80 Local Area Command positions.

The *Police Regulation 2000* divides the rank of superintendent into two grades, superintendent and chief superintendent. There are 112 superintendent positions and 8 chief superintendent positions.

Prior to the Wood Royal Commission, NSW Police had a smaller number of superintendents with a flat salary structure. There was no legislative recognition of the chief superintendent grade.

This encouraged mobility within the rank of superintendent, with the Commissioner able to easily transfer officers within the rank.

In 1998, NSW Police followed the Wood Royal Commission recommendation to link salaries more closely to positions and job descriptions. It evaluated the responsibilities of each of NSW's 80 Local Area Commanders and introduced three levels of superintendent Local Area Command positions, each with a different salary.

Superintendents outside the LAC structure have a different salary that falls within the LAC Commanders' salary range. The grade of chief superintendent also now has a salary band within the salary range for superintendent grade positions, which makes

it clear that a chief superintendent appointment is not necessarily a promotional appointment. All five levels of superintendent salary are within an \$18,000 range.

Whilst these pay arrangements are more equitable, appointment to command positions has been slowed as it is no longer as easy to transfer officers between commands as the *Police Act* only allows officers to be transferred to positions carrying the same salary.

This means that command appointments that were once dealt with quickly as transfers must now be processed through the promotions system.

The delays inherent in the promotions system mean that critical command positions may not be permanently filled for long periods of time, with officers temporarily appointed under section 66 of the *Police Act*.

These arrangements are not conducive to command stability and prevent the Commissioner from quickly appointing qualified commanders who he has assessed as having demonstrated the skills necessary to meet the challenges of a particular command. The lack of certainty in command management has a flow on effect to all officers within the command.

In the general public sector, and amongst NSW Police's non-sworn employees, appointments may be made without advertising in certain circumstances, for example where a critical position needs to be promptly filled. The *Police Act* specifically excludes the making of these "direct appointments" in police positions, a safeguard that is strongly supported by rank and file police. However, this difference means there is no middle ground between the transfer and full promotion systems.

Parliamentary Counsel is currently drafting amendments to the *Police Regulation 2000* to abolish the separate grade of chief superintendent to remove a distinction that changes to salary arrangements have rendered artificial.

Clause 7 of the Bill amends section 67 of the *Police Act* to enable the Commissioner, if he considers it in the interests of NSW Police, to transfer a non-executive superintendent to another non-executive superintendent position, irrespective of any difference in remuneration.

Transfers will generally be made up through the various levels of superintendent in response to natural attrition.

However, there may be circumstances where an officer is transferred to a position at a lower level. In such cases, the officer will receive salary maintenance for the remainder of their fixed term appointment unless they have requested the transfer or have been transferred for misconduct or unsatisfactory performance.

Any minimal costs associated with salary maintenance will be offset by the savings in not going through the promotions process.

The new process will only apply to superintendents who have already demonstrated their command abilities in being appointed to that rank through the promotions process. It is not a policy that allows direct appointment to all superintendent positions.

It will still be necessary to advertise some superintendent positions, having regard to operational needs and natural attrition within the rank. Only inspectors and superintendents are eligible to apply for advertised superintendent positions under NSW Police's rank at a time promotions policy.

The Bill provides that the new transfer provisions will apply to future vacancies, not positions that have already been advertised. The Commissioner has insisted on this arrangement, as he believes it would be unfair to all officers to change the rules for appointment in the middle of the selection process.

The remaining provisions of the Bill deal with the requirements of officers to sign statutory declarations as to their conduct before being eligible for appointment. Promotional statutory declaration arrangements were introduced under the *Police Service Amendment (Promotions) and Integrity Act 2001*.

Their purpose was to ensure that all police officers granted a promotion have sworn an oath as to their conduct. It was not intended to use statutory declarations for any purpose other than to better assess the integrity of the officer to be promoted. This is clear in the current provisions of the Act, which prevent a failure or refusal to sign a declaration being considered for any other purpose.

The legislation, as originally introduced by the Government, provided that the Commissioner may require applicants for appointment to sign statutory declarations.

The word "may" was used, rather than the word "must", to give the Commissioner flexibility to require the signing of statutory declarations at a later stage of the appointment process, rather than at application, and to not seek declarations from civilian Police Senior Executive Service appointees (PSES), as declarations are not sought from any other civilians.

The Honourable Michael Gallacher moved an amendment that replaced "may" with "must", on the grounds that the Bill would allow the Commissioner to apply the statutory declaration requirements in an inconsistent manner.

The Ministry for Police provided Mr Gallacher with a briefing on the administrative burden this would place on the promotions system, rather than allowing for statutory declarations to be signed at interview or before selection.

The Government acknowledged there should be no discretion in promoted officers having to sign a statutory declaration and indicated its preference for making a solid commitment that all promotional appointees would be asked to sign a statutory declaration, with amended statutory declaration provisions being introduced at a later time.

Notwithstanding this, the amendment was moved and the Government understood the reasons for this.

However, the Ministerial Inquiry had found that the amended provisions have placed a significant and unnecessary strain on the promotions system.

It has taken 3 people hundreds of hours to manage the requirement to get statutory declarations for each application, which delayed the interviews for the last round of sergeant positions for weeks.

The delays were caused by officers who applied for multiple positions only supplying one declaration, when the amended legislation required a declaration for each application.

Other officers faxed a copy of a declaration, whilst the *Oaths Act* requires original statutory declarations to be provided.

Other officers wanted to discuss their complaints histories to determine what information needed to be declared.

