

# LEGISLATIVE COUNCIL

Tuesday 3 December 2002

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

**The President** offered the Prayers.

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

## ASSENT TO BILLS

Assent to the following bills reported:

Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill  
 Public Health Amendment (Juvenile Smoking) Bill (No 2)  
 Civil Liability Amendment (Personal Responsibility) Bill  
 Drug Court Amendment Bill  
 Environmental Planning and Assessment Amendment (Illegal Backpacker Accommodation) Bill  
 Law Enforcement and National Security (Assumed Identities) Amendment Bill  
 Rail Safety Bill  
 Business Names Bill  
 Child Protection Legislation Amendment Bill  
 Courts Legislation Miscellaneous Amendments Bill  
 Crimes Legislation Amendment (Criminal Justice Interventions) Bill  
 Election Funding Amendment Bill  
 Gaming Machines Further Amendment Bill  
 Law Enforcement (Powers and Responsibilities) Bill  
 Pawnbrokers and Second-hand Dealers Amendment Bill  
 Police Amendment (Appointments) Bill  
 Retail Leases Amendment Bill  
 Security Industry Amendment Bill  
 State Revenue Legislation Amendment Bill  
 Strata Schemes Management Amendment Bill  
 Superannuation Legislation Amendment Bill  
 Superannuation Legislation Further Amendment Bill  
 Statute Law (Miscellaneous Provisions) Bill (No 2)

## STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (No 2)

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

## LEGISLATIVE COUNCIL

### Report

**The President** tabled the annual report for the year ended 30 June 2002.

**Ordered to be printed.**

## NEW SOUTH WALES PARLIAMENT JOINT SERVICES

### Report

**The President** tabled the annual report for the year ended 30 June 2002.

**Ordered to be printed.**

**OFFICE OF THE OMBUDSMAN****Report**

**The President** announced, pursuant to the Law Enforcement (Controlled Operations) Act 1997 and the Ombudsman Act 1974, the receipt of the special report entitled "Law Enforcement (Controlled Operations) Act, Annual Report 2001-2002", dated November 2002.

**The President** announced that she had authorised the report to be made public.

**COUNCIL OF THE UNIVERSITY OF NEW ENGLAND****Appointment of Representative**

**The President** reported the receipt of a letter dated 19 November 2002 from the Hon. Tony Kelly tendering his resignation as the representative of the Legislative Council on the Council of the University of New England.

**The President** reported further that she had acknowledged the letter, accepted the resignation with effect from 19 November 2002, and informed the University of New England.

**TABLING OF PAPERS**

**The Hon. Michael Costa** tabled the following papers:

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

Cabinet Office  
NSW State Electoral Office  
Parliamentary Counsel's Office  
Premier's Department

Annual Reports (Statutory Bodies) Act 1984 for the year ended 30 June 2002—

Centennial Parklands  
Election Funding Authority  
Independent Pricing and Regulatory Tribunal  
Thoroughbred Racing Board

Administrative Decisions Tribunal Act 1997—Report of the Administrative Decisions Tribunal for the year ended 30 June 2002

Community Services (Complaints, Appeals and Monitoring) Act 1993—Report of Community Visitors' Scheme for the year ended 30 June 2002

Industrial Relations Act 1996—Report of the Industrial Relations Commission for the year ended 31 December 2001

**Ordered to be printed.**

**STANDING COMMITTEE ON STATE DEVELOPMENT****Report**

**The Acting Clerk** announced, according to the resolution of the House of 25 May 1999, the receipt of report No. 27, entitled "Local Government Boundaries in Inner Sydney and the Eastern Suburbs", dated November 2002, together with minutes of proceedings, submissions and correspondence.

**The Acting Clerk** further announced that, pursuant to the resolution, she had authorised the report to be printed.

**The Hon. TONY KELLY** [11.19 a.m.]: I move:

That the House take note of the report.

**Debated adjourned on motion by the Hon. Tony Kelly.**

## PETITIONS

### Cyanide Heap Mining

Petition praying that cyanide heap mining be banned, received from **Ms Rhiannon**.

### Genetic Engineering Freeze

Petition calling for protection of the rights of farmers who wish to remain free from genetic engineering contamination, establishment of genetic-engineering-free zones, declaration of a freeze on the intentional release of new genetically engineered crops, and consultation with all farming groups, received from the **Hon. Duncan Gay**.

## BUSINESS OF THE HOUSE

### Withdrawal of Business

**Business of the House Notice of Motion No. 1 withdrawn on motion by the Hon. Don Harwin.**

### STANDING ORDER 126: NO MEMBER TO VOTE IF PECUNIARILY INTERESTED

**Ms LEE RHIANNON** [11.14 a.m.]: I move:

That, during the present session and unless otherwise ordered, Standing Order 126 be amended to read:

- 126 No Member shall be entitled to vote in any Division upon a Question in which the Member, the Member's spouse or the Member's children have a direct pecuniary interest, not in common with the rest of Her Majesty's subjects and on a matter of State Policy, and the vote of any Member so interested shall be disallowed.

I have moved this motion because the community wants the Carr Labor Government to enforce a higher pecuniary interests standard for members of this Parliament. Our pecuniary interests provisions are out of step with the best practice in this country. As members of Parliament we have a responsibility always to strive to improve the standards under which we operate. For example, the Senate has stronger and more thorough provisions than this House. We cannot continue to allow this House and this Parliament to have their standing diminished by weak pecuniary interests laws. We are lucky that not all the rules controlling pecuniary interests are in legislation, so this change to our standing orders will allow us to put this House in order.

The most important avenue for non-disclosure being abused in New South Wales is the ability of a member to hide his or her assets and income stream behind his or her family. The Senate does not allow this, and nor should we. We have the power to change the situation, and this motion provides us with the means to bring some degree of integrity into our operations in this place. The Senate has comprehensive and clear rules which the Greens will push for this place to adopt when the new Parliament resumes in 2003. One of the key rules is a requirement that family interests be declared. That is widely accepted these days, and I hope that all members will see their way free to support it here.

The system in the Senate is thorough; a registrar of senators' interests keeps a register of family interests which is confidential but which provides a check in the case of family assets creating a conflict of interest for a Senator. My simple motion will not introduce a complete system of checks but it will close the loophole in Standing Order 126 that states, "No Member to vote if pecuniarily interested". Members should read Standing Order 126 because in discussions I have found that people are not aware that members are already bound by this requirement in terms of their own pecuniary interests. All that this motion provides is that Standing Order 126 be extended to cover the pecuniary interests of one's partner and one's children.

The current loophole is that Standing Order 126 refers only to a member, not to a member's spouse or children. The effect of the motion would be that a member's vote would be disregarded in the event of a conflict of interest involving a member's spouse or children. Members should remember that that is not radical: Standing Order 126 already makes that provision with regard to members.

We need to pass this motion as a matter of urgency even though it is only a partial solution. Problems and ambiguities remain and we acknowledge them, but, as many members like to remind me, we achieve change incrementally, and surely this motion should be part of an incremental change. We cannot have the

public thinking that we will allow a massive loophole to exist. We cannot leave in place a standing order that leaves a "family assets" loophole in place. We must act now to restore public confidence in the pecuniary interests rules of this House. This motion provides us with some means to do that, and I urge all members to support it.

**The Hon. MICHAEL EGAN** (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [11.20 a.m.]: I move:

That the question be amended by omitting all words after "That" and inserting instead:

the Standing Committee on Parliamentary Privilege and Ethics inquire into and report on the possible amendment of Standing Order 126 to include reference to the direct pecuniary interests of a Member's spouse or the Member's children.

Standing Order 126 currently reads:

No Member shall be entitled to vote in a Division upon a Question in which he has a direct pecuniary interest, not in common with the rest of Her Majesty's subjects and on a matter of State policy, and the vote of any Member so interested shall be disallowed.

The motion of Ms Lee Rhiannon seeks to extend that to a member's spouse or children. No doubt this is a headline-grabbing motion, but I am not sure that it is terribly well thought out. If the standing order is to be extended to the pecuniary interests of a member's spouse or children, why, I ask, should not it be extended to a member's parents, grandparents, aunts and uncles, or nieces or nephews? Why not to a close friend? Why not to a business associate? The honourable member has simply not thought this through and that is why, although the matter is important, it should be referred to the privileges committee for thorough examination.

As I said, the proposed amendment to Standing Order 126 will extend the current provision so that a member cannot vote in any matter in which the member's spouse or child has any pecuniary interests. The Government does not support the proposal without a review by the Standing Committee on Parliamentary Privilege and Ethics. The motion will impose on each member of this House an obligation to find out about all the financial dealings of his or her spouse and children, whether they are dependent or not.

Such a proposal makes certain presumptions about the nature of relationships that may not be valid in today's world. Further, to include all children, including adult children that are not dependent on the member, will put the member in an impossible position. What will happen in cases where a member and the adult children are estranged? Indeed, what will happen if a member and his or her spouse are estranged? What if the children of the member refuse to disclose their interests to the member and a vote of the member is subsequently called into question?

Adult children will probably have significant privacy concerns with such a requirement. After all, they are not the ones who ran for public office, and the spouses of members are not the ones who ran for public office. Sometimes the spouses of those who run for public office have entirely different political positions. It is not common, but it happens from time to time. The proposal by Ms Lee Rhiannon will put members in an impossible position. Even worse, it will leave the validity of certain votes on legislation and other matters open to question. The Government's position on this proposal does not mean that the Government will not support sensible reform to ensure that the integrity of the parliamentary process is maintained. Of course, the Government supported the introduction of a code of conduct for members of Parliament.

After considering the issues raised in the censure debate and subsequent questions relating to the conduct of the Leader of the Opposition in the other place, the Government has asked the Independent Commission Against Corruption to look into those matters and report on what measures might be taken in respect of regulating or limiting members of Parliament accepting payment for providing advice on public affairs. The Government proposes that this matter be referred to the Standing Committee on Parliamentary Privilege and Ethics for consideration, and I have so moved.

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [11.24 a.m.]: As important as this motion is in the continuing development of greater transparency between members of Parliament and the constituents of New South Wales, the Opposition is not in a position to support it as it stands. One need only look at the contribution by the Leader of the Government and the commonsense examination of the flow-on effect, especially with children, to see its shortcomings. Where there is an estranged relationship between a member of Parliament and a child, difficulties might arise immediately upon such a change being made to the standing orders.

That being said, the Opposition believes that this matter is important and needs to be addressed as a matter of urgency, not like the 1995 ministerial code of conduct and its subsequent changes that seem to have disappeared into the ether in this Government's priorities. Honourable members may be aware that there is a distinction in the 1995 ministerial code of conduct—

**The Hon. John Della Bosca:** Oh, you have read it then?

**The Hon. MICHAEL GALLACHER:** The Deputy Leader of the Government asks whether I have read it. He should look at the debate that has occurred in this place since 1995. One would be led to believe by the contributions of members of the Government, particularly the Leader of the Government in this House, that the 1995 document has been superseded—and the only other document available is his document—but nothing flows from the ministerial code of conduct that makes transparent the issue of a member's spouse or children.

The ministerial code of conduct refers to Ministers' spouses and children, but there is no continuation of the 1995 principle about members' pecuniary interests. Instead of the Minister making the flippant comment, "Oh, you have read it then," he would be better off looking at the contribution of the Treasurer. That has painted a picture of the document being superseded but there being no document that one can refer to that looks directly at Ministers' responsibilities as opposed to the responsibilities of ordinary members.

Be that as it may, the Opposition believes that this needs to be addressed by the Standing Committee on Parliamentary Privilege and Ethics. I understand that some work has already been done on this, and the motion of the Hon. Lee Rhiannon would be an extension of what the committee has already looked at and what it proposes to look at in the future. In a matter of months when the Coalition becomes the Government in New South Wales, we will be quite happy to bring this matter on as a priority.

It is unfortunate that the Hon. Lee Rhiannon has phrased her motion in the way she has. She said that the Senate has comprehensive and clear rules. I do not believe that this simple amendment to Standing Order 126 would make our standing orders more comprehensive and clear, or consistent with the Senate. I am sure that the Hon. Lee Rhiannon would be the first to recognise that the Senate's standards are far wider than the mere extension of Standing Order 126 to include a member's spouse or children.

The Opposition supports the Government's amendment that the whole issue of pecuniary interests and declarations be referred to the privileges and ethics committee for a far broader examination. The privileges and ethics committee may make recommendations that may or may not be consistent with the overall package that has been adopted by the Senate—which the Hon. Lee Rhiannon has referred to as being comprehensive and clear—but it should make them as soon as possible.

**The Hon. HELEN SHAM-HO** [11.30 a.m.]: I speak in this debate as a member of Parliament elected to serve in this Chamber and not as the Chair of the Standing Committee on Parliamentary Privilege and Ethics. As a member, I support the amendment of Standing Order 126 proposed by the motion of Ms Lee Rhiannon, and I strongly support the Government's amendment of the honourable member's motion. I simply remind the House that the committee has one report outstanding; that is on its inquiry into the pecuniary interests register. Hopefully, that report will be tabled soon. That the committee has not concluded its deliberations and completed its report restricts me somewhat in recommending what the House should do. Certainly, the Government amendment comes a little closer to my personal opinion of the important issues that the committee should consider.

However, I echo what Ms Lee Rhiannon has said: The community has a higher expectation of transparency and accountability of members of Parliament and is demanding that those expectations be met. Therefore, the reference to the committee to inquire into all pecuniary interests of members is very important. May I simply say, because I must abide the confidentiality of committee deliberations, that my personal opinion is that the committee's inquiry into the peculiarly interests of members of Parliament should be broader than an amendment of Standing Order 126. I ask the House to support the Government's amendment. I repeat, as I am restricted in what I can say to the House before the committee's report is tabled, I suggest that the House consider another reference to the Standing Committee on Parliamentary Privilege and Ethics that is wider in its terms.

**The Hon. Dr PETER WONG** [11.32 a.m.]: I will comment briefly on the motion moved by Ms Lee Rhiannon to amend Standing Order 126. I totally endorse her position. If it is good enough for the Senate of the Australian Parliament, there is no reason whatsoever it should not be good enough for this House. In fact, as

mentioned a moment ago by the Hon. Helen Sham-Ho, what has happened in the past few months put the reputation of members of this House at stake. I think the sooner we adopt the change to Standing Order 126 the better it will be for everyone concerned.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [11.33 a.m.]: I am pleased the Greens have taken up the issue of probity of members' pecuniary interests, which has been of concern to the Democrats for a long time, as has election funding. I understand the amendment will not affect members who have an interest in a profession, be they doctors, farmers or lawyers, who could, at least in theory, be argued to have a personal conflict of interest if debating a bill or other matter the subject of which related to their professions. I am given to understand by the explanation given by the honourable member that her proposal merely adopts Senate procedures. That does not, however, mean that the standing orders should be written in stone. This is an evolving issue, and if the Senate is a little ahead of this State in this area, that should not preclude members of this Parliament considering this matter further.

The freedom of members' partners and children is somewhat curtailed by the amendment to the standing order. It is an unfortunate fact that we live in an age when adult children are non-dependent and have lives quite separate from those of parent members. It is not simply a question of spouses' financial interests. The unresolved question is: Who will determine whose vote should be disregarded? It is one thing to say that a vote should be disallowed. It is another to say who will determine which vote should be disallowed. If a vote is tight, should members of Parliament involved in the tight vote exclude from voting a member whose vote may decide an issue on the basis that that member has some pecuniary interest? What if some of those members have an interest in excluding that member's vote in order to fiddle the numbers? That also is an issue that should be considered. We should not just consider what the Senate is doing and go right ahead with that. I am inclined to accept the Government's amendment. I congratulate the Greens on moving to amend the standing order, but I accept the Government's amendment so that the committee may examine the issues more closely and advance the matter in historical terms, rather than quickly latching onto the Senate amendment as the status quo and inserting it into our standing orders.

**Reverend the Hon. FRED NILE** [11.35 a.m.]: The Christian Democratic Party supports the objective of the motion moved by the Greens. But, along with other members, we believe the issue needs further thought and that the relevant forum for that is the Standing Committee on Parliamentary Privilege and Ethics. Possibly, the Standing Orders Committee also would need to consider this issue in due course. I share the concern of the Hon. Helen Sham-Ho that the committee might regard itself as locked into considering only the subject of the motion and therefore be unreasonably restricted in its deliberations. Therefore, I move:

That the amendment be amended by inserting at the end "and any other relevant and associated matters".

This will give the committee the flexibility to come back to the Chamber with perhaps some other proposal on how to deal with this matter of members revealing any conflict of interest and so on.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [11.37 a.m.]: The Government will support the amendment moved by Reverend the Hon. Fred Nile.

**The Hon. HELEN SHAM-HO** [11.37 a.m.]: I must speak in support of the amendment moved by Reverend the Hon. Fred Nile because, as I projected in my previous address to the House, although I support the Government's amendment the amended motion would restrict the committee's deliberations to the proposed amendment to Standing Order 126. The amendment moved by Reverend the Hon. Fred Nile broadens the terms of the reference to the committee. As Chair of the Standing Committee on Parliamentary Privilege and Ethics, I think that will give the committee a wider range of matters to look at when considering this very important issue. As I said earlier, the committee is to table a report soon. Might I simply say that report may need to be changed in view of the amendment. I urge honourable members to support the two amendments before the House. I am sure the Standing Committee on Parliamentary Privilege and Ethics would be pleased to start looking into this important issue, one which we have a responsibility to consider as members of Parliament.

**The Hon. JOHN JOBLING** [11.38 a.m.]: The Opposition can see merit in the amendment of Reverend the Hon. Fred Nile. The addition of the words will achieve the most satisfactory outcome. Clearly, this issue needs to be looked at carefully and in detail. Honourable members would be aware of the possibility that any new standing and sessional orders for the new Parliament may well incorporate the existing standing and sessional orders. Members need to be sure that the resolution of the issue will protect the adult children and partners of members. This issue should not be taken lightly. It requires close and careful examination.

To that end, the Opposition will support the broadening of the original motion. We will support the Government's reference of the issue to the Standing Committee on Parliamentary Privilege and Ethics, which will have sufficient time to examine the matter and ensure that we get it right. To act in haste now and to make mistakes that could affect members and their reputations would be a highly undesirable outcome and would not be what Ms Lee Rhiannon intended. The Opposition will support the amendment moved by Reverend the Hon. Fred Nile and the amendment moved by the Government, which will refer the matter to the Standing Committee on Parliamentary Privilege and Ethics for full consideration.

**Ms LEE RHIANNON** [11.40 a.m.], in reply: I thank all members who participated in the debate. The Greens will accept both amendments to the motion. I was pleased to hear the various comments that were made, but I was disappointed by the response of some members. We had an opportunity to act and to show the community that we, as members of Parliament, are committed to and willing to change the provisions under which we operate in this House. The Greens support the referral of the matter to a committee but, as members know, members of the public are cynical and often think that members of Parliament avoid taking action by hiding behind committees. I believe that the committee can do good work, but this was an opportunity to act and put in place a small change—nothing super-radical, revolutionary or dramatic. The proposal was to adapt a Senate practice in this House. That is why the Greens were hopeful that members would have gone the distance.

The Government amendment refers the issue to a committee. As all members know, collective minds usually come up with some excellent propositions, and the Greens look forward to the process improving how members operate in this House—something that is badly needed. Quite often members of major political parties feel the odium of processes they are caught up with, but once people become members of Parliament they bear a responsibility to ensure that their work is carried out with transparency, accountability and the greatest integrity. The Greens moved the motion to achieve that end because we believe that this House still has some way to go. I was disappointed by some of the comments made by the Treasurer and the flippant way in which he referred to the Greens decision to move the motion, even though I agree with his amendment. At times flippancy occurs during debate, but the key consideration is that we should move forward. What members are gaining from this debate takes us one small step towards improving how members operate in this House.

**Amendment of amendment agreed to.**

**Amendment as amended agreed to.**

**Motion as amended agreed to.**

## **WATER MANAGEMENT AMENDMENT BILL**

### **Second Reading**

**Debate resumed from 21 November.**

**The Hon. RICHARD JONES** [11.44 a.m.]: While I generally support the bill—especially schedule 1, item [9], which inserts new section 20 (2) (e) to establish mandatory conditions on access licences, including varying the share and extraction components of access licences—I am concerned about provisions relating to the hierarchy of the Water Management Act 2000, transfers, supplementary water licences, licences, water management plans, public participation and miscellaneous matters. When the Water Management Act 2000 was passed by this Parliament it gave environmental water first priority, basic land-holder rights second priority and the extracted regime last priority. However, this bill attempts to give access licence dealing rules the same importance as environmental health water, and therefore undermines the intention of this Parliament as expressed when the Act was passed. This bill also provides for inter-valley transfers of water licences or allocations between water sources. Such transfers should be prohibited because they will have an unacceptable impact on the environment owing to the fact that the impacts of such transfers are not considered in any of the surface or ground water sharing plans.

This bill seeks to clarify that plans and embargoes can be made in parts of water management areas. This is not only a complete nonsense it is unacceptable, as it may enable subcatchments to be opened up for expansion. This bill enables the water users with a history of high use to be able to extract above the sustainable yield while those who have not fully developed their licences will be able to trade to the sustainable yield only. This is not only inequitable, it is also unsustainable. This bill replaces "regulated river (supplementary water) access licences" with a new class of licence, "supplementary water access licences", and enables them to be

traded separately from general security licences. Removing the link between general and supplementary licences, by enabling them to be traded separately, is unacceptable as it will open up access to supplementary water and may cause an increase in water diversions in overallocated ground water catchments.

This bill introduces a supplementary licence term that is far too lengthy—15 years. A five yearly limit would be far more appropriate, and all supplementary licences should be required to contain a clear definition stating that they are, for a limited term, designed to bring extraction down to the sustainable yield. It should also be made clear that the licences do not amount to a right to water, and do not have the security of access given to other licences. The period set for transitional arrangements in this bill also needs tightening up. The reference to an "appointed day" is far too ambiguous and should therefore be replaced with a limited term of two years. The implementation of water reforms and the Water Management Act 2000 need to be time bound. This bill fails to make it clear that the Minister has the power to accept or reject consent applications for the transfer of access licences, and fails to ensure that embargoes apply to transfers. This needs to be corrected. It also needs to be made clear that there is to be no compensation payable when the Minister gives orders in relation to replacement access licences that are created on the conversion of entitlements from the Water Act 1912—namely, conversion of the share components from a volumetric basis to a proportional basis—or when applying uniform extraction components to access licences.

It is inappropriate for this bill to rely on unenforceable access licence dealing principles that have not yet been prepared by the Department of Land and Water Conservation. At the very least, the principles should be made into regulations that are subject to the scrutiny and approval of the public and the Parliament. It is also inappropriate for provisions relating to water management plans to require a Minister's plan to deal with any matters that a management plan is required to deal with "in general terms" only, as that erodes the specificity of the proposed legislative scheme. The rights of public participation are also not adequately protected by the Water Management Act 2000 as there is no requirement for public notification of applications for the grant, renewal or variation of access licences or approvals. The power to object to or appeal a decision relating to the grant, renewal or variation of an access licence for water is restricted to grants of access licences in an area that is not within a water management area, or where there is no water sharing plan. In relation to water use approvals, rights of public participation are restricted to the applications that fall within the advertised category established by the regulations.

Several of my colleagues and I will be moving amendments during the Committee stage that maintain the priority of environmental health water over access licence dealing rules; ensure that embargoes on regulated rivers cover the entire river, including headwaters, tributaries and the flood plain and its unregulated reaches; ensure embargoes on regulated rivers encompass the entire river, including headwaters, tributaries and the flood plain; ensure embargoes on ground water systems mean that no aquifer interference activity can occur within the entire area, including shallow and deep aquifers; require the public to be notified of all applications for access licences in newspapers circulating locally and generally throughout the State; allow any person to object to an application for an access licence; give the public at least 28 days to make submissions on proposals with significant environmental impacts, and 14 days in other cases; and remove the power of the Minister to require an objector to provide additional information.

We will also move amendments to provide third party appeal rights relating to all decisions to grant an access licence, a decision to vary access licences if this would have been required under the grant of the licence in question, and all applications for the transfer of an access licence to another catchment, or upstream in the same catchment; make it clear that it is an offence to breach a condition of approval and, accordingly, that any person may enforce the conditions of that approval; empower the Minister to suspend or cancel an approval when it is granted as a result of false, misleading or materially inaccurate information supplied by, or on behalf of, the applicant; and require public notification, the right to make objections and third party appeal rights relating to the variation of conditions, if any of that would have been required in relation to the grant of the approval in question. This is very important legislation. Especially at a time such as this, we need to ensure that our water is shared fairly. The environment must have adequate water for its maintenance in the long-term while we meet the needs of other water users.

**Reverend the Hon. FRED NILE** [11.51 a.m.]: The Christian Democratic Party supports the Water Management Amendment Bill. The amendments it makes will further finetune the Water Management Act 2000. The bill will clarify the law, extend certain facilities, develop the access licence register, ensure that necessary powers exist and clarify certain terms. The prolonged drought has made us all become far more conscious of the pressure on the available water in our State and nation. Massive hardship is being caused to farmers, particularly in the western areas of New South Wales. This reminds us that we are living on a very dry



continent where there always will be a shortage of water. With the growth in population and land use, especially with crops such as cotton that require irrigation, there will be constant pressure to meet the needs of the farming sector while meeting the need of the environment so that we can live as human beings and families. Balancing the competing needs is a test for any government, whether it is a Labor government or Coalition government.

The foreshadowed Committee amendments would dramatically change the bill from the Government's intentions. The amendments reveal that the limited availability of water will always result in tension between the competing interests. The Premier has foreshadowed mandatory controls over water use even for metropolitan areas because of the low level of dam storages in Sydney, the Hunter Valley and Illawarra. The bill covers four main aspects: water sharing plans, registration and transfers of access licences, access licences and works approvals, and miscellaneous matters. We support the bill and have reservations about supporting some of the foreshadowed amendments that would dramatically change the balance that the Government has designed the bill to achieve.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [11.54 a.m.]: Australia is the driest continent on earth apart from Antarctica. We have the lowest percentage of rainfall as run-off, the lowest amount of water in our rivers and the smallest area of permanent wetlands. Only 12 per cent of rainfall on our continent runs off to collect in our rivers. The Murray-Darling Basin captures only 6.1 per cent of annual rainfall, and 51 per cent of that water is diverted for human use. The sustainable use of our surface water is of major concern to the Australian Democrats. We must be smart about how we use our water. The bill will amend section 18 of the principal Act relating to matters for consideration by water management committees in drafting water management plans. Committees can now take into consideration the effect of activities occurring, or likely to occur, upstream and the impact on the availability and quality of water in their relevant area. Section 83 of the Water Management Act provides for a register that shows the licences and any subsidiary rights attached to them.

The amendments in the bill are intended to facilitate a variety of transactions, ensure priority of interests based on their order of registration, and provide safeguards against fraud. The amendments are intended to achieve a market in access licences, thereby permitting them to be put to their highest value use. However, we do not support transfer of water rights between water sources as we are concerned that water does not simply have a market value; it has to be seen in its environmental context. We believe that if water becomes too attached to money it will not become attached enough to the environment, which will mean that there will be distortions. In other words, the economic system will distort the ecosystem. That will create unsustainable water use and it is likely to create long-term damage to aspects of the environment. The economic drivers cannot be unrelated to the environmental imperatives of our land.

New chapter 3, part 2, division 4 will establish new regimes for access licences. New section 71A deals with the change of ownership. New section 71B covers the conversion of an access licence to a new category. New section 71C provides for the splitting and reforming of access licences, which are to be known as subdivision and consolidation. New section 71D covers the transfer of part of an entitlement from one licence to another. 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. 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.

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". This will make changes to numerous water sharing plans and will require the reviewing of tens of thousands of licences. The bill also provides for the continuation of existing access rights and the preservation of their priority against newly created interests. As the Act currently stands, the rights of the mortgagees and others could cease to exist on conversion of the water licence to an access licence as the licence is no longer attached to the land that is the subject of the agreement. New section 9A clarifies that existing rights over Water Act licences and other entitlements are preserved. The bill provides that any priorities between existing rights are preserved. Further, it gives the land-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.

However, some aspects of the bill warrant concern. The Democrats are surprised and disappointed that the State's water resources are still managed under the Water Management Act 1912. We knew it would take time to implement the necessary reforms under the 2000 Act; however, two years have passed and we need to get cracking. Hence, the Democrats will move amendments that will extend the access licence provisions of the Water Management Act 2000 to within five years of commencement. The Democrats will support the bill with some amendments.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [11.59 a.m.], in reply: We have heard a great deal about water management in this debate but very little about the bill. Before I turn to the matters raised in the debate I remind honourable members of what the bill is about. The Water Management Amendment Bill is a collection of largely technical modifications and elaborations of the matters contained in the Water Management Act 2000. Schedule 1 deals with the water sharing plan provisions of the Act, making them clearer, more workable and more in line with how plans are made in practice. These amendments will facilitate the making of both current plans and future plans.

Schedule 2 covers the access licence system. It sheds a great deal of light on the system by clarifying how things will work in practice. In this regard the bill provides greater certainty for administrators, licence holders and the broader community. Schedule 2 also will facilitate the access licence register, which is intended to minimise the cost of trading and provide security to those who lend money against licences. Schedule 3 deals with approvals, and brings greater clarity to the legislation as well as extending useful facilities such as joint schemes. Schedules 2 and 3 contain provisions that will permit the phased introduction of the system across the State.

Schedule 4 contains a series of miscellaneous, definitional and consequential changes. The Water Management Amendment Bill contains detailed, useful and necessary changes to the mechanical aspects of the Water Management Act. It is not a change of policy or direction. On the eve of the implementation of the remaining portions of the Water Management Act, these changes will greatly facilitate the smooth introduction of this new era in water management. I turn now to matters raised in debate. Rather than deal with many individual misunderstandings, confusion and unfounded attacks on the Government's record in water management, I will speak generally. First, I will deal with the many comments made about the environment. I will paraphrase the words of section 9 of the Water Management Act to make the Government's position clear. I must do this because there seems to be confusion among honourable members about the place of the environment in water management.

Section 9 states that anyone administering the legislation must do so in accordance with water management principles. Very generally, these principles are that water sources are to be protected and restored, damage should be minimised, and benefits to the economy and the community should be maximised. Section 9 also sets out the order of importance of water sharing principles, with the first priority being the protection of the water source and its dependent ecosystem. These guiding principles of the Act reflect the Government's view on how the legislation should be administered. They are critical aspects of the legislation that this Parliament agreed to only two years ago.

I will now reflect on the apparent conflict between the environment and various forms of water use. Effective water management is not about conflict, but shared responsibility for balancing the needs of the environment and the needs of the people in a sustainable way. We have seen the degradation caused by poor farm practices and overuse of water. We know what an imbalance can do. We know that our wealth and lifestyles are dependent on environment. Further, we know that future generations will survive only if we leave them with environmental resources to do so. Therefore, the key concepts for water management must be shared responsibility and sustainability. Although some honourable members opposite have lost sight of this central tenet, the Government has not. The Government is mindful of the potential for trading to bring undesirable consequences. However, I remind honourable members opposite that trading has been a feature of water management of the major regulated rivers for almost 20 years. This has shown that the risks are minimal and that we can introduce rules to guard against undesirable outcomes.

There is also some confusion about intervalley transfers. These can occur only when the water sources are connected and water is available to permit the cancellation of a licence in one water source and issue a new licence in the connected source. Such trading is impossible when there is no connection between the water sources. Water sharing plans spell out the rules needed to ensure that movement of licences occurs only when it does not result in danger to the environment. This is practical and important legislation that will clarify, facilitate and improve the provisions of the Water Management Act. 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) [12.04 p.m.], by leave: I move Government amendments Nos 1 to 6 and 8 to 24 in globo:

No. 1 Page 4, schedule 1, line 8. Omit "may establish conditions". Insert instead "may contain provisions with respect to the conditions".

No. 2 Page 6, schedule 2. Insert after line 14:

- (2) Despite subsection (1), specified provisions of this Part may be declared by proclamation to apply to the whole of the State, and apply accordingly.

No. 3 Page 8, schedule 2, line 5. Insert ", as in force immediately before it was renewed," after "licence".

No. 4 Page 8, schedule 2. Insert after line 6:

- (9) An application for the renewal of an access licence is not to be refused on the ground that fees due under the licence have not been paid unless the Minister has given written notice, to all persons in whose names any interests in the licence are registered in the General Register of Deeds, that the application will be refused unless arrangements satisfactory to the Minister have been made for the payment of those fees.

No. 5 Page 11, schedule 2, line 9. Insert ", as in force immediately before it was cancelled," after "licence".

No. 6 Page 12, schedule 2, line 9. Insert ", as in force immediately before they were cancelled," after "licences".

No. 8 Page 13, schedule 2, line 21. Insert ", as in force immediately before it was cancelled," after "licence".

No. 9 Page 14, schedule 2. Insert after line 14:

- (3) Such an application may only be made with respect to water allocations currently credited to the access licence from which water allocations are to be assigned.

No. 10 Page 15, schedule 2. Insert after line 12:

- (3) Such an application may only be made with respect to water allocations currently credited to the access licence from which water allocations are to be assigned.

No. 11 Page 16, schedule 2, line 1. Insert "a security interest or" before "an interest".

No. 12 Page 16, schedule 2. Insert after line 14:

- (5) Subject to the regulations, notice of the Minister's determination of an application under this Division is to be given to the applicant or applicants as soon as practicable after the determination is made.

No. 13 Page 16, schedule 2. Insert after line 27:

**[21] Section 78 Suspension and cancellation of access licences**

Insert after section 78 (3):

- (4) Action under this section may not be taken in relation to an access licence on the ground that fees due under the licence have not been paid unless the Minister has given written notice, to all persons in whose names any interests in the licence are registered in the General Register of Deeds, that such action will be taken unless arrangements satisfactory to the Minister have been made for the payment of those fees.

No. 14 Page 18, schedule 2. Insert after line 30:

- (1) An access licence may become the subject of a security interest.

No. 15 Page 20, schedule 2. Insert after line 25:

**[32] Section 341 (2A)**

Insert after section 341 (2):

- (2A) This section does not prevent a person from taking water from a water source pursuant to an entitlement in force under the *Water Act 1912*, where *entitlement* has the same meaning as it has in clause 9 of schedule 9.

No. 16 Page 21, schedule 2. Insert after line 4:

**[33] Section 342 (2A)**

Insert after section 342 (2):

- (2A) This section does not prevent a person from using water on land for any purpose pursuant to an entitlement in force under the *Water Act 1912*, where **entitlement** has the same meaning as it has in clause 9 of schedule 9.

No. 17 Page 21, schedule 2. Insert after line 19:

**[34] Section 343 (4)**

Insert after section 343 (3):

- (4) This section does not prevent a person from constructing or using a water supply work, drainage work or flood work pursuant to an entitlement in force under the *Water Act 1912*, where **entitlement** has the same meaning as it has in clause 9 of schedule 9.

No. 18 Page 22, schedule 2. Insert after line 31:

- (2) If the interest in the entitlement included a mortgage of land under the provisions of the *Real Property Act 1900*, the equivalent interest in the access licence is taken to include a power of sale with respect to the licence.
- (3) Subject to the regulations, the *Real Property Act 1900* applies to the exercise of a power of sale with respect to an access licence pursuant to subclause (2) in the same way as it applies to the exercise of a power of sale with respect to land under the provisions of that Act.

No. 19 Page 23, schedule 2, line 4. Insert "or under Part 2K.3 of the *Corporations Act 2001* of the Commonwealth," before "as the case may be".

No. 20 Page 23, schedule 2. Insert after line 12:

- (4) The regulations may make provision with respect to the procedures to be followed in connection with the registration of interests referred to in subclause (2).

No. 21 Page 24, schedule 2. Insert after line 18:

**security interest**, in relation to an access licence, means an interest in the licence, or a power with respect to the licence, that, in the instrument from which it arises, is expressed to secure the payment of a debt or the performance of some other obligation under a contract or other legally enforceable arrangement.

No. 22 Page 26, schedule 3. Insert after line 12:

- (2) Despite subsection (1), specified provisions of this Part may be declared by proclamation to apply to the whole of the State, and apply accordingly.

No. 23 Page 34, schedule 4. Insert after line 4:

**[23] Section 344 (4)**

Insert after section 344 (3):

- (4) This section does not prevent a person:
- (a) from carrying out a controlled activity pursuant to a permit in force under the *Rivers and Foreshores Improvement Act 1948*, or
- (b) from carrying out an aquifer interference activity pursuant to a licence in force under Part 5 of the *Water Act 1912*.

No. 24 Page 36, schedule 4. Insert after line 4:

**[34] schedule 9, clause 9**

Insert after clause 9 (7) (e):

, or

- (f) any other right, interest, privilege, permission or authority that is declared by the regulations to be an entitlement for the purposes of this clause.

These amendments will clarify some of the provisions in the bill to limit what can be done with supplementary licences, to permit access licences to be mortgaged, and to protect rights on transition. Amendments Nos 1, 3, 5, 6 and 8 clarify the wording of the bill. Amendments Nos 2 and 22 allow individual provisions of chapter 3 to be commenced on a statewide basis. Amendments Nos 3 and 13 give mortgagees the right to be notified if the licence is to be cancelled due to non-payment of fees. Amendments Nos 9 and 10 ensure that only water that a licence holder has accrued to his or her account can be sold on the temporary market.

Amendments Nos 11, 14, 18, 19, 20 and 21 deal with mortgages over access licences. They preserve existing rights in recognition of existing mortgages. They also ensure that licences will be capable of being mortgaged. Amendment No. 12 ensures that parties are given notice of the registration of their applications. Amendments Nos 15, 16, 17 and 23 permit the offence provision to be commenced at the same time as the licensing and approvals provisions for the particular part of the State. Amendment No. 24 allows the many types of interests that are not listed in the Act to be converted to a new licence system. In general these will not be tradable.

**The Hon. RICK COLLESS** [12.07 p.m.]: The Opposition will not oppose any of the Government's amendments. They are basically procedural and will improve the overall tenacity of the bill.

**The Hon. IAN COHEN** [12.07 p.m.]: The Greens support the Government's amendments.

**Reverend the Hon. FRED NILE** [12.07 p.m.]: The Christian Democratic Party supports the Government's amendments.

**Amendments agreed to.**

**The Hon. RICHARD JONES** [12.08 p.m.]: I move amendment No. 1 standing in my name:

No. 1 Page 4, schedule 1 [9], line 12. Insert at the end of the line:

, and

(f) must be consistent with the water management principles.

This amendment will ensure that access licence principles must be consistent with water management principles set out in the Water Management Act.

**The Hon. RICK COLLESS** [12.08 p.m.]: The Opposition will oppose this amendment. It is not necessary, given the other provisions in the bill.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [12.08 p.m.]: The Government accepts the amendment. It is consistent with the overarching obligations under section 9 of the Act. Once again I take this opportunity to congratulate the Hon. Richard Jones on—as was stated last night at his farewell—moving more successful amendments through this House than the Opposition.

**Amendment agreed to.**

**The Hon. PETER BREEN** [12.10 p.m.]: I move Reform the Legal System amendment No. 1:

No. 1 Page 5, schedule 1 [19], lines 24 and 25. Omit all words on those lines.

The Reform the Legal System party opposes the insertion of the words "in general terms" in clause 50 (2). The Government proposes that a Minister's plan can deal only in general terms with any matter required to be dealt with in a management plan. That approach clearly erodes the specificity of the proposed legislative scheme. It provides no certainty for the water user or the environment. These words dilute the intention of Parliament as expressed only two years ago. At that time everyone accepted the need for our precious water resources to be managed properly, and community debate on the issue has been extensive. Yet here we are, less than two years later, being asked to accept an amendment that will allow the Government to pass global plans that lack detail on the critical issues of economic, social and environmental sustainability.

All stakeholders are entitled to know in advance exactly what will be covered in a Minister's plan and to be assured that it will deal with exactly the same matters as a plan produced by a water advisory committee. It would be completely inappropriate for the Minister to produce a water sharing plan that addressed matters in

only general terms because that would set the scene for abuse of process and lack of transparency. This provision clearly allows for a lack of accountability in the government process. I commend the amendment to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [12.12 p.m.]: The Government does not accept the amendment. It would impose restrictions on and hold up the making of water-sharing plans and the rollout of the new system.

**The Hon. RICK COLLESS** [12.12 p.m.]: The Opposition opposes the amendment.

**Amendment negatived.**

**Schedule 1 as amended agreed to.**

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [12.13 p.m.], by leave: I move Democrats amendments Nos 1 and 5 and 8 to 13 inclusive in globo:

No. 1 Page 6, schedule 2 [1], proposed section 55A. Insert after line 14:

- (2) On the date occurring 5 years after the commencement of this section, this Part is extended to each part of the State, water source and category or subcategory of access licence that has not been the subject of a proclamation under subsection (1).

No. 5 Page 26, schedule 3 [1], proposed section 88A. Insert after line 12:

- (2) On the date occurring 5 years after the commencement of this section, this Part is extended to each part of the State, and each type or kind of approval, that has not been the subject of a proclamation under subsection (1).

No. 8 Page 36, schedule 4 [34], proposed clause 13A, lines 8 and 9. Omit all words on those lines. Insert instead "Despite section 10 of the *Subordinate Legislation Act 1989*, the following regulations are repealed on the date occurring 5 years after the date of assent to the *Water Management Amendment Act 2002*:"

No. 9 Page 40, schedule 5.3 [2], lines 11 and 12. Omit all words on those lines. Insert instead:

- (4) Despite section 10 of the *Subordinate Legislation Act 1989*, the regulations under this Act are repealed on the date occurring 5 years after the date of assent to the *Water Management Amendment Act 2002*.

No. 10 Page 40, schedule 5.4 [1], lines 16 and 17. Omit all words on those lines. Insert instead:

- (2) Despite section 10 of the *Subordinate Legislation Act 1989*, the regulations under this Part are repealed on the date occurring 5 years after the date of assent to the *Water Management Amendment Act 2002*.

No. 11 Page 40, schedule 5.4 [3], lines 27 and 28. Omit all words on those lines. Insert instead:

- (2) Despite section 10 of the *Subordinate Legislation Act 1989*, the regulations under this Part are repealed on the date occurring 5 years after the date of assent to the *Water Management Amendment Act 2002*.

No. 12 Page 41, schedule 5.4 [5], lines 11 and 12. Omit all words on those lines. Insert instead:

- (5) Despite section 10 of the *Subordinate Legislation Act 1989*, the regulations under this Part are repealed on the date occurring 5 years after the date of assent to the *Water Management Amendment Act 2002*.

No. 13 Page 41, schedule 5.4 [7], lines 22 and 23. Omit all words on those lines. Insert instead:

- (2) Despite section 10 of the *Subordinate Legislation Act 1989*, the regulations under this Part are repealed on the date occurring 5 years after the date of assent to the *Water Management Amendment Act 2002*.

The Democrats are a little perplexed. Two years after we passed the Water Management Act 2000 thinking that the responsible Minister and department had thrown away the Water Act 1912 and were busy ensuring that the State's water resources were properly managed, we have been presented with this legislation. This bill is an admission that the Department of Land and Water Conservation is having difficulties completing the transition. In fact, all of the State's water resources are still being managed under the Water Act 1912. Licences are still being issued with no requirement to be consistent with the objects and principles of the Water Management Act 2000 despite a very clear legislative intent. It is lucky for the department that no-one has challenged it legally on this point. The Democrats accept that it takes time and resources and the fewer resources the department has presumably the longer it takes to implement a new legislative framework. However, the department had years of consultation before the legislation was enacted and it certainly should not have come as a surprise that systems must be put in place to cope with and ensure an effective transition to the new Act.

The Democrats support the Water Management Act 2000 and think it should be implemented as soon as possible. We see the provisions of the Government bill as an admission of failure. The Government wants this Parliament to accept that the transition may never occur and to suspend reviewing progress towards transition by removing the normal scrutiny afforded to legislation under the Subordinate Legislation Act 1989. The Democrats believe that providing for a further five-year phase-in period in conjunction with the two years that the Government has already taken is a reasonable proposition to ensure completion of the transition towards the State's water resources being managed to current standards of acceptability. The Democrats propose a seven-year phase-in period, which is reasonable by all standards. However, the Government thinks it might not achieve the implementation within that time frame. It cannot seem to define what would be a reasonable period in which to finish the job. That is an unacceptable admission of failure. I commend these amendments to the Committee because they will address the problem.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [12.15 p.m.]: The Government opposes all these amendments. Although the Hon. Richard Jones might be the most decorated member of this House, the Hon. Dr Chesterfield-Evans has to be the most undecorated member.

**The Hon. Duncan Gay:** Be nice.

**The Hon. Richard Jones:** That's not fair.

**The Hon. IAN MACDONALD:** My apologies. The Government opposes Democrats amendment No. 1. The five-year limit is unnecessary for inclusion in this bill because it is already the Government's intention. The Government opposes amendments Nos 5 and 8 to 13 for the same reason that the amendment to include a five-year limit was rejected.

**The Hon. RICK COLLESS** [12.15 p.m.]: The Opposition opposes the amendments moved by the Hon. Dr Arthur Chesterfield-Evans. We also believe that a five-year restriction might place unnecessary burdens on the department's efforts to phase in these provisions. We do not want them mass produced simply to meet a five-year time frame.

#### **Amendments negatived.**

**The Hon. IAN COHEN** [12.16 p.m.], by leave: I move Greens amendments Nos 1, 2 and 9 in globo:

No. 1 Page 7, schedule 2 [6], line 8. Omit all words on that line. Insert instead:

Omit "regulated river (supplementary water) access licence" wherever occurring in section 61 (2). Insert instead "supplementary water access licence".

No. 2 Page 7, schedule 2 [8], line 13. Omit all words on that line. Insert instead:

Omit "a regulated river (supplementary water) access licence". Insert instead "a supplementary water access licence".

No. 9 Page 13, schedule 2 [20], proposed section 71D. Insert after line 4:

(8) This section does not apply to a supplementary water access licence.

The Government is seeking to make supplementary licences independent of access licences. The Greens believe that all supplementary licences for regulated and unregulated rivers should be attached to an access licence and should not be able to be traded independently. The Greens also believe the scientists when they say that the nation's rivers are in crisis. We want to see reductions made over time with appropriate structural adjustments for water extracted from rivers in regional areas. Several approaches can be implemented, including demand management and ensuring that the use of inappropriate delivery systems does not waste huge volumes of water. Allocations must also be reduced. I note that that is anathema to my colleagues in the National Party. However, sooner or later they will have to take their heads out of the sand—hopefully it is not very salty sand.

**The Hon. Rick Colless:** Where is your Christmas spirit?

**The Hon. IAN COHEN:** My Christmas spirit relates to the urgency of the situation and the long-term benefit for everyone in rural areas. Unpalatable actions will be required if the land west of the Great Dividing Range is to remain arable. The Greens are convinced that there is now enough scientific evidence from our scientific institutions, such as the Commonwealth Scientific and Industrial Research Organisation, to support environmental flows. Of course, those flows will need to mimic the natural pattern of our rivers. The aim must

be to get extraction down to environmentally sustainable levels. Insisting that supplementary licences are attached to access licences will make it easier for governments to wean irrigators from their expectations of supplementary water. Allowing people to trade supplementary licences to people who otherwise do not have water access licences is against the concept of "supplementary". The *Australian Concise Oxford Dictionary* defines "supplementary" as "forming a supplement; additional". By removing the link between an access licence and a supplementary licence and by allowing the trade of a supplementary licence to someone who does not have a licence means that the licence is no longer supplementary. It becomes a standalone water access licence that will create unrealistic expectations and impose enormous additional pressure on our already stressed rivers. I commend the amendments to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [12.20 p.m.]: The Government opposes Greens amendments Nos 1, 2 and 9. Amendment No. 1 will unnecessarily restrict free trade for no environmental benefit, and it is contrary to the water sharing plans. For the same reasons the Government opposes Greens amendment No. 2. The Government does not accept Greens amendment No. 9, as it is an unnecessary restraint on trade with no environmental benefits.

**The Hon. RICK COLLESS** [12.20 p.m.]: The Opposition opposes the amendments for reasons similar to those articulated by the Government.

#### **Amendments negated.**

**The Hon. PETER BREEN** [12.20 p.m.], by leave: I move Reform the Legal System amendments Nos 2 and 3 in globo:

No. 2 Page 7, schedule 2. Insert after line 8:

[7] **Section 61 (3) - (4A)**

Omit section 61 (3) and (4). Insert instead:

- (3) Except as provided by the regulations, the Minister must advertise an application for an access licence and give the public an opportunity to make submissions in relation to any such application.
- (4) The application must be advertised in a newspaper that circulates throughout New South Wales, and in a local newspaper that circulates in the area in which the access licence will apply.
- (4A) The Minister must allow a period of not less than 28 days for public comment unless the application, if granted, would have only a minor environmental impact, in which case the Minister may allow a period of not less than 14 days.

No. 3 Page 7, schedule 2. Insert after line 8:

[7] **Section 62 Objections to granting of access licences**

Omit "objector or" from section 62 (3) (a).

[8] **Section 62 (3) (a)**

Omit "objection or".

[9] **Section 62 (3) (b)**

Omit "objection or" wherever occurring.

Water access and licences are of significant interest to the community. Regional communities depend on the water that flows past their properties for water supply, stock and crop sustenance, and for aesthetics. All sectors of the community share the rivers and are concerned about the environmental health of the rivers. Amendment No. 2 will ensure that the public has an opportunity to comment on the issuing of water access licences. It ensures that the advertisements that call for submissions have to be placed in an appropriate local newspaper as well as a New South Wales daily newspaper. This is a minor public accountability amendment. The lack of the Government's capacity to accept this amendment raises questions about its concern for public participation and accountability.

Amendment No. 3 ensures that the onus is shifted from the objector, to the licence applicant. The divide between people who have access to water licences, or are applying to gain additional licences, such as mining corporations and the general regional community, can be a wide one. Currently the indigenous people



and the Coalition against Lake Cowal are objecting to the renewal of lapsed bore and pipeline licences. The department holds the relevant information on file, and obviously the company has access to it, but the community does not. The amendment would ensure that only the applicant can be asked for additional information protecting the objectors from unreasonable requests for additional information, which may be very costly, and as a result out of the range of most objectors. I commend the amendments to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [12.21 p.m.]: The Government does not accept either amendment. In relation to amendment No. 2, further advertising on individual applications is an expensive and unnecessary burden, because the publicly advertised water sharing plans cover the same subject matter. In relation to amendment No. 3, there is no reason why objectors should be exempt from justifying their objection.

**The Hon. RICK COLLESS** [12.21 p.m.]: For reasons similar to those espoused by the Government, the Opposition does not accept amendment No. 2. We believe that the requirement to advertise is provided for in the regulations. In relation to amendment No. 3, it is appropriate that objectors have to justify their reasons for objecting and be accountable.

**Amendments negatived.**

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [12.23 p.m.], by leave: I move Democrats amendments Nos 2, 3 and 6 in globo:

No. 2 Page 8, schedule 2 [9]. Insert after line 6:

- (9) An access licence takes effect:
  - (a) at the end of the time permitted by section 368 (3) for making an appeal with respect to the decision to grant the licence, or
  - (b) if an appeal is made against the decision within that time, at the time the appeal is finally disposed of.

No. 3 Page 8, schedule 2 [10]. Insert after line 11:

- (3) A notification under subsection (1) must be given within 7 days of the determination.

No. 6 Page 26, schedule 3 [4]. Insert after line 22:

- (5) An approval takes effect:
  - (a) at the end of the time permitted by section 368 (3) for making an appeal with respect to the decision to grant the approval, or
  - (b) if an appeal is made against the decision within that time, at the time the appeal is finally disposed of.

Amendments Nos 2 and 6 ensure that an access licence takes effect only when all appeals are properly dealt with or when the time for such appeals has lapsed. This is a sensible amendment that reflects the current intention of the Act, but which is not explicit. Amendment No. 3 ensures that notification is to be given to the applicant and any objectors within seven days of the determination when the application relates to an area not within a water management area or a water management area where no water sharing management plan is in force. This ensures that both objectors and applicants properly notify the determination and that the process is transparent. I commend the amendments to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [12.24 p.m.]: The Government accepts Democrats amendments Nos 2, 3 and 6. Amendment No. 2 is a statement of how things operate in practice. Amendment No. 3 states in the statute what is intended to occur in practice. Amendment No. 6 is, again, a statement of current practice.

**The Hon. RICK COLLESS** [12.25 p.m.]: The Opposition opposes Democrats amendments Nos 2 and 6. The Opposition supports Democrats amendment No 3. In relation to amendments Nos 2 and 6, we are concerned that they will allow third parties to delay the activities or progress indefinitely. The Opposition does not oppose amendment No. 3, but requests that the amendments be put seriatim.

**The Hon. IAN COHEN** [12.26 p.m.]: I support the Democrats amendments Nos 2, 3 and 6; they are appropriate and timely. I am pleased that the Government has seen its way clear to support them.

**Amendments agreed to.**

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [12.26 p.m.], by leave: I move Democrats amendments Nos 4 and 7 in globo:

No. 4 Page 9, schedule 2. Insert after line 18:

**[17] Section 68A**

Insert after section 68:

**68A Notification to objectors of change of conditions**

The Minister must cause written notice of the following decisions to be given to each person who objected to the granting of an access licence, within 7 days of any such decision:

- (a) a decision to impose a condition on the access licence, or
- (b) a decision to revoke a condition to which the access licence is subject.

No. 7 Page 28, schedule 3. Insert after line 2:

**[10] Section 103A**

Insert after section 103:

**103A Notification to objectors of change of conditions**

The Minister must cause written notice of the following decisions to be given to each person who objected to the granting of an approval, within 7 days of any such decision:

- (a) a decision to impose a condition on the approval, or
- (b) a decision to revoke a condition to which the approval is subject.

These amendments provide for the notification of objectors of any change in conditions to access licences and approvals. Advice from the Environmental Defenders Office was that the Water Management Act should be amended to require public notifications, to provide the right to make objections and third party appeal rights on variation of conditions, if that would have been required for grant of the approval in question. It is essential for the transparency of the process that objectors remain fully informed of any change in conditions. As such, I commend these amendments to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [12.27 p.m.]: The Government does not accept Democrats amendment No. 4. It would be a costly imposition on government, and objectors can make their own inquiries. The Government does not accept Democrats amendment No. 7 for the same reasons that the similar amendment dealing with objections to licence applications was rejected.

**The Hon. RICK COLLESS** [12.28 p.m.]: The Opposition opposes both amendments, because they give third parties more rights than necessary.

**Amendments negatived.**

**The Hon. IAN COHEN** [12.28 p.m.], by leave: I move Greens amendments Nos 3 and 4 in globo:

No. 3 Page 9, schedule 2 [17], lines 19 and 20. Omit all words on those lines.

No. 4 Page 9, schedule 2 [19], line 24. Insert at the end of the line:

Insert instead:

- (c) for 10 years, in the case of a supplementary water access licence.

The bill would give supplementary licences for 15 years. The life of a water sharing plan, which allocates supplementary water, is for 10 years. It is undermining the process of allowing those involved in considering water allocation and the clearly difficult issue of water licences to set in place, for 15 years, supplementary water licences. The Greens initially sought to have supplementary licences for five years but the Government indicated that it would support the 10-year supplementary licences, so we have compromised. But then, at the eleventh hour, the Minister came under pressure from irrigators. The Government backed away from even 10-year licences. These long-term natural resources allocations are ensuring that our children will have to pay the price of our inability to make courageous and principled decisions in 2002. I commend Greens amendments Nos 3 and 4 to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [12.29 p.m.]: The Government does not accept Greens amendment No. 3, for the same reason that the Government opposed Greens amendments Nos 1 and 2. The Government also does not support Greens amendment No. 4. Fifteen years is an appropriate length of time, and to alter this period would involve a substantial policy shift.

**The Hon. RICK COLLESS** [12.30 p.m.]: The Opposition also opposes Greens amendments Nos 3 and 4. With regard to Greens amendment No. 4, we do not believe it makes any sense at all to have a 10-year supplementary licence and a 15-year general licence; this would lead to a lot of confusion. With regard to the point raised by the Hon. Ian Cohen, the Opposition believes it is appropriate that in natural resource management areas there be some security of supply, and that we should be considering lengthening the period rather than shortening it, to ensure that the management techniques are appropriate.

#### **Amendments negatived.**

**The Hon. PETER BREEN** [12.30 p.m.]: I move Reform the Legal System amendment No. 4:

No. 4 Page 10, schedule 2 [20], proposed section 71A, line 8. Insert "and the Minister may grant, or refuse to grant, consent to the transfer" after "the transfer".

The amendment clarifies the Minister's powers and makes it clear that the Minister may grant or refuse to grant consent to the transfer of a water licence. This is unclear on the face of the provision as it stands. I understand the Government will accept the amendment, and I commend it to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [12.30 p.m.]: The Hon. Peter Breen is correct: the Government accepts the amendment, which clarifies the extent of the Minister's powers.

**The Hon. RICK COLLESS** [12.31 p.m.]: The Opposition does not support the amendment. We believe that the provision is already implicit in the Act.

#### **Amendment agreed to.**

**The Hon. IAN COHEN** [12.32 p.m.], by leave: I move Greens amendments Nos 5, 10, 11, 12 and 13 in globo:

No. 5 Page 10, schedule 2 [20], proposed section 71A. Insert after line 15:

(4) The Minister must not grant consent to the transfer of an access licence to another water management area or water source.

No. 10 Page 13, schedule 2 [20], proposed section 71E, lines 5-25. Omit all words on those lines.

No. 11 Page 14, schedule 2 [20], proposed section 71G, line 10. Insert "access licence that relates to the same water management area or water source" after "another".

No. 12 Pages 14 and 15, schedule 2 [20], proposed sections 71H and 71I, line 20 on page 14 to line 12 on page 15. Omit all words on those lines.

No. 13 Page 16, schedule 2 [20], proposed section 71K, lines 4-11. Omit all words on those lines.

With respect to the transfer of licences between water sources, the bill is absurd. These Greens amendments seek to, first, remove the ability of the Minister to reissue access licences with a different share component specifying the water to come from a different water source than the one for which the original licence had been issued; second, ensure that water allocations may be assigned only from one to another within a catchment, and from the same water source—the Government's bill would allow such allocations to be assigned from one water source to another; and, third, remove the power of the Minister to transfer access licences interstate.

As I said in the second reading debate, the Greens are extremely worried about the consequences of inter-valley, inter-catchment and interstate water access trading. Licences have been issued for particular rivers and places. To think that in some way these can be transferred to another river and another place is ridiculous. This inter-catchment trading is a significant step in water speculation. The Coalition in the other place rightly raised the spectre of an entrepreneur lying on a Gold Coast beach doing water trading on a mobile phone. The ability for individuals and companies to buy up water access licenses also paves the way for the Global Agreement on Trade in Services [GATS] currently being negotiated in secret by the Federal Government.

The Doha meeting of the World Trade Organisation made a general commitment to remove all barriers to trade in environmental services. The Australian Government position paper in the current round of negotiations supports a proposal to allow water services to be included in the GATS. This means that governments could face pressure to include water services in their GATS commitments. If other changes to GATS proceed—to reduce the right of governments to regulate and to open up the funding of public services to foreign corporations—GATS could become a means of deregulation and privatisation of water services. I quote from *Fortune Magazine* of 15 May 2000:

Today, companies like France's Suez are rushing to privatise water, already a \$400 billion global business. They are betting that water will be to the 21<sup>st</sup> century what oil was to the 20<sup>th</sup>.

I commend the amendments to the Committee, and suggest to honourable members that the trading of water across catchments is dangerous and disturbing, and should be seriously considered before it is allowed to go ahead.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [12.35 p.m.]: The Government does not accept Greens amendments Nos 5, 10, 11, 12 and 13. Amendment No. 5 is misconceived, as transfers under section 71A can never result in a change of water source or area. I believe the Hon. Ian Cohen has missed that point. With regard to Greens amendment No. 10, changes to water source in clearly defined and clearly restricted circumstances is appropriate and consistent with water sharing plans. The Government opposes Greens amendment No. 11 for the same reason as outlined in rejecting Greens amendment No. 10. With regard to Greens amendment No. 12, interstate trade is an important part of co-operation between the States as part of the Murray-Darling Basin arrangements. Greens amendment No. 13 is consequential on the amendment to restrict trading and is therefore rejected.

**The Hon. RICK COLLESS** [12.36 p.m.]: While I have some sympathy for the comments on the Hon. Ian Cohen, particularly in relation to some of the water transfers that have occurred in other countries, I cannot see that situation arising here. The Opposition opposes the amendments, on the basis that this would mean that there could be no inter-valley transfers, even if it were physically possible. This goes against the principles of water trading and ensuring the highest-value water usage. Having said that, I emphasise that uncontrolled inter-valley transfers are not acceptable. However, given the Government's position on the connected water sources, the Opposition does not support the Greens amendments.

#### **Amendments negated.**

**The Hon. IAN COHEN** [12.37 p.m.], by leave: I move Greens amendments Nos 6, 7 and 8 in globo:

No. 6 Page 11, schedule 2 [20], proposed section 71B. Insert after line 8:

- (4) An access licence arising under this section may only be granted in relation to the same water management area or water source as the cancelled access licence.

No. 7 Page 11, schedule 2 [20], proposed section 71C, line 19. Insert "that relate to the same water management area or water source and are" after "access licences".

No. 8 Page 12, schedule 2 [20], proposed section 71C. Insert after line 8:

- (4) An access licence arising from a subdivision or consolidation may only be granted in relation to the same water management area or water source as the cancelled access licence or licences.

These are commonsense amendments. If the holder of an access licence seeks to cancel an existing licence and have a new licence issued for another category or subcategory, it can be only for the same water source or catchment. If a licence holder seeks to subdivide an access licence by cancelling it and having two or more access licences issued in its place, or if a licence holder seeks to consolidate two or more access licences into a single licence, it can be only for the same water source or catchment. I commend the amendments to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [12.38 p.m.]: The Government supports Greens amendments Nos 6, 7 and 8 because they clarify the intended meaning of the respective provisions.

**The Hon. RICK COLLESS:** These amendments relate basically to the same concept—that is, the same water management areas and water sources for access licences. The transition from the old system to the new system does not make sense; it would place licences under a different water source. The Opposition does not support these amendments.

#### **Amendments agreed to.**

**The Hon IAN MACDONALD** (Parliamentary Secretary) [12.40 p.m.]: I move Government amendment No. 7:

No. 7 Page 13, schedule 2, line 11. Insert "or supplementary water access licence" after "licence".

This amendment will limit what can be done with the lowest class of licence, that is, supplementary water access licences. This amendment will make it clear that supplementary water access licences cannot be transferred to another water source.

**The Hon. RICK COLLESS** [12.40 p.m.]: The Opposition supports this amendment.

**Amendment agreed to.**

**The Hon. RICHARD JONES** [12.41 p.m.], by leave: I move my amendments Nos 2, 3 and 4 in globo:

No. 2 Page 13, schedule 2 [20], proposed section 71E. Insert after line 20:

- (4) An access licence arising under this section must not be granted unless:
  - (a) a study to determine the likely social and economic consequences of the issuing of the new licence has been conducted by or on behalf of the applicant, and
  - (b) the applicant submitted the results of the study to the Minister, and
  - (c) the Minister has taken the results of the study into account.
- (5) The issuing of an access licence under this section:
  - (a) is an activity to which Part 5 of the *Environmental Planning and Assessment Act 1979* applies, and
  - (b) is taken to be an activity referred to in section 112 (1) of that Act.

**Note.** Activities referred to in section 112 (1) of the *Environmental Planning and Assessment Act 1979* require the preparation of an environmental impact statement.

No. 3 Page 16, schedule 2 [20], proposed section 71L, line 16. Omit all words on that line. Insert instead "The regulations are to prescribe".

No. 4 Page 17, schedule 2 [23], lines 9 and 10. Omit all words on those lines. Insert instead "Omit section 82 (1) (d)".

Amendment No. 2 will ensure that, before a licence can be transferred, traded or converted between water catchment sources, an environmental impact study is conducted. Amendment No. 3 will ensure that access licence dealing principles are prescribed by regulation and are, therefore, subject to the scrutiny and disallowance of the Parliament. Amendment No. 4 will broaden the circumstances under which embargoes on applications for access licences will not operate, from an application for transfer of an access licence to an application under division 4, access licence transfers. This is far too broad and, therefore, is unacceptable.

**The Hon IAN MACDONALD** (Parliamentary Secretary) [12.42 p.m.]: The Government does not accept amendment No. 2 as it will place onerous and expensive obligations on licence holders. Further, the water sharing plans are designed to cover what is proposed in this amendment. The Government does not accept amendment No. 3, which would impose needless delays on the making of water sharing plans. The Government does not accept amendment No. 4, which will constrain trading and modification of existing access licences for no environmental benefit.

**The Hon. RICK COLLESS** [12.42 p.m.]: The Opposition opposes these amendments.

**Amendments negatived.**

**The Hon. RICHARD JONES** [12.43 p.m.], by leave: I move my amendments Nos 5 and 6 in globo:

No. 5 Page 17, schedule 2. Insert after line 10:

**[24] Section 82 (3)**

Insert after section 82 (2):

- (3) Subject to the terms of the order or proclamation by which it is declared, an embargo:
  - (a) in relation to a water source that is a regulated river, applies to all surface waters that may flow into the embargoed water source, including any unregulated reaches of the river or its tributaries, and

- (b) in relation to a water source that is an unregulated river, applies to all surface waters that may flow into the embargoed water source, and
- (c) in relation to a groundwater system, applies to any aquifer that may be part of that groundwater system.

No. 6 Page 23, schedule 2 [38], proposed clause 9B of schedule 9. Insert after line 31:

- (4) No compensation is payable in relation to an order made by the Minister under this section.

Amendment No. 5 will ensure that embargoes on regulated rivers cover the entire river, including headwaters, tributaries and the floodplain and its unregulated reaches; that embargoes on unregulated rivers encompass the entire river, including headwaters, tributaries and the floodplain; and that embargoes on groundwater systems mean that no aquifer interference activity can occur within the entire area, including shallow and deep aquifers. Amendment No. 6 will ensure that orders made by the Minister in relation to the conversion of volumetric shares to proportional shares are not subject to compensation.

**The Hon IAN MACDONALD** (Parliamentary Secretary) [12.44 p.m.]: The Government accepts amendment No. 5, which clarifies how embargoes are being applied in practice. The Government also accepts amendment No. 6 which confirms what is already the case.

**The Hon. RICK COLLESS** [12.44 p.m.]: The Opposition opposes both amendments. I refer, first, to amendment No. 5. As there are already embargoes on all rivers in New South Wales the Opposition does not believe that this amendment is necessary. Amendment No. 6 refers to something that is a heartland issue for members of the National Party. If someone has a right to use—or he or she has ownership of—any natural resource and that right or that ownership is removed, compensation should be paid. If the Hon. Ian Macdonald owned a property and some of his land was resumed for a roadway he would be paid compensation. The right to use water is similar. It is overly restrictive and unnecessary to place regulations in an Act that state that no compensation is payable. The Opposition will divide on that issue. Mr Chairman, I ask you to put these amendments seriatim, as the Opposition will not divide on amendment No. 5.

**Amendment No. 5 of the Hon. Richard Jones agreed to.**

**Question—That amendment No. 6 of the Hon. Richard Jones be agreed to—put.**

**The Committee divided.**

#### **Ayes, 22**

Mr Breen	Mr Dyer	Mrs Sham-Ho
Dr Burgmann	Mr Egan	Ms Tebbutt
Ms Burnswoods	Mr Hatzistergos	Mr Tsang
Dr Chesterfield-Evans	Mr R. S. L. Jones	Mr West
Mr Cohen	Mr Macdonald	
Mr Corbett	Mr Obeid	<i>Tellers,</i>
Mr Costa	Ms Rhiannon	Ms Fazio
Mr Della Bosca	Ms Saffin	Mr Primrose

#### **Noes, 17**

Mrs Forsythe	Mr Lynn	Mr Ryan
Mr Gallacher	Reverend Nile	Mr Samios
Miss Gardiner	Mr Oldfield	Dr Wong
Mr Gay	Mrs Pavey	<i>Tellers,</i>
Mr Harwin	Mr Pearce	Mr Colless
Mr M. I. Jones	Dr Pezzutti	Mr Jobling

**Question resolved in the affirmative.**

**Amendment No. 6 of the Hon. Richard Jones agreed to.**

**The Hon. PETER BREEN** [12.51 p.m.]: I move Reform of the Legal System amendment No. 5:

No. 5 Page 21, schedule 2. Insert after line 19:

**[34] Section 368 Appeals to Land and Environment Court**

Omit section 368 (1) (b). Insert instead:

- (b) a decision granting an access licence,
- (b1) a decision varying an access licence,
- (b2) a decision permitting the transfer of an access licence to another water source or water management area, or upstream in the same water source or water management area,

**[35] Section 368 (1A)**

Insert after section 368 (1):

- (1A) Any person may appeal to the Land and Environment Court against a decision of the Minister referred to in subsection (1) (b) - (b2).