The interviews could not be held before each applicant had been given the opportunity to fully complete a statutory declaration, as a failure to complete at that stage would prevent their being eligible for appointment.

All of these issues, when there are thousands of applications for hundreds of simultaneously advertised positions, mean the current process is unreasonably burdensome.

In line with the Inquiry's recommendations, and with discussions with the Police Integrity Commission, the Bill prevents an officer from being appointed before a statutory declaration is signed. It does not require each and every unsuccessful applicant to sign a separate declaration for each and every application.

Linking statutory declarations with the appointment process, rather than with the application process, is consistent with other integrity provisions of the Act that require integrity reports to be sought prior to appointment.

Clause 5 of the Bill also makes it clear that the preferred applicant, or selected officer, cannot be appointed on probation pending integrity check and appeal action until a statutory declaration is signed. This means statutory declarations will need to be signed at interview or as part of the formal selection.

Targeting this smaller pool will allow officers to discuss their individual concerns and taking applications at interview will ensure that properly completed original declarations are provided at the first instance.

Clauses 10 and 12 contain provisions that will also ensure persons who are appointed through the appeals or eligibility list processes are required to complete statutory declarations. The Bill contains other provisions that ensure a person can be identified as a preferred applicant, placed on an eligibility list or appeal a promotional appointment without having signed a statutory declaration at that stage, although they must obviously sign one if they are to be appointed.

The Bill also explicitly requires the Commissioner to consider statutory declarations, which was a minor omission in the original statutory declaration legislation.

The new section 39(5D) in clause 3 of the Bill makes it clear that statutory declarations need not be sought from PSES appointees who have never been a police officer in NSW or anywhere else.

Statutory declarations were always intended to be police specific. Whilst police are familiar with what constitutes appropriate conduct for a police officer, there are no clear guidelines for civilians. This means applicants for civilian PSES jobs have not known which things they need to declare.

Whilst this Bill builds on other recent improvements to the police promotions process, it is clear that more needs to be done to promote a fair and efficient promotions system that has the confidence of police. The Government will continue to make the necessary changes that are identified by Geoff Schuberg and his Inquiry team.

The Bill will make a real difference in getting the right commander into the right job at the right time and cut the useless red-tape that is strangling the promotional statutory declaration system.

I commend the Bill to the House.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [9.32 p.m.]: The Opposition is pleased to support this bill. The contribution by the shadow Minister for Police in the other House is quite detailed; it sets out the position of the Opposition very clearly. It deals with the transfer of superintendents and related salary issues as well as statutory declarations for position applications within NSW Police. During debate in the Legislative Assembly the honourable member for Cabramatta and Parliamentary Secretary, Ms Meagher, took great delight in trying to blame me for quite significant administrative difficulties the police service experienced following a Legislative Council amendment to similar earlier legislation. If the honourable member reads the debate she will see that the Hon. Michael Costa supported the amendments I moved. He believed they were worthwhile at the time. Ms Meagher should pull her head in.

Reverend the Hon. FRED NILE [9.34 p.m.]: The Christian Democratic Party supports this bill. It will give the Commissioner of Police flexibility to appoint superintendents to any superintendent position where he believes their commander skills can be best utilised. It cuts unnecessary red tape in the promotion system. There are 120 superintendents occupying critical management positions in this State. Prior to the royal commission there was only one superintendent's salary structure, so the commissioner could move superintendents easily

from various commands. Because a new five-tiered superintendents salary structure was introduced it became far more complicated. This legislation will streamline the structure and allow the commissioner to transfer any superintendent to another superintendent position, irrespective of any salary difference, if that is in the interests of NSW Police and the New South Wales community. We support the bill.

Ms LEE RHIANNON [9.35 p.m.]: The Greens do not oppose the bill. Advice from the Police Integrity Commission is that the bill has no probity implications. On that basis we will not oppose it.

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.35 p.m.], in reply: I thank honourable members for their contributions to this debate. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

PAWNBROKERS AND SECOND-HAND DEALERS AMENDMENT BILL

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.37 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The purpose of this bill is to amend the Pawnbrokers and Second-hand Dealers Act 1996 and the Pawnbrokers and Second-hand Dealers Regulation 1997 as a consequence of a national competition policy review of the legislation. The bill principally contains provisions arising in response to recommendations made in the final report of that review. The main purpose of the Pawnbrokers and Second-hand Dealers Act 1996 is to restrict the trade in stolen goods. This is done by regulating the industry through an occupational licensing regime and having evidence of identity and record-keeping requirements. The Act also aims to constrain the exercise of market power in respect of the provision of pawnbroking services and to provide a mechanism to facilitate the return of stolen property to rightful owners quickly and equitably.

As of 16 October there was a total of 1,339 licence holders under the Act of whom five were licensed as pawnbrokers only, 997 were licensed as second-hand dealers only and 337 were licensed as pawnbrokers and second-hand dealers. The review of the Pawnbrokers and Second-hand Dealers Act 1996 was undertaken in accordance with the Government's commitments under national competition policy. There was extensive consultation with the industry and other interested parties throughout the review process. The review was supervised by a steering committee and a reference group was also established to provide advice to the review. The reference group included representatives from the Pawnbrokers Association of New South Wales, the Australian Antique Dealers Association, the Law Society of New South Wales, the Consumer Credit Legal Centre and other industry and consumer groups.

The review concluded that the current licensing system provides a net public benefit and therefore should be retained. Notwithstanding that finding, the review also found that a greater net public benefit would arise from enhancing the existing licensing model. The final report recommended that the legislation be amended so that it is more effective and efficient in achieving its objectives, to reduce the regulatory burden for licensees, and for the purposes of clarification and consistency.

In this regard the bill makes further provisions regarding the application and operation of the Act, the licensing of pawnbrokers and second-hand dealers, the regulation of licensed businesses, the regulation of markets at which second-hand goods are sold, and the taking of disciplinary action against licensees and former licensees. The bill also provides a new mechanism to deal with goods in the possession of a licensee that are claimed to have been stolen or otherwise unlawfully dealt with. The bill prevents the unauthorised disclosure of personal information obtained in the course of conducting a licensed business and makes other amendments of a minor, consequential or ancillary nature.

I now turn to specific provisions contained in the bill. In the course of the operation of the Act it has become apparent that the presumption for carrying on a business has been used as a means of circumventing the need to be licensed. Consequently the bill changes the statutory presumption as to when a person is considered to be carrying on the business of buying or selling second-hand goods, so that the presumption arises when a person sells goods on more than six days—instead of 12 days—within a 12-month period.

This presumption will allow people conducting garage sales or sporting and school groups enough opportunity to sell their own household quantities of these prescribed goods while ensuring that the system of tracking stolen goods is as effective as possible. This presumption is also in keeping with similar provisions in the legislation of other jurisdictions. Licensing arrangements within the Act have been amended so that they are more effective in their objective of preventing people of unsuitable character from entering the industry. In this regard the bill provides that an individual or a corporation, and each of its directors, cannot be a disqualified person and must be a fit and proper person to hold a licence.

In addition to existing requirements the bill provides that a disqualified person is one who is: the holder of a licence suspended under the Act or a licence or authority suspended by the Fair Trading Act 1987; or disqualified from holding a licence or other authority, or have such a licence or other authority suspended, under a corresponding law of another jurisdiction. The bill also provides that a person is disqualified from holding a licence if he or she is the executive officer of a corporation that is disqualified from holding a licence; or is in partnership in connection with the business with a disqualified person. In order that the Act is consistent with other jurisdictions and other Acts administered by the Department of Fair Trading, licence conditions can now be imposed, varied or revoked at any time during the currency of a licence.

Amendments have been made to the business of pawnbroking to ensure that the requirements of the Act are effective and to clarify certain provisions. In this regard the bill provides that pawned goods must be physically kept at registered business and storage premises. This allows pawners to redeem their goods whenever possible and to ensure that such goods can be readily inspected. Specific classes of premises can be excluded to ensure that the intent of the legislation is maintained. To ensure that the tracking of stolen goods is as effective as possible a pawn ticket, and a pawnbroker's record of pledges, must, in a fair and reasonable description of the pawned goods, include every serial number, other identifying number, inscription and engraving appearing on the goods and each component of the goods.

One of the main areas of market failure in the pawnbroking industry is the imbalance of information between the consumer and the trader. As a means of addressing this important consumer issue, the Act has been amended to require a pawn ticket to incorporate or be accompanied by an itemised statement of fees and charges and the manner of determining those fees and charges. The bill requires a licensee to provide a pawnier with a prescribed notice which sets out the rights and obligations of the pawnier and a statement of the method by which the pawned goods may be sold if they are not redeemed. To ensure that a pawnier's rights are not undermined, a pawn ticket cannot exclude, modify or misrepresent the pawnier's legal rights.

To provide increased consumer protection, the bill requires that a pawn agreement cannot be varied, except by extending the original redemption period by mutual agreement. The operation of the Act has determined the importance of having all agreements in writing. To that effect the bill provides that certain particulars must be set out in writing when extending the original redemption period. The Act currently requires all unredeemed pledges to be sold by public auction when the principal lent on the goods exceeds \$50. The review concluded that this enforced method of sale does not always procure the fairest price for the goods and the costs involved in sending goods to auction often negates a potential surplus for the pawnier on the sale of the goods. Consequently, the bill allows pawnbrokers the option of selling unredeemed goods either by sale at their premises or by sale by auction elsewhere. Pawnbrokers, however, are still required to sell unredeemed goods in a manner conducive to securing the best price reasonably obtainable.

A person who has pawned goods for a lesser value than their worth but is unable to redeem those goods is entitled to any surplus proceeds from a sale of those goods. To support this right the bill provides that a pawnbroker must notify the pawnier, by way of registered mail, of any surplus proceeds of the sale of pawned goods. This is not necessary when the pawnier has requested the pawnbroker in writing not to send the notice or where the amount that may be claimed is less than \$50. To assist pawniers in redeeming their goods at the end of the redemption period, the bill requires that pawniers have the option to pay their interest on the pawn at monthly intervals, rather than at longer intervals or entirely at the end of the redemption period. To ensure that those who pawn goods are aware of all the fees and charges and the applicable interest rates, the bill provides that pawnbrokers are required to display these prominently. In the interests of consumer protection the bill provides that interest on the pawned goods is to cease at the end of the redemption period.

To maintain consistency with other consumer protection laws, the bill requires pawnbrokers to notify those with whom they have operational pawn agreements if the business is sold or transferred to another licensee. Additionally, if pawnbrokers surrender or do not renew their license, then the bill requires that they make arrangements for the redemption of pawned goods. To assist with the tracking of stolen goods, the bill requires that market promoters obtain the same kind of evidence of identity from stallholders that persons offering to pawn or sell goods are required to produce before permitting them to sell second-hand goods at the markets.