**[36] Section 368 (2)**

Insert "or (1A)" after "Despite subsection (1)".

**[37] Section 368 (3)**

Insert ", except in the case of an appeal by an objector, which may not be made more than 28 days after the date on which the Minister notified the objector of the Minister's decision" after "decision was made".

This amendment facilitates appeals to the Land and Environment Court for decisions under the Water Management Act, as amended by this bill. Decisions with respect to our natural resources, particularly public lands, should be challengeable if they are likely to have a significant effect on the environment. It is important that the Government takes every opportunity to insert third party rights into natural resources legislation. This is the right of any person to appeal decisions of the Minister to the Land and Environment Court. Many natural resources and environmental management legislative frameworks provide this right in New South Wales, in fact more so than any other State.

Granting legal standing in this way used to be the policy of both the Australian Labor Party and the Coalition under previous administrations but, unfortunately, the current policy of both parties is to undermine this critical aspect of ecologically sustainable development and public participation. By denying the right of the community to defend natural assets they hold dear, such as healthy waterways, the Government is denying citizens their political and legal rights. I commend the amendment to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [12.53 p.m.]: The Government does not accept this amendment. This would be an unnecessary expansion of the appeal provisions and would open the door to vexatious litigation.

**The Hon. RICK COLLESS** [12.53 p.m.]: We agree entirely with the Government's comments and also oppose the amendment.

**Amendment negatived.**

**Schedule 2 as amended agreed to.**

**The Hon. Dr PETER WONG** [12.54 p.m.]: I move my amendment No. 1:

No. 1 Page 28, schedule 3. Insert after line 8:

**[12] Section 109 Suspension and cancellation of approvals**

Insert after section 109 (1) (d):

- (e) that the approval was granted as a result of false, misleading or materially inaccurate information supplied by or on behalf of the applicant.

The amendment is quite self-explanatory. It says that if an approval was granted as a result of false, misleading or materially inaccurate information supplied by or on behalf of the applicant, the Minister has the right of suspension and cancellation of the approval. I believe that the Government accepts this amendment.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [12.54 p.m.]: The Government accepts this amendment. It clarifies that the intent of the legislation in granting approval on the basis of sound information.

**The Hon. RICK COLLESS** [12.54 p.m.]: The Opposition will not oppose this amendment.

**Amendment agreed to.**

**Schedule 3 as amended agreed to.**

**The Hon. PETER BREEN** [12.55 p.m.]: I move Reform the Legal System amendment No. 6:

No. 6 Page 35, schedule 4. Insert after line 17:

[29] **Section 403A**

Insert after section 403:

**403A Annual review by Auditor-General**

- (1) The Auditor-General is to review and report on the progress of the implementation of the *Water Management Act 2000*.
- (2) The review is to be conducted on an annual basis with the first such review occurring within 12 months of the date of assent to the *Water Management Amendment Act 2002*.
- (3) The Auditor-General is to prepare a report of the review and present the report to each House of Parliament, as soon as is reasonably practicable after the completion of each review.

This amendment grew out of a suggestion by the Minister, who, instead of suggesting an actual time limit on the application of the Water Act, offered an annual departmental report to Parliament on progress towards full implementation of the Water Management Act 2000. I believe it is a disgrace that the Government will not allow two different legislative regimes for managing the same resource which will be tradable across the two legal frameworks. I believe it is a recipe for disaster. Half the State's precious water resources will be managed under a legislative regime appropriate for a society 100 years behind our own, while the other half will reflect the current social and environmental standards as passed by this Parliament. This is a contradiction on a grand scale. The sooner the Government progresses towards full and effective implementation of the Water Management Act 2000 the better.

My amendment requires an independent assessment of progress towards that target to be tabled each year in the Parliament. The Audit Office has recently proven its bona fides in this regard with its excellent assessment of the incompetence of the Department of Land and Water Conservation in implementing a similar natural resource legislative framework, namely the Native Vegetation Conservation Act 1997. It is a similar story with this legislation. Two years after the passing of the Act, two years down the path towards regulating community water sharing plans, the department has still not finalised the State Water Management Outcomes Plan, the agenda statement of the Government's policy framework. After two years there has been no action on the key agenda-setting document!

I look forward to a similar Audit Office assessment report on the way in which the Department of Land and Water Conservation is implementing its legislative duties with respect to water quality. I believe this reporting process would act as a driver, both internally and externally, towards ensuring that New South Wales waterways are managed properly and according to the standards set by this Parliament two years ago. I commend the amendment to the House.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [12.57 p.m.]: The Government does not accept this amendment. It would create an unnecessary use of Government resources.

**The Hon. RICK COLLESS** [12.57 p.m.]: The Opposition also opposes this amendment. The review of the Native Vegetation Conservation Act carried out by the Auditor-General was a good way to go and we do not believe that this amendment is necessary.

**Amendment negatived.**

**Schedule 4 as amended agreed to.**



**Schedule 5 agreed to.**

**Title agreed to.**

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

*[The President left the chair at 1.00 p.m. The House resumed at 2.30 p.m.]*

## **PRIVACY AND PERSONAL INFORMATION PROTECTION AMENDMENT (PRISONERS) BILL**

### **Second Reading**

**Debate resumed from 20 November.**

**The Hon. GREG PEARCE** [2.32 p.m.]: The Coalition does not oppose the Privacy and Personal Information Protection Amendment (Prisoners) Bill, which is the Government's response to community concern about the possibility of compensation being paid to convicted serial killer Ivan Milat over a breach of his privacy by the Department of Corrective Services. The breach involved the public release of some X-rays of Milat taken following his ingestion in prison of razor blades and other metal objects. I am pleased that the Treasurer pointed out in his second reading speech that the Government is committed to the privacy principles set out in the Privacy and Personal Information Protection Act and to respecting the privacy of people in their dealings with government in general.

This bill does not remove those obligations but deals instead with an isolated remedy involving the potential payment of up to \$40,000 in damages when the Administrative Decisions Tribunal conducts a review of action by an agency and determines that the applicant is entitled to payment of damages. The bill is typical of the Government's approach to these sorts of issues: it is basically a media stunt. I do not think there is any real likelihood that Mr Milat would be able to establish before the Administrative Decisions Tribunal that he had suffered financial loss or psychological or physical harm because of the conduct of the Department of Corrective Services—although many other people probably have legitimate claims against that department, the management of which this Government has failed to attend to, causing great expense to the community. The Coalition does not oppose the bill.

**Reverend the Hon. FRED NILE** [2.34 p.m.]: The Christian Democratic Party supports fully the Privacy and Personal Information Protection Amendment (Prisoners) Bill. I do not believe it is necessary to speak at length on this legislation. The bill will prohibit the payment of damages for contraventions of privacy laws in relation to persons serving sentences of imprisonment. We are pleased that the Government has introduced this bill in order to prevent Mr Milat or any other person like him from using the privacy laws to establish a case for breach of privacy and/or compensation. However, I am concerned by media reports that Mr Puplick, the Privacy Commissioner, is apparently speeding up the inquiry in order to forestall the Government's endeavours in this legislation.

I do not believe it is appropriate for a statutory officer to try to prevent the Government from enforcing its policy. I understand that Mr Puplick is attempting to make a decision on the matter before the bill is enacted, so it will need to go quickly from Parliament to Government House for the Governor's signature. I put on record our criticism of Mr Puplick's attitude to issues such as this. It is bad enough that the inquiry was initiated but now he is apparently trying to circumvent clearly stated Government policy. That is a matter of concern and makes me wonder—as I have done before about some of his other activities—whether Mr Puplick is a suitable person to continue in his present role.

**The Hon. JOHN RYAN** [2.36 p.m.]: The Opposition supports the Privacy and Personal Information Protection Amendment (Prisoners) Bill. However, we would not be doing our duty as parliamentarians if we failed to refer to some important issues regarding the bill's origins and the involvement of Mr Puplick. Additionally, I believe this bill seeks to reduce scrutiny of the Department of Corrective Services, and I can make a better than good case for increasing, not decreasing, such scrutiny.

This bill is nothing less than an outrageous stunt by either the administration of the Department of Corrective Services or the Minister for Corrective Services. It seeks to address a problem that simply does not exist. The bill's purpose is to prevent the payment of any form of compensation to Mr Ivan Milat or Bilal Skaf—as if that were an imminent possibility. The truth is that Parliament and the community have been misled that

such an outcome is likely or even legally possible. It is not possible. The Minister has never pointed out that one single cent in compensation has been paid to anyone for a breach of privacy. Who would dream—I suspect that Mr Puplick certainly would not—of awarding damages or any sort of compensation to Ivan Milat or Bilal Skaf? I cannot imagine that that would happen.

**Reverend the Hon. Fred Nile:** Why is he investigating it?

**The Hon. JOHN RYAN:** There is an enormous difference between investigating a matter and awarding compensation. Fact No. 1: Mr Puplick is not legally permitted to pay anyone compensation; he cannot make such a decision. Fact No. 2: If Mr Puplick investigates a matter, no compensation can be paid. People who wish to make a complaint about a privacy matter must, before going to Mr Puplick, elect to pursue that matter in one of two ways. First, they may choose to have Mr Puplick investigate it, at which point they become ineligible to receive one cent in compensation. I cannot ascertain whether Mr Milat went to Mr Puplick because he would in no way breach Mr Milat's privacy. But if Mr Milat asked Mr Puplick to investigate anything, that would be the end of any opportunity for compensation—it would vaporise; it would no longer exist.

Under New South Wales privacy laws, payment of compensation is possible only if Mr Milat asks the Department of Corrective Services to investigate his privacy matter. If, having conducted that investigation, the Department of Corrective Services were minded to offer Mr Milat some compensation, that money would be paid to him. I cannot imagine that the Department of Corrective Services would ever be minded to pay compensation to Mr Milat or to Bilal Skaf. In case what I say is misrepresented, of course I accept that the payment of even one dime to Mr Milat, his family, Mr Skaf or members of his family would be totally inappropriate and a travesty of justice. But that is not to say that the Privacy Commissioner does not have an appropriate role to investigate the Department of Corrective Services with regard to privacy matters.

Honourable members will remember that some months ago on behalf of this Parliament I was given the responsibility of undertaking an inquiry into the increase in prisoner population. On a couple of occasions the committee wanted advice direct from the source and sought to go into the prisons to obtain evidence from inmates who had written to the committee. On one occasion the committee was threatened with non-admittance to a prison because the department was worried about the privacy of inmates. On one occasion the department will use the privacy of inmates to prevent scrutiny and on other occasions it will use it as a weapon, as it has in this legislation. The committee immediately contacted the Inspector General of the Department of Corrective Services and asked him how he gained entry to gaols. The committee then asked the Department of Corrective Services to make the same arrangements for the committee as those that pertained to the inspector general. Oddly enough, the committee was then allowed entry to the prisons.

The fact that people are incarcerated does not mean that the community no longer has a responsibility to treat them with dignity. Of course we do. As a committed Christian I believe that every single individual, regardless of their behaviour, is owed the dignity of being a creature of God. Of course, it is important for them to suffer punishment for any evil deeds they do—particularly Ivan Milat and Bilal Skaf—but I do not believe they lose all rights to be treated with dignity. I refer to comments made by Mr Puplick in response to this bill that deserve to be put on the parliamentary record. He said:

In the first instance, the Bill is unnecessary, as the Government knows. The Premier has suggested on radio that the Bill is to stop people like Ivan Milat from receiving compensation "if the Privacy Commissioner upholds a complaint they make". As I have stated before, I have no power to award compensation in relation to privacy complaints investigated by me. Neither the Premier nor the Minister for Corrective Services seems to understand that **even if I uphold a complaint, no compensation can be awarded to the complainant.**

That was emphasised by Mr Puplick. He continued:

The awarding of damages by the Administrative Decisions Tribunal only relates to matters which have first been the subject of an Internal Review under the Act.

An internal review is conducted by the Department of Corrective Services, not by the Privacy Commissioner. He further stated:

This is an entirely separate process to investigations of complaints by my Office. Complainants must choose up front which option they want: an Internal Review with the option later to go to the Tribunal, or an investigation and conciliation by the Privacy Commissioner. People who seek to have their complaints investigated by me cannot seek compensation via the Tribunal. I have attached a flowchart to explain the legislation for those who still think otherwise.

There is to date no precedent for the awarding of compensation for a privacy breach. Not a single dollar has been awarded by the Tribunal for any breach of privacy. Even if a prisoner could prove their privacy has been breached, it would be extremely difficult to show that they had suffered the type of damage for which compensation might be ordered: they have to prove physical, financial or psychological harm was suffered because of the breach of their privacy. Suggestions to the contrary—that the awarding of compensation is somehow straightforward or automatic are just a synthetic concoction by those who do not understand the law—

Or I would add, choose not to understand the law. For the further information of the House, Mr Puplick later explained:

Furthermore, Ivan Milat has stated publicly he has not made any claim for compensation. Even if he did make a claim in the future, an application could only be made to the Tribunal if the Department of Corrective Services first agreed to the lodgment of an out-of-time Internal Review application. If they have not agreed to this—and I presume the Minister knows if they have or not—then Milat is not even eligible to go to the Tribunal, let alone seek compensation.

Why the chicken act by the department? Why does it say to the Parliament that there must be legislation to prevent something that legally cannot happen and is not going to happen? I do not think it was an accident that this legislation was introduced a weekend or two after the publication by the *Sun-Herald* of photographs of the family visit to Bilal Skaf. I have no sympathy for Bilal Skaf: what he did was utterly dreadful and he is receiving the punishment he deserves, but the same does not apply to his family. Sadly, the photographs released by the department to the newspaper for publication include not only a photograph of Mr Skaf's mother, who allegedly carried out a crime, the investigation into which I have no objection, but a photograph of his father, who apparently has not committed a crime. This bill refers to the families of people, not just the prisoners. Even worse, there were pictures of two children playing in the corner while their mum and dad were visiting Bilal Skaf.

I discovered, after placing questions on notice, that the Department of Corrective Services not only gave those photographs in two forms—digital and hard copy—to the media for publication but also revealed the individuals in the photographs. That is what this bill is all about. The department has discovered it has done something that all Australians would regard as wrong: It has put up for scrutiny two young children who, sadly, are related to one of the worst criminals ever to be sentenced in our criminal justice system in recent times. Those children, by an unfortunate accident of birth, are related to a criminal. That alone would be a heavy enough burden to carry but I wonder what it is like for them to be also confronted by children at school or friends with a photograph of them visiting their relative in gaol. That would be tough for them as, indeed, it probably has been tough to grow up in Bilal Skaf's family. Those children do not need the Department of Corrective Services to make things more difficult for them.

I speak as one with a lifetime of experience caring for young people and I certainly care for young people who have yet to enter the criminal justice system. The department, by publishing those photographs, has just made it all the more likely that those young people will indeed come into contact with the criminal justice system. By virtue of that act—by accident or omission—those children have now been irreparably identified with that individual. Many people in the community are very angry about what Bilal Skaf did, and rightly so. Sadly, some people do not regard our criminal justice system as sufficient punishment. Somebody could have taken the photograph identifying those young people to cause them some damage. And if something ever happens to those young people, their blood will be on the hands of the Department of Corrective Services because under no circumstances should it have permitted the publication of photographic material that showed the images of two young relatives of a person in custody. In seeking to avoid the consequences of having done that, the department then conned the Minister that there was a chance that the Privacy Commissioner would award damages to Ivan Milat and ran a story that obviously degrades and denigrates Christopher Puplick. The speech just given by Reverend the Hon. Fred Nile shows how effective that campaign has been. Reverend the Hon. Fred Nile probably believes that Mr Puplick is genuinely considering awarding compensation as a result of the very effective, totally misleading and, in my view, scandalous campaign by the Government to enable it to pass this legislation.

**The Hon. Peter Breen:** Alan Jones did the same thing on the radio this morning.

**The Hon. JOHN RYAN:** Talkback radio was full of outrage, and quite rightly so, if the story had been true. This legislation is founded upon a rotten and wrong premise. I am aghast at the manner in which the Department of Corrective Services appears to be out of control with regard to scrutiny by outside agencies. If people make a complaint against the Department of Corrective Services they can expect to be vilified—I evidence this particular episode. An oversight body watching over any aspect of the Department of Corrective Services can expect a battle in exercising its powers. Every exercise of those powers will be a knock-down, drag-out battle because the department will use every available resource to frustrate the oversight body carrying out its legal duty.

The Privacy Commissioner is not the only watchdog to have been subjected to this sort of vilification by the Department of Corrective Services. I served on a parliamentary committee looking at aspects of Corrective Services. During the inquiry it was documented in graphic detail how the Department of Corrective Services has basically frustrated the Inspector General of Corrective Services. Indeed, the department held up—it is a simple matter—20 reports of the inspector general that had been presented to the Minister which, we were told in the Minister's second reading speech, in the normal course of events would be published by being reported to the Parliament. None of the reports was made public until the Parliament asked for them to be made available for us to scrutinise. People should not kid themselves that the Department of Corrective Services has anything other than an unbelievable culture of cover-up. This bill demonstrates the limits to which it will not go to avoid scrutiny and to continue its culture of secrecy.

In the last sitting of the Parliament I said that the administration of our prison system is rotten from the top down. There is excellent evidence—and I provided some of that evidence—that the Department of Corrective Services is in bad shape. I still believe that a properly constituted royal commission into the department would uncover levels of corruption equal to or worse than that uncovered by the Wood Royal Commission into the New South Wales Police Service. Having made those allegations in the last sitting week, I am more than happy for any member who believes that I might be playing the Franca Arena game—that is, I have a box of documents that I will not show to anyone—to view the publicly available documents on the matters I am raising, and have raised, in the Parliament. I will show the documents to anyone who chooses, provided appropriate arrangements are made for the privacy of individuals who need to be protected for their safety. Other than that, I will show the documents to anyone. I am not playing games that I am not prepared to play with integrity.

The truth is that the Department of Corrective Services is out of control, and this bill demonstrates that beyond any reasonable doubt. Opposition members will not be conned into opposing this bill, because we know that what the Government has done will simply spill over to us. We will not do that, but it is not unreasonable to point out the history of this legislation and to demonstrate where it is going. It is amazing. In relation to the scrutiny of oversight bodies, I stood in the Parliament and pointed out that an individual who currently holds the position of Assistant Commissioner of Corrective Services blew the cover of an ICAC informant. The informant was providing reliable evidence to the ICAC—I have been able to confirm that that was the case—and Assistant Commissioner Lee Downes blew the informant's cover. She came to the knowledge that this person was an ICAC informant. She did not seek advice, but in the presence of other prison officers who she knew would spread it around, she had a conversation with the informant that I understood went in these terms:

You think I am f--ken corrupt do you? By the way—

she names the individual—

I have put you on protection. Consider that a kick in the guts—that will slow you down for a while.

She organised for the person to be arrested for holding contraband which the person had shown to an ICAC officer; she had the person accused of carrying contraband as if it belonged to that person. When the prisoner left Grafton gaol she continued to take an interest in the inmate to ensure that he did his porridge as hard as possible into the future; she ensured that the authorities were aware of her comments about him and that his prison term was as hard as possible. I have no idea why she did that, but no doubt the fact that she did it to this individual was a salutary lesson for any other inmate who might want to put up his hand to help the ICAC.

Before blowing the cover of an inmate who was believed to be carrying out a covert inquiry, one would have thought a prison governor with integrity would first have consulted someone senior or the Independent Commission Against Corruption before blowing the cover and ordering a raid on the inmate's cell. I am concerned that no organisation has investigated this serious allegation. I am concerned also that the person who did this is an Assistant Commissioner of the Department of Corrective Services. I do not see Government members running into the House to rescue this person's reputation. I presume that my research has been accurate and thorough, and that the matter will simply lapse.

Only last week I demonstrated how one of the most senior people in the union movement, John Campbell, had been found guilty of falsifying a workers compensation claim. I do not believe it gets much more serious than that, and it does not. The source of my information was the Government. I did not get the information from a special document; I placed a question on notice and received an answer. The Government confirmed that an individual who now holds an elected position in the Department of Corrective Services falsely stated that he saw an individual throwing up in the toilet; the individual had sustained his injuries because he was king-hit by another prison officer and had sustained very serious injuries—injuries that would ordinarily result in criminal charges against the perpetrator.

What concerns me about that matter was not just that a union official was involved. I point out that the matter was never reported formally to the police; it was internally investigated by the Department of Corrective Services. It was reported initially to the police but the undertaking was given that when the matter had been investigated the files would be returned to the department to see whether action was considered appropriate. Among the documents I have on this matter—if any member asks, I will happily table the documents so that members can see for themselves—is a report by custodial staff liaison officer David Mainwaring dated 16 June 1997, in which he expresses additional concern that many staff from Goulburn had made false allegations in relation to the matter. He said:

There are a number of reports attached to the file concerning officer Henricks—

he is the individual who was punched—

which would suggest that not all of the staff at Goulburn are enamoured of him but once again there is no suggestion in the reports that they were orchestrated by Schofield—

he carried out the assault—

It is interesting, however, that they were all provided during a period of three days in April 1997 ...

That is substantially after the events took place. Suddenly all the officers of Goulburn who had had any association with his bloke wanted to hand over a piece of paper accusing the officer who was assaulted of wrongdoing. He further said:

... which suggests collusion but at whose instigation is not clear. These staff might be asked what prompted them to go into print on or about the same time concerning Henricks.

They probably should have been asked to do that. It suggests that the entire staff of the prison have decided to gang up on an individual who was assaulted and to provide false evidence against him. But obviously no-one in the department wanted to investigate that matter. As I said, the Department of Corrective Services is rotten from the top down. I can demonstrate with document after document that that is the case. I believe there should be a properly constituted royal commission into the Department of Corrective Services so that these matters can be ventilated. I want to know why the Commissioner of Corrective Services, Ron Woodham, let off his assistant, Ian Maclean, with a direct order that he pay back sustenance allowances in excess of \$3,000.

In terms of oversight, the Parliament asked some questions and, frankly, we were given good old-fashioned bullstuff in response to those questions. We were not told that the documentation, which allegedly verified that payment, was in the form of a couple of statutory declarations dated three years after the claim was made and which did not indicate that any expenses were incurred. However, we were not given any explanation for that. Again, if members want to see the documents, I have them available for tabling in the House. I do not believe the Department of Corrective Services can be trusted. While we might support this legislation going through, it will not change anything. No payments have been made to criminals; nor are they likely to be. However, the suggestion that the Department of Corrective Services was in any danger was misleading to say the least. It was a campaign of mischief that I believe is sadly too typical of a department that is completely and hopelessly out of control.

**The Hon. IAN COHEN** [2.59 p.m.]: I concur with much of the sentiment expressed by the Hon. John Ryan, and I wonder why the Opposition cannot see its way to oppose this bill. When the Hon. Jeff Shaw was Attorney General and a major figure in this House he undertook debates with style and was a commanding presence, as was the Hon. John Hannaford. There were inspiring debates. I remember on a number of occasions talking about issues like this, using as examples serious criminals, not the sorts of people who would gain sympathy from anyone in society. The Hon. Jeff Shaw said words to the effect that sometimes the worst examples make the best law. This is a case in point. It is important that we do not vilify these people. We should acknowledge that they deserve to be and are being punished. I believe that some members of this House take the extent of punishment beyond the realm of an advanced civilisation.

The object of the bill is clear: to prevent prisoners, their families and their associates from seeking redress when their privacy is infringed. While the legislative intent of the bill is flawed, its political intent is even worse. As the Hon. John Ryan said, the bill is a political stunt. Media comments made by the Government in relation to the bill are blatantly misleading. The bill is an insult to democracy, and the Greens are opposed to it on that basis. We are opposed to the systematic erosion of the rights of persons in prison. This legislation, which aims to degrade the rights of persons in this State, is draconian and deeply flawed. I am very concerned

when I hear utterances about the penal system in this State and the punishment—sometimes torture—that is meted out to individual prisoners. We have referred previously to rapes and violence that occur in prison. It goes beyond reasonable punishment.

When the rights of one person in our community are degraded, the rights of all are degraded. Everyone in this society has rights, and our society prides itself on being democratic and civilised. If that is the case, we cannot condone degradation within the community, which is what happens when people's rights are taken away. Those who will lose their rights under this legislation are not all long-term, hardened criminals. Those affected by this bill are serving full-time sentences of imprisonment, whether as a result of court sentences, failure to pay monetary penalties or the revocation of periodic detention orders, home detention orders or parole orders. All inmates will lose their rights under this unreasonable and unnecessary legislation.

Under this legislation an inmate will not be paid compensation if his or her privacy, or the privacy of a spouse, partner, relative, friend or associate of an inmate, is infringed by a public sector agency. In a statement released on 19 November the Privacy Commissioner described the bill as seriously flawed. This legislation provides that any department can release any information about a convicted person without fear of infringing the law. The commissioner gave as an example a member of Parliament who may be sent to prison for bribery, for robbing an electoral allowance or for any other offence.

**The Hon. John Ryan:** Or those who visited Phuong Ngo.

**The Hon. IAN COHEN:** I note the interjection by the Hon. John Ryan about those who visited Phuong Ngo. Under the provisions of this bill the Department of Health would be at liberty to release to the media the public health record of the former member of Parliament without any fear of that person having access to redress or compensation for damage. In addition, if the bill is passed—and I do not imagine it would not be—it will eliminate the privacy rights of any prisoner's spouse, partner, relative, friend or associate. As the Privacy Commissioner demonstrated, all those Labor Party members who visited Phuong Ngo in gaol would lose any rights if their privacy were breached. The bill will also apply to a prisoner's legal representatives, spiritual counsellors or treating medical practitioners.

This extremely poorly conceived bill not only frees government departments from all privacy obligations but, as the Privacy Commissioner said, allows the unlawful collection of information about prisoners or their friends, relatives or associates. It also relieves government departments of the obligation to maintain accurate records and not to misuse those records. The bill may have retrospective application. The Privacy Commissioner pointed out:

Retrospective legislation eliminating rights is the hallmark of governments with no concern for decency or democracy, making laws to benefit and protect only themselves. One must seriously question: why is this legislation needed?

The Privacy Commissioner asked:

Why give blanket exemptions to all departments and agencies, in both State and local government, to violate all privacy rights of all of the thousands of convicted prisoners in New South Wales, with virtual immunity?

Why not hold governments to account if they have not obeyed the law?

The Government must answer those questions. The bill is a fraud and a sham, and the Greens oppose it.

**The Hon. PETER BREEN** [3.05 p.m.]: I oppose this bill. It is a complete perversion of our privacy laws to allow legislation like this, which is directed to two incidents in the gaol system that are at the heart of the problem. The problem has been created by the Department of Corrective Services. The department selectively released the information to the *Sun-Herald* in the case of Bilal Skaf and Ivan Milat. It selectively released photographs which were then published in the mainstream press. To treat prisoners in this way is an appalling breach of their privacy. I do not think anyone would argue about that. The argument seems to be about whether they are entitled to compensation. That is the reason for introducing the legislation.

My experience of the legal system is that the chances of Milat getting compensation to the tune of \$40,000 are about one in a billion. Given the hundreds of thousands of dollars that are forked out by the Victims Compensation Tribunal, for example, to people who simply have a good story and no conviction to back up their claims—as required in other States—why are we not focusing on that problem? This bill relates to two incidents of mismanagement by the Department of Corrective Services. The release by the Department of Corrective Services of information about Bilal Skaf is a complete scandal. The problem was a drawing that he

made of his cell, which his mother was seen to be smuggling out. This is a complete reversal of prison security. Prison security is meant to prevent things being taken into prison. If something is already in prison, how can it be a breach of security to take it out? Whether it is taken out openly or in papers or in a sock, as in this case, is not the issue. Security is aimed at preventing things getting into prison.

**The Hon. John Ryan:** They were worried about a drawing.

**The Hon. PETER BREEN:** But the drawing had already been published in the *Sun-Herald* in a much more detailed fashion months earlier. The drawing was not a risk to anybody. The department used it as an excuse to vilify Bilal Skaf's family and to justify the release of the information to the *Sun-Herald*. In the Milat case, what was the Department of Corrective Services doing allowing him to swallow razor blades, allowing him to swallow the chain off a set of nail clippers and allowing him to swallow stationery staples? It is bizarre. For this Parliament to be debating legislation that represents incompetent management by the Department of Corrective Services is an absolute disgrace. Let us look at the reverse. Let us look at the problem of various news teams, cameramen and journalists who want to get into prisons to interview prisoners about particular cases, who want to find out on behalf of the community what is happening in the prisons.

If the Department of Corrective Services were as anxious to allow information into prisons as it is to let information out, I would be a bit happier about this bill. Today I spoke to Ross Coulthard from the *Sunday* program. He has been trying for years to get into prisons and interview prisoners about particular cases, but the Department of Corrective Services simply puts up a brick wall and will not allow, under any circumstances, cameramen, news teams or journalists to go into prisons. I go into prisons on a regular basis. A couple of weeks ago I took a private investigator into prisons with me. One has to jump through enormous hoops to do that. It is quite wrong that the Department of Corrective Services operates in this completely unaccountable and hideously biased fashion and punishes prisoners in a way never intended by the legal system that put them in there.

This legislation is simply a line in the sand as far as I am concerned. The Department of Corrective Services must be accountable for the way it treats prisoners. If the department allows out information like it did in the case of Ivan Milat and Bilal Skaf, then it should be accountable in some way. This Parliament should not be supporting the department by passing this bill. This is nonsense. This is the complete reversal of what we should be doing. It is about time the department allowed news crews and journalists to go into prisons and see what is happening in them. Given the rising number of prisoners and the effect of that on the community—bearing in mind that most prisoners will return to the community—the community ought to be informed about the sort of people being created and moulded in the prisons. The only way we can do that is by allowing people to go into the prisons and report back to the community on what is happening. That is what we should be doing—not passing legislation such as the bill before the House.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [3.11 p.m.]: On behalf of the Australian Democrats, I oppose the bill. It is extraordinary and outrageous. The Government is simply backing up the department in its release of X-rays and photographs of Ivan Milat and Bilal Skaf's family and, having done so, without any regard to their welfare, seeks to make such behaviour permissible in respect of all prisoners at all times, whether they have committed murder or not paid parking fines, and in respect of their relatives and visitors. This is an outrageous and unnecessary attack on the civil liberties of everyone in New South Wales, but on prisoners in particular.

Prisoners must be treated by the department in the most humane way possible, especially as a huge proportion of prisoners will return to the community. Ideally, when they do, they will have been rehabilitated to the extent of being less dangerous than they were when they went into prisons. If their rights are totally trashed, if they are treated like animals and demonised by the department and the Government—with its foolish legislation incarcerating more people and overcrowding our prisons—if anybody who commits a crime generally is demonised rather than looked at against the background that led to the commission of their crimes, effectively that gives a green light to the worst elements of bullying within Corrective Services and a bullying culture within society as a whole.

I agree wholeheartedly with the good work of the Hon. John Ryan, both as the Chair of the Select Committee on the Increase in Prisoner Population and its recent investigations and as reflected by his comments today. It is most unfortunate that his party does not have the integrity to back him up or the guts to oppose this legislation. Instead, it adopts a law and order attitude, along with the Government, and determines that it will not be outdone in this silly auction. In fact, the Liberal Party lacks integrity. If the Hon. John Ryan wants to join a party with integrity, he is welcome to join the Democrats. We will be happy to have a person of integrity such as him—because, unfortunately, though he has spoken with integrity and truth today, his colleagues have not backed him up.

He must use some fancy footwork and work out how to say what needs to be said, to tell the truth about this, without apologising for his sorry little party, which engages with the Government in a law and order auction. To quote his leader, "We won't be outflanked on the right." Of course, with this Government in the saddle, you have to go a fair way to get further right than it is. A good example of that is this stupid legislation. The Department of Corrective Services has done two things that it knows perfectly well it should not have done: release X-rays and release photographs. Not content with that, the department wants to truncate all prisoners' rights, at all times, simply to get the department off the hook post facto. This Government goes along with it! What a spineless Government! What a hopeless apology for any claim to civil rights it has.

The Government's anti-terrorism bill, to be introduced into this Chamber this afternoon, makes that point even clearer. It is convenient to demonise prisoners in an attempt to get this sort of silly bill passed, but that puts an end to any intelligent discussion of the causes of crime, and cost-effective and humane ways in which society might deal with crime, as are the Europeans—unlike the crazy American religious right, which is pushing this hell and damnation view of crime, criminals and punishment, despite the fact that that approach does not work. I could quote from the very sensible media release of the Privacy Commissioner, Chris Puplick, but that has been dealt with at some length by both the Hon. John Ryan and the Hon. Ian Cohen so I will merely note for the purposes of *Hansard* that it is the media release from Privacy New South Wales of 19 November 2002 entitled "Flawed bill fails victim—and others".

Milat, of course, has made no complaint. As the Privacy Commissioner said, as Milat has made no complaint there will not be any investigation by the Privacy Commission. If Milat were to make a complaint to the Privacy Commissioner—which he is now out of time to do, but assuming that he does—and the complaint were upheld, no compensation would be awarded in any case. So the bill has no rationale at all, except to allow the Government to trade on the idea that prisoners are monsters and that the Government is tough on them. This is silly, media-driven nonsense, and it wastes everybody's time. If we try to speak on these bills, the Government accuses us of wasting time. If we use any other proper means of the Parliament to draw attention to issues, we are equally accused of wasting time. Of course, the Government is allowed the luxury of bringing in silly bills, wasting our time, and calling that good governance—simply because it is trying, as usual, to win the election. This bill is appalling. It is a disgrace. We will oppose it, and we will divide on it.