I now come to one of the most important aspects of the bill, the provision of a new mechanism for the restoration of goods that are alleged stolen or improperly dealt with and are in the possession of a licensee. The bill provides that if the theft of the goods has been previously reported to the police, then the person claiming the goods may furnish a written statement to a police officer alleging that the goods have been stolen or otherwise improperly dealt with, together with documentary evidence or a statutory declaration substantiating the claimant's ownership of the goods. The police officer may then serve a restoration notice on the licensee requiring the licensee to deliver the goods to the claimant, unless the licensee commences proceedings before the Consumer, Trader and Tenancy Tribunal, which may deal with the matter. To ensure that consumers are aware of their rights, the licensee must display prescribed notification of these rights in a prominent location.

For the purposes of tracking stolen goods, the legislation requires the capturing of detailed information about those who use pawnbroking and/or second-hand dealing services. To ensure that this information is treated confidentially the bill makes it an offence, with the exception of certain circumstances, for a licensee or other person involved in the management of a licensed business to disclose this personal information. The disciplinary provisions of the Act have been amended to ensure that those of unsuitable character are not involved in the pawnbroking and second-hand dealing industries.

In this regard the bill provides that a "show cause" can be served on a licensee as to why the licensee's licence should not be revoked on the following grounds: that the licensee, or an employee, has contravened the Act or other legislation administered by the Department of Fair Trading; or that the licensee has been convicted of an offence involving dishonesty or become a disqualified person since the licence was issued or last renewed. In order that disciplinary action can be taken against those licensees who do not comply with the Act's requirements, the bill introduces a new provision which enables disciplinary action to be taken against those who have held a licence in the last 12 months. This provision is in keeping with current legislation administered by the Department of Fair Trading.

I now turn to amendments to the Pawnbrokers and Second-hand Dealers Regulation 1997. As technology advances, certain types of goods come onto the market which are at a high risk of theft. Consequently, the prescribed list of goods to which the

legislation applies must be updated to ensure that they represent those goods that are still at high risk of theft. In this regard the bill amends the regulation to clarify that items like minidisks and DVDs are specifically included in the prescribed list of second-hand goods. The record-keeping requirements have also been amended to keep up with technology to ensure that the most valuable information is obtained. To this end, the bill provides that pawnbrokers record what is a fair and reasonable description of goods in relation to compact discs, mobile phones and items with bar codes.

In order to ensure that people are not discriminated against when using pawnbroking services, the bill has provided for more acceptable forms of identification. In this regard the bill provides that the documentation issued by the government of a foreign country is allowed amongst the kinds of evidence of identity that may be produced by a person seeking to redeem goods. As another means of providing up-to-date information about transactions involving prescribed classes of second-hand goods, the bill requires second-hand dealers to record transaction details by close of business on the date of the transaction. However, as this may not always be practical when licensees are on buying expeditions or when the acquisition of second-hand goods is at a place other than the dealer's business premises, this recording is to be done as soon as possible afterwards.

This bill enhances the existing pawnbroking and second-hand dealer licensing regime. It ensures that the objectives of the legislation—to restrict the trade in stolen goods, to provide consumer protection to those who use pawnbroking services and to provide a mechanism to facilitate the return of stolen property to rightful owners quickly and equitably—continue to be met in the most efficient and effective way. My appreciation is extended to the industry and other interested parties who made submissions to the review and in response to the exposure draft bill. In particular, I extend my appreciation to the Pawnbrokers Association of New South Wales and its members who have taken a constructive approach in the consultation process on this bill. I commend the bill to the House.

The Hon. JOHN RYAN [9.37 p.m.]: The alternative government does not oppose the bill.

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.37 p.m.], in reply: I thank the honourable member for another excellent contribution. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

ADJOURNMENT

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.38 p.m.]: I move:

That this House do now adjourn.

COMPLEMENTARY MEDICINE

The Hon. RICHARD JONES [9.38 p.m.]: I bring to the attention of the House one more time the severe problems the Government will get itself into if it continues its attack on the complementary health industry. This industry is worth approximately \$1 billion in New South Wales, with 70 per cent of the people in New South Wales visiting complementary practitioners. The attack is aimed not just at strange cures peddled by strange people; it attacks traditional Chinese medicine that has been used for more than a thousand years. It has been used by most of the Chinese community and has proved to be effective.

By attacking the Chinese community in this way the Government could get itself into an awful lot of trouble. The person leading the charge is Professor John Dwyer, who has been saying some extraordinary things in the media, not just about complementary medicine, with which he has a real obsession—he was made a sceptic by the Sceptic Society—but about breast milk. On 2 July 2001 the *Inner Western Suburbs Courier* reported him as saying that breast milk:

... is wonderfully nutritious in most ways but it contains very little iron, the same is true for cows milk...

Nature expects babies to begin to experiment with food other than breast milk after about six weeks of life.

This came under attack from Dr David Lillystone, Chairman of the Paediatrics NSW State Committee, the Royal Australasian College of Physicians; and Dr Patricia McVeagh, Visiting Paediatrician, Sydney Children's Hospital at Westmead and Tresillian Family Care Centres. The article stated:

We are very concerned about the article that appeared in the *Courier* on July 2 written by Professor John Dwyer. It contained misinformation and misleading information.

It is important that this is rectified so that parents are not unnecessarily alarmed and so that *Courier* readers have good, current information regarding children's nutrition.

The header "Breast milk is wonderfully nutritious in most ways but it contains very little iron, the same is true for cow's milk" is very misleading ...

The second major concern with the article is the advice that "nature expects babies to begin to experiment with food other than breast milk after about six weeks of life." This runs counter to good nutrition and developmental advice ...

This topic is too important to be dealt with by adult physicians—it should be left to the experts, those who work with children: paediatricians and paediatric dieticians.

An article appeared in *New Scientist* on 28 January 1989 that reviewed a book written by Professor John Dwyer called *The Body at War*. The review stated:

Sadly, as the chapters unfold it becomes clear that Dwyer's biology is not much more accurate than his geography.

The most startling of his errors concerns the chromosomes, which carry our hereditary material ...

Confusing the two strands of the DNA molecule with the two chromosomes in a chromosome pair is the sort of mistake for which a schoolchild would fail an elementary biology exam. Kind-hearted readers might be inclined to think that this is a slip of the word processor on Dwyer's part, when it first arises. But the author precludes any such charitable interpretation with two diagrams, illustrating his dreadful blunder with unmistakable clarity ...

It is hard to imagine how these diagrams came into being without the author realising the inherent contradictions they contain ...

The many other mistakes in *The Body at War* seem almost trivial by comparison ... Even on his home ground, immunology, Dwyer seems to go astray remarkably often ...

The Body at War is riddled with the Ghosts of Biology Past. A number of Horrible Mistakes which were given a decent burial years ago, rise again in these pages, to haunt Dwyer's vision of the immune system. He must surely be the only scientist left on Earth who still accepts Haeckel's theory of recapitulation—the idea that the developing embryo slavishly re-enacts the evolution of its species ...

This particular piece of biological nonsense leads Dwyer into strange and murky territory, for which he applies it to the question of why cells become cancerous ...

The Lamarckian flavour of "trying to improve on the older model" will also strike a chill into the hearts of biologists. It is a theme that runs all through the book, and even the lowly viruses are not exempt from efforts at self-improvement ...

These factual and theoretical errors are compounded by Dwyer's unhappy way with words. He uses them with all the precision of a drunk swatting flies—and with a damp newspaper at that. Unsaturated fat is used when he means saturated, and positive result (for HIV) when he means negative. He employs "antigen" in one section, to describe a splinter of wood, while elsewhere he talks of "killing" antigens. Both are wide of the mark, an antigen being a molecule, usually a protein, that antibodies recognise ...

In his efforts to explain how the immune system works, Dwyer aims low—and misses.

Dwyer is the man who is heading the witch-hunt to remove the complementary medical industry, a \$1 billion industry in this State that employs many people and provides enormous benefit to many people. In contrast, 18,000 people in Australia died because his colleagues practised bad medicine. The medical profession should take a look at itself before it attacks an industry that works in the best interests of the people.

AGED CARE COMPANION ANIMALS

The Hon. AMANDA FAZIO [9.43 p.m.]: I refer to an inconsistency confronting some people who are forced to go into aged care. It is well recognised within the community that companion animals as therapy pets play an important role in the health of aged people. A number of nursing homes and hostels have companion animals as therapy pets for their aged residents. However, problems arise when a person who resides in his or her own home or rented accommodation has a pet—a dog or a cat—and is forced to go into supported accommodation. Most nursing homes and hospitals do not allow people to bring their pets. People may have companion animals that they have cared for over a number of years and for whom they have developed a strong affection and bond. When they can no longer take care of themselves in their own home they are placed in the invidious position of having to decide whether to go into some form of supported accommodation, usually a hostel, and what to do with their pets.

Although many pounds now operate on a no-kill basis—that is a good thing—people face the decision of going into the assisted accommodation facility that they need, which necessitates the putting down of their pets, or remaining in their home for longer than they should to keep their pets. People should not have to make such difficult decisions. These are often elderly people, who are lonely, and their one friend is their pet. It may be a budgerigar or a galah, but in most cases it is a cat or a dog. People in their twilight years should not be forced to make such a decision. Consideration should be given to this problem when decisions are being made about development approvals for aged care facilities. If the accommodation is reasonably independent, such as a hostel or a townhouse that is part of a staged system of care for the elderly, people should have the right to take their pets with them. I accept that there will be provisos.

The Hon. Rick Colless: Like if it was an elephant?

The Hon. AMANDA FAZIO: No! A dog that is dangerous, bites or is noisy would not be acceptable to aged residents. In most cases, small breeds such as shih tzus and bichon frises would be suitable in that type of accommodation. Companions are not necessary in nursing homes where the residents are well beyond the stage of living independently. The presence of a pet in the day room will only evoke sad memories of the pet they had to put down in order for them to access aged care. I would ask the non-government and for-profit organisations that provide aged care to seriously consider this issue. Australia has the highest rate of pet ownership in the world. Australians love their pets and we are not doing our aged population a favour by expecting them to make this difficult decision. It is time we looked at the provision of aged care and afforded people the opportunity, if possible, to take their companion animal with them when they go into some form of aged care. Our population is ageing and this problem will only increase. We need to do the right thing by our elderly and their companion animals.

REGULATION REVIEW COMMITTEE REPORTS

The Hon. DON HARWIN [9.48 p.m.]: As it appears that there will be no other private members' days before the House rises for the election, I shall begin with a discussion on reports Nos 1/52 through to 22/52 of the Regulation Review Committee. I say at the outset that the standing and sessional orders of the House make no provision for debate on the substantial work done by honourable members serving on the joint committees of both Houses. Only Legislative Council standing committees are discussed during the one hour reserved for committee reports on Wednesday afternoons. General purpose standing committees and joint committees must take their chance on private members' day. This matter should be reviewed for the Fifty-third Parliament. Some time before the Fifty-third Parliament convenes in April or May next year, the Legislation Review Act will be proclaimed and the Regulation Review Committee will be renamed and will have much broader jurisdiction. In the course of debate on that legislation there was fairly detailed and considered debate on the history of the scrutiny of delegated legislation in this State, so I shall not go over that ground.