**The Hon. RICHARD JONES** [3.17 p.m.]: I support the call of the Hon. John Ryan for a royal commission into Corrective Services as that is now overdue. I do not normally call for royal commissions because they cost an awful lot of taxpayers' money, but this is an instance in which a royal commission is needed. I hope the Government is listening. I hope next year, when this Parliament resumes, there will indeed be a royal commission into Corrective Services. The whole system is riddled with corruption and mismanagement. It is time for a royal commission. This bill is just one manifestation of that corruption. This bill is flawed, disingenuous, and absolutely unnecessary. I wonder how the Cabinet Office approved it. I thought it had more integrity than that. It bewilders me that the Cabinet Office would approve the bill. Maybe it did not actually approve it. Maybe this is at the initiative of just one Minister who decided it was a good idea in the heat of the moment.

The bill says it aims to prohibit damages from being payable for contraventions of privacy laws in relation to persons serving sentences of imprisonment. The bill provides that damages for a breach of privacy cannot be paid by a public sector agency—or the Privacy Commissioner where he acts as the agent of the agency—on an internal review of its conduct, or awarded by the Administrative Decisions Tribunal [ADT] on an external review of its conduct. However, the Privacy Commissioner has no power to award compensation in relation to privacy complaints investigated by him. Even if the Privacy Commissioner upholds a complaint, no compensation can be awarded to the complainant.

The awarding of damages by the ADT only relates to matters which have first been the subject of an internal review under the Act. The Privacy Commissioner says that this is an "entirely separate process to investigations of complaints by my office". Complainants must choose up front which option they want: an internal review or an investigation by the commissioner. People who seek to have their complaints investigated by the commissioner cannot seek compensation, as has been said. There has been to date no precedent for the awarding of compensation for a privacy breach. Not a single dollar has been awarded by the tribunal for any breach of privacy. So why is this legislation now before the House? The commissioner notes, quite rightly, that even if prisoners could prove their privacy had been breached it would be extremely difficult to show that they had suffered the type of damage for which compensation might be ordered.

The bill is extremely unfair in many respects: it treats all prisoners the same, whether they are fine defaulters or mass murderers. It provides that any department can release any information about a convicted person with complete immunity. It eliminates the privacy rights of prisoners' spouses, partners, relatives, friends



or associates. It frees government departments from all privacy obligations. It may have retrospective application. Why give blanket exemptions to all departments and agencies, in both State and local government, to violate all privacy rights of all prisoners, with virtual immunity? Why should we not hold government departments accountable if they do not obey the law?

The *Daily Telegraph* claimed yesterday, in relation to a claim by Ivan Milat that his privacy had been breached when X-rays showing the contents of his stomach were made public, that a favourable recommendation from the Privacy Commissioner could significantly help his cause if he is successful in taking his case to the Administrative Decisions Tribunal [ADT]. This is complete and utter nonsense. That newspaper should be more responsible in its coverage. The *Daily Telegraph* also reported last month that this bill fits in with the loss of other rights that prisoners incur because of the seriousness of their crime. Again, this is utter rubbish. Not just serious offenders but all prisoners will lose their rights under this legislation.

The *Daily Telegraph* has reported this story in a most hideous manner. It has attacked the Privacy Commissioner, it has attacked his decision to investigate the Milat case and it has even attacked the amount he is paid per year. What kind of gutter journalism is this? The commissioner is bound to investigate all complaints that are lodged. He is impartial. In addition, the problems associated with the human rights abuses of prisoners are serious and have been debated for many years. For example, a book entitled *Prisoners as Citizens—Human Rights in Australian Prisons*, written by David Brown and Meredith Wilkie and published by the Federation Press, states:

In 1978, Darcy Dugan was unsuccessful in his civil action for defamation after the High Court decided by six to one that the doctrine of civil death for capital felonies had been received into NSW, had never been expressly repealed and that therefore Mr Dugan was civilly dead and had no right to sue at common law. Prisoners in NSW can only vote if they are serving sentences under 12 months and ex-prisoners cannot serve on juries for a period of ten years after release. Prisoners cannot, subject to limited exceptions, claim criminal injuries compensation for injuries sustained in assaults upon them while in prison.

Citizenship is central to some of 'our' most foundational colonial struggles 'from penal colony to free society' yet, as shown in the small number of examples discussed, it is far from universal and is replete with exclusions. Exclusions which at least in relation to prisoners are not withering away in the long march of enlightenment civilization ... but in some instances are being revived and resurrected, given new and brutalist forms.

We must remember that punishment is for deterrence and retribution, and it is to protect and rehabilitate. That is what prisons are supposed to do. Stripping away other rights of prisoners is not what punishment is about. The deprivation of liberty is what punishment is about: It is not about stripping away that which makes people human. Of all those who pass through the gaol system—that is about 20,000 a year—only about a dozen will not come out. All the others go into the prison system and come back into the community. To take away a prisoner's right to privacy and human dignity does nothing to contribute to their rehabilitation. What does it say about us as a society? What does it say about the people we are churning out at the other end? It only reinforces that prisoners are different, and that the community does not care, and when they are released from prison they feel that they do not owe the community anything.

Prisoners should have the same privacy rights as anybody else in society. Have we learned nothing? Basic human rights conventions and personal safety are already breached in prisons. Prisoners are totally dependent on the gaols, or on legal advice, to which many do not have access. We hear about only the most flagrant breaches of rights. It is about time we as a society woke up to what we are doing to the thousands of people—mainly young people and disadvantaged people—who are passing through our prison system. Once again I call upon the Government to hold a royal commission into the Department of Corrective Services—an inquiry that is long overdue.

**Debate adjourned on motion by the Hon. Peter Primrose.**

## **GOVERNMENT INFORMATION TECHNOLOGY CONTRACT**

### **Return to Order**

The Acting Clerk tabled, in accordance with the resolution of the House of Wednesday 20 November 2002, documents relating to the New South Wales Government information technology tender, received from the Director-General of the Premier's Department and referred to in paragraph 1 of the resolution, together with an indexed list of documents.

### Return to Order: Claim of Privilege

The Acting Clerk tabled a return identifying documents considered privileged, which under paragraph 4 of the resolution should not be made public or tabled. In accordance with the resolution the Acting Clerk advised that the documents were available for inspection by members of the Legislative Council only.

## SUMMARY OFFENCES AMENDMENT (SPRAY PAINT CANS) BILL

### Second Reading

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [3.25 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 bill that I introduce into the Legislative Council today on behalf of the Government will ban the sale of spray paint cans to young people under the age of 18 years.

The bill is part of the Government's wider package of new proposals being announced today to "up the ante" in the fight to stamp out graffiti crime.

The package also includes proposals to further extend the Community Service Orders arrangements for juvenile offenders to paint out graffiti, new anti graffiti initiatives by the State Rail Authority, and direct involvement by the new Police Community Accountability Teams in reporting on graffiti crime.

The Government is committed to reducing graffiti vandalism in the community, particularly the costly and damaging graffiti caused by misuse of spray paint cans.

This requires constantly trying new and innovative approaches to reinforce and strengthen earlier anti graffiti initiatives.

Similar legislative provisions to those introduced by this bill already exist in several US jurisdictions, have been proposed by the *UK London Local Authorities bill 2002*, and commenced in South Australia earlier this year.

In almost all these jurisdictions, the ban on sale of spray paint cans to minors has been set at the age of 18 years.

The bill that we introduce into the Legislative Council today will therefore amend the Summary Offences Act 1988, restricting the sale of spray paint cans to anyone under the age of 18 years.

The legislation generally mirrors the restriction on the sale of knives which the Government introduced in 1997.

Schedule 1 of the bill introduces a new section 10C which provides for a maximum penalty of \$1100 for anyone who sells a spray paint can to a minor.

However it will be a defence for any person charged under the new section to demonstrate that he or she believed on reasonable grounds that the person buying the spray paint can was 18 years of age or over.

As in the case of the laws banning the sale of knives to young people, the bill also provides that an employer will be responsible for any illegal sale by an employee.

However, the employer will also have a defence to any charge arising from actions of their employee if the employer had no knowledge of the illegal sale, and if they could not, by the exercise of due diligence, have prevented the illegal sale.

Provision has also been made in the bill for the issue by police of penalty notices where the law has been breached. It is intended that a fine of \$110 by way of penalty notice will be included in regulations to be made under the Act.

The bill also provides, at Clause 2 (2), that the Act may not commence until at least six months after assent.

The six month pause will give retailers time to put into place necessary safe storage requirements and other procedures to prevent sale to minors.

The Government will work closely with retail traders and other stakeholders over this period to assist them in putting into place new procedures, information and guidelines to prevent minors from illegally purchasing spray paint cans.

The bill will not prevent adults from buying spray paint cans on behalf of a minor, nor does it prevent a minor from possessing a spray paint can. There are clearly circumstances where a minor may need access for employment, for education purposes, or for use at home.

But it will substantially reduce access to spray paint cans by young criminals, and it is clearly aimed at reducing the vandalism caused by these repeat offenders who are costing the community more than \$60 million per annum.

The Government will also be asking the Bureau of Crime Statistics and Research to evaluate the effectiveness of the legislation over the two years following commencement.

The Government remains committed to evidence based policy.

If the legislation does not make significant inroads into the level of graffiti crime caused by young criminals using spray paint cans, then we will certainly be giving consideration to further legislative measures.

This could include consideration of an outright ban on spray paint cans.

I commend the bill.

**The Hon. JAMES SAMIOS** [3.25 p.m.]: The Coalition does not oppose the Summary Offences Amendment (Spray Paint Cans) Bill, the purpose of which is to make it an offence to sell spray cans of paint to people aged under 18 years. The bill amends the Summary Offences Act 1988 and authorises the issuing of penalty notices. Under regulations to be included under the Summary Offences Act, the offence of selling spray paint cans to people under 18 years will attract a penalty of 10 penalty points. The bill will not commence until at least six months after assent to give retailers time to introduce measures to prevent the sale of spray cans of paint to minors, including putting in place the necessary safe storage facilities to meet requirements. The bill will not prevent adults from buying spray paint cans on behalf of a minor; nor does it prevent a minor from possessing spray paint cans.

The Carr Government's proposal to ban the sale of spray paint cans to people under 18 years, without securing cans against theft, will simply increase the level of shoplifting. For that reason the Opposition will move an amendment to ensure that spray paint cans are locked in cabinets. Honourable members will no doubt be aware that in another place the honourable member for The Hills, Michael Richardson, introduced a private member's bill which would not only ban the sale of spray paint cans to people under 18 years but also prohibit retailers from displaying spray paint cans if they are not properly secured against shoplifters. As I indicated, the Opposition will not oppose this bill.

**The Hon. IAN COHEN** [3.28 p.m.]: While not opposing this bill, the Greens do not have much faith that in the overall scheme of things this legislation will lead to any significant reduction in graffiti in New South Wales. Young people who engage in graffiti will find other ways to obtain spray paint to engage in those activities. Certainly, however, the Greens are pleased that this legislation does not create a criminal offence to apply to young people who are in possession of spray paint cans; nor does it make it an offence for a young person to buy spray paint cans. Instead, an offence is committed by the person who sells a spray paint can to a young person. The Greens have often made the point that creative and innovative programs are the best way to deal with graffiti.

To the Government's credit, it has introduced a number of excellent initiatives that are designed to reduce the incidence of graffiti in our community, especially the Graffiti Solutions Program. The Greens would suggest that that is the way to go. Programs that seem to work involve the graffiti artists themselves. For instance, if graffiti artists are involved in the painting of murals on walls used predominantly for graffiti the work is rarely defaced. There are many examples of murals and controlled graffiti activities. Certain councils have done quite a bit to positively redirect graffiti artists away from their previous damaging activities.

In May 2001 we debated the graffiti removal bill, which the Greens supported. We congratulated the Government on focusing on a non law and order approach to graffiti. The Government, through the Attorney General's Department, was adopting a sensible and realistic approach to graffiti. The debate allowed us to consider why graffiti vandalism occurs. In my speech on that bill I quoted an interesting article on graffiti entitled "Hip Hop Graffiti Culture: Addressing Social and Cultural Aspects". It stated:

Graffiti is evident in all communities throughout Australia and manifests itself at every level of society. Graffiti can be defined as occurring in four distinct forms, toilet, community, political and gang related. There is only one such manifestation that typically draws a reactive commitment from police and the community, that being graffiti committed by young people.

Law and order approaches fail to address the cultural and social aspects of graffiti. An article written by Jenny Barga when she was a lecturer at the University of New South Wales entitled "Law Enforcement: Court—The Last Resort" saw graffiti as a symptom of broader problems. Ms Barga put forward employment, homelessness, boredom and alienation from traditional education as some of the factors that can contribute to graffiti. She pointed out that the most sensible approach to dealing with graffiti is to address the motivation of young people to engage in graffiti and the opportunities available to do so. She argued:

Rather than process all young graffiti "artists" through the criminal justice system, police should work with community members who are affected by graffiti and with young people who engage in graffiti-related activities.

Recently I have received correspondence from people upset that the walls of their shops or houses have been the subject of graffiti. Such mindless graffiti is certainly a negative in society, but we need to keep it in perspective. In some cases graffiti has had positive results. The Hon. Dr Arthur Chesterfield-Evans has raised a number of times in the House the activities of Billboard Utilising Graffitiists Against Unhealthy Promotions or BUGA-UP. I happily admit to being a graffiti artist against the tobacco industry for a period of years. I and many people like me changed billboards—artfully I might add—promoting tobacco. At one stage I travelled around with a group of doctors and medical students to do that type of graffiti. I think that it directly saved lives. It was also an outlet for many young people who wanted to express a political view.

There are times when graffiti is appropriate. The Greens certainly encourage moves that would direct young people into that type of positive activity rather than making it a destructive activity. It is a shame to see mindless graffiti that destroys people's property. However, in some instances it is part of the on-the-street art of society. In many cases the Government would be well advised to direct its attention to far more weighty matters in regard to the betterment of society rather than targeting young people and graffiti art on the streets. If enough resources were directed to those young people and they were given opportunities to express their art in other more socially acceptable ways and to burn off some of their energy in more productive ways, the Government would get a far greater dividend from the potential of those artists in Australia's society.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [3.35 p.m.]: I oppose this bill on behalf of the Australian Democrats. I am mindful of a quote that used to be on the toilet wall when I was in university, "A man's ambition must be small to write his name on a dunny wall." It seems to sum up the situation that if the best thing you can do in life is simply write your name on a wall you have a problem. It is effectively saying, "I exist." People leaving graffiti tags are saying, "I exist. Please notice me." It is somewhat pathetic that they need to do that to be recognised. We should look at graffiti in a broader context. During my youth the Vietnam war was on and a great deal of graffiti was political. People were concerned about people writing on walls. They were not concerned about the fact that we were in a silly war we never should have been in, that our young people were being killed, and that the Vietnamese were being brutally killed in large numbers. But they were concerned about people writing on the walls! People wrote on walls to communicate when the media would not cover demonstrations against the Vietnam war except to regard them as a threat to law and order and people's ability to drive down the street without being obstructed by marchers. So graffiti at the time was important politically.

I used to write on tobacco billboards with the Billboard Utilising Graffitiists Against Unhealthy Promotions [BUGA-UP] group. We took on the tobacco industry because there was no other way to attack it. The industry was spending millions and millions of dollars advertising cigarettes, saying that they were terrific. We were made criminals when we wrote the truth on cigarette billboards. We have now triumphed. The people in the tobacco industry are regarded as the criminals, which of course they are. Although the Government does not have the guts to take them on, they are at least stopped from advertising. Advertising of tobacco has now become illegal and the people who wrote the graffiti are vindicated. Believe it or not, some of them are members of Parliament.

A political result of the campaign was the Victorian Tobacco Act, which was the first Act to ban tobacco advertising and to devote funds from tobacco licensing fees to the sponsoring of health promotions. Another form of graffiti is the "John loves Susan" variety. Sometimes John wrote it, sometimes Susan wrote it, and sometimes someone who wanted to tease John and Susan wrote it. But it was at least an expression of some meaning to the people who wrote it. It is disappointing that young people are turning inward and have the small ambition to write their names on walls. That is unfortunate but we need to address the problem far more globally than simply by banning spray cans.

Tag graffiti originated in the New York subways, where gangs used to see how quickly they could write their names all over rail cars. Almost all of the trains in New York are covered in graffiti. The gangs wanted to show how tough they were by escaping from security men. Interestingly, they did not write on the advertising, even though the advertising was highly capitalist—it was mainly for cigarettes in those days—but only wrote on parts of the carriage. In a sense they were making an unconstructive statement of their power. This was in the days before spray cans were widespread so most of the graffiti then was not done with spray cans.

These days we want to criminalise everybody. If we want to stop something we simply make it a crime. Rather than adopting a more intelligent approach to the consideration of why people do things, the Government is criminalising everything. Our gaols are bursting at the seams, but we continue with the fine rhetoric and build

more goals. I received a press release from the manufacturers of spray cans: the Australian Paint Manufacturers Federation Incorporated, the Aerosol Association of Australia Incorporated, the Australian Retailers Association and the Hardware Association of New South Wales Ltd. Those organisations said they did not want kids banned from purchasing spray cans. The current thinking that children under 18 should not be allowed to buy spray cans is only another step towards criminalising them. Adults will still be able to buy them.

The Opposition suggests that spray cans should be locked up. That is a lock-up mentality designed to demonise kids. I have never known a generation to be more scared of its young people than the present generation. I wonder why adults have lost the ability to talk to kids. It is a worry if we cannot say to kids: What is your problem? What do you want to do? What facilities can we give you? Why do we not live together happily? At the end of the day we will be dead and they will run the show. We should adopt a far more intelligent approach to our youth and to society generally. To suggest banning spray cans is, once again, part of the unintelligent approach of the Government. The Democrats do not support the legislation.

**The Hon. MALCOLM JONES** [3.40 p.m.]: The purpose of the Summary Offences Amendment (Spray Paint Cans) Bill is to make it illegal to sell spray paint cans to those under 18 years of age. The bill intends to stop graffiti crime. I cannot agree with the Hon. Ian Cohen that defacing property is in any way desirable, and I cannot agree with the "I BUGA-UP, therefore I am" contribution of the Hon. Dr Arthur Chesterfield-Evans. Not even the Government has gone so far as to provide sentencing provisions for offences committed using spray paint cans. Parliamentary Library research document No. 8/2002 entitled "Dealing with Graffiti in NSW" by Rachel Callinan, revealed that most of the aerosol paint cans utilised in the application of graffiti are stolen or shoplifted from retail establishments.

The Government briefing note says that it will try new approaches. However, the Government's proposal to ban the sale of spray paint cans may not be the only solution to the graffiti problem. What is the point of banning people from buying spray paint cans if the vast majority of spray paint cans used for graffiti are stolen? Several months ago a constituent came into my office to discuss an immobiliser aerosol can security system. I have never met the inventor of the system. An officer from the Premier's Department who is on the secretariat of the graffiti task force had heard about the proposal, but nothing had come of it. I have again forwarded documentation to the Premier's office so the merits of the project can be reconsidered.

Last night I heard that the Hon. Peter Primrose had become involved in consideration of this system, which I commend to the House. If anyone wants further information about it, they can access it in my office. The technology is reasonably straightforward. The system immobilises paint aerosols until the point of purchase. A security nozzle renders aerosol cans unusable until the retailer, with a specific tool, installs a special nozzle at the point of sale. The system will allow both wholesalers and retailers to stock aerosol paint cans without the threat of theft.

The immobiliser provides a three-pronged attack: the system restricts the availability of aerosol paint cans to genuine purchasers; the nozzle is easily applied by the retailer using a special tool; and the value of paint products is preserved by making theft unattractive. The Government briefing paper states that it is proposed to sell aerosol cans without the standard nozzle and provide the nozzle only at the point of purchase. However, not only are nozzles freely available on the Internet, they can be taken off old aerosol cans and screwed on to new ones. The Government claims that the bill will prevent graffiti. However, as the research of Rachel Callinan shows, the bill will do little to prevent graffiti because virtually all graffiti is perpetrated by offenders using stolen spray paint cans. Notwithstanding that, I support the bill.

**The Hon. RICHARD JONES** [3.45 p.m.]: The legislation is a direct crib from the Summary Offences Amendment (Selling Spray Paint to Minors) Bill, which I introduced into this House in 1997. Like the Government, I had a rush of blood to the head and, again like the Government, I did not consult adequately with the community. Subsequently, I received a flood of letters but the one that influenced me the most was a letter from Justice for Young People. I knew the people involved, Peter O'Brien and Kilty O'Gorman. The letter stated:

Dear Richard

We are surprised to hear of your *Summary Offences Amendment (Selling Spray Paint to Minors) Bill*. It comes as a surprise because you don't seem to realise that really isn't going to solve the problem, if there is a problem in the first place.

Your stance on this issue is hypocritical and cynical. Is it not your contention that current prohibitive drug laws do not work, haven't you argued that such laws create more problems than they solve? Isn't your proposed legislation prohibitive? Can't you see any difficulty in reconciling these two stances?

When I settled down a little and talked to more people about it I did see a difficulty. I introduced the legislation because I felt the same as so many others in our community: I was shocked by the number of cityscapes that graffiti was destroying and I wanted to take some action. The legislation was not a good idea. The letter continued:

How can you expect young people to take it seriously when one bill you are preparing to introduce relates to reducing the voting age to 16, and another attempts to treat young people as irresponsible, destructive, and laden with criminal intent? Are you suggesting that while young people are responsible enough to take part in the future of our State, they are not responsible enough to purchase spray paint?

Apparently one of your arguments is that graffiti is ugly and costs too much. Graffiti is a form of art, a creative expression we should be encouraging and accommodating for, not criminalising. As for your argument as to the health effects of spray paint, what a furphy! This is an appalling attempt to legitimise this piece of anti-youth legislation by promoting it on the basis of "protecting" young people—isn't this exactly the same argument which your friends at the Local Government Association, and the ALP and the Liberals are using to implement the oppressive *Children (Protection and Parental Responsibility) Bill*?

They were right and I was wrong. I got a call from the Premier's office saying, "We will support your legislation." The Government always supports extreme right-wing legislation. It supported the four or five bills introduced by the Hon. John Tingle that have gone through this House. The Government rarely supports moderate and progressive legislation, but it always supports right-wing legislation. My bill would have sailed through this House in no time at all. Legislation I have proposed has not gone through, but legislation introduced by the Hon. John Tingle has gone through because it is all about law and order and putting people in gaol for longer and longer periods. His legislation has nothing to do with progressive policies, which I would have thought the Hon. Ian Macdonald would have been more interested in because that is what he has shown throughout the years. I was wrong then and the Government is wrong now. In addition to young people who wrote to me, put their case fairly eloquently and highlighted what an idiot I was to introduce the legislation, I also received a letter from the Retail Traders Association of New South Wales which stated:

This Bill has significant ramifications for retailers and it is a concern to this Association that there appears to have been no consultation with industry groups on the need for and content of the Bill.

The association was right. I had intended to consult with interested parties before I introduced the bill. Subsequently I did so. I am sure that the Retail Traders Association would now say the same thing to the Government as it said to me. I am sure the association, which consists of a number of organisations, has not been consulted. The letter refers to a graffiti scheme which is supported by the Australian Paint Manufacturers Federation Incorporated, the Aerosol Association of Australia, the Hardware Association of New South Wales, the Food Retailers Association of New South Wales, the Newsagents Association of New South Wales and Australian Capital Territory Incorporated, the Service Stations Association Ltd, the Motor Traders Association of New South Wales, the Pharmacy Guild of Australia and the Retail Traders Association of New South Wales. The scheme was a non-prescriptive but punitive method of reducing the graffiti problem. It certainly did not attempt to ban the sale of aerosol cans, which I tried to do for a brief moment in time five and a half years ago. I received a letter from the Aerosol Association of Australia Incorporated which also condemned me for my attack on the industry. The letter stated:

As a major stakeholder in the issue and as the representative voice of the manufacturers and marketers of the 16.5 million spray paints produced in Australia annually I am concerned that we were not consulted in the stages prior to the Bill's introduction.

More importantly, we have grave concerns about the likely (in)efficacy of the proposed measure in addressing the graffiti issue.

Yet again that was correct. The letter also referred to the experience in the United States of America. The association was eloquent in its opposition to the legislation. I also received a letter from the Hardware Association of New South Wales Ltd, which stated:

The hardware industry is tackling the issue with graffiti by participating with an overall graffiti strategy including a point of sale poster, "Graffiti, and you pay", highlighting the penalties. We are committed as an industry to assist in part resolving graffiti problems in the community.

I received a letter from the Retail Traders' Association of New South Wales which stated:

The Association believes that Graffiti is primarily a community based problem that requires a comprehensive Government strategy if a significant reduction is to be achieved. Any restrictions on the sale of products used for graffiti will merely penalise the vast majority of consumers who do not use them for illegal purposes.

That letter was accidentally sent to the Hon. John Tingle, who immediately responded that he would support my legislation in spite of the association's concerns. That is not surprising, given that his philosophy is so far to the

right of the political spectrum. After receiving advice from the industry, the community and young people, I realised that I had made a serious error and I promptly withdrew my legislation. It has been sitting in a dusty file ever since. Lo and behold, after a rush of blood to the head, someone in government has decided that prohibition is a good idea. I am sure that there has been no consultation with the industry, young people or any of the organisations I have mentioned. I am also sure that they are writing the same letters today that they were writing in 1997, pointing out that they were not consulted, that legislation such as this will harm them and that it will not work. It was a ridiculous idea when I introduced my bill and it is still a ridiculous idea today.

**Reverend the Hon. Dr GORDON MOYES** [3.53 p.m.]: The Christian Democratic Party [CDP] supports the Summary Offences Amendment (Spray Paint Cans) Bill. The objects of the bill are clear. It will be an offence to sell spray paint cans to persons under the age of 18 years and police officers will be authorised to issue penalty notices to offenders. Graffiti is an ancient art form. Earlier in my life I was involved in large-scale archaeological excavations in the Middle East. It was interesting to note the amount of graffiti found at Greek and Roman sites put there by the original inhabitants 2000 or more years ago. However, we do not want that graffiti in our cities. We must make it an offence to sell spray paint cans to persons under the age of 18 and also restrict the purchase of such products by underage persons.

Members of the Retail Traders Association might consider displaying spray paint cans in glass cabinets in the same way that many other products are displayed. Yesterday I noted that the spray paint section of the Big W store near my home is covered with paint; it has been put there by people testing the cans. I am sure that the retailers are not happy about that. The CDP is interested in helping retailers and this legislation will go some way towards achieving that. If the cans were displayed in glass cabinets theft would be reduced. That would help because most graffitiists steal the spray cans they use. There is no question that cities deteriorate when graffiti is rampant. Honourable members need only do as I have done and study some of the rust bucket cities of the United States of America such as Detroit to see how widespread graffiti leads to the deterioration of the rest of the community. People living in affected environments seem to take less care of everything in the area.

Over the years some people have encouraged spray painting on walls by young people to provide them with an outlet. I remind the House that the Graffiti Solutions Program, which involves costly prevention and clean-up strategies, was introduced by the Government in 1997 and has been under way for the past five years. Prevention strategies include the voluntary industry strategy that was developed in consultation with the Australian Retail Traders Association of New South Wales, the Graffiti Traineeship Grants Scheme to help local councils divert young people from illegal graffiti to acceptable graffiti, a \$900,000 Beat Graffiti Scheme to fund projects by councils, schools, police and communities to divert young people from illegal graffiti, and so on. It is obvious that those programs have not worked. In fact, some honourable members who have spoken in this debate have been rather hypocritical in encouraging people to make use of graffiti while decrying the result.

The signs put up by graffiti artists can be offensive, if one knows how to read them. Often they are anti-Semitic; an increasing number of neo-Nazis are using graffiti to spread their message. I remind the House that young people also endanger themselves by placing graffiti on the sides of moving trains and in hazardous locations such as the walls along the Gore Hill Freeway. I do not believe that the bill will prevent graffiti. However, it will restrict the availability of spray paint cans, and their availability encourages their misuse. Graffiti may be long lasting; a few "Pig Iron Bob" signs can still be seen. Sydney was home to the country's most famous graffiti artist whose tag has now become acceptable and the stuff of legend. Of course, I refer to Arthur Stace and his chalk "Eternity" signs. One of the signs can still be seen after 55 years. Graffiti may be interesting, but it does not do much for the character of a city.

**Motion agreed to.**

**Bill read a second time.**

### **In Committee**

**Clauses 1 to 3 agreed to.**

### **Schedule 1**

**The Hon. JAMES SAMIOS** [3.59 p.m.]: I move:

Page 3, schedule 1 [1], proposed section 10C. Insert after line 8:

- (2) The occupier of any shop or retail premises from which spray paint cans are sold must not display a spray paint can on the premises in the view of customers except:

- (a) in a locked cage or other locked display cabinet, or
- (b) within or behind any counter that is attended by the occupier or by any member of the occupier's staff, or
- (c) in any other manner prescribed by the regulations.

Maximum penalty: 10 penalty units.

This is an important amendment. It is not much good introducing legislation until we can prevent people under the age of 18 accessing spray cans. This amendment addresses that issue.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [4.00 p.m.]: The Government opposes the amendment. The Government's approach has been consistent; it is committed to working with retail traders in implementing this ban. The Government will target offenders not small business owners, and that is why the ban will not start for at least six months. I seek leave to incorporate in *Hansard* the remainder of my responses to this amendment.

**Leave granted.**

This will give retailers time to educate their staff and to put in place procedures to effect the ban.

The Government has already worked with retail traders to implement our Voluntary Industry Strategy designed to reduce the misuse of spray cans.

Under the Strategy, retailers avoid the display of products in areas outside of the sight of staff.

Where commercially viable, retailers either physically secure products behind the counter, remove self service access to the products, locate the products in areas visible from a service point and maintain regular staff supervision of these products.

Retailers are also encouraged to display empty cans or markers and make sure staff are aware of penalties for unlawful possession or misuse.

The Department of Fair Trading will keep working with the Australian Retailers Association of NSW to encourage more shop owners to adopt the strategy; for example, by targeting retailers from non-English speaking background. The Government will closely monitor the impact of the strategy and continue to work with retail traders to implement it.

We will not shy away from our evidence-based approach in fighting graffiti.

According to estimates provided by the Australian Retailers Association, these display cabinets cost around \$700 to \$800.

They are an onerous burden on small businesses and there is no conclusive evidence as to the effectiveness of such measures.

However, the Government is committed to trailing measures that will drive down graffiti.

We will be led by the evidence and the international experience and we will closely monitor the effectiveness of this Bill.

We are prepared to look at further measures if necessary in light of the evaluation of this legislation.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [4.01 p.m.]: This amendment is very important. Government members can talk all they like about this bill, but the fact remains: if spray cans are to be left on shelves in stores people will be able to steal them and use them for graffiti purposes. If the Government is fair dinkum about eradicating graffiti, it will agree to the amendment, which provides that spray cans cannot be displayed unless in a locked cabinet.

**The Hon. Michael Costa:** Why don't you just cut their hands off?

**The Hon. DUNCAN GAY:** The Minister for Police interjected "Why don't you just cut their hands off?" What a silly comment from a silly man. He rides the hard line. He is the Government's hard man, day after day. This is a sensible amendment. Spray cans should be displayed in locked cabinets. If the Government is not fair dinkum about eradicating graffiti, it will continue to allow spray cans to be placed in a position from where they can be stolen. The Government can pass any bill it likes, it can pontificate and claim that it is cleaning up graffiti, but it is not fair dinkum unless it supports this amendment.

**Reverend the Hon. FRED NILE** [4.02 p.m.]: The Christian Democratic Party supports this very practical amendment. It is far better than cutting off people's hands.



**The Hon. IAN MACDONALD** (Parliamentary Secretary) [4.02 p.m.]: The Government is working with various stakeholders on this issue. The Opposition's suggestion of locked display cabinets would cost small business operators between \$700 to \$1,000, and that would be an onerous burden on those operators. The Government is of the view that this is an inappropriate way to solve the problem.

**Amendment negatived.**

**Schedule 1 agreed to.**

**Title agreed to.**

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

**Pursuant to sessional orders business interrupted.**

### QUESTIONS WITHOUT NOTICE

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#### STATE SECRETARY OF THE NEW SOUTH WALES BRANCH OF THE AUSTRALIAN WORKERS UNION FRAUD ALLEGATION

**The Hon. MICHAEL GALLACHER:** My question without notice is addressed to the Minister for Police. What is the status of the police investigation into allegations of fraud against the State secretary of the New South Wales Branch of the Australian Workers Union involving union funds? When did the Minister first become aware of the allegations? What is the extent of the Minister's involvement in these matters?

**The Hon. MICHAEL COSTA:** It must be the silly season for the Opposition to ask such a question. The matter referred to is an operational matter. I do not know the status of the investigations, nor should I. That is a matter for operational police.

#### INTERNATIONAL DAY OF PEOPLE WITH A DISABILITY

**The Hon. RON DYER:** My question without notice is directed to the Minister for Disability Services. Will the Minister advise the House of what the New South Wales Government is doing to celebrate International Day of People with a Disability?

**The Hon. CARMEL TEBBUTT:** It is important that the House note that today is the annual International Day of People with a Disability. It is significant that the House supports this special day, which was declared by the United Nations General Assembly in 1992. It is on this day that we mark with pride the many achievements and abilities of people living with a disability. It is also important to raise community awareness about the challenges that confront people with a disability. Today's celebration reminds us that people with a disability live fulfilling and productive lives and make significant contributions to our communities in many different ways.

As honourable members may have noticed, entertainment and activities showcasing the achievements and diverse interests of people with a disability are being held today in Martin Place under the banner "Celebration of Ability". I joined with people in Martin Place at the celebrations, which were organised by the Department of Ageing, Disability and Home Care, and a number of non-government disability service providers. Highlights of the day included a game of cricket organised by the New South Wales Blind Cricket Association as well as a demonstration of goal ball, which was a particular lunchtime crowd favourite. For honourable members who are unaware, goal ball was the only visually impaired team sport played at the Sydney 2000 Paralympic Games.

Other entertainment held at Martin Place today included an art exhibition as well as music and theatre acts performed by physically and intellectually disabled performers. Events celebrating International Day of People with a Disability took place in a number of other venues throughout the State. The Government has made an unparalleled investment in disability services since being elected in 1995. Over that period funding for services for people with a disability has increased by \$423 million. For 2002-03 the New South Wales Disability Services Program stands at \$828 million of which the New South Wales Government will contribute \$657 million, or nearly 80 per cent. The Government's investment in disability services has boosted the number of service outlets by 536, with 306 of those being outside the Sydney metropolitan area.