First, I pay tribute to the two past chairmen of the committee. Peter Nagle was an energetic Chair, who was determined to make a seemingly arcane subject like the scrutiny of delegated legislation interesting, and succeeded. By employing the dexterity for which his profession is renowned, Peter managed to construe our terms of reference broadly enough to permit us to stray into all sorts of interesting matters, as our reports show. The honourable member for Bathurst has now taken over the reins, and he is certainly a pleasure to work with. I place on record my thanks to the staff. Our committee manager was Jim Jefferis, until earlier this year. Jim had been with the committee since its inception and it was a great shock to all of us when the Parliament decided not to re-appoint him.

I am not convinced that the administration's policy of revolving committee managers is preferable to the alternative of developing and retaining corporate memory in permanent committee staff. That is a debate for another time and another place. Of course, we are delighted to have Russell Keith as our new committee manager—he will be known to many honourable members. Greg Hogg has been our legal adviser though this Parliament and Don Beattie has been the Clerk to the Committee, although he has recently retired. He has been assisted by Rachel Dart and Vanessa Pop. All of them have worked hard to ensure that committee members can make a worthwhile contribution and their efforts are very much appreciated.

The committee operates under the Regulation Review Act. In short, our role is to consider all regulations while they are subject to disallowance by Parliament. We are required to consider whether Parliament's attention should be drawn to a regulation on nine grounds under the statute, including trespass on personal rights and liberties, and the impact on business. Other grounds relate to regulatory quality, such as whether the primary legislation sanctions the making of the regulation, whether there is regulatory duplication and the clarity and efficacy of the regulation. Finally, we have a role in monitoring compliance with various provisions of the Subordinate Legislation Act. We can recommend disallowance where we think it is merited. We have the power to conduct a general review of a regulation when given such a reference by a Minister, but no such references, sadly, have been received during this Parliament. Much of the work of the committee is not reflected in tabled reports—in fact, I would suggest the majority.

The committee meets weekly when Parliament sits and considers a briefing paper on each regulation. The committee secretariat calculated in June 2000 that it has produced approximately 3,000 briefing papers on regulations ranging in length from one to 10 pages. The 22 reports that have been tabled—as of today we have tabled 26—cover extraordinarily broad range of subjects. Several of the committee's reports illustrate the key

role the committee has played in the scrutiny of legislation within Australia and internationally. Report 1/52 details the committee's hosting of the Biennial Conference of Australian Scrutiny Committees in 2000 and report 19/52 details the Inaugural International Conference on Regulatory Reform Management and Scrutiny of Legislation, which was held in the Legislative Assembly Chamber from 9 to 13 July 2001. The international conference was attended by delegates from Australia, New Zealand, Canada, United Kingdom, France, India, Italy, the Netherlands, South Africa, United States, the Cook Islands, Botswana the British Virgin Islands and Brazil.

Reports 6/52 and 14/52 record the contribution the New South Wales committee is making through the Working Group of Chairs and Deputy Chairs of Australian Scrutiny of Primary and Delegated Legislation Committees, which is focussing in particular on the tricky issue of scrutinising national schemes legislation. The impact of regulation on business was the focus of report 2/52. In our report on the Retail Leases (Sydney Airport) Regulation we found that retailers at the airport had been deprived of the protections of the principal Act. Ostensibly to facilitate the expansion of the terminal facilities for the 2000 Olympics, we found that the unintentional consequence was that the retailers remained without the standard retail tenancy protections even after the regulations had sunsetted. [*Time expired.*]

SEX INDUSTRY PLANNING LAWS COMPLIANCE

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [9.53 p.m.]: I refer to problems in the sex industry that have resulted in less than 10 per cent of businesses being able to comply with the planning laws. It has resulted in widespread violence, corruption and abuse perpetrated against people who work from home. The Disorderly Houses Amendment Act 1995 intended to decriminalise, not legalise, the sex industry. The intentions of the Act have been undermined by subsequent reviews of the legislation, interpretation by the Department of Urban Affairs and Planning, and council regulatory requirements. The complaints-based system envisaged in 1995 has been turned into an onerous, prohibitive regulatory system, with 172 variations in planning policy: one per local council. A backward glance at 1994 *Hansard* shows that Mr Carr, Dr Refshauge who was then Minister for Health, Craig Knowles who was then Minister for Planning and Urban Affairs, and other top politicians framed the 1995 Act as a piece of legislation intending to improve the health and safety of sex workers and prevent corruption.

To oversee the implementation of the legislation, Mr Carr ordered that an interdepartmental committee of senior officers oversee the implementation of the Act. By 1996 that committee had drafted guidelines for local councils but they were unfortunately abandoned. The Brothels Taskforce report documents threats, corruption potential and violence against sex workers, and said that the current regulatory practice in relation to home-based businesses is "contrary to the recommendations of the legal working party on the intergovernmental Committee on AIDS" and a number of other advisory bodies and the United Nations Declaration of Commitment of HIV-AIDS 2001. The task force suggested the remedy: a statewide exemption from the development application process for private worker home-based businesses. Unfortunately, that has not been implemented, even though both the Attorney General, Bob Debus, and the Minister for Health, Craig Knowles, support the remedy.

Local councils who have now got control of the sex industry are ill equipped to regulate the sex industry. They are exposed to political pressures on a moral issue when, in fact, it should be a health issue. ICAC identified brothels as a dangerous source of corruption for local councils, and in a lot of cases that is happening. The December 2001 laws further isolate sex workers, especially private workers of home-based businesses that are now classed as brothels under the Act. In all but two of the 172 councils, brothels can be investigated as unauthorised when they should be classified as home occupations. If they were, health workers who want to lessen AIDS and sexually transmitted diseases with the Sex Workers Outreach Program would be able to do so and continue to encourage safe-sex practices. Private workers are being pursued as part of local councils cracking down on the sex industry and mayors can claim huge successes in closing down illegal brothels when, in fact, they are simply harassing and moving on individual private workers who conduct discrete, invisible, no-amenity-impact-causing businesses.

Private workers are presumed to be competition for the brothel section of the industry, and local councils are under pressure from large brothels to close down these smaller so-called illegal unauthorised businesses. In some regions, there is only one legal sector left standing—the "McBrothels". Councils are, in effect, acting as pimps to big brothels. In council areas where councils have aggressively pursued home-based workers, the only way for these workers to operate legitimately—without paying 50 per cent of their income to big brothels—is to work on the street. The sad reality of this prudish policy is to push private workers out of

their home and on to the streets with a consequent worsening of the amenity of the neighbourhood, the health of the workers and the spreading of infectious diseases to the population in general.

The New South Wales Minister for Health is responsible for population groups identified as at risk under the national HIV-AIDS strategy. Sex workers are the only at-risk group in New South Wales handed over to councils to be regulated and that goes against the recommendations of the bipartisan report of the intergovernmental committee on AIDS, which set out the legal framework for HIV-AIDS prevention, to which New South Wales signed off as implemented after the Disorderly House Amendment Act 1995. It is important that Health takes a stronger stand, otherwise the fragmentation of private workers will lead to a large spread of the AIDS epidemic to Australia. Australia's honest policy in relation to AIDS by getting target groups to use safe-sex practices has been extremely important in stopping the epidemic of AIDS spreading to Australia. We must double that commitment at the moment because the neglect is causing grave danger to the Australian population.

LAIKI BANK RADIOMARATHON

The Hon. JOHN HATZISTERGOS [9.58 p.m.]: On 8 November of this year I represented the Premier at the Laiki Bank Radiomathon dinner in Kogarah. Originally organised in Cyprus in 1990 with the aim of raising funds for children with special needs, it has since grown into one of the largest and most important charity fundraising events in the Hellenic-speaking world. Throughout this time Radiomathon has been met with overwhelming support from the Greek Diaspora and has evolved into an annual event with activities organised in Greece, Cyprus, the United Kingdom, the United States of America, Canada, Russia, Yugoslavia, South Africa and Australia. The first Radiomathon event in Australia was organised seven years ago, and since then it has grown and flourished. International Radiomathon events have included art exhibitions of Greek and Cypriot artists, athletic and football games, puppet theatre performances and dance and music performances.

Australian fundraising events this year started in September and have ranged from a Christmas card drawing competition, a lunch function with students from St George College in Adelaide, a charity event with the South Melbourne Soccer club, a barbecue held at the Cyprus Hellene Club, the Alkaios Concert, an open day at Radio 3XY and Doriforos, as well as dance parties organised by the National Union of Greek Australian Students in Victoria and New South Wales. These fundraising efforts will result in the trust being able to provide aid to a number of worthwhile causes including the Estia Foundation, the Sydney Children's Hospital, the Thalassaimia Society in Melbourne and Sydney, Boccia New South Wales, Giant Steps Educational and Therapy Centre for Children, the Make a Wish Foundation in Melbourne and children with special needs units in schools, as well as the Agapi Foundation in Melbourne.

The focus in support of non-profitable organisations helping children with special needs quite often also includes the purchasing of medical equipment and special treatments for these children. This evidently costs a substantial amount of money and the Radiomathon fundraising should help ease the burden. The many children Radiomathon seeks to help include those with impairments and disabilities such as cerebral palsy, cardiovascular disorders, leukaemia, learning difficulties and mental retardation, cancer, hearing deficit-impairments, speech-language disorders, visual impairment-deficit and psychological disturbance.

Radiomathon's important cause also focuses on influencing and informing the community about children with special needs. The raising of community and government awareness of the plight of these children and their families not only helps to lift the confidence of these children but, hopefully, also provide them with access to greater financial support. The Government was pleased to make a contribution of \$10,000, which I presented at the gala dinner. This very worthwhile and important cause is a credit to the Laiki bank, in particular its Executive Chairman, Mr Kikis Lazarides, and its General Manager, Mr Miltos Michaelas, for driving and organising such a successful fundraising event in Australia. It is most uncommon for pleasant and positive things to be said about banks in this country but this occasion is certainly an exception.

Laiki Bank has many loyal customers nationally and, together with the bank, they were able to organise a successful range of activities for fundraising for this worthwhile cause. In the past 12 years, with the help of Laiki Bank, Radiomathon has managed to raise in excess of \$50 million for children with special needs. This admirable aim of raising awareness regarding children with special needs should, hopefully, contribute to a change in mentality in our own communities and also help alleviate many of the financial problems these children and their families face, thanks to the cash contributions raised. The quest to ensure a better quality of life for our children, especially those with special needs, is to be applauded and encouraged. I congratulate the charity on its fundraising work and wish it all the best in its future successes.