The largest growth in disability services has been in the expansion of respite services, involving more than \$35 million, or 126 per cent. That important service provides support for families who care for people with a disability. Growth has been unprecedented in disability accommodation support services, which will be further supplemented in 2002-03 as relocation and support programs continue. That investment is consistent with key Government directions to strengthen family supports. Spending on services such as early intervention for children with a disability, behavioural support and advocacy, has increased by more than 75 per cent.

In addition, from 1995 to 2002 more than 2,800 individuals have received assistance through the Adult Training and Learning System, known as ATLAS, and day service programs. I remind honourable members that when the Industrial Relations Commission handed down a long-overdue wage justice decision for workers in non-government services—some of the lowest paid workers in the State doing the most important work to support vulnerable and disadvantaged people—it was the New South Wales Government that stepped in with a \$290 million package over five years to ensure the ongoing viability of services.

The Commonwealth Government showed its clear disinterest in this area by refusing to honour its commitments. Since the New South Wales Government was elected it supports, on a typical day, some 16,000 people with a disability to use specialist disability services. Clearly these are major achievements by the Government and they form the basis of a significant improvement in the quality of life for people with a disability.

#### **LOCAL GOVERNMENT SUPERANNUATION SCHEME LOOMIS SAYLES INTERNATIONAL BONDS MANDATE**

**The Hon. DUNCAN GAY:** My question without notice is addressed to the Treasurer, and Leader of the Government. Has the Government conducted an investigation into very serious allegations of a conflict of interest in the awarding of a \$50 million international bonds mandate to Loomis Sayles by the Local Government Superannuation Scheme [LGSS], as the wife of the managing director of the LGSS is a senior marketer with Loomis Sayles? Has the Treasurer investigated why the managing director of the LGSS did not declare this conflict of interest to the board of the LGSS and why he then misled the superannuation magazine *Investor Weekly* by saying "I wasn't involved at all because of that potential conflict of interest"?

**The Hon. MICHAEL EGAN:** I point out to the Deputy Leader of the Opposition that neither I nor any other New South Wales Government Minister has a supervisory role over the Local Government Superannuation Scheme. That supervisory role is performed by the Australian Prudential Regulation Authority [APRA]. I suggest that if the Deputy Leader of the Opposition has any concerns or information that he believes ought to be investigated, that information should be provided to APRA.

#### **STATE RAIL TRACK LEASES**

**The Hon. DAVID OLDFIELD:** My question is addressed to the Treasurer. Will the Government acknowledge that the Federal Government's proposal for the Australian Rail Track Corporation [ARTC] to take over New South Wales rural and Hunter tracks will cause the direct loss of 1,500 rural jobs? Is the Government concerned that the lack of a specific statement on its position with regard to the Federal Government ARTC proposal is causing great angst in rural communities? Is the Government aware that without a specific statement on this issue prior to the March 2003 State election, rural communities will reasonably conclude that the New South Wales Government favours the ARTC takeover? Given these issues, will the Government reject relinquishing control of the tracks I have referred to prior to the State election in March 2003?

**The Hon. MICHAEL EGAN:** The House will be aware that some time ago the Commonwealth Government made a proposal to the New South Wales Government that the interstate rail track in New South Wales should be leased by the State Government to the Australian Rail Track Corporation, which is the Commonwealth Government-owned track access body. The State Government undertook to evaluate the proposal. Recently we received a detailed proposal, and we are presently in the course of evaluating it. Certainly the principle that there be one organisation responsible for all interstate track throughout Australia has great attraction. I recall that in the 1970s the Whitlam Government made an offer to all States to take over the railways, so we could have a national railway. I regret that South Australia was the only State to take up that offer. As I said, certainly the principle that there be one track access organisation for all interstate track throughout Australia has a lot of appeal. However, before the New South Wales Government signed up to any such proposal we would have to be satisfied on a number of grounds. One of the grounds is obviously safety; another is reliability; another concerns the financial arrangements; and, most importantly, industrial relations

issues would have to be addressed. I believe we are a long way from finalising our evaluation or, for that matter, any negotiations with the Commonwealth Government.

**The Hon. DAVID OLDFIELD:** I ask a supplementary question. Will the Treasurer acknowledge the need for rural New South Wales residents to have an answer on this issue prior to the next State election?

**The Hon. MICHAEL EGAN:** What I will acknowledge is the importance to Australia of an efficient national freight rail network. I am sure all members would be aware of the potential advantages to the Australian economy, rural producers and the people of country areas of the most efficient freight rail network in Australia that is possible. That has to be the goal, and it has to be something that will enhance the position of rural and regional Australia. That is why we are looking at the Commonwealth Government's proposal. As I said earlier, we still have a long way to go in our evaluation, which involves discussions with regional and rural communities and the trade unions. Indeed, only last week a delegation from the New South Wales Labor Council and the relevant New South Wales road unions visited my office, and the answer I gave them is the answer I have given the House today.

### BIOTECHNOLOGY INDUSTRY

**The Hon. TONY KELLY:** My question without notice is directed to the Treasurer, and Minister for State Development. Will the Treasurer advise the House about developments in the biotechnology industry in regional New South Wales?

**The Hon. MICHAEL EGAN:** The biotechnology industry presents the New South Wales economy with excellent opportunities for growth. As it continues to improve the nutritional quality of food, minimise environmental impacts of agriculture and reduce the cost of production, biotechnology is likely to bring substantial benefits to communities and economies in rural and regional New South Wales. In fact, regional New South Wales is the source of a great deal of innovation in the biotechnology sector. Key biotechnology research organisations outside of Sydney are located at Armidale, Tamworth, Lismore, Wagga Wagga, Orange, Newcastle, Wollongong and Broken Hill.

A great biotech success story is USCOM, a Coffs Harbour company that has developed a non-invasive heart monitoring device. The company's first product, the ultrasonic cardiac output monitor, measures blood flow across the heart valves using ultrasound. The technology is totally non-invasive and hands-free, yet it produces data that is reliable and immediate. USCOM was assisted with development funding in the first round of proof of concept grants that are part of the State Government's \$68 million *BioFirst* strategy.

In October, independent Australian-owned private investment advisers Bell Potter Securities invested in USCOM more than \$1.5 million in working capital for the worldwide commercial release of its product in early 2003. Another company supported by the New South Wales Government is ADP Pharmaceuticals in Goulburn. This company is working with deer antlers, which contain a gene with the potential to eliminate the pain and suffering of the almost four million Australians affected with osteoarthritis.

**The Hon. Rick Colless:** There's nothing wrong with their genes; they need better nutrition.

**The Hon. MICHAEL EGAN:** Who does?

**The Hon. Rick Colless:** People with osteoarthritis.

**The Hon. MICHAEL EGAN:** I do not think that better nutrition, of itself, will overcome the difficulties of people who have a predisposition to osteoarthritis.

**The Hon. Michael Costa:** Michael would know.

**The Hon. MICHAEL EGAN:** I do, indeed. I will not inform the House about the recent television program on people being deprived of exposure to the sun; I will draw it to members' attention on another occasion. ADP Pharmaceuticals hopes to deliver the deer antler gene into damaged human cartilage cells to enable them to self-repair, something mature cartilage is normally unable to do. The therapy has the potential to eliminate joint replacements, delivering economic benefits by reducing hospitalisation rates.

Our regional centres are progressive and viable with a range of competitive strengths in research, science, technology and education, essential for the development of biotechnology. I look forward to informing

the House about further groundbreaking research and exciting developments in biotechnology from the regions of New South Wales. I am sure that is very good news for anyone who has a knee or hip that they feel might need some attention in 10 or 20 years time. Indeed, I sometimes have a problem with my right knee. I am sure the Hon. Dr Brian Pezzutti, who has come into the Chamber late—and who is not going to be around for very much longer; he is shooting through at the first available opportunity—would be interested in— [*Time expired.*]

### COMPLEMENTARY MEDICINE

**Ms LEE RHIANNON:** I direct my question to the Treasurer, representing the Minister for Health. Is the Treasurer aware that the Health Claims and Consumer Protection Advisory Committee is chaired by Professor John Dwyer, who is renowned for his antagonism towards complementary medicine? Is it true that all the members of the committee have been hand-picked by Professor Dwyer, with no representation from the complementary health care profession? If the Government is committed to quality health care for the people of New South Wales, should it not support equal representation from each of the modalities in complementary medicine, including homoeopathy, chiropractic and herbal medicine?

**The Hon. MICHAEL EGAN:** I will refer the honourable member's question to the Minister for Health.

### LIVERPOOL WEST PUBLIC SCHOOL SAFETY

**The Hon. JOHN RYAN:** My question without notice is directed to the Minister for Police. Did police in Liverpool on two occasions take in excess of 45 minutes to attend Liverpool West Public School after bomb threats were made there on Thursday 28 November and Friday 29 November? In view of obvious public concern about matters of this nature, should they not be receiving a higher priority than that?

**The Hon. MICHAEL COSTA:** I agree with the honourable member's final comments, if the information that he has provided me is accurate. However, I always take with a grain of salt any information given to me by Opposition members as I have discovered on many occasions in this House that it is likely to be inaccurate. I will take on board and examine the issues to which the honourable member has referred. When bomb threats are made the police must assess the seriousness of those threats and respond accordingly.

### WORKPLACE SAFETY SUMMIT

**The Hon. IAN WEST:** My question without notice is directed to the Special Minister of State, and Minister for Industrial Relations. What measures are being taken by the Government to improve safety in New South Wales workplaces?

**The Hon. JOHN DELLA BOSCA:** Last month I launched a major safety program aimed at reducing workplace injuries by at least 40 per cent and fatalities by 20 per cent over the next 10 years. Achievement of these targets will mean fewer injuries for tens of thousands of workers and their families and hundreds of millions of dollars in savings to businesses and the community. The three-year program of safety initiatives, which is part of the New South Wales Government's formal response to the New South Wales Workplace Safety Summit, focuses on developing practical solutions to prevent injury in high-risk areas. The Government has adopted the majority of the 132 recommendations made by the 200 representatives of unions, employers, and professional and community groups, and the government and international experts who were brought together in Bathurst to tackle the workplace safety issues confronting our State.

The Government's response includes: a Safer Towns and Cities Program, in which government agencies will provide occupational health and safety leadership and guidance in specific areas of regional New South Wales; an extension of the Premium Discount Scheme—a small business strategy—which will ensure that non-government organisations can participate in and benefit from the scheme; an extension of WorkCover's Rollover Protective Structures Rebate Scheme to June 2003; and a new Workplace Fatality Investigation Unit within WorkCover to support expert investigation of workplace fatalities. The Attorney General has been consulted about the making of a sentencing guideline for occupational health and safety prosecutions.

The Government's response also includes a three-year safety program integrating basic safety and risk management principles into the curriculum for schoolchildren, an extension of the popular YouthSafe Program, making occupational health and safety competency a prerequisite for holding a building or liquor licence, research to be commissioned into the issue of managing work-related stress, and amendments to the

Occupational Health and Safety Act to give contractors in the long haul trucking industry better protection against unrealistic timetables. In consultation with industry, consideration will be given to extending those provisions to other industries.

The Government will also ensure that employers and employees work together to find new solutions by funding five industry-specific forums and a new Forestry Industry Safety Council. The New South Wales Workplace Safety Summit helped to create a strong partnership between unions, employers and government to achieve safer workplaces, and fewer injuries and fatalities. The Carr Government has responded with a substantial \$30 million package to achieve a safer New South Wales. Community safety awareness will be raised through a Safer Towns and Cities Program, in which government agencies will co-ordinate occupational health and safety guidance to rural and regional communities. Government-wide strategies will be developed to assist businesses in accessing occupational health and safety information and training and in realising the financial advantages of safer workplaces.

Safety in the rural industry will be further strengthened by the extension of WorkCover's highly successful Rollover Protective Structures Rebate Scheme to June 2003. The community expects industry to take its occupational health and safety responsibilities seriously, so workplace safety and accountability have been strengthened by the establishment at WorkCover of a dedicated Workplace Fatalities Investigation Unit. That unit has already commenced its first investigations. The Government will seek sentencing guidelines for courts to achieve consistency in prosecutions involving workplace deaths. Among the special initiatives that will be implemented to assist high-risk industries will be the establishment of a Forestry Industry Council. The 2002 summit, which was an overwhelming success, will be followed by a second summit to be convened by the Government in 2005 to report on progress that we have been able to make together.

#### **BOTOX REGULATION**

**The Hon. HELEN SHAM-HO:** My question without notice is directed to the Leader of the House, representing the Minister for Health. I refer the Minister to the new beauty treatment botox—a strong neurotoxin that is injected into the skin to reduce wrinkles. Is the Minister aware that botox injections are increasingly being performed in unlicensed non-clinical environments, such as people's homes, and in groups where alcohol might have been consumed? Given that a recent editorial published in the *British Medical Journal* raises significant concern over the long-term health effects of botox, what steps will the Government take to better regulate the provision of botox—especially when it is being injected in casual settings—and to inform consumers about its potential risk?

**The Hon. JOHN DELLA BOSCA:** I will ask the Minister for Health to provide the honourable member with an answer to her question as soon as it is practicable.

#### **CLARENCE ELECTORATE POLICE NUMBERS**

**The Hon. MELINDA PAVEY:** My question without notice is directed to the Minister for Police. Did the local member for the Clarence electorate claim in a recent publication sent to voters in that electorate, that 383 police are now working within that electorate? With large numbers of police across New South Wales on stress injury or other forms of leave does that mean that the actual number of police working in the Clarence electorate is below that stated level? What is the actual number of police in the Clarence electorate? Will the Minister write to people in that electorate and inform them of the local member's exaggerated claims?

**The Hon. MICHAEL COSTA:** I am glad that the honourable member asked me a question about police officers on long-term sick leave. It gives me an opportunity, once again, to inform this House what the Government is doing to deal with this serious problem of long-term sick leave in the New South Wales Police Force. I agree with the comments made by the honourable member. Communities have a right to ensure that police in their local area commands are not affected by these problems. That is why Commissioner Moroney and I made this matter a priority. In July we announced a plan to deal with police officers on long-term sick leave. Honourable members would be aware that we define long-term sick leave as a period of three months or more. The ministerial inquiry into long-term sickness was established as part of that plan. NSW Police has advised me that all outstanding long-term sick positions at local area commands will be filled after the 20 December attestation of police recruits.

**The Hon. Rick Colless:** We will have to wait for months.

**The Hon. MICHAEL COSTA:** That is in about 18 days time. I will have to get the honourable member a calendar. No wonder Opposition members are called pot plants with faces. What else could we all call them? An Opposition member labeled members opposite pot plants with faces.

[Interruption]

I apologise. The Deputy Leader of the Opposition just informed me that that description applies only to members of the Liberal Party and not to members of the National Party. That is fine; I will accept that members of the Liberal Party are pot plants with faces. In addition, the ministerial inquiry recommended the introduction of a permanent restricted duties policy for the first time in the history of policing in New South Wales. That policy will enable injured or long-term sick officers who meet strict criteria to apply for available specialist or administrative jobs that directly support front-line police. The ministerial inquiry also recommended that a maximum of five restricted duty positions be established at each local area command; the creation of a new Restricted Duties Co-ordination Unit to administer the policy; management of sick leave and rehabilitation to be included in the performance agreements for all local area commands; and the appointment of a NSW Police State rehabilitation occupational health and safety co-ordinator to oversee intensive case management and rehabilitation of police on long-term sick leave.

The inquiry also recommended the recruitment of eight new police rehabilitation occupational health and safety co-ordinators, who will be additional to the current 15 occupational health and safety staff at regional and specialist commands. The inquiry recommended ongoing discussions with the State Superannuation Trustees Corporation to streamline the current 12-month waiting period for police seeking medical discharge. And, as I have mentioned, the inquiry recommended the use of recruits from the August and December 2002 attestations and the transfer of experienced police to backfill the remaining 332 local area command positions occupied by officers on long-term sick leave.

My ministerial advisory council was briefed about this matter last week. The inquiry's interim report addresses the immediate concerns of front-line police and the communities they serve in metropolitan and country New South Wales. These measures, combined with continuing record police numbers and next month's attestation of new recruits, will restore all our local area commands to maximum operational capacity by filling the 332 remaining positions occupied by officers on long-term sick leave. As I said, this is an important initiative. It means that, with the 20 December class, all of our local area commands will be at full operational strength. Those in additional long-term sick leave positions will be placed in restricted-duty positions and provide added support for our police.

**The Hon. MELINDA PAVEY:** I ask a supplementary question. In light of the Minister's answer, will he resign on 20 December if 383 positions are not filled in the Clarence electorate?

**The Hon. MICHAEL COSTA:** I am prepared to take up the Hon. Melinda Pavey's offer if she is prepared to resign if the positions are filled.

### SCHOOLS PUBLIC-PRIVATE PARTNERSHIPS

**The Hon. JANELLE SAFFIN:** My question is directed to the Treasurer. Will he please advise the House whether the Government has made a decision about a private financing proposal for nine new public schools?

**The Hon. MICHAEL EGAN:** I can inform the House that the Government has selected the Axiom Education consortium of ABN Amro, St Hilliers, Hansen Yuncken and SSL Facilities Management (Spotless) to build nine new schools and maintain them for the next 30 years, with a bid price of around \$133 million. This is an innovative arrangement between the State Government and the private sector that will speed up dramatically construction of these nine new public schools in Sydney, Wollongong, on the Central Coast and in Shellharbour. The schools are located at Horsley, Mungerie Park, Mataram Road at Woongarah, Rosebery Road at Baulkham Hills, Poole Road at Baulkham Hills, Glenwood at Blacktown, Perfection Avenue at Blacktown, Shell Cove at Shellharbour, and Horningsea Park at Liverpool. I point out that the schools will be staffed in the same way as other government schools: the school principals will have complete control of the school facilities.

The people of New South Wales will get these new schools sooner and they will cost less than if provided under traditional arrangements. The schools will be maintained over 30 years by the consortium and, because of the contractual arrangements that are being put in place, I believe we can assure the public of New

South Wales that maintenance over that 30-year period will be absolutely first-class. These nine schools are in addition to the Government's \$1.1 billion school improvement package that we announced in March 2001, which will continue to build, rebuild, renovate and refurbish scores of other schools throughout New South Wales. The cost to the Government of having the private sector take full responsibility for building and maintaining the nine privately financed project schools is about 4 per cent less than under existing arrangements. Under the contract the Government will make monthly payments to Axiom Education provided—I emphasise this point—it performs to stringent standards. Financial deductions will apply, for example, if a broken classroom window is not fixed the same day or if any other maintenance is not done within the prescribed time.

I expect that a conditional contract will be signed with Axiom Education next week, with construction of the schools to begin early in 2003. As to the former timetable for the building of these schools, the school at Horsley in Wollongong, for example, was due for construction in 2006 but the delivery date is now 2004. Mungerie Park had a previously planned completion date of 2006 but is now looking at a delivery date of 2004, and likewise with Mataram Road at Warnervale. We expect a 2004 delivery date for Rosebery Road at Baulkham Hills compared with the previous construction date of 2007. The Poole Road school at Baulkham Hills will be completed in the time frame envisaged originally. The school at Glenwood at Blacktown will be completed in 2005 instead of 2008. [*Time expired.*]

### SYDNEY IMMIGRATION POLICY

**The Hon. Dr PETER WONG:** My question is directed to the Treasurer, representing the Premier. Can he explain why the Premier is seeking that the Prime Minister of Australia, John Howard, reduce the number of immigrants entering Australia by 20 per cent? Can he explain why the Premier's position should not be viewed by many as shifting the blame for the Government's poor track record on planning and service provision in Sydney from the Government to migrants?

**The Hon. MICHAEL EGAN:** I suspect—in fact, I am sure—that the Hon. Dr Peter Wong and other honourable members have asked similar questions on previous occasions. I think the House is aware that the population of Sydney, in particular, is chock-a-block.

**The Hon. Duncan Gay:** The Premier is out there playing the race card.

**The Hon. MICHAEL EGAN:** That is nonsense; it is the pot calling the kettle black. However, I will refer the honourable member's question to the Premier for a response.

### HAWKESBURY RIVER COMMERCIAL FISHING RESTRICTIONS

**The Hon. JENNIFER GARDINER:** My question is directed to the Minister for Fisheries. Can the Minister advise whether research on the sustainability of the resource in the Hawkesbury River fishery provided the basis for the latest restrictions on commercial fishing in the Hawkesbury River? If so, what is the nature of that research? Did any socioeconomic impact assessment inform the decision in any way?

**The Hon. EDDIE OBEID:** I will take that question on notice to see what research is available and return to the House with a response.

### POLICE PROMOTIONS MINISTERIAL INQUIRY

**The Hon. JOHN HATZISTERGOS:** My question is directed to the Minister for Police. What is the latest information about the ministerial inquiry into police promotions?

**The Hon. MICHAEL COSTA:** Since I became Minister I have heard the concerns of front-line police about the police promotions system. This issue impacts directly on police morale. That is why on 27 June this year I established the ministerial inquiry into police promotions.

**The Hon. Dr Brian Pezzutti:** Why haven't you fixed it yet?

**The Hon. MICHAEL COSTA:** I will fix everything but give me time. The inquiry delivered its interim report to my advisory council at its last meeting in Dubbo on 27 November. The inquiry has laid the foundations for a more fair and more efficient promotions system by identifying key principles for reform. These key principles for reform include simplifying promotions procedures and legislation, streamlining the

promotions system to avoid delays in appointments, and cutting red tape from the promotions system. Greater recognition of the practical operational experience of police officers, which is a very important point, and close monitoring of the prequalifying assessment process are also key principles. Included also are greater consistency in assessment standards for applicants; a more equitable system for temporary and higher duty appointments; closer monitoring of the appeals process; and flexibility in senior appointments.

Significant changes have been made to the police promotions system in the past 12 months. These include the introduction of rank-at-time promotions and new laws passed when the House last sat allowing the commissioner to directly appoint superintendents to senior and local area commander positions. The inquiry has advised that a number of its concerns have already been addressed. I am advised that these include additional staff for the New South Wales Promotions and Selections Branch and an extra officer within the Police Integrity Commission to reduce delays in progressing the integrity reports of applicants. I take this opportunity to thank the inquiry for its work so far. It is chaired by former assistant commissioner Geoff Schuberg who is also a member of the Police Minister's Advisory Council, the membership of which comprises representatives from NSW Police, the Police Association, the New South Wales police ministry and the office of the Minister for Police.

The inquiry's terms of reference are: reviewing legislation governing police promotions; reviewing internal police practices, policies and legislation relating to police promotions, including the collection of statistics applicable to promotions; developing plans to ensure the integrity of the police promotions system; examining police promotion systems in other Australian jurisdictions; and considering relevant records on this topic.

The views of front-line police are vital in identifying further changes to the system. I am advised that the inquiry has already received about 140 submission from front-line police and will continue to do so until it delivers its final report in June 2003. The inquiry will also travel to regional and rural New South Wales to ensure front-line police across the State have their say. Serving police will be able to access the interim report of the inquiry on the NSW Police intranet. The inquiry has taken the first critical step in developing a more fair, open, and accountable promotions system in this State. Having spoken to front-line police I know that the most important issue for them is to have a fair, equitable, open and transparent promotions system. They are very supportive of the Government's move to rank-at-time promotions and tenure in that rank. [*Time expired.*]

### POLICE SNIFFER DOGS

**The Hon. PETER BREEN:** My question is to the Minister for Police. Is the Minister aware of a decision by Justice Barry O'Keefe of the Supreme Court to the effect that it is not an assault for a police drug sniffer dog to nuzzle a person's crotch? Is the Minister also aware that Justice O'Keefe likened the use of a police drug sniffer dog to an extension of the police officer's nose? Will the Minister acknowledge that many people find the dog in the crotch grossly offensive, particularly one that might be compared to a police officers nose?

[*Interruption*]

**The Hon. MICHAEL COSTA:** Just like Pinocchio's? Pinocchio is your leader. The Pinocchio from Pittwater who still has not explained—

**The Hon. Michael Egan:** You mean two-job Johnny?

**The Hon. MICHAEL COSTA:** Two-job Johnny who has not explained what he got for PricewaterhouseCoopers.

**The Hon. Melinda Pavey:** What about Eddie?

**The Hon. Michael Costa:** We had the absurd situation of poor old Eddie being harassed.

**The Hon. Greg Pearce:** Poor old Eddie?

**The Hon. Michael Gallacher:** Point of order: The Minister for Police is misleading the House because the Minister for Fisheries could never be accused of being poor.



**The Hon. Duncan Gay:** To the point of order: Madam President, I request you to order the Minister to withdraw his comments because on two previous occasion you have ruled the terms he used out of order. I thought you would have done so.

**The PRESIDENT:** Order! I remind honourable members that implications against members of this Chamber or the other Chamber are disorderly.

**The Hon. MICHAEL COSTA:** I have just been informed that Justice O'Keefe was involved in the admission of the Hon. Greg Pearce—

*[Interruption]*

He wasn't? I apologise, I was wrong. I was going to congratulate him. I am aware of the decision of Justice O'Keefe.

**The Hon. Michael Gallacher:** Withdraw it.

**The Hon. MICHAEL COSTA:** Withdraw what?

**The Hon. Michael Gallacher:** The comment.

**The Hon. MICHAEL COSTA:** Does the honourable member want me to withdraw the comment "Pinocchio from Pittwater"? I am happy to withdraw the comment. My Leader has reproached me. From now on, I shall refer to "the honourable Leader of the Opposition, commonly referred to as the Pinocchio from Pittwater." I am happy to do that in the future and I stand chastised in relation to that matter.

**The Hon. Duncan Gay:** Point of order: Obviously the Minister is trifling with your decision and I ask you to request him to withdraw his gratuitous comment.

**The PRESIDENT:** Order! I remind all members that implications must not be made against other members of Parliament.

**The Hon. MICHAEL COSTA:** This is an important question that relates to a recent decision regarding sniffer dogs. The decision of Justice O'Keefe indicated that sniffer dogs should be regarded as important tools in the fight against crime. It is a sensible decision, which in a sense is redundant because of recent legislation that ensured that dogs could be used in certain circumstances with appropriate protection. Whilst that decision is welcomed, it has no impact because of legislation that governs the usage of dogs. We do not intend to repeal the legislation at this stage.

**The Hon. PETER BREEN:** I ask a supplementary question. Given the Minister's information that these dogs are law enforcement tools, can the Minister explain the difference between a police baton and a police gun so far as this law is concerned? As they are all grossly offensive law enforcement tools, why is the Minister allowing the law to remain in place?

**The Hon. MICHAEL COSTA:** It is difficult to explain the difference between tools. I am sure honourable members understand that if a screwdriver is used to remove screws and a hammer is used on nails, they are tools. I can explain all the tools and their relationship to the outcome they are designed to deliver but that does not add to the discussion. Clearly a baton is used for certain purposes, a gun for other purposes and sniffer dogs for other purposes. We design tools for specific purposes, and that has occurred in this matter. I strongly advise the honourable member to use a screwdriver for removing screws and a hammer for applying nails. I know people sometimes use tools for inappropriate purposes but for occupational health and safety purposes alone that is not advisable.

In relation to this matter, Justice O'Keefe made an appropriate observation about the use of these dogs. As the honourable member said, they are an extension of the police officer's sensory capacity. That is precisely what the sniffer dogs are being used for, to extend the ability of police officers to smell in those circumstances and to apply the law as it should be applied, as defined by this Parliament. Again, I give a strong warning that everybody, particularly at Christmas, should use tools for the right purposes so that injuries do not occur. I would be concerned if anybody took away from this particular question a misunderstanding about the inappropriate usage of tools.

**STATE POOL FUND**

**The Hon. GREG PEARCE:** My question is addressed to the Treasurer. Given that the State pool fund's annual report revealed that the fund lost \$948 million with a negative return of 2.3 per cent in the first two months of this financial year, will the Treasurer provide the House with up-to-date information on the pool fund's investment performance?

**The Hon. MICHAEL EGAN:** Like other superannuation funds, the pool fund is marked to the market at the end of each financial year. Obviously throughout a financial year, at any particular day, the value of a fund's assets will vary according to the state of the markets. We bring that to account each year at the end of the financial year for our annual reporting purposes. It is true that over the past 18 months or so the earnings of the pool fund have been negative, as has been the case with almost every other superannuation fund not only in Australia but in the world.

I remember a question time some weeks or months ago during which the Hon. John Ryan took me to task when I suggested that all the stock markets around the world had in fact declined. I have with me today yesterday's edition of the *Economist* magazine, which shows that the Australian stock market is 13.7 per cent lower than its record high. However, that is a phenomenal performance relative to the rest of the world. The magazine shows that the Austrian stock market is down 36.5 per cent, the Belgian stock market is down 43.1 per cent, in Britain the FTSE is down 40.2 per cent, and in Canada the Toronto composite is down 42 per cent.

**The Hon. Greg Pearce:** Point of order: The Treasurer is reading from the *Economist* magazine to try to establish his point. Clearly, he does not rely on the research of Treasury, because he does not believe that Treasury research is reliable.

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

**The Hon. MICHAEL EGAN:** Not only is there no point of order, but also it is one of the silliest points of order I have ever heard in this House. As I said, in Canada the Toronto composite is down 42 per cent, in Denmark it is down 43.8 per cent, and in France it is down 49.5 per cent.

**The Hon. Dr Brian Pezzutti:** What is the point?

**The Hon. MICHAEL EGAN:** The point is that the markets have gone backwards in the past 18 months.

**The Hon. John Ryan:** I apologise.

**The Hon. MICHAEL EGAN:** That has had an impact on the earnings of every superannuation fund and, indeed, every managed fund. Are you apologising?

**The Hon. John Ryan:** Absolutely.

**The Hon. MICHAEL EGAN:** I accept the Hon. John Ryan's apology and thank him for it.

**BROKEN HILL MINERALS EXPLORATION**

**The Hon. PETER PRIMROSE:** My question without notice is directed to the Minister for Mineral Resources. What has been done to encourage continued investment in and around Broken Hill?

**The Hon. EDDIE OBEID:** I thank Government members for an important question. Government members and crossbenchers always ask me informative questions that the community should know about. Our community owes a great debt to the men and women of Broken Hill—

**The Hon. Duncan Gay:** Point of order: The Minister is misleading the House. Earlier today the Hon. Jennifer Gardiner asked him an important question about his portfolio, but he did not have a clue what the answer was. Now he has indicated that only the crossbench and Government members ask important questions relating to his portfolio.

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

**The Hon. EDDIE OBEID:** Every time Graham Hilliard rings the Hon. Jennifer Gardiner and sets her up with a question, I have to answer it. The Hon. Jennifer Gardiner has none of the information. She has no contact with the commercial industry, other than with Graham Hilliard.

**The Hon. Dr Brian Pezzutti:** Point of order: My point relates to relevance. The Minister was not asked a question on fisheries; he was asked a question on mineral resources.

**The PRESIDENT:** Order! I ask the Minister not to be diverted by interjections.

**The Hon. EDDIE OBEID:** Our community owes a great debt to the men and women of Broken Hill whose efforts and industry have brought great wealth to New South Wales. Since 1883 more than \$70 billion worth of silver, lead and zinc have been extracted from Broken Hill's underground mines. The riches of Broken Hill have certainly benefited us all. However, those rich finds of the past are nearing depletion. Today we are using modern technology to uncover the region's extensive resources—the traditional minerals of silver, lead and zinc and new potential finds such as gold, mineral sands and petroleum. The Carr Government supports and encourages future development in the State's far west. To date we have spent \$5 million on investigating the hidden wealth of this vast area.

Last week the New South Wales Government released the very latest mineral studies and information from this area. This is the first time information about Broken Hill's future potential has been released, where it was gathered in the west of our State. The information—maps, CD-ROMS and images—is now available to worldwide investors interested in minerals and petroleum. Early next year the Carr Government will spend an extra \$1.2 million on further research in this area. This project will include three new surveys. One of these surveys will cover 55,000 square kilometres in the Murray-Riverina area. This will be the largest New South Wales Government minerals survey ever carried out.

Researchers will target the area's potential for mineral sands, gold, silver, lead and zinc from Hay to Balranald. It is another first for minerals exploration in New South Wales, and it is funded by the Carr Government's \$60 million exploration program. An aerial survey will be carried out covering the area surrounding the Broken Hill township, and a seismic survey is planned over the Darling Basin. It is hoped that this survey will provide more information about potential petroleum deposits in this underexplored area. This release of information, together with extensive new surveys, is good news for the far west community. I look forward to advising the House about further developments in this area.

#### **DEPARTMENT OF LAND AND WATER CONSERVATION DIRECTOR-GENERAL CONFLICT OF INTEREST**

**The Hon. IAN COHEN:** My question is directed to the Special Minister of State, representing the Minister for Land and Water Conservation. When will the Minister take action to remove a senior bureaucrat from positions in which he has a direct conflict of interest? My question refers to the Director-General of the Department of Land and Water Conservation, who is also the Chief Executive Officer of State Forests, and to the various approvals given to State Forests by the Department of Land and Water Conservation for land clearing, the State Forests appropriation of moneys under the National Action Plan for Water Quality and Salinity, and the private native forestry exemption to the Native Vegetation Conservation Act.

**The Hon. JOHN DELLA BOSCA:** I am not sure whether the honourable member has confused the concept of "conflict of interest" in the way he framed his question. However, I am sure the Minister will be able to give the House a substantial answer and I will ask him to do so as soon as possible.

#### **ROYAL BOTANIC GARDENS STAFFING**

**The Hon. PATRICIA FORSYTHE:** My question without notice is addressed to the Minister for Community Services, representing the Minister for the Environment. Why has the Government imposed a staff freeze on employment at the Royal Botanic Gardens? In addition, are up to 50 staff facing redundancy? Is the Government downgrading the gardens at a time when the gardens are under stress due to the adverse weather conditions? How does this action sit with the Premier's recent boasts about his achievements in relation to the environment of New South Wales?

**The Hon. CARMEL TEBBUTT:** I cannot comment on the accuracy or otherwise of the claims made by the Hon. Patricia Forsythe. I think the gardens are looking exceptionally well despite some of the environmental difficulties we are facing at the moment. However, I will refer the honourable member's question to the Minister in the other place and undertake to get a response as soon as possible.