MUSLIM WOMEN CLOTHING

The Hon. DAVID OLDFIELD [10.02 p.m.]: Recently it has been suggested that the traditional dress of Muslim women may be used by terrorists to hide the carrying of weapons or explosive devices. While there has been some effort to play down such possibilities, it should be understood that terrorists have not only used the garb of Muslim women to secrete weapons. Clearly, female Muslim terrorists have played an active role in using their garments as camouflage. The recent tragic taking of hostages and subsequent murders in a Moscow theatre should have sent a clear message to the world that terrorists of the female gender can be used to devastating effect. This issue of Muslim traditional attire being taken advantage of by terrorists, this wearing of the burka or similar facial coverings, has been a concern of mine for some time.

Only recently I was asked why motorcyclists must remove their helmets when entering many public buildings, most particularly banks, due to the impediment posed by helmets with regard to identification, yet no such security consideration seems to be given to the attire of Muslim women. It is clear that Muslim women must be prepared for body searches. It is clear that the traditional dress of Muslim women poses a security risk, and hence Muslim women entering public buildings or areas with large concentrations of people may need not only to pass through equipment designed to identify weapons but also be prepared to be physically searched.

Unfortunately, we must come to terms with the fact that a woman is as deadly a terrorist as any man, and that theatre in Moscow flashed images to the world of Muslim women occupying the front lines as murderous terrorists. The dress of Muslim women can be very easily used to mask the tools of death carried by terrorists, and unless we accept this and are prepared to deal with it we will suffer as a consequence. We should also consider that the wearing of a burka or similar facial coverings would easily allow a male terrorist to pass himself off as a woman. If there is no shape to discern the body and head and something covers the face, how could anyone seriously know what and who lies beneath these foreign coverings? Our country is under a direct threat that in many ways might be considered more sinister and less preventable than that which Australians faced during the darkest hours of World War II. Yesterday the Acting Attorney-General, Senator Chris Ellison, said:

The Government has received credible information of a possible terrorist attack in Australia at some time over the next couple of months.

We know there are terrorists in our midst. We know that those understood to be the leaders responsible for the murder of Australians in Bali have had multiple contacts with Muslims living in Australia. We know that after the first World Trade Center bombing in 1993 the Muslims responsible were in direct contact by telephone with persons in Sydney. Chris Ellison tells us that it is likely Australia will be struck by terrorism during the Christmas and New Year holidays and that Muslim extremists of Al Qaeda and related groups are involved. Australian authorities are holding a Muslim follower of Osama bin Laden who is facing charges of conspiring to bomb the Israeli Consulate in Sydney and the Israeli Embassy in Canberra. Indeed, can there be any thinking Australian who is not yet convinced that the agents of Muslim terrorism, the followers of Osama bin Laden, are amongst us and waiting for their chance to strike?

Today in the Legislative Council what appeared to be a woman wearing traditional Muslim attire sat in the public gallery. She/he did not gain entry via a metal detector. This questions the safety and security of Parliament House. We should be calling upon peaceful Muslims in Australia to allow Muslim women to dispense with the traditional dress when in public, or to understand and accept that there will likely be a need for body searches and the use of metal detectors. Australia is a target. I call upon law-abiding Muslims to co-operate in every way required to ensure Australia's internal security.

CUBA BLOCKADE

Ms LEE RHIANNON [10.07 p.m.]: I inform the House about the activities of the Australian Government at the United Nations Human Rights Commission in relation to Cuba. When this matter was last debated not only did Australia vote to condemn Cuba but it acted with America, as a co-sponsor of the resolution. This stands in sharp contrast with Australia's response to the blockade of Cuba. Australia has consistently and sensibly voted against the American blockade on Cuba. Co-sponsoring the American motion condemning Cuba seems curious when compared to this. Indeed, America uses Cuba's human rights record to justify the blockade, but Australia voted against the blockade. The American-sponsored condemnation becomes a justification of the blockade.

I believe that the Human Rights Commission resolution unfairly ignores the considerable social achievements of Cuba in health and education, which for a low-income country are extraordinary. Australia has

no intrinsic self-interest to pursue in condemning Cuba. One is left with the uncomfortable feeling that our position is simply one of trying to please America in this instance. Our foreign policy should be determined on a more substantive basis.

[Time for debate expired.]

MUSLIM WOMEN CLOTHING

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [10.08 p.m.]: I listened with some concern to the remarks made by the Hon. David Oldfield in tonight's adjournment debate. They were simply silly. The Hon. David Oldfield—who knows?—could be hiding a weapon in his rather large suit coat. He takes his coat off. Next he will be telling us that we are only safe if people appear in their underwear, because that is the logical conclusion of what he was saying.

The Hon. David Oldfield: Does the Treasurer deny that people who go into banks must take off their helmets?

The Hon. MICHAEL EGAN: They do.

The Hon. Duncan Gay: What about a nun's habit?

The Hon. MICHAEL EGAN: Well, what about a nun's habit?

The Hon. David Oldfield: How many terrorist nuns are there?

The Hon. MICHAEL EGAN: That is the point. Next the Hon. David Oldfield will be saying that people should not wear overcoats or loose jumpers. Any manner of dress could be declared to be dangerous.

The Hon. Amanda Fazio: Women wearing maternity clothes.

The Hon. MICHAEL EGAN: Yes, women wearing maternity clothes. I think the Hon. David Oldfield is making a rather silly, provocative and insensitive point to gain publicity. If he paused for a moment to think about the logical conclusion to the point he made, he would realise it was pure nonsense.

Motion agreed to.

The House adjourned at 10.13 p.m. until Tuesday 3 December 2002 at 11.00 a.m.