## WESTERN SYDNEY BUSINESS DEVELOPMENT

**The Hon. HENRY TSANG:** My question without notice is to the Treasurer, and Minister for State Development. Will the Treasurer provide the House with information about the latest initiative to assist businesses in Western Sydney?

**The Hon. MICHAEL EGAN:** I am pleased to advise the House that small businesses in the greater Western Sydney area were provided with an opportunity to find out about selling to big business at a special seminar held in mid-November. The seminar focused on current major projects located in Parramatta, namely the Parramatta rail link and the new police headquarters. Both these developments present very significant supply and construction opportunities for local small businesses.

The seminar provided practical information for small businesses hoping to bid for this work as well as other upcoming projects. Speakers included the project manager for the Parramatta rail link and a senior manager from a development construction company building the new police headquarters. The seminar was organised by the Department of State and Regional Development's Parramatta office and the New South Wales Industrial Supplies Office, which, honourable members will be aware, is a government-supported organisation that assists firms to source products and services that would otherwise be imported.

The Government's Industrial Supplies Office import replacement program was worth almost \$100 million to the State in 2001-02. That is a 16 per cent increase over the previous year. It also represents the creation of almost 2,000 additional jobs across New South Wales. These are very significant returns to local industries and communities. The Industrial Supplies Office received inquiries from more than 950 companies seeking local suppliers of products and services, and made almost 2,000 client visits. Seminar attendees were also provided with information about how to access business development programs to assist them to meet the requirements for supplying big business. I am very pleased that by maximising local products and services in these major projects the Government will provide a boost to employment and income for the western Sydney community.

## COMPLEMENTARY MEDICINE

**The Hon. ALAN CORBETT:** My question is addressed to the Treasurer, representing the Minister for Health. Does the Minister believe it is an important attribute for a professor of medicine who works within the New South Wales health system to be open to examining, without bias, the evidence arising from the practice of a 200-year old form of medicine known as homoeopathy before making a judgment about its efficacy and safety? If so, does the Minister believe that sweeping generalisations that homoeopathy is nonsense and rubbish, made by Professor John Dwyer, Chair of the Health Claims and Consumer Protection Advisory Committee, a so-called expert in medicine, are acceptable?

Given that the professor is widely acknowledged as being an opponent of any form of medicine he does not understand or agree with, will the Minister, one, insist on a representative from the Australian Homoeopathic Association being on the committee and, two, listen to the protests of practitioners, consumers and industry representatives of complementary medicine and remove Professor Dwyer as both a member and chair of the committee? If not, why not?

**The Hon. MICHAEL EGAN:** I will, of course, refer the question to my colleague the Minister for Health. Professor Dwyer is a very well-known and respected medical practitioner and teacher of medicine—an academic. I am not aware of any bias on his part. I would be surprised if he was not open to argument and persuasion. I am not aware of comments that he has made on previous occasions about homoeopathy, but I will draw the content of the honourable member's question to my colleague the Minister for Health and obtain a response.

## BANKSTOWN AIRPORT

**The Hon. JOHN DELLA BOSCA:** On 23 October the Hon. Ian Cohen asked me a question without notice concerning Bankstown Airport. I am advised by my colleague the Deputy Premier, and Minister for Planning, as follows:

The then Minister for Urban Affairs and Planning did not set up a watchdog group at that stage because there had been no announcement by the Commonwealth Government regarding its strategy for airports in the Sydney Region.

The Commonwealth announced its strategy, including the proposal to transform Bankstown Airport, in December 2000.

The NSW Government position since that time has been clear and unchanged. It is one of opposition to the proposal to expand or increase the capacity of Bankstown Airport and opposition also to the transfer of regional air services away from Kingsford Smith.

Following the Commonwealth Government's announcement of its airport strategy for the Sydney Region, the Mayor of Bankstown convened meetings of a group similar to that proposed by the member for Menai. It is understood that the group includes members of the Legislative Assembly, the Mayors of Canterbury and Liverpool, and representatives of community groups.

The group has been active in organising public rallies and lobbying the Commonwealth Government in opposition to the expansion of Bankstown Airport. In these circumstances, the Minister for Planning considers that it would be a duplication of effort to establish a "watchdog group" with virtually the same membership as the Mayor of Bankstown's group.

### NEEDLE EXCHANGE PROGRAM

**The Hon. JOHN DELLA BOSCA:** On 24 October Reverend the Hon. Fred Nile asked me a question without notice about the needle exchange program. I am advised by the Minister for Health as follows:

1. Yes. The report entitled *Return on Investment in Needle and Syringe Programs in Australia* was prepared by Health Outcomes International Pty Ltd in association with the National Centre for HIV Epidemiology and Clinical Research and Professor Michael Drummond, of the Centre of Health Economics, York University, for the Commonwealth Department of Health and Ageing. It was co-launched by the Australian National Council on Drugs and the Australian National Council of AIDS and Hepatitis Related Diseases, 23 October 2002.

The report estimated that by 2000, due to the introduction of the Needle and Syringe Program in 1988, approximately 25,000 HIV infections and 21,000 Hepatitis C infections had been prevented.

2. The report used statistical regression analysis to estimate the change in HIV and Hepatitis C prevalence in cities in countries with and without needle and syringe programs. The economic analysis in the report included direct operating and infrastructure costs and direct savings associated with the prevention or avoidance of HIV and Hepatitis C from needle and syringe programs. These details can be found on pages 5 and 11 of the summary report.
3. The report was prepared by Health Outcomes International, engaged by the Commonwealth Department of Health and Ageing. As such, this question should be directed to the Commonwealth Minister for Health and Ageing, the Hon Senator Kay Patterson.

In so far as the benefits of the program are concerned, it was noted by Major Brian Watters, the Chairman of the Australian National Council on Drugs in his media release dated 23<sup>rd</sup> October 2002, that an estimated 5,000 lives have been saved, and the investment of almost \$150 million in needle and syringe programs in Australia has resulted in an estimated return of somewhere between \$2.4 and \$7.7 billion.

### BLACKTOWN LAND ZONING

**The Hon. JOHN DELLA BOSCA:** On 24 October the Hon David Oldfield asked me a question without notice about Blacktown land zoning. The Minister for Planning has advised:

Blacktown City Council is now in the process of preparing a draft Local Environmental Plan covering the Riverstone Release Area. This plan will have the potential to supply up to 7,500 lots to the Sydney residential market.

The draft plan will seek to achieve a sustainable balance between the urban development potential of the land and the need for appropriate controls to reflect the varying environmental attributes of the area.

After Blacktown Council submits the plan to the Department of Planning, the Department will prepare a report for the consideration of the Minister for Planning. At this time, all relevant issues of environmental concern will be taken into account.

### SANDON POINT RESIDENTIAL DEVELOPMENT

**The Hon. JOHN DELLA BOSCA:** On 30 October the Hon. Ian Cohen asked me a question without notice concerning State environmental planning policy No. 71. The Minister for Planning has advised:

SEPP 71, which took effect from 1 November 2002, provides that major high-risk development proposals in the coastal zone are declared State Significant Development. I will be the consent authority for these developments. Local councils will be the consent authority for the majority of development proposals in the coastal zone, however proposals in sensitive coastal locations must be referred to PlanningNSW for review and comment. The Department will then be in a position to determine whether I should become the consent authority for a particular proposal. SEPP 71 does not apply retrospectively.

On 30 October 2002 I declared the development at Sandon Point a State Significant Development. I will be the consent authority for any future development at the site.

With regard to future development at Sandon Point, I have decided to establish a Commission of Inquiry to investigate any further development at the site. This will provide a transparent forum for all interested parties, and provide me with the relevant information and recommendations to make decisions about appropriate land use, and land use controls for the area.

The Land and Environment Court has approved Stage 1 (14 lots) and Stages 2-6 (92 lots) and upheld the Section 90 certificate issued by the National Parks and Wildlife Service. Construction has commenced for the approved stages of the development. As Minister, I have no power under the Environmental Planning and Assessment Act to intervene with the approved development.

### **FOX STUDIOS OCCUPATIONAL HEALTH AND SAFETY**

**The Hon. JOHN DELLA BOSCA:** On 30 October the Hon. Patricia Forsythe asked me a question without notice about Fox Studios occupational health and safety. I can now inform the honourable member of the following:

1. WorkCover visited the site in early October and viewed the clearance certificates for the demolition and removal of materials. They were satisfied that correct procedures had been undertaken by the companies involved and no breaches of Occupational Health and Safety legislation had occurred.
2. Notice was given to WorkCover in more than sufficient time for both the demolition of the buildings and the removal of asbestos from the site.
3. The sheds did contain bonded asbestos, and this was removed by a licensed asbestos removal contractor in the proper manner.
4. As part of the demolition and asbestos removal process the company involved contracted an occupational hygienist to ensure control over any potential atmospheric contaminants. WorkCover is satisfied that neighbours surrounding the site were not exposed to any health risks.

### **IVAN MILAT BREACH OF PRIVACY ALLEGATION**

**The Hon. JOHN DELLA BOSCA:** On 31 October Ms Lee Rhiannon asked me a question without notice about a complaint alleged to have been lodged by Ivan Milat with the Privacy Commissioner. The Minister for Corrective Services has advised:

I have not attempted to intimidate the Privacy Commissioner.

### **NORTH HEAD QUARANTINE STATION**

**The Hon. JOHN DELLA BOSCA:** On 31 October the Hon. Dr Arthur Chesterfield-Evans asked me a question without notice concerning North Head Quarantine Station. The Minister for Planning has advised:

The responsibility for the issues raised in these questions falls within the portfolio of my colleague, the Hon Bob Debus MP, Minister for the Environment.

### **STATE RAIL TRACK LEASES**

**The Hon. EDDIE OBEID:** On 23 October the Hon David Oldfield asked me a question without notice concerning rail track leases. The Minister for Transport has advised:

The Commonwealth, on behalf of the Australian Rail Track Corporation, has provided the NSW Government with a detailed proposal for the leasing of certain rail lines in NSW. The proposal has been provided on a confidential basis and its details cannot be disclosed, other than those matters that are on the public record. The NSW Government is closely considering all issues associated with the proposal, including the potential impact on rural employment.

### **DEFERRED ANSWERS**

The following answers to questions without notice were received by the Acting Clerk during the adjournment of the House:

### **RED KANGAROO POPULATION**

On 31 October the Hon. Richard Jones asked the Minister for Community Services, representing the Minister for the Environment, a question without notice regarding the red kangaroo population. The following response was provided:

1. I am advised that an eight percent decrease in red kangaroos was observed between the kangaroo aerial surveys of 2001 and 2002.
2. No.

3. The drought situation in NSW is obviously severe.
4. No.
5. & 6. The National Parks and Wildlife Service will continue to monitor kangaroo populations closely as the drought continues. The NPWS has commissioned a report on managing kangaroo populations through the drought. This report will be available before 2003 and will be considered by the NSW Kangaroo Management Advisory Committee.

#### **FLYING FOX KILLINGS**

On 31 October the Hon. Ian Cohen asked the Minister for Community Services, representing the Minister for the Environment, a question without notice regarding flying fox killings. The following response was provided:

The National Parks and Wildlife Service has fully investigated this matter and issued appropriate penalty notices.

#### **DEPARTMENT OF STATE AND REGIONAL DEVELOPMENT REMOTE OFFICE ACCOUNTABILITY**

On 12 November the Leader of the Opposition asked the Minister for State Development a question without notice about the Department of State and Regional Development accountability for remote office funds appropriation. The following response was provided:

I am advised that the Department has recognised and implemented all recommendations to avoid misappropriation of public funds, which were detailed in the Independent Commission Against Corruption Report to which the Member referred.

I am advised that the financial management controls adopted by the Department enabled the early detection of the irregularity with regard to one payment processed in the Tokyo Office.

#### **DISTRICT AND SUPREME COURTS APPEAL STATISTICS**

On 23 October the Hon. Peter Breen asked the Treasurer, representing the Attorney General, a question without notice regarding court appeals. The Attorney General provided the following response:

A key feature of our system of Government is the independence of the judiciary. There is a separation between the Courts and the Parliament, and that the judiciary are neutral adjudicators in disputes between parties.

Judges hear a diverse range of cases during the course of their duties. Cases are decided on the law as it stands and the facts as presented to the court. Judges may hear cases where the relevant law is settled, or where the law is uncertain.

The diverse range of factors that affect the judicial decision-making process make it inevitable that some parties will be dissatisfied with some decisions. These parties then have the option of appealing against these decisions.

It would be quite misleading to evaluate the likely success of a particular appeal, based simply on appeal rates and appeal outcomes. Any such decision should be based on the particular facts of a case, the evidence adduced, the particular motivations of the parties involved and the legal question to be determined.

The appeal mechanism is the only fair way for a court's decision to be reviewed. Further, if it is in issue, a judicial officer's conduct is subject to scrutiny by their Head of Jurisdiction, by the Judicial Commission and ultimately by Parliament.

I have forwarded a copy of the Honourable Member's question and my response to the Chief Justice of New South Wales for his information.

#### **DROUGHT ASSISTANCE**

On 29 October the Deputy Leader of the Opposition asked the Treasurer, representing the Minister for Agriculture, a question without notice regarding Drought Affected Farmers Cash Grants. The Minister for Agriculture provided the following response:

I am pleased to advise that the Carr Government has responded to the worsening drought and has reviewed and enhanced several existing State schemes of assistance and has also introduced additional measures. In all, some 30 items of drought assistance for farmers and rural businesses have been introduced by this Government since August this year.

These steps have been taken on the basis of sound policy advice and in full consultation with farmers and rural communities to identify key needs. Unlike the cash grants now being offered in Victoria and Western Australia, the NSW measures are carefully targeted to address priority needs while remaining consistent with broader farm sector and environmental policy.

I would also point out that the NSW package is the most broad ranging, including not only direct measures to support farm businesses and families, but also a suite of other initiatives, such as funding of EC applications, increased funding of feral animal control and assistance for non-farm businesses, farm employees and rural financial counselling. In addition, the Carr Government has not set aside a fixed amount of money for drought relief but, rather, has committed to demand-driven funding of appropriate measures to whatever extent proves necessary.

We are also continually reviewing the effectiveness of these drought measures and are assessing new proposals, and are prepared to introduce further initiatives as and when it proves necessary.

#### **FOOD PESTICIDE RESIDUES**

On 24 October the Hon. Richard Jones asked the Treasurer, representing the Minister for Health, a question without notice relating to food pesticide residues. The Minister for Health provided the following response:

The latest survey published on the United Kingdom based *Food Standards Agency* web site shows that out of the 2000 samples, about 30% contained pesticide residues.

However, the report goes on to say:

But this does not mean that consumers are at risk from the residues that are found. It is only when the legal limit (called a Maximum Residue Level – MRL) is exceeded or a residue of a non-approved pesticide is found that a potential problem is highlighted.

The legal limit represents the maximum amount of residue that will be left on a food when a pesticide is applied according to the instructions on the label. Legal limits are not safety limits and are usually set at levels well below the safety limits.

The vast majority (98%) of samples tested since 1998 do not contain residues above legal limits and do not contain non-approved pesticide residues.

In almost all cases where a legal limit was exceeded or a non-approved use was found, these did not present a health risk.

The report does not specify the foods in which residues above the Maximum Residue Level were found.

The NSW Department of Health monitors the results of surveys conducted at a national level by Food Standards Australia New Zealand (FSANZ), Agriculture, Fisheries and Forestry - Australia (AFFA), and at the state level by NSW Agriculture and Sydney Markets Limited (SML).

The latest survey results from these agencies indicate that Australian produce is of a high quality with respect to residues and contaminants.

These surveys are available on the websites of FSANZ, AFFA and NSW Agriculture.

#### **PSYCHIATRIC BED NUMBERS**

On 29 October the Hon. Dr Arthur Chesterfield-Evans asked the Treasurer, representing the Minister for Health, a question without notice relating to psychiatric patients beds. The Minister for Health provided the following response.

Yes.

#### **NORTHERN BEACHES MENTAL HEALTH SERVICES**

On 13 November the Hon. Helen Sham-Ho asked the Treasurer, representing the Minister for Health, a question without notice relating to Northern Beaches mental health. The Minister for Health provided the following response:

The Northern Sydney Area Health Service continues to provide emergency psychiatric assessment and care for mental health clients on the northern beaches 24-hours-a-day, 7-days-a-week.

#### **INDECENT ASSAULT OFFENDER PRISON SENTENCE**

On 30 October the Hon. Malcolm Jones asked the Treasurer, representing the Attorney General, a question without notice regarding child protection. assault. The Attorney General provided the following response:

The *Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002*, sets out standard minimum non-parole periods for the offences of:

Sexual Intercourse with a Child under 10	— 15 years
Aggravated Sexual Assault	— 10 years
Sexual Assault	— 7 years
Aggravated Indecent Assault	— 5 years

The Act also increases the maximum penalty for the offence of sexual assault of a child under 10 years of age from 20 to 25 years.

#### **COMPLEMENTARY MEDICINE**

On 12 November the Hon. Alan Corbett asked the Treasurer a question without notice relating to complementary medicine. The Minister for Health provided the following response:

Professor Dwyer is well respected and highly qualified to chair the Committee. The Minister for Health has full confidence in this ability to chair the Committee in an unbiased and objective manner.



**COMPLEMENTARY MEDICINE**

On 13 November the Hon. Richard Jones asked the Treasurer a question without notice relating to the complementary medical profession. The Minister for Health provided the following response:

As publicly stated by the Minister for Health, the formation of the committee is in no way intended to generate a witch-hunt against the complementary therapy industry.

No person known as "Michelle Trueblood" is a member of this committee.

**OFF-PEAK ELECTRICITY TARIFFS**

On 30 October the Deputy Leader of the Opposition asked the Treasurer a question without notice regarding the availability of off-peak electricity tariffs. The following response was provided:

After consultation with Government owned energy retailers I can confirm there is no plan to reduce the period of off-peak electricity tariffs or to remove them altogether.

In fact, under the regulatory arrangements put in place by the NSW Government, such a proposal would not be possible as all residential and small business customers have the right to be supplied at rates regulated by IPART, including existing off-peak rates.

**DROUGHT ASSISTANCE**

On 23 October the Deputy Leader of the Opposition asked the Treasurer and Minister for State Development a question without notice regarding drought assistance expenditure. The following response was provided:

I am advised that Treasury has costed the cost of the Government's drought measures at more than \$17 million.

**RAIL MAINTENANCE EXPENDITURE**

On 29 October the Hon. Rick Colless asked the Treasurer a question without notice about spending on rail networks in country areas. The following response was provided:

\$1.4 Billion Commitment – Expenditure to Date

I am advised that the Government will now spend about \$1.9 billion on above and below rail Community Service Obligations for the period 2000-01 to 2005-06, compared to the Government's original commitment of \$1.4 billion which I outlined in the Second Reading Speech on the Freight Rail Corporation (Sale) Bill. This includes a \$118 million commitment to build new grain handling facilities (NSW Broadacre Project) to be met by Pacific National under the FreightCorp sale agreement. During the first two years \$585 million has been spent. In the first three months of 2002-03 a further \$52.9 million has been spent.

**Maintenance of Country Network**

I am advised that the Line CSO Funding Agreement between the Government and Rail Infrastructure Corporation (RIC) requires the Corporation to restore the mainline network and upgrade busy branch lines. It requires RIC to maintain the country network to specific technical performance standards, including track conditions.

I am advised that a small proportion of branch lines with very low rail traffic will not be upgraded but rather receive whatever maintenance is necessary to keep them operational.

**ENGLISH AS A SECOND LANGUAGE TEACHERS**

On October 23 the Hon. Helen Sham-Ho asked the Minister for Police, representing the Minister for Education and Training, a question without notice regarding English as a second language teachers. The following response was provided:

I am advised by the Department of Education and Training that English as a Second Language (ESL) teacher positions are adjusted each year according to information on ESL student numbers provided by schools.

The annual redistribution of ESL teacher positions is reflective of changes in settlement patterns of migrants. New South Wales continues to receive the bulk of non-English speaking migrants from overseas and other states and territories.

This Government is continuing to make representations to the Commonwealth to reconsider its eligibility and formulas used to allocate ESL funding to states and territories.

**FISHING LICENCE COMPLIANCE POLICING**

On 29 October the Hon. Jennifer Gardiner asked the Minister for Police a question without notice concerning enforcement of compliance with fishing licences. The following response was provided:

Police advise the Honourable Member has not provided sufficient detail of an incident concerning "a Central Coast angler" for police to identify any such incident.

NSW Police also advise the assistance of Fisheries officers in compliance issues is a function police may undertake from time to time if required. The level of assistance falls well within guidelines and policies for police officers in the protection of members of the community and support services, including Fisheries Officers.

#### **DNA TESTING OF PRISONERS**

On 29 October the Hon. Peter Breen asked the Minister for Police a question without notice concerning the Innocence Panel. The following response was provided:

The Panel has met on nine occasions to date. It has been at these meetings that legal, technical and privacy issues concerning the Panel's work have been discussed, investigated and resolved.

Application forms and information brochures were distributed in mid October, with the Panel now receiving applications.

**Questions without notice concluded.**

### **PRIVACY AND PERSONAL INFORMATION PROTECTION AMENDMENT (PRISONERS) BILL**

#### **Second Reading**

**Debate resumed from an earlier hour.**

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [5.05 p.m.], in reply: I thank honourable members for their contributions to this debate and I commend the bill to the House.

**Question—That this bill be now read a second time—put.**

**The House divided.**

#### **Ayes, 28**

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

#### **Noes, 7**

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

**Question resolved in the affirmative.**

**Motion agreed to.**

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

**BUILDING LEGISLATION AMENDMENT (QUALITY OF CONSTRUCTION) BILL****In Committee**

**Consideration resumed from 20 November.**

**Clauses 1 to 5 agreed to.**

**Schedule 1**

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [5.15 p.m.], by leave: I move Government amendments Nos 1, 2, 3 and 4 in globo:

No. 1 Page 4, schedule 1, line 16. Omit "7". Insert instead "2".

No. 2 Page 4, schedule 1, line 27. Omit "7". Insert instead "2".

No. 3 Page 5, schedule 1, line 16. Omit "7". Insert instead "2".

No. 4 Page 5, schedule 1, line 25. Omit "7". Insert instead "2".

The Australian Institute of Building Surveyors has raised a concern about the proposal to increase the time required for a council to receive notice of the appointment of an accredited certifier as the principal certifying authority for a development. Other amendments in the bill will ensure that councils have sufficient notice of building work being approved and its commencement date. We are reducing from seven days to two days the time for accredited certifiers to forward their certificates to councils, and we are ensuring that the accredited certifier, rather than the owner, must submit the notice of appointment. In the light of these other amendments, it is not considered necessary to increase to seven days the two-day requirement for the submission of a notice of appointment of the principal certifying authority.

**The Hon. JOHN RYAN** [5.17 p.m.]: I must say I have been caught a little unawares by one of the amendments moved, and I would like to ask a question about it. I hope there are some advisers from the Department of Fair Trading handy. Apparently, the Government seeks to change the means by which a principal certifier will present information of that certifier's appointment, and that will be done by the certifier rather than the owner. Does this mean that the Government has changed its mind in regard to the appointment of certifiers? I understand that the rationale behind the amendments is that the owner of the premises—essentially, the consumer who is contracting for the building works—would appoint the certifier. Is that to be changed by the amendment just moved?

That may not be the case, but I was trying to work out whether the amendment is designed to negate that change. I understood that the Government was to introduce a procedure whereby the owner appoints the certifier. Is that being changed, because the certifier must submit the notice of appointment, I presume, to the Department of Planning or the council? I think the arrangement was that the builder appointed a certifier. Under the bill, we were supposed to be moving to a situation where the consumer, not the builder, would appoint the certifier. I seek clarification of that, because if that is the case, this amendment is a radical change from what was outlined in the second reading speech.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [5.19 p.m.]: In response to the Hon. John Ryan, the measure providing for the owner to appoint the principal certifying authority has not been changed. It is still in the bill.

**The Hon. JOHN RYAN** [5.19 p.m.]: I must confess that I am to some extent proceeding on the fly because the Opposition has not had a chance to thoroughly consider these amendments. The Opposition will not oppose them but I add this caveat: the Opposition has not necessarily been well briefed on exactly what the amendments are intended to achieve and I can only take the Government's word on that. If they become pear shaped later, it will not be the fault of the Opposition.

**Amendments agreed to.**

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [5.20 p.m.]: I move Government amendment No. 5:

No. 5 Page 7, schedule 1, line 6. Insert "by the principal certifying authority or another certifying authority" after "inspected".

The Housing Industry Association has expressed concern about the provision requiring the principal certifying authority to ensure that inspections prescribed by the regulation are carried out. It is argued that the bill is unclear as to who is required to carry out the prescribed inspection and whether compliance certificates must be issued after these inspections. The critical phase inspections proposed in the regulation are intended to be undertaken by either the principal certifying authority or another certifying authority, that is, an accredited certifier or a consent authority such as a council. The inspections relate to critical components that are generally inspected by building surveyors or by engineers. Therefore there is no reason not to ensure that these inspections are carried out by either the PCA or another certifying authority. The proposed amendment clarifies who is to carry out the inspections.

**The Hon. JOHN RYAN** [5.21 p.m.]: I have gained some understanding of what is meant. Obviously the principal certifying authority is someone about whom the Opposition would have no concern, but what is meant by "another certifying authority"? Does that simply mean that if there is not a private certifier appointed by the council, for example, the builder, as opposed to the certifying authority, can appoint someone to carry out these inspections? I do not understand. It should be borne in mind that the consumer, not the builder, will appoint the certifying authority. The importance of this is the need to ensure that these critical phase inspections will be carried out by someone who has not been appointed by the builder but by, or at least through, the consumer.

If it is the certifying authority, for example, it will be someone whom the consumer has appointed. That chain of command is important. I understand some of the difficulties that the Housing Industry Association [HIA] has had with this amendment, but I am endeavouring to ensure that this amendment will not be a backdoor method by which builders will be able to supply inspection certificates that are initiated by someone the builders themselves have nominated.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [5.22 p.m.]: My response to the query raised by the Hon. John Ryan is that it is the principal certifying authority or a council, so in effect it is a certifying officer of the council.

**The Hon. JOHN JOBLING** [5.22 p.m.]: The Opposition has had very short notice of these amendments, which were received from the Parliamentary Counsel's Office only today. I ask the Parliamentary Secretary to clarify whether Government amendments Nos 1 to 4, which change "seven days" to "two days" refer to working days or calendar days.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [5.23 p.m.]: I understand that the Interpretation Act applies, and it is two calendar days.

**Amendment agreed to.**

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [5.24 p.m.], by leave: I move Government amendments Nos 6 and 7, in globo:

No. 6 Page 24, schedule 1, lines 17-28. Omit all words on those lines. Insert instead:

- (2) In the case of the erection of a concrete structure (other than the placement or relocation of a pre-fabricated concrete structure), inspections must be conducted, for each stage of construction that involves a concrete pour:
  - (a) after any steel reinforcement has been positioned and before any formwork has been completed, and
  - (b) after any formwork has been completed and before the concrete is poured.

No. 7 Page 24, schedule 1, lines 33-35. Omit all words on those lines.

The Campbell inquiry recommended that five mandatory inspections be carried out for all buildings. These inspections have been defined for the purposes of the regulations. However, consultation with local government bodies has raised concerns that some inspections are more appropriately carried out by the person who installed the components, such as is the case with termite barriers. Council certifiers and accredited certifiers often do not have the technical expertise that an installer would have in relation to such complex systems. For that reason, the Government has considered it appropriate to remove this inspection from the regulation. The inspection of excavation material is commonly part of the inspection of steel reinforcement. For that reason, the amendment will also remove that inspection from the regulation.

**Amendments agreed to.**

**Schedule 1 as amended agreed to.**

## Schedule 2

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [5.35 p.m.], by leave: I move Australian Democrats amendments Nos 1 and 2 in globo:

No. 1 Page 35, schedule 2. Insert after line 27:

**[16] Section 114 Home Building Administration Fund**

Insert after section 114 (3) (a):

- (a1) meeting the costs of the Home Building Advisory and Advocacy Centre,

No. 2 Page 35, schedule 2. Insert before line 28:

**[16] Part 7A**

Insert after Part 7:

**Part 7A Home Building Advisory and Advocacy Centre**

**115A Constitution of Home Building Advisory and Advocacy Centre**

- (1) There is constituted by this Act a body corporate with the corporate name of the Home Building Advisory and Advocacy Centre.
- (2) The Home Building Advisory and Advocacy Centre is, for the purposes of any Act, a statutory body representing the Crown.

**115B Management and control of Home Building Advisory and Advocacy Centre**

- (1) The affairs of the Home Building Advisory and Advocacy Centre are to be managed and controlled by such person or body as may from time to time be authorised by the Minister in that regard.
- (2) Any act, matter or thing done in the name of, or on behalf of, the Home Building Advisory and Advocacy Centre by a person or body so authorised is taken to have been done by the Centre.

**115C Staff of Home Building Advisory and Advocacy Centre**

The Home Building Advisory and Advocacy Centre may employ such staff as are necessary to enable it to exercise its functions.

**115D Functions of Home Building Advisory and Advocacy Centre**

- (1) The Home Building Advisory and Advocacy Centre has the functions conferred or imposed on it by or under this or any other Act or law.
- (2) The functions of the Home Building Advisory and Advocacy Centre include the following:
  - (a) the development and provision of education programs in relation to consumer rights concerning home purchase and home construction,
  - (b) the provision to consumers of advisory and advocacy services in relation to home purchase and home construction,
  - (c) the referral of consumers to building consultants and legal practitioners for further advice in relation to the technical and legal aspects of home purchase and home construction,
  - (d) the publication of information as to the programs and services that are available from the Centre.
- (3) The Home Building Advisory and Advocacy Centre may do all such things as are supplemental or incidental to the exercise of its functions.

These amendments set up the home building advisory and advocacy centre in accordance with recommendation Nos 3 and 29 of the Campbell report. The Building Action Review Group [BARG] and Irene Onorati have been very anxious that the review and the advisory centre should be separate from the Department of Fair Trading so it is not in the position of giving advice to both sides and having to be an arbiter as well. Basically, BARG has acted as a totally unpaid advisory centre and that should not happen.

The amendments seek to establish a home building advisory and advocacy centre that will offer education programs and advice and advocacy for consumers regarding home building. The amendments should make it possible for the advocacy centre to be separate from the Department of Fair Trading. I believe that that is absolutely necessary. The amendments meet the recommendations of the Campbell committee and take into account that BARG has had to provide these services from its own resources for a long time. I commend the amendments to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [5.37 p.m.]: The Government does not support Australian Democrats amendment No. 1. The report of a joint select committee referred to the Tenants and Advice and Advocacy Program [TAAP] as a model for the proposed consumer advice and advocacy service. The new consumer service will be an independent body which will give independent advice to consumers. The TAAP is not established by legislation. TAAP services are contracted to community organisations. A pilot consumer and advocacy service is to be conducted in 2003 to assess the demand for these services and operational issues. The pilot will be funded by the Department of Fair Trading.

The Government does not support Australian Democrats amendment No. 2. The TAAP model was not established by legislation. Making a consumer advisory service a statutory body representing the Crown ruins its independence, which is meant to be its key feature. The effect of this proposal would also expose the Government to liability for independent advice given by the consumer and advice service. The TAAP services are required to carry their own professional indemnity insurance to cover service and advice.

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

**The Committee divided.**

Ayes, 24

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

Noes, 14

Dr Burgmann	Mr Hatzistergos	Mr Tsang
Ms Burnswoods	Mr Macdonald	Mr West
Mr Costa	Mr Obeid	<i>Tellers,</i>
Mr Della Bosca	Ms Saffin	Ms Fazio
Mr Dyer	Ms Tebbutt	Mr Primrose

Pair

Mr Lynn

Mr Egan

**Question resolved in the affirmative.**

**Amendments agreed to.**

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [5.35 p.m.]: I move a further amendment circulated in my name:

Page 35, schedule 2. Insert after line 34:

**[18] Section 145 Review of Act**

Insert after section 145 (3):

- (4) Without limiting subsection (1), the Minister is to review this Act with a view to establishing a Home Building Compliance Commission in accordance with the recommendations of the Joint Select Committee on the Quality of Buildings in its *Report on the Quality of Buildings*.
- (5) The review is to be completed within 12 months after the date of assent to the *Building Legislation Amendment (Quality of Construction) Act 2002*.
- (6) A report on the outcome of the review is to be tabled in each House of Parliament as soon as possible after the review is completed and, in any case, within 4 months after the end of the 12-month period referred to in subsection (5).

The purpose of the amendment is to give force to the first recommendation of the Campbell report. I requested Parliamentary Counsel to draw up an amendment to provide for this in the bill. Parliamentary Counsel replied that it would take about two weeks of drafting time and would involve a major restructuring of the bill, which Parliamentary Counsel was not keen to do at this stage of the parliamentary year in view of the fact that the amendment may not get up. I was discouraged by this and was unable to work out what to do next. I discussed the matter with Irene Onorati and my colleague the Hon. Dr Peter Wong, who made the practical suggestion that it be suggested that the bill be reviewed in 12 months and the Minister look to reply to the first and chief recommendation of the report of the Joint Select Committee on the Quality of Buildings. As I did not have time to draft an amendment to create the Home Building Compliance Commission the Minister should conduct a review of the Act within a year with a view to implementing that recommendation. The amendment would implement what the Campbell committee recommended. I commend it to the Chamber.

**The Hon. Dr PETER WONG** [5.37 p.m.]: I am surprised that the Government is not making any comment on this issue.

**The Hon. Ian Macdonald**: Give them a break.

**The Hon. Dr PETER WONG**: Is the Hon. Ian Macdonald going to support us now? I totally support the amendment moved by the Hon. Dr Arthur Chesterfield-Evans. I also congratulate the Opposition on supporting consumers and builders on a worthwhile amendment. Nobody should oppose it.

**The Hon. JOHN RYAN** [5.38 p.m.]: All this amendment seeks is a review of the operation of the Act in 12 months. The Opposition generally supports the idea of a review of legislation. I see no reason to argue against that. If the review commences in a year we might be reviewing something that is a little bit too young to be reviewed. I would not object to at least allowing the scheme to work for two years before it is reviewed.

**The Hon. Dr Arthur Chesterfield-Evans**: No, it should have been in the bill.

**The Hon. JOHN RYAN**: I am not moving an amendment; I am simply saying that we would concur. We are dealing with these amendments on the run.

**The Hon. Dr Arthur Chesterfield-Evans**: You are being naughty. You are giving them more rope.

**The Hon. JOHN RYAN**: I am not giving them more rope. It is good practice not to review something too early. Twelve months would be a little early. By then there would be time only to appoint staff and to open offices. The result of a review then would be that everything is absolutely wonderful or that it is too early to tell. There might then be a problem in that there would be no further look at how the legislation operates. If we allow the legislation to operate for at least two years we will have a realistic opportunity to examine how it is working, and that escape clause will not be available. We will not be able to say, "We are about to fix this up; we are about to start this; we have not had enough time." The concept of a review is indisputable, given that following each review it has been necessary to make changes. We have been told three times that the Act has been amended for the final time. But I would not object to the timing of the review being moved on. A review in 12 months will be too soon. I will be interested to hear the comments of the Government about the amendment. The concept of a review is sound, but a review in 12 months might be a bit early.

**The Hon. HELEN SHAM-HO** [5.40 p.m.]: I support the amendment moved by the Australian Democrats. Recommendation No. 1 of the Joint Select Committee on the Quality of Buildings recommended the establishment of the Home Building Compliance Commission. I was surprised that the bill did not provide for the setting up of such a commission. If it would take Parliamentary Counsel two weeks to draft the amendment originally requested by the Hon. Dr Arthur Chesterfield-Evans, I can understand the difficulties and enormous strategic problems faced by the Government in trying to set up a commission before the end of this session. The amendment is logical: it seeks to give the Government time in the next 12 months to set up a Home Building Compliance Commission.

Recommendation No. 2 of the Joint Select Committee on the Quality of Buildings recommends a performance audit of the commission by the New South Wales Audit Office after two years of operation. If the commission is set up, it is logical that recommendation No. 2 be accepted, which will provide another review of the commission. I support the amendment moved by the Hon. Dr Arthur Chesterfield-Evans. Following the election next year the government will have to consider how to set up the Home Building Compliance Commission. It is sensible to allow the government to implement the recommendations of the committee.

**Progress reported from Committee and leave granted to sit again.**

## **PUBLIC FINANCE AND AUDIT AMENDMENT (COSTING OF ELECTION PROMISES) BILL**

### **Second Reading**

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [5.43 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.**

For many years the NSW Treasury has undertaken the costing of Government and Opposition election promises following requests by the Government of the day. At various times different conditions for this exercise have been negotiated between Treasury and the Government of the day. These covered the scope and approach to be taken.

The previous ad hoc arrangements for costing election promises can lead to conflict between the Public Service's duty to support the Government of the day in implementing its policies and priorities, and its responsibility to avoid undertaking work predominantly directed towards achieving electoral advantage for the Party in Government.

This situation has led to protocols being developed in a number of jurisdictions to make the process of Treasury costing election promises transparent to Political Parties and the electorate.

A protocol for costing election promises in New South Wales has been endorsed by the Government. It establishes the basis for a clear understanding on the part of the Government and the Opposition for the conditions under which the NSW Treasury will undertake an independent costing of election promises.

The protocol is contained in an Agreement which the Opposition has been invited to enter with the Government. The Agreement sets out a formal process under which the policies of both the Government and the Opposition can be costed independently by the NSW Treasury, free of any political interference.

The Agreement has been signed by the Premier and the Treasurer and the Leader of the Opposition and his Treasury spokesman have been asked to sign as well.

Although the Leader of the Opposition on 6 June 2002 called for "independent costings of policies by the Treasury during an election campaign free from political interference", he now displays reluctance to have Opposition promises subjected to this scrutiny.

The alternative mooted by the Opposition Leader, of having an accounting firm undertake this function, will not bring to the exercise the same level of scrutiny. It is the NSW Treasury that compiles the State's Budget and the Forward Estimates. Only the NSW Treasury has the intimate knowledge necessary to accurately cost public sector budget proposals and assess the impact these proposals are likely to have on the State's fiscal position.

The Bill now before the House will effect amendments to the Public Finance and Audit Act 1983 to ensure that information that Treasury obtains for the purpose of costing election promises and the actual costings cannot be accessed by anyone other than the person requesting the costing. Neither the Government nor the Opposition will be able to access information provided by the other to the Treasury for the purpose of having an election promise costed.

For the Election Costing Agreement to work as intended it needs to be accepted by both the Government and the Opposition. In so doing each party would be giving a commitment to provide all necessary information to enable the Treasury to undertake the most accurate costing possible.

Only through this process can the people of New South Wales go to the polls knowing that the programs outlined by the major Parties have been subjected to an identical process of independent costing by the Treasury. Only then can they have confidence that they know how much the programs of each major Party will cost and how they will impact on the State's Budget and its balance sheet.

I therefore again call on the Leader of the Opposition and his Treasury spokesman to enter this important Agreement with the Government.

However, even without the Opposition's commitment to this independent costing process, it is essential for there to be an endorsed protocol which is transparent publicly for the costing of election promises made by the major Parties.



The Government will, therefore, adopt the protocol contained in the proposed Agreement as the basis for Treasury costing of the Government's election promises and the publicly announced promises of the Opposition.

The protocol, which is now a public document, outlines the scope and approach to the costing of election promises, and includes a detailed costing methodology to be observed by the Treasury. It also specifies the form in which Treasury will provide costings.

The Bill now before the House will ensure the integrity of this process by prohibiting the release of costings to anyone other than the Party requesting the costing. Once this safeguard is in place there is no basis for the Opposition's concerns that the Government could obtain access to information provided to the Treasury or influence the costing process.

I commend the Bill to the House.

**The Hon. JOHN RYAN** [5.43 p.m.]: The bill is nothing more than a stunt by the Government, which has no desire to independently cost election promises. The bill is full of holes. It has been designed intentionally as an alleged trap for the Opposition. We would be the only administration in the country to independently cost election promises in this way. Treasury is not an independent, statutory body: it is a government department like any other government department. It is subject to ministerial control. There is ample evidence in the media that the Government has already used Treasury for political purposes. On 11 November the Treasurer held a media conference to release what he called Treasury's costing of Coalition election promises in which he claimed that the Opposition promises would cost \$5.2 billion. We dispute that costing.

When we looked at the finer detail of the press release we discovered that the promises we were alleged to have made had been doctored. For example, projects for which we have supported feasibility studies have been presented as though we were prepared to support at once the entire funding for the project. We could play the same game. The Premier has referred to a fast train to the Central Coast, for which he has promised a feasibility study. If the promise were implemented, it could be costed at \$8 billion. Everyone can play at that nonsense. It is a normal part of robust political debate. I will not quibble with the fact that the Treasurer might do that, although it does not add much to the fabric of the body politic. The Government expects the Opposition to lie down and support the Treasurer's proposition that somehow or another Treasury will change its spots. The legislation provides that Treasury cannot tell the Government what the Opposition's promises are, nor can it tell the Opposition what the Government's promises are. But if they are election promises they will eventually be released for public consumption.

The bill does not make it obligatory for Treasury to objectively cost the promises or to behave objectively. The Opposition has proposed and maintains that we should follow the example of Victoria, but the Government has balked at supporting it. The Opposition proposes costings by an independent accountancy firm outside of government, of which there are plenty. In the last election the Labor Party sought costings from KPMG, which set a precedent. If the Labor Party were serious about independent costing of election promises it would ensure that they were made by an independent firm outside of government, not subject to government control. There is some benefit in having election promises costed independently, but we would be fools to trust a process that has already been damaged and exploited by the Government.

The other problem is that for quite obvious reasons Treasury will rule a line in the sand and nominate a closing date for the submission of election promises. Any election promise made after the closing date will not be subject to costing. Consequently, it will be possible to subvert the legislation by including promises before and after the closing date, which does not seem to be workable. It is a transparent stunt by the Government. We should not waste the time of the House by further debating the legislation. The Government is not sincere in seeking to objectively cost either its promises or ours. The House should reject the legislation as a stunt. I call upon the crossbenchers to exercise some independence in the process, and weigh up this bill for what it is: nothing more than an election stunt that should not be given more than five minutes consideration.

**Ms LEE RHIANNON** [5.50 p.m.]: On the face of it, this appears to be a relatively straightforward bill. It seeks to prohibit any Treasury officer from disclosing any information or documents relating to the costing of either Government or Opposition promises to anyone other than the representative of the Government or the Opposition who requested the costing. That seems reasonable but, as we know, that is not always the case. On closer inspection it becomes clear that this bill is in fact another Labor stunt.

**The Hon. John Jobling:** Surprise, surprise!

**Ms LEE RHIANNON:** Yes, it is interesting. It is a stunt rather than a meaningful piece of legislation. We thought we were getting useful legislation, but when we looked into the magician's hat the bill turned into a stunt. The Government and the Opposition have been engaged in an ongoing argument about election costings, the independence of Treasury and who is more profligate. It has been the usual, predictable and tedious election-

eve squabble about who is promising more and whose promises are the most expensive. The only new element is that they are pulling the issue of costings. This predictable squabble does nothing to engender public confidence in the political process. The Government's strategy is to develop a protocol for Treasury costings of election promises. Presumably, it thinks that will work to its advantage. The Opposition alleges that the Government cannot be trusted and that the Treasury has been politicised, which is a predictable and credible claim.

The Government has responded to that charge by drafting this bill. It is saying, "Look, we can be trusted not to interfere with Treasury processes. To prove it, we will make it an offence for a Treasury official to leak information." It is a get-tough approach and includes a few costing issues. The Government obviously thinks it has this well and truly sown up. The Opposition has responded by saying that this bill is still not good enough and that the enforcement mechanisms are weak. It wants a completely independent firm to undertake the costings, as happens in Victoria. This is a strategic move by the Government to outmanoeuvre the Coalition on this issue. It is also worth noting the timing of the bill. Cross-bench members are told not to do this and that, and not to speak for too long or to move an extra amendment, but we are debating this frivolous legislation. The Government is clearly trifling with the House. We have a backlog of bills because the Government did not introduce them months ago, but it has added a petty and unnecessary bill to the pile. It is shameful. It will do nothing to increase respect for this House.

The Greens believe that election promises should be costed as independently as is possible. Given Labor's history of politicising the public service, we are sympathetic to the argument that it would be better to find another way to achieve this end. The Government could establish a separate, independent unit in Treasury or even an outside agency. The Greens are open to suggestions. It would be unfortunate to have to go outside the public service, but it would clearly be Labor's fault if we supported any move to do so. The Greens would also like to see minor parties given the capacity to have election promises costed. That would allow minor parties to participate more fully in the political process. Given the increasing public interest in and support for minor parties, that is only reasonable. There should be a time limit—for instance, 100 hours—to ensure that the cost to taxpayers is not too great. Minor parties also make election promises and on occasion they succeed in having legislation passed by the Parliament. Independent costings would clearly improve the democratic process. Although the Greens indicate some support for and interest in its purpose, the bill is frivolous and does Labor no credit.

**The Hon. Dr PETER WONG** [5.56 p.m.]: This bill is a gimmick, a political stunt and a waste of time. We should not support it.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [5.56 p.m.]: Perhaps I am getting sentimental in my old age, but the degree of cynicism being displayed is amazing. The Government is doing a good thing with this bill and it should be supported. The Australian Democrats believe that the process of government should be as open as possible, and that the costing of plans being put together for the people of New South Wales should be transparent. We all witnessed the extremely cynical exercise undertaken by John Howard with regard to the costing of the goods and services tax [GST]. A huge amount of taxpayers' money was spent working out the returns expected from the different taxation models, but that information was kept a secret until just before the election so that no-one could discuss the alternatives. After spending that money and keeping the information secret—he had the only game in town—John Howard offered his plan or nothing. No-one else had the resources to produce the relevant information. Only the Democrats tried to negotiate; Labor was too lazy. That was a gross abuse of Treasury and taxpayer resources for partisan purposes.

Governments naturally cost their election promises. Oppositions must cost their promises using whatever method is available. Of course, they then claim that those costings are accurate. We then have a debate about whether the costings are valid. If the system proposed in this bill works as the Treasurer has suggested it will—that is, both Government and Opposition election promises will be costed—the Australian Democrats' proposed amendments will simply make that process transparent. If the Government says that Treasury has costed its promises at a certain amount and the Opposition disputes that, Treasury's calculations will be available so that everyone can see how the figures were determined. In other words, the policy options and costings will be publicly available for the media to pick over and economic commentators to examine. People will know the costs and the benefits of election promises. The only flaw in this bill is that the calculations will not be transparent. The information should not go into a black box and the answer appear without the calculations. Given that the calculations will presumably exist, the Government should have no problem accepting the Australian Democrats' proposed amendment.

The Government sees the world as a duopoly involving it and the Opposition. In New South Wales at the last election 35 per cent of the population wanted neither Liberal nor Labor. The Coalition attracted only

28 per cent of the vote and the crossbench attracted 35 per cent of the vote. Notwithstanding the grumbles and groans of the Hon. Ian Macdonald, let us make no mistake about it, the people of New South Wales are sick and tired of the old parties. They want options, and election campaigns produce those options. Crossbench proposals should be costed. If the Government or the Opposition wish to dismiss crossbench ideas as crazy, let us examine them. If they are genuinely costed and are proved to be crazy fantasies, then so be it. However, if they are sensible ideas and are costed sensibly—given the increasing sophistication of alternative voices in this Parliament, they will be—people will have the information they need to decide to move away from this tired old duopoly.

My other foreshadowed amendments provide for costings to be provided to registered political parties who want their promises costed. I have had some preliminary communication with the Government, and the Government has suggested that it cannot possibly afford to cost the options of parties other than the Government and the Opposition. I asked the Government why the two largest parties should get all the benefits and other parties be ignored. Representative government, if ever we achieve it, will not develop under pure majority government but will emerge with minority government, when shades of opinion begin to have an effect on final decisions. The people of New South Wales, who support the expense of running this Parliament as a forum in which many views and policies are aired and options are intelligently negotiated, have a right to expect costings to be researched.

Costings are a flea bite in the overall cost of government, and this Government knows that. If the Government is interested in good government, it will support my amendments, which basically seek transparency and provision for costing the promises of crossbenchers and registered parties. The bill should not be dismissed as a cynical move by the Government. In a number of parliaments there has been abuse of Treasury by the incumbent government. This bill is a start in addressing that problem, and the Government deserves to be commended. I ask the Government to continue its spirit of enlightenment and to support my amendments.

**Reverend the Hon. FRED NILE** [6.01 p.m.]: The Christian Democratic Party supports the Public Finance and Audit Amendment (Costing of Election Promises) Bill in principle. The bill endeavours to deal with a real situation, that is, how to provide costing information on Government and Opposition promises, commitments and proposals. The bill sets up a system to enable that to be done. Discussions have occurred during development of the protocol, and I gather from my knowledge as an outsider that there was some hope by the Government that the Leader of the Opposition and his Treasury spokesman would agree to the proposals. That is why the Government developed the protocol.

If the bill is rejected we will return to controversy and to a costings information vacuum. Any real costing benefits the community. Once information has been conveyed to the Government and the Opposition they should be required to make that information public—and the bill provides for that. In that way taxpayers will know the cost of Government or Opposition election promises. Taxpayers have to meet that cost and they have a right to know. I am concerned about the attacks on Treasury. Over many years I have had a lot of contact with Treasury. I have never heard such widespread attacks that Treasury is under the political influence of the Government as I am currently hearing. I do not know whether there is any evidence on which to base such attacks.

That inference has never been raised in any inquiries in which I have been involved, some of which I have chaired. My impression is that we always take on face value the truthfulness of Treasury representatives at those inquiries. The attacks raise a new and very serious factor, and undermines the professionalism of Treasury representatives. I do not believe it is helpful to the ongoing government of this State, whether under Labor or the Coalition, to view Treasury with suspicion. That would not be a helpful development.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [6.04 p.m.], in reply: I am somewhat surprised at the attitude of a few members of this Chamber. The Hon. John Ryan, again, chooses, when he feels like it, to attack public servants by suggesting that they cannot realistically cost the promises that have been put forward by the Opposition and the Government. The implication is that Treasury cannot do this job objectively. I believe that Treasury can do this job objectively. The attacks by Ms Lee Rhiannon and the Hon. John Ryan are extraordinary. The process that has been put in place contains a detailed agreement, a detailed process, with which Treasury is to cost election funding.

What is the alternative? To hand over to PricewaterhouseCoopers or some other corporation the task of costing public policy in this State? Every major media outlet and the people of this State want to know what

election promises will cost and what they will mean in dollar terms. I believe that the best way to do that is to have Treasury cost those promises, in accordance with the established protocols that were put before the House today.

**The Hon. John Ryan:** What protocol?

**The Hon. IAN MACDONALD:** I will show you. There are pages of an agreement, and it is all in the bill. Obviously, the Hon. John Ryan has not read the bill.

**The Hon. John Ryan:** It is not in the bill. Where is it in the bill?

**The Hon. IAN MACDONALD:** It is an agreement under the bill. I believe that the agreement would give the people of this State a fair analysis of what is going on with the budget costings. The attacks on this bill by the Hon. John Ryan and Ms Lee Rhiannon are misplaced. I and the Government believe that a process is needed for working out the cost of promises. In the run-up to previous elections governments of both political persuasions have involved Treasury in the costing of both government and opposition election promises. Treasury was placed in the position of balancing its duties to serve the government of the day in pursuing its policies and to provide advice to the opposition of the day on the financial implications of its proposals. It is fair to say that Treasury was placed in an invidious position in the absence of any well-defined rules for its involvement. The protocol for costing election promises contained in the election costing agreement lays down clear and reasonable procedures that can be followed by Treasury. The protocol sets down the rules of the game. The Government is asking that the participants agree to abide by the rules. If the Opposition has difficulty with the terms of the agreement as currently drafted, the Government is willing to consider proposed variations, if they are reasonable.

**The Hon. John Ryan:** Consider?

**The Hon. IAN MACDONALD:** Yes. However, outright rejection of the protocol is unfounded and would undermine a well-constructed and responsible process for giving the electorate confidence in the costing of the policies of the major parties. The election costing agreement is predicated on the assumption that either of the major parties can have Treasury undertake costings without the risk of the opposing party or other interested groups gaining premature access to details of the proposal or its financial implications. The bill makes it an offence for a Treasury officer to release any information received in relation to a request for a costing or any document produced by Treasury as part of the costing exercise.

The bill is intended to provide greater assurance that Treasury will not allow anyone other than the representatives of the party requesting the costing to gain access to information relating to the request or the costing. As part of the political process the major parties will be required to release details of the financial impact of their policies. Treasury costings of their policies would be released by the major parties in that context. Normally, Treasury would not be expected to publicly comment on costings. That would occur only if Treasury was materially misrepresented and could not resolve the issue with the person who made the misrepresentation.

In relation to the independence of the New South Wales Treasury, the Opposition, in rejecting the election costing agreement, suggested that after eight years of serving a Labor Government the New South Wales Treasury was incapable of independently costing election promises made by the Opposition. This is an outrageous slur on a department that has displayed a long and proud tradition of professionally serving successive governments of different political persuasions. Treasury prides itself on presenting whichever party is in government with well-researched advice on the fiscal impacts of the many proposals that come to government for consideration. Indeed, it would be a foolhardy government that did not carefully consider advice provided to it by Treasury before entering into significant commitments.

Through the election costing agreement the Government is offering the Opposition the benefit of Treasury costing its proposals before making commitments that may have far-reaching and potentially significant fiscal consequences for the State. The bill provides a statutory guarantee of confidentiality during the Treasury costing process, thereby removing the possibility of Treasury being influenced to divulge what could be politically sensitive information or documents. An Opposition that forgoes this protection will undoubtedly be seen by the electorate as acting irresponsibly.

At the last election the Opposition willingly entered into arrangements with Treasury for it to cost Opposition promises. After the election Treasury was complemented by the Opposition on its professionalism

and impartiality. I am at an absolute loss to understand the reasons for the complete about-face by the Opposition. I therefore call on the Opposition and Ms Lee Rhiannon to reconsider their position in light of additional safeguards put in place by an unambiguous protocol for the impartial costing of election promises by Treasury, an unambiguous protocol that, with the passing of this bill, will have legislative backing.

I draw honourable members' attention to the detailed protocol for the costing of election promises, which sets up a methodology for the treatment of election promises and election material before Treasury. I am at a loss to understand the Opposition's attack on Treasury at this stage. As Reverend the Hon. Fred Nile said, Treasury regularly gives advice to the various committees of this Parliament, and it is generally acknowledged that the advice Treasury gives to those committees is sound advice. In the political context in New South Wales, I simply have not heard any attacks on the integrity of Treasury for a very long time. I therefore find it extraordinary that honourable members would not regard as perfectly reasonable a bill that gives Treasury an independent role in costing the election promises of both the Government and the Opposition.

**Reverend the Hon. Fred Nile:** Is the alternative to tender it out to the big end of town?

**The Hon. IAN MACDONALD:** Let's face it, the alternative is to tender it out in some way, to head off to PricewaterhouseCoopers or some other body—for a fee, of course—and say, "Will you please have a look at our election promises?" We are prepared to put our promises before Treasury, and I cannot see why the Opposition would not trust Treasury to undertake the costing. I simply cannot fathom the approach taken by the Opposition. Why not have Treasury look at it?

**The Hon. Dr Peter Wong:** I don't trust them.

**The Hon. IAN MACDONALD:** The Hon. Dr Peter Wong says he does not trust Treasury. That is an absolutely outrageous statement. I believe that there is an agreement, that there are penalties for non-disclosure of information, and that Treasury can conduct itself fairly and equitably in relation to this issue.

**The Hon. John Jobling:** Do you speak about protocol?

**The Hon. IAN MACDONALD:** Yes.

**The Hon. John Jobling:** You show me where the word is mentioned in the bill.

**The Hon. IAN MACDONALD:** This is the agreement between the major parties.

**The Hon. John Ryan:** It's not in the bill.

**The Hon. IAN MACDONALD:** It does not have to be in the bill. It is a detailed agreement between the major parties, and it is backed up by a bill that ensures the integrity of the process by imposing penalties on public servants who break the honour of that system. I commend the bill to the House. I find it quite extraordinary that some crossbench members are considering voting against it. I believe that any proposal that gets Treasury involved in a realistic and equitable way in looking at election promises is part of the democratisation of the issue. I cannot see any other process that could be put in place at this time to look at these sorts of issues. An agreement has been signed by the major parties, and everyone can sign it. I do not think that agreement would be broken. It is extraordinary that the Opposition is not prepared to trust Treasury. I trust Treasury to get it right. Treasury will get it right: it will look after the interests of all parties in relation to this issue.

**Question—That this bill be now read a second time—put.**

**The House divided.**

**Ayes, 21**

Mr Breen	Mr R. S. L. Jones	Ms Tebbutt
Ms Burnswoods	Mr Kelly	Mr Tsang
Dr Chesterfield-Evans	Mr Macdonald	Mr West
Mr Corbett	Reverend Nile	
Mr Costa	Mr Obeid	
Mr Della Bosca	Mr Oldfield	<i>Tellers,</i>
Mr Dyer	Ms Saffin	Ms Fazio
Mr Egan	Mrs Sham-Ho	Mr Primrose

**Noes, 16**

Mr Cohen  
Mrs Forsythe  
Mr Gallacher  
Miss Gardiner  
Mr Gay  
Mr Harwin

Mr M. I. Jones  
Mrs Pavey  
Mr Pearce  
Dr Pezzutti  
Ms Rhiannon  
Mr Ryan

Mr Samios  
Dr Wong  
*Tellers,*  
Mr Colless  
Mr Jobling

**Pair**

Dr Burgmann

Mr Lynn

**Question resolved in the affirmative.**

**Motion agreed to.**

**Bill read a second time.**

**In Committee**

*[The Chairman left the chair at 6.25 p.m. The Committee resumed at 8.00 p.m.]*

**Clauses 1 to 3 agreed to.**

**Schedule 1**

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [8.02. p.m.], by leave: I move Australian Democrats amendments Nos 1, 3 and 5 in globo:

No. 1 Page 3, schedule 1 (proposed section 61A (1) (a)), lines 10 and 11. Omit "the Government or the Opposition". Insert instead "a registered party".

No. 3 Page 3, schedule 1 (proposed section 61A (2) (a)), line 18. Omit "the Government or the Opposition". Insert instead "the registered party".

No. 5 Page 4, schedule 1 (proposed section 61A (5)), line 4. Omit all words on that line. Insert instead:

(5) In this section:

*registered party* means a party registered in accordance with Part 4A of the *Parliamentary Electorates and Elections Act 1912*.

*Treasury costing* of an election commitment or

These amendments, which have been criticised, will enable registered parties in either Chamber to obtain Treasury costings for their election promises. Honourable members would be aware that some political parties will not form government. Under our present electoral system there is only one winner. However, more than one-third of the voters in New South Wales do not want to vote for members of the Coalition or members of the Australian Labor Party. Although crossbench members in this Chamber received 35 per cent of the primary vote at the last election and Government members received 37 per cent, Government members have total Treasury resources and crossbench members have nothing, which is inequitable.

This bill will provide for Treasury costing of election promises made by Coalition parties, which received 28 per cent of the primary vote at the last election, but that provision will not be extended to crossbench members who, as I said earlier, received 35 per cent of the primary vote. New South Wales taxpayers are being dudded by this Government. This Government, with its duopoly philosophy, wants to control all the money, but that is not the wish of the New South Wales taxpayers. It has been said that it is too expensive for Treasury to cost the election promises of small parties. If a small party makes loony promises that are likely to cost taxpayers a squillion dollars, Treasury should cost those promises, make that information available to the public and that party will be laughed out of existence.

It would be cheaper for Treasury to cost the election promises of such a party—it would involve the services of a couple of accountants for a few weeks at most—than it would be to fund a member of Parliament

and his or her staff for a period of four years. These amendments will ensure better and more accountable government. If a party such as the Australian Democrats came up with an extremely sensible budget that was costed by Treasury and the Australian Democrats did not subsequently form government, the government of the day could steal its ideas, rubbish the Democrats—which is what one would expect from people with closed minds and limited vision—and then say, "That is good idea, which we will re-badge, as we do not want to reveal where we got our ideas from, and the people of New South Wales will benefit."

Under these amendments sensible ideas and loony ideas alike will be costed and judged on their merits. We need an equitable distribution of taxpayers' resources in the costing of election promises. Small parties will have to think before making any election promises; they will no longer be able to make silly claims. Earlier today I spoke to the Treasurer to try to establish whether the Government would support my amendments. The Treasurer, who was a little recalcitrant, said it was expensive to cost election promises and that it would place a strain on Treasury resources. The Government could move an amendment to ensure that there are two levels of Treasury costing—a detailed costing for those parties that had more of a chance of getting into power, and a lesser degree of costing for those parties that did not have much of a chance. These amendments are a fundamental first step towards raising the level of public debate about the costing of election promises. I commend these amendments to the Committee.

**Reverend the Hon. FRED NILE** [8.07 p.m.]: The Christian Democratic Party is sympathetic to the views expressed by the Hon. Dr Arthur Chesterfield-Evans, who is seeking to achieve justice for all those parties involved in an election. The bill makes reference to the fact that Government and Opposition parties will have their election promises or commitments costed. However, it would be tilting the scales somewhat if the provisions in the bill were dramatically expanded to include 19 other registered parties. This bill represents the first stage of these costing arrangements. The second stage would include what I would call the minor parties. Most legislation in this Parliament provides only for members of the Government or members of the Coalition.

As the Hon. Dr Arthur Chesterfield-Evans said earlier, under our present electoral system, 13 crossbench members are in limbo. They are not part of the Opposition parties or the Government party. In future we should refer only to parliamentary parties rather than to registered parties. In the Legislative Assembly, any party with 10 or more members is recognised as a registered party. We should consider implementing a similar system. Originally, the Legislative Council recognised any party with more than two members as a registered party. Perhaps that number should be expanded to three members.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [8.09 p.m.]: The Government opposes the amendments moved by the Hon. Dr Arthur Chesterfield-Evans. Extension of the costing arrangements to all registered parties would impose unjustifiable work pressures on Treasury and involve unwarranted additional costs. The costing of promises that will not be fulfilled is prohibitive. The prime purpose of the bill is to facilitate Treasury costing of election commitments made by the major parties that are most likely to form a government. While individual commitments will be costed, it is imperative to have an overall assessment by Treasury of the fiscal impacts on the State's budget and balance sheet of the election platforms of the major parties. The electorate requires such an assessment to enable it to judge the fiscal credentials of the major parties, one of which will form government.

**The Hon. JOHN RYAN** [8.10 p.m.]: The Opposition is entirely ambivalent about these amendments. The very fact that they have been moved demonstrates a flawed proposal. This legislation will not work, but its intent is to beat the Opposition over the head because it will not submit to the Government's wishes. The suggestion has been made by a crossbench member that the legislation should be wider. In some respects costing crossbench promises would be an excellent idea. For example, it is somewhat frustrating to attend community meetings at which crossbenchers can give a commitment to anything in the full knowledge that they will never be held accountable for anything they say, whereas the Government and the Opposition are constrained by the fact that one day they may form a government.

A part of me is tempted to have the promises of minor parties costed, which would highlight the unrealistic nature of some of their proposals. The major parties are constrained because we recognise that resources are not infinite and sometimes we have to allocate resources on the basis of priority. We acknowledge that although we want some things, we may want other things more. Therefore, we must be responsible. In some ways dragging the crossbenchers into this trap would be a terrific idea. However, the Opposition takes the general view that the entire legislation is—

**The Hon. Dr Arthur Chesterfield-Evans:** An elitist view.

**The Hon. JOHN RYAN:** It is not an elitist view at all. The Opposition believes this entire proposal is flawed. If the Government takes the view that the amendments are unacceptable, the Opposition will allow the Government to have its legislation in this form, but that does not mean we support the bill. Even amending the bill would make it no more acceptable to the Opposition than it was originally. We believe that Treasury is not an appropriate instrument for costing promises made by the Opposition. Sadly, we believe that this whole proposal has already been politicised and poisoned by the way it has been used. We do not see these amendments as either improving or making the situation any worse. We oppose the bill in its entirety. As tempting as these amendments might be—and I believe the Government has indicated there might be some temptation on its part to subject the crossbenchers also to truth in election advertising—this is a bill with which the Opposition does not wish to be associated in any way.

**Amendments negatived.**

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [8.13 p.m.], by leave: I move Democrats amendments Nos 2 and 4 in globo:

- No. 2 Page 3, schedule 1 (proposed section 61A (2)), line 16. Insert "before polling day for the election concerned" after "document".
- No. 4 Page 3, schedule 1 (proposed section 61A). Insert after line 29:
- (4) As soon as practicable after polling day for an election for which the Treasury has costed election commitments or proposals as referred to in this section, the Secretary of the Treasury is to make public all documents prepared by the Treasury for the purposes of that costing (including costing methodology and documents provided for the purposes of that costing).

These amendments seek to have the costings requested in the lead-up to the election publicly released after the election. Taxpayers have paid for Treasury to do the work and, in the interests of informed debate about the future of the State, such figures would be most useful. The amendments also seek to have included in the costings the methodology that was used by Treasury to arrive at the figures supplied.

There are a number of ways that an infrastructure project can be created and costed. Unless the framework for the costing of the figures is provided there can be no critical evaluation of the accuracy of the figures. In other words, during the heat of the election debate people may suggest that their figures were costed at a certain amount, without clearly showing how those figures were arrived at. The promises may be financed by selling bonds, by public-private partnerships or by some other means. We can have more intelligent debate if the methodology is provided. These costings would involve making public those documents that would have been prepared at the time the costing was prepared. Therefore, these amendments would not result in an added cost to the Government.

Costings are not released publicly until after an election because a political party may decide against a proposal once it had been costed by Treasury. However, if costings were released after the election, it would not have an adverse effect on those who had prudently decided not to run with the policy. Also, if the project were mooted at a later time, the figures relating to costings and benefits would already be available. Since the taxpayers have already paid for the work, they may as well see the results. It would make for a higher standard of political debate in this State, which surely should be the aim of this Parliament. I commend the amendments to the Committee.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [8.16 p.m.]: The Government opposes these amendments. The proposal to have Treasury release full details of its costings after the election would be superfluous. Under the Government's bill Treasury will prepare costings of each election commitment and document its costing methodology, including the costing techniques used, the policy parameters assumed and the statistical data used. The expectation is that the major parties will release the Treasury documents prior to the election. Any party refusing to do so will not be able to maintain its credibility within the electorate. While the honourable member's contribution to the consideration of this important bill is fully appreciated, the Government considers that the bill, as drafted, will fulfil the objective of properly informing the electorate of the fiscal implications of voting the major parties into office.

**Amendments negatived.**

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [8.17 p.m.]: I move Democrats amendment No. 6:



No. 6 Page 4, schedule 1 (proposed section 61A (5)), line 6. Insert "or a periodic election of the Legislative Council" after "Legislative Assembly".

This is a technical amendment to ensure that if the timing of an election is changed in future the bill will still have effect.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [8.17 p.m.]: The Government would not neglect the implications of the legislation and any change to an election date, if that were possible, which I doubt.

**Amendment negatived.**

**Schedule 1 agreed to.**

**Title agreed to.**

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

## **BUSINESS OF THE HOUSE**

### **Suspension of Standing and Sessional Orders**

**Motion by the Hon. Ian Macdonald agreed to:**

That standing and sessional orders be suspended to allow the moving of a motion forthwith relating to the conduct of the business of the House.

### **Order of Business**

**Motion by the Hon. Ian Macdonald agreed to:**

- (1) That the Motor Accidents Compensation Further Amendment (Terrorism) Bill, Workers Compensation Amendment (Terrorism Insurance Arrangements) Bill, Terrorism (Commonwealth Powers) Bill and Terrorism (Police Powers) Bill be considered together at the second reading stage, and
- (2) That the questions on the motions for the second reading of these bills and subsequent stages be dealt with separately in respect of the separate bills.

### **MOTOR ACCIDENTS COMPENSATION FURTHER AMENDMENT (TERRORISM) BILL**

### **WORKERS COMPENSATION AMENDMENT (TERRORISM INSURANCE ARRANGEMENTS) BILL**

### **TERRORISM (COMMONWEALTH POWERS) BILL**

### **TERRORISM (POLICE POWERS) BILL**

### **Second Reading**

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [8.20 p.m.]: I move:

That these bills be now read a second time.

I seek leave to incorporate the second reading speeches in *Hansard*.

**Leave granted.**

### **MOTOR ACCIDENTS COMPENSATION FURTHER AMENDMENT (TERRORISM) BILL**

As members will recall, the *Motor Accidents Compensation Amendment (Terrorism) Act 2002* was passed during the Budget session of Parliament. The Act amended the *Motor Accidents Compensation Act 1999* to temporarily exclude liability arising from a terrorist act involving a motor vehicle, from the Compulsory Third Party (CTP) motor accidents insurance scheme. The exclusion of terrorist acts currently applies from 1 January 2002 until 1 January 2003.

After the 11 September 2001 terrorist attacks in the United States, international reinsurers withdrew unlimited liability cover for terrorist related losses. The motor accident scheme terrorist exclusion was introduced in response to these changes in the international reinsurance market.

In introducing the amendments last session the Government indicated that the action of reinsurers had serious potential to impact on the viability of the NSW Green Slip scheme as it left CTP insurers exposed to a potential liability that could not be covered by reinsurance.

The Government also indicated that should no viable alternatives develop during the remainder of this year then it would be necessary to extend the terrorism exclusion further into the future.

The NSW Motor Accidents Authority (MAA) has been closely monitoring the reinsurance position and assessing the requirements for further action.

Following the withdrawal of terrorism cover on all lines of insurance business post September 11, the market is slowly reintroducing cover for domestic lines of insurance, such as motor and home insurance. However the market is not offering cover at an affordable price for commercial lines or third party liability lines such as CTP or personal injury insurance.

Arising from discussions with re-insurers and information available from international sources, the MAA is of the view that terrorism cover for CTP reinsurance will remain unavailable for the foreseeable future. Indeed, following the terrorist bombings in Bali, terrorist acts, as with acts of war, may become completely uninsurable.

On 25 October 2002 the Commonwealth announced its proposal for a national scheme for replacement terrorism insurance, to commence from 1 July 2003. Whilst State statutory schemes are not at this stage part of the Commonwealth's planned national scheme, the Commonwealth has indicated that subject to discussions with State and Territory Governments the national scheme may be extended to include State workers' compensation and CTP schemes.

The Government will take up the Commonwealth's offer to discuss the inclusion of the NSW CTP and workers' compensation schemes within the national scheme.

The reinsurance market conditions which necessitated the introduction of the terrorism exclusion for the motor accidents scheme remain unchanged. There will be no alternative national scheme in place before 1 July 2003 at the earliest.

The terrorism exclusion approved by this Parliament in the last session is only in place until 1 January 2003. Accordingly, it is necessary to extend the terrorism exclusion for a further period.

The Motor Accidents Compensation Further Amendment (Terrorism) Bill 2002 proposes to extend the terrorism exclusion until 1 January 2004.

I commend the Bill to the House.

#### **WORKERS COMPENSATION AMENDMENT (TERRORISM INSURANCE ARRANGEMENTS) BILL**

Following the terrorist attacks in the US on 11 September 2001, reinsurers worldwide indicated that unlimited cover in relation to claims arising from acts of terrorism may no longer be available.

This lack of availability of re-insurance for terrorism-related losses has serious implications for insurers underwriting a range of insurance business across Australia. It is compounded by requirements on insurers to comply with the regulatory requirements of Federal authorities such as the Australian Prudential Regulation Authority in relation to re-insurance and capital adequacy.

Specialised workers compensation insurers are required to hold an authority to carry on insurance business under the Commonwealth Insurance Act 1973. In order to obtain an authority, it is necessary to have re-insurance arrangements that have been approved by the Australian Prudential Regulation Authority.

On 27 June 2002, I announced the Government's intention to introduce arrangements to establish a Workers Compensation Terrorism Re-insurance Fund.

I am pleased to introduce the Workers Compensation Amendment (Terrorism Insurance Arrangements) Bill 2002. The Bill aims to address the potential impact of the lack of availability of re-insurance for terrorism related losses.

The Bill represents the outcome of consultation with Scheme stakeholders, including licensed workers compensation insurers, specialised insurers and self-insurers.

The Bill enables the establishment of a Workers Compensation Terrorism Re-insurance Fund in the event of a significant terrorism related loss. The Bill will assist workers compensation insurers to meet licensing requirements and will ensure that individual insurers are not exposed to the full cost of workers compensation losses in the event of an act of terrorism in New South Wales.

The Bill provides for the activation of the Fund upon declaration by the Minister that a "significant terrorism related loss" had been incurred. The purpose of the Bill is to offer insurers a "safety net" in the event of significant workers compensation losses caused by an act of terrorism after 30 June 2002.

The intention of the arrangements is to ensure that no individual insurer or employer will be exposed to the full cost of any workers compensation losses arising out of acts of terrorism but rather to spread any such losses across the broadest base available.

The purpose of the Fund must be considered in determining the monetary value of a "significant terrorism related loss". In addition, the threshold must be set at a level that encourages insurers to obtain appropriate re-insurance, where available.

Therefore, the Bill provides that a declaration can only be made if the loss incurred by the insurer or insurers exceeded or was expected to exceed \$1 million. An insurer with re-insurance would be required firstly to make a claim against that re-insurance, and would only be able to make a claim on the Fund for any amount not covered by the re-insurance and in excess of their portion of the \$1 million threshold.

The Bill provides for contributions to the Fund by all licensed insurers, self-insurers and specialised insurers in the event of a significant terrorism related loss. A total figure to be contributed to the Fund would be determined by WorkCover, based on the cost of claims not covered by re-insurance and above the \$1 million threshold. This figure would then be apportioned according to the wages on which an insurer's premium is assessed.

During consultation on the Bill, a number of concerns have been raised. For the information of Honourable Members, I will detail these concerns and provide an indication of the Government's position with regard to them.

The first concern relates to the wording of subsection (2) of proposed section 239AG. This deals with the amount that is to be contributed to the Terrorism Re-insurance Fund. The effect of subsection (2) is to provide that the total amount to be contributed by insurers is that amount necessary to satisfy all workers compensation claims in respect of the act of terrorism **less the greater of:**

- the \$1 million threshold); **or**
- the reinsurance entitlements of the insurers who are subject to claims arising from the act of terrorism.

There was a suggestion that the amount to be deducted in calculating contributions to the fund in respect of re-insurance was the total amount of reinsurance held by all insurers irrespective of whether those insurers had claims arising from the act of terrorism.

This is not the case.

A further concern was the wording of proposed section 239AH. Clause 239AH (2) states that the Authority "may" reimburse an insurer who makes an application under subsection 1. The reason for this qualification is because of the necessity of satisfying all of the requirements of the section before payments can be made. In particular, there must have been a declaration that an act of terrorism has given rise to significant terrorism-related liabilities under clause 239AD.

Then the requirements of subclause (4) of proposed section 239AH must be satisfied. These are that:

- (a) insurer has made the payments specified in the application for reimbursement;
- (b) the payments were made in respect of claims arising from the act of terrorism; and
- (c) the amount to be reimbursed is no more than the total amount paid by the insurer less the insurer's excess.

Once these conditions have been satisfied, the WorkCover Authority will reimburse from the Terrorism Re-insurance Fund the amount of the claims, less the insurer's excess.

Proposed section 239AG of the Bill, provides for the Authority to make a determination of the amount to be paid to the Terrorism Re-insurance Fund and for the amount to be contributed by each insurer. If an act of terrorism occurs that results in a declaration being made that it has given rise to significant terrorism-related liabilities, it may take some considerable time for the total of all claims arising from the Act to be known. Accordingly, proposed section 239AG (6) enables further or additional determinations to be made from time to time.

Once the amount to be contributed has been determined, the Authority is to give written notice to each insurer of the amount to be paid under clause 239AG (4). There is concern that as clause 239AG (4) is worded, there is no capacity for an appropriate staging of contributions.

I have noted these concerns and indicate that I will be introducing in Committee an amendment that will clearly give a power for the payment of contributions by instalments to meet the cash flow needs of the workers claims.

The measures contained in this Bill will provide an interim solution for New South Wales to what is a serious national problem until such time as a truly national approach can be adopted.

The Bill provides for a review of the Workers Compensation Terrorism Re-insurance Fund provisions as of May 2003. Any decision to continue or discontinue provisions for the Fund will be based on the availability of terrorism re-insurance at that time. It will also provide two specialised insurers who have taken a particular interest, the Catholic Church Insurance and Guild Insurance, an opportunity to further consult with Government and explore what further arrangements may be necessary.

In view of the Commonwealth Government's recent announcement of its intention to establish a scheme for replacement terrorism insurance from 1 July 2003, this review can also consider that would be needed if acceptable arrangements for a national scheme that includes covering workers compensation insurances can be developed.

I have recently written to the Federal Treasurer expressing a desire to commence discussions about the possible extension of the Commonwealth scheme to enable those specialised and self insurers involved in the NSW workers compensation scheme who so elect to be covered by the Commonwealth's replacement terrorism insurance.

I am pleased to advise the House that the Commonwealth Treasurer has advised the New South Wales Treasurer of the following:

Referring to the proposed scheme to provide reinsurance cover, the Hon Peter Costello states:

The Scheme will operate from 1 July 2003 and will be structured with the potential to accommodate the state and territory statutory classes of insurance of workers compensation and compulsory third party motor vehicle insurance.

I commend the Bill to the House.

### **TERRORISM (COMMONWEALTH POWERS) BILL 2002**

It is clear from 11 September and the tragic events in Bali that Australia is not immune from terrorism.

We must prepare calmly and coolly for the possibility of a terrorist outrage on our homeland.

The Government's response to this threat has been decisive.

Last month I announced the formation of the NSW Police Counter Terrorism Co-ordination Command. This 70-strong unit began operation on 1 November.

Furthermore, a standing reference is being drafted to enable the New South Wales Crime Commission to work with New South Wales and Commonwealth agencies to investigate terrorist activity.

The New South Wales State Emergency Management Committee is conducting a review of all critical State infrastructure to assess the level of protection needed.

Honourable members know that I have also proposed a national counter terrorism strategy for consideration by States, Territories and the Commonwealth.

One of my major concerns is that we develop a new, higher degree of co-operation between the Commonwealth, States and Territories.

One of the great lessons from 11 September is that relevant information collected by the Central Intelligence Agency was not passed on to the Federal Bureau of Investigation.

We must ensure that after Bali, intelligence gained by law enforcement and national security organisations is quickly shared.

That means ensuring our Federal structure does not impede intelligence and information sharing.

The consequences of getting it wrong are too high.

The Leaders Summit on Transnational Crime and Terrorism in April this year saw the beginning of a new culture of co-operation.

This was followed by the signing of the inter-governmental agreement on counter terrorism arrangements on 24 October.

We now need to ensure that the Commonwealth has all the power it needs to outlaw terrorist activities.

The Commonwealth has already passed laws establishing new offences, including engaging in, providing training for, supporting and financing terrorist acts.

A terrorist act is an act intended to advance a political, religious or ideological cause and to intimidate and cause serious harm.

It does not include legitimate protest or industrial action that is not intended to cause serious harm.

The offences also prevent participation in groups declared to be terrorist organisations such as al Qaeda and Jemaah Islamiyah.

The Commonwealth's existing constitutional powers provide the legal basis for many aspects of the terrorist offences.

However, there may be unforeseen gaps in the legal basis of the Commonwealth offences.

We must fill those gaps so that suspects do not exploit legal loopholes to frustrate prosecutions.

That is the central purpose of this legislation.

This is a short bill so I will not detain the House long in explaining its provisions; they are straightforward.

The main provision is clause 4, which refers power to the Commonwealth to make laws with respect to terrorist acts or actions relating to terrorist acts as set out in the Commonwealth legislation annexed to the bill.

Clause 5 provides that the referral is to continue indefinitely unless it is terminated by proclamation of the Governor.

New South Wales' interests are protected by the provisions of the Commonwealth legislation, which is the subject of the referral.

Clause 100.6 of the legislation maximises the scope for both State and Commonwealth criminal laws to apply in New South Wales at the same time.

Clause 100.9 of the Commonwealth legislation provides that the Commonwealth may not amend the legislation without the agreement of a majority of the States and Territories, including at least four referring States.

I note that there is still debate between the Commonwealth and other States as to whether this amendment provision should be enacted by legislation or by an intergovernmental agreement.

New South Wales has decided to go ahead with this bill on the assumption that it will be done by way of an intergovernmental agreement.

However, if the Commonwealth and other States agree that it must be done by legislation, we will amend this bill at a later stage.

I am introducing the bill today because I do not want to delay this important legislation over one technicality.

We cannot afford to leave the Commonwealth without the powers it needs to protect our people.

This sort of measure could make a difference; it could give us that extra level of protection that will prevent the possibility of more stricken Australian families such as those that suffered as a result of the terrible and foul act in Bali.

This bill is only the first step in the legislative reforms needed to confront the menace of terrorism.

We are currently preparing a bill to complement the Commonwealth's Australian Crime Commission legislation.

The New South Wales Police Force is also looking at the adequacy of its current powers to deal with terrorist threats.

In summary, this is a bill to ensure there are no gaps in the constitutional basis of the new Commonwealth terrorism laws.

It minimises the risk of legal technicalities standing in the way of justice.

Any suspected terrorist will have a fair trial, but the community would be justly horrified if such people evaded justice because of legal or constitutional technicalities.

With that purpose in mind, I commend the bill to the House.

#### **TERRORISM (POLICE POWERS) BILL**

The events of the last 14 months have caused us to change our views about our safety as a nation.

The terrorist attacks in New York and Bali show a new preparedness amongst terrorist organisations to strike at civilians with the aim of causing mass casualties.

The Bali bombing has brought terrorism to our doorstep and the specific reference to Australians as a target, that intelligence analysts believe came from Osama bin Laden himself, means that we have no option but to respond to the reality of a possible terrorist attack in our State.

At the time this Bill was introduced in another place, the Commonwealth Government upgraded its assessment of the domestic terrorist threat. We have since seen specific warnings in respect of our Embassy in the Philippines.

This Government has already taken several important steps in responding to the increased terrorist threat.

We have created a new seventy-member Counter-Terrorism Command in the Police Force, under the command of Superintendent Norm Hazard, and have increased funding to NSW police counter-terrorism programs to provide new and better equipment to operational and support units.

We have also reviewed Commonwealth anti-terrorism legislation, and legislation in the United Kingdom and the United States to determine the additional powers needed by police to respond to terrorist threats and incidents.

This Bill is the result of that review.

The Government has carefully balanced two very important considerations in formulating this bill.

Firstly, the need to be able to react effectively at short notice to a terrorist threat or in the immediate aftermath of an attack.

Secondly, the need to remain calm in the face of terrorism and not sacrifice the important principles and rights on which our society is founded.

I would rather these laws were not necessary—but they are.

The new powers given to police are confined to limited circumstances and are balanced by appropriate accountability provisions.

The new powers may only be triggered

- Where the Commissioner of Police or a Deputy Commissioner is satisfied that there are reasonable grounds for believing there is an imminent threat of a terrorist attack and the use of the new powers would substantially assist in preventing that act; or
- Immediately after a terrorist act, where the Commissioner or a Deputy believe the powers would substantially assist in apprehending those responsible or protecting the public from the attack's impact.

The new powers given to police are not intended for general use. In ordinary circumstances we rely on standard police investigations and the cooperation of Australian and international law enforcement and intelligence agencies.

However, when an attack is imminent, all resources must be able to be mobilised with maximum efficiency.

Similarly, when an attack has just occurred, there is an increased chance of catching the terrorists, and this chance must be taken.

I will now address key provisions of the bill.

Clause 3 defines "a terrorist act". We have adopted the definition used by the Commonwealth in the model criminal code.

This is essential to permit the maximum possible cooperation between NSW Police and Commonwealth law enforcement and intelligence personnel. Everyone must be operating under the one definition.

As defined, terrorism are those acts intended to intimidate the government or the public and involving serious injury or danger to people, serious damage to property, or serious interference with an electronic system. Legitimate, non-violent protest cannot trigger the proposed powers.

Clauses 5 and 6 provide for the limited circumstances in which the new powers may be invoked, which I outlined earlier.

Clause 8 gives the Commissioner of Police and the two Deputy Commissioners the capacity to authorise the use of the new powers.

In cases where none of these officers are available, an officer above the rank of superintendent, being a police senior executive position, may authorise the use of the powers. This succession planning will guard against a situation where the terrorist attack targets or isolates the most senior ranks of NSW police.

Clause 9 provides a key safeguard. An authorisation must be approved or ratified by the Minister for Police.

If the Minister for Police is not available at the time, then ratification must occur within 48 hours or else authorisation is terminated. The Minister for Police may also revoke the authorisation at any time.

Clause 11 sets out the duration of the authorisation.

An authorisation to prevent a future terrorist act lasts for a maximum of 7 days, extendable with Ministerial agreement by another 7 days.

This reflects the fact that while information available may suggest an attack is about to occur, it need not mean it will occur today. We see an imminent threat as one that could last for up to 14 days.

An authorisation after an attack lasts for a maximum of 24 hours, extendable with Ministerial agreement by another 24 hours.

Clause 13 makes it clear the decisions of senior police are reviewable by the Police Integrity Commission. The Ombudsman's jurisdiction to oversight complaints about the inappropriate exercise of the powers under the Bill is not affected.

The information on which authorisations are made is likely to be highly sensitive intelligence material, quite possibly provided by cooperating Australian or foreign agencies. This information must be protected to ensure the continuing supply of this intelligence.

I will now describe the new powers granted to police.

Clause 7 sets out what the powers are for. They are to permit police to:

- Find a particular person—a target person;
- Find a particular vehicle or a vehicle of a particular kind—a target vehicle, and
- To prevent a terrorist act in a particular area—a target area.

They may also be used to target specific premises, when a person or place authorisation permits.

These different purposes recognise the range of possible scenarios.

Police might receive a warning that a particular type of vehicle will be involved in a terrorist attack.

Or the information may be that a particular area is the target, without telling us who or how it will be attacked.

The authorisation provisions are sufficiently flexible to allow persons to be described—a photo or a drawing may be used for this purpose.

The target area provisions extend to persons or vehicles about to enter the target area, or persons and vehicles that have recently left the area.

Part 3 of the Act sets out the new powers.

Clause 16 permits a police officer to direct someone to identify themselves if the officer suspects on reasonable grounds the person is a target person, or a vehicle is a target vehicle or if the person is in a target area.

It will be an offence not to comply without reasonable excuse or to provide false answers. The maximum penalty is 50 penalty units or 12 months imprisonment or both.

Clause 17 gives officers the power to stop and search a person if the officer suspects on reasonable grounds the person is a target person, the person is in a target vehicle or is in a target area.

Search powers may also be used in connection with persons found in suspicious circumstances in the company of a target person.

The search may be a frisk search (running the hands over the outside of a person's clothing), an ordinary search (jackets, hats, gloves, shoes may be removed and examined) or it may be a strip search in very limited circumstances.

Frisk searches and ordinary searches will generally be enough to determine if the person is carrying a bomb or a gun for example.

A strip search is much more intrusive and will only be permitted if the person is suspected of being a target person.

Clause 18 permits a police officer to stop and search a vehicle, and anything in or on the vehicle, if the officer suspects on reasonable grounds the vehicle is the target of the authorisation, a person in the vehicle is a target, or the vehicle is in a target area.

Clause 19 permits an officer to enter and search premises if the officer suspects on reasonable grounds a target person is inside, a target vehicle is inside or if the premises are in a target area.

Clause 20 permits an officer to seize and detain any item the officer suspects could be used or could have been used to commit a terrorist act.

The Government acknowledges the range of items seized could be broad. This is because a terrorist attack could be made in many ways—with firearms, explosives, gases or liquids.

It is appropriate that any article that an officer suspects should be able to be seized for further assessment.

An officer may also find things that are evidence of general offences (such as drugs offences)—the officer may seize these things if he or she reasonably suspects there may be evidence of a serious indictable offence. This threshold has been chosen in recognition of the intrusive nature of the new powers.

Clause 22 makes it an offence without reasonable excuse to hinder an officer exercising these powers—the maximum penalty is 100 penalty units or 2 years imprisonment, or both.

Clause 23 requires officers to identify themselves and give the reason why they are exercising one of these powers, as soon as is reasonably practical before or after exercising a power under the Act. The reasonably practical test is an important one—if police are trying to manage hundreds of people after a terrorist incident, they may not be able to provide this information in every case.

If a person, or their vehicle or premises, has been searched, he or she may also apply to the Commissioner for Police for a written statement that the powers were exercised under an authorisation. This arrangement has been adopted from United Kingdom legislation.

Part 4 of the Bill permits members of law enforcement agencies of other Australian jurisdictions to be authorised to use the powers.

This recognises that in an emergency situation, we want to maximise our capacity to respond to a terrorist incident, especially in the area of scarce resources such as specialist search units. Such an officer ultimately remains under the command and control of his or her home law enforcement agency.

Part 5 of the Bill contains important additional safeguards.

Clause 26 requires a report to be provided to the Minister for Police and the Attorney General by the Commissioner as soon as practicable after the expiry of an authorisation.

Clauses 27 and 28 provide for the return or disposal of property seized under the powers.

Clause 36 provides for annual reviews of the Act.

Schedule 2 of the Bill contains amendments to the State Emergency and Rescue Management Act 1989.

These new powers are not exercised as part of the authorisation system I have already described. They are separate powers.

These new powers deal with the reality of chemical, biological and radiological weapons.

When these weapons are used, persons exposed to these agents may unintentionally expose others to them. This is what happened in Tokyo in 1995 when sarin nerve gas was released in the subway.

Many casualties occurred, not through direct exposure to the gas as it circulated in the air, but through persons touching the skin or clothing of others who were already exposed.

The Bill creates a power for a senior police officer who is satisfied there are reasonable grounds to authorise that persons who may have been contaminated can be kept in a particular area, quarantined and decontaminated.

Schedule 2 also permits police officers to remove a vehicle or object from a danger area and to direct persons not to interfere with such an object. The latter power is necessary to maintain the integrity of possible crime scene evidence, the importance of which was highlighted in the Bali investigation.

These powers have been designed to complement existing Commonwealth powers and are necessary to maximise the ability of New South Wales to protect our people.

I commend this Bill to the House.

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [8.21 p.m.]: I am pleased to lead on behalf of the Opposition on the four terrorism bills. I commend the Government for the mature way in which it has endeavoured to address these individually important bills that we are considering together. The Opposition does not oppose the Motor Accidents Compensation Further Amendment (Terrorism) Bill, and our position is consistent with the contribution made on this bill in the Legislative Assembly.

The Coalition is happy to support the Government in passing the Workers Compensation Amendment (Terrorism Insurance Arrangements) Bill through Parliament. I understand from the Minister's second reading speech that the Workers Compensation Terrorism Re-insurance Fund would be activated only in the event of a terrorist attack and upon the Minister's declaration that a "significant terrorism-related loss" had occurred. As representatives of the New South Wales community, we all hope and pray that our citizens will never be the victims of such a terrorist attack, either in this country or while travelling overseas. Tragically, the world has changed in the past 15 months and we cannot ignore the risk of terrorism and the need to plan for worst-case scenarios. This legislation is a recognition of what must be done in New South Wales, and I understand that it is consistent with what is happening in various other jurisdictions.

The Opposition is also pleased to support the Terrorism (Commonwealth Powers) Bill, which will transfer to the Commonwealth a number of powers that are currently State administered. Several bills before the House and others that were passed recently aim to extend and enhance the powers of governments and law enforcement authorities to ensure the safety of New South Wales residents. This bill will refer powers to the Commonwealth to make laws with respect to terrorist acts or actions relating to terrorist acts. This referral will last indefinitely unless it is specifically terminated.

The Opposition supports the Terrorism (Police Powers) Bill but we have several concerns about its limitations. I foreshadow that I will move two amendments in Committee. I will also raise other issues without seeking to amend the bill so as not to delay unnecessarily its passage through the House. In another place the Coalition raised a number of concerns about the scope of the bill and the way in which the Government has approached the threat of a terrorist attack in this State. I do not intend to reiterate those concerns in detail, but they remain to this day. It is now up to the Government to do the right thing and to address each of them in detail. This bill does not live up to the Premier's claims as reported in the London *Sunday Times*, which stated:

Where we get a credible warning from our allies or from Canberra about a heightened risk of terrorism, I want us to be able ... to trigger an increased police capacity to act to save Australian lives," Mr Carr said. "If we get a serious warning of a terrorist strike, I don't want there to be people out there who have links to JI or al-Qaeda ... I want them detained.

The Premier indicated clearly that he wants police to be able to detain people who have links with Jemaah Islamiah or Al Qaeda. The Coalition also believes police must have the power to detain terrorists but, in what we believe is a major failing, the bill does not provide for such a power. The bill states that police have the power to obtain disclosure of identity, to search persons, to search vehicles, to enter and search premises and to seize and detain items. It also deals with the use of force generally by police officers, offences and the supply of a police officer's details. However, the words "detention" and "arrest" do not appear in the bill. One would think that police who receive reasonable information that a terrorist act is about to be committed should be able to detain and interrogate the people who are involved. However, that will not happen under this bill. This bill affords police no extra powers: the powers that police will use to arrest or detain a terrorist or suspected terrorist already exist in the Crimes Act or will exist shortly as a result of changes in the recently passed Law Enforcement (Powers and Responsibilities) Bill.

The original power to arrest was created in section 352 of the Crimes Act, which provided three powers for arrest without warrant when a crime is being committed or has been committed or when there is a reasonable belief that a serious crime is about to be committed. Those three powers in the Crimes Act have been reduced to two in the police powers legislation: the powers to arrest during the commission of a crime and after the commission of a crime. The Coalition wants police to have the power to arrest a person when a police officer forms a reasonable belief that that person is about to commit a serious indictable offence, particularly if the officer has a reasonable suspicion that a terrorist act is about to be committed. I am pleased to see the Minister for Police in the Chamber during consideration of this important legislation.

I turn now to the amendments, of which I am sure the Minister is well and truly aware. They are consistent with the Opposition's position on this bill. At this point I think it is important to read onto the record a



letter from the Leader of the Opposition, John Brogden, to the Premier of New South Wales, Bob Carr, dated 3 December. Mr Brogden writes:

Dear Premier

I write to seek an urgent meeting with you to assure the smooth passage of special police powers in response to recent terrorism events.

We support the Government's anti-terrorism Bill and want to do everything we can to help this legislation pass as quickly as possible. However, I believe we can make the Bill better and tougher and wish to discuss two vital amendments with you.

Firstly, I believe an amendment allowing special police powers to be extended for up to 14 days past any clear terrorist act would make the Bill stronger. It will give Police the powers they need to conduct full and comprehensive investigations. The Coalition is of the view that having granted police special powers for just 24 to 48 hours after a terrorist attack is not long enough.

Secondly, we wish to move an amendment ensuring the Police Minister is subject to the powers of ICAC whilst discharging his or her duties in relation to the Act. Today on radio you said that Michael Costa would be subject to the scrutiny of ICAC if this Bill were to become law, however, our oral advice from the Parliamentary Counsel's Office is that this would not be the case.

The Coalition believes the Police Minister must be subject to the same scrutiny as Police when exercising powers under the Act. If you can produce Solicitor General's advice to back your public position we can happily agree to your legislative position.

The Leader of the Opposition is extremely emphatic about the position of the Coalition with regard to this legislation. Government members who suggest that the Opposition is watering down the legislation or endeavouring to dilute its effectiveness for operational policing matters are quite simply wrong. The Leader of the Opposition sent that letter to the Premier of New South Wales indicating the Opposition's preparedness to work with the Government to assist police in the event or suspected event of a terrorist attack in this State to ensure that the police have the power not only to act prior to such an offence but have the continuing power to act after it.

I understand the requirements of operational policing, and the Minister purports to have an understanding of the needs of policing. He must recognise that the Opposition is seeking to extend the period of authorisation to assist police. Any suggestion that that would hinder police is without any foundation whatsoever. As the shadow Minister has already flagged, members of the Coalition will go to the election promising to restore to police the power to detain people who they believe on reasonable grounds are about to commit a serious indictable offence. I cannot believe that the Minister for Police has allowed that very important tool—an expression he used earlier—within the legislation to be removed. Between now and the State election campaign, the Coalition will strongly pursue the reinstatement of that very important tool to enable police officers to arrest people who they reasonably suspect are about to commit a serious indictable offence.

**The Hon. HELEN SHAM-HO** [8.32 p.m.]: The Terrorism (Police Powers) Bill confers special powers on police in situations of an actual or imminent terrorist attack. As honourable members would no doubt agree, this bill comes at a very unhappy point in the history of this State and, indeed, the nation. It is the Government's response to growing fears that terrorism—something that only ever happened overseas, in some politically volatile or unstable country—might now strike at home. The changes the Government intends to introduce are designed to deal with such a problem, either before a terrorist attack takes place and therefore as a means of thwarting it, or afterwards, as a means to quickly and efficiently find the perpetrators so they might be brought to justice as soon as possible.

Perhaps two months ago, before the Bali bombing, I, and other members of the public, might not have thought that these sorts of measures would be necessary in this nation. After all, Australia has traditionally been a very secure and safe country. By international standards we have quite literally been the lucky country. Sadly, I believe those days have gone. With terrorists acts such as last year's September 11 attack in America and the bombing in Bali in October this year, we have to face the reality that terrorists may well reach Australian soil. Since its introduction, public debate around this bill has gathered momentum, with many individuals expressing their opposition to it.

On Wednesday 27 November an article in the *Sydney Morning Herald* entitled "Backlash building over anti-terror laws" reported that Justice Dowd, the Australian President of the International Commission of Jurists—a former member of the Legislative Assembly, a former Attorney General and a highly respected person—condemned both the New South Wales Government's proposed anti-terrorism measures and the Federal Government's plans to extend the powers of the Australian Security Intelligence Organisation. Justice Dowd was quoted as saying that an "atmosphere of hysteria" was emerging which would almost certainly cause members of the Australian Muslim community to be unfairly victimised. I empathise with the concerns of

Justice Dowd and sincerely hope that these new police powers do not result in the persecution of innocent members of the community.

Having said that, this bill is extraordinary for the very reason that we are now living in different and more dangerous times. Only last week, on 28 November, a tourist hotel in Mombasa, Kenya, was targeted in an attack which killed 16 people, including the three suicide bombers. There was also an attempted surface-to-air missile strike at an Israeli jet, which thankfully failed. Back home, on 20 November, the Federal Justice Minister, Chris Ellison, took the very serious step of issuing a national security alert. Apparently, the Federal Government has received credible information of an impending attack against Australia.

Interestingly, Professor Ross Babbage—an expert defence analyst from the Australian National University's Centre of Strategic and Defence Studies—was quoted in the *Sydney Morning Herald* on 20 November as saying that he was "not surprised by the Government's latest warning" and added that "we're in a situation where it [a terrorist attack] could happen tomorrow, Christmas Eve or Christmas Day". Certainly, there are many people who believe it is not a question of if a terrorist attack will take place in Australia but rather a question of when. I will now address certain key aspects of this bill. The bill proposes to give police greater powers to stop and search suspects, enter suspected premises without a warrant, and stop and investigate vehicles in response to a terrorist attack. That concerns me.

I know that some members of the public are worried about what constitutes a terrorist act for the purposes of this bill. For example, a number of people are worried that events such as peaceful political marches or rallies will fall within the definition. The definition of "terrorist act" in clause 3 of the bill is very similar to that adopted by the Commonwealth Criminal Code. It provides that a terrorist act occurs when:

- (b) the action is done with the intention of advancing a political, religious or ideological cause,
- (c) the action is done with the intention of:
  - (i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or part ... or
  - (ii) intimidating the public or a section of the public.

Clause 3 outlines in more detail the kinds of undertakings that will fall within this definition. To briefly summarise, they are acts which are specifically designed to kill or inflict serious physical harm to a single person, section of the community or the public generally. They may also be acts which endanger the public's health or safety, or cause serious harm to property. Threats or damage to key elements of infrastructure, such as transport, electronic and financial systems, are also covered. While part 5.3 of the Commonwealth Criminal Code specifically excludes non-violent political protests, demonstrations, marches, strikes and other forms of industrial action from the meaning of a "terrorist act", this aspect of the bill still concerns me.

What does the bill mean by an "action done with the intention of advancing a political, religious or ideological cause"? Who will decide when valid political advocacy falls within this meaning? I hope that the Minister in reply will answer that question. What constitutes "violence" remains ambiguous in my view. We all know that political protests sometimes involve scuffles, or even assaults between protesters and police. Though I do not condone physical aggression, I still think there is a difference between those confrontations and acts of terrorism. I certainly hope the definition of "terrorist act" will not encompass genuinely low-level acts of civil disobedience. I say that because I believe that expressions of political dissent are very much a part of any healthy democratic system. Australia is a politically robust and diverse community and we must always be free to express our views. Sometimes marches or protests become heated, and we all know that clashes between individuals and police are not uncommon. Indeed, sometimes they are unavoidable. To rule out acts of legitimate democratic dissent on the basis that they are acts of terrorism would simply be another attack on the Australian way of life.

What is important about this bill is that the extra police capabilities will operate during a restricted time frame, and then only after proper authorisation has been given. First, there must be reasonable grounds for believing that an attack is imminent and that extraordinary policing functions would be of substantial use in preventing it from occurring. If a terrorist act has already taken place there must be reasonable grounds for believing that the extra capabilities would help find and catch those responsible. When authorisation has been obtained to prevent a terrorist attack, members of the Police Force may exercise the extra powers and functions for seven days. When a terrorist act has already taken place and police officers are charged with the job of apprehending the perpetrators, they will last for two days.

That aspect of the bill is crucial, because it guarantees that the extended capabilities of the police are not permanent. This should go some way to allay fears that New South Wales would become a police State under the bill. Over and above that, the bill provides a clear-cut process which must be followed before the special powers may be put into practice. The scheme depends on ministerial concurrence. That means that either the Commissioner of Police or a deputy commissioner must first obtain consent from the Minister for Police for the additional powers to be triggered. The strict procedural framework which the bill sets up is a good one. It will function as a system of checks and balances, ensuring that no member of the Police Force, no matter how high ranking, including the commissioner, could unilaterally or arbitrarily issue the extraordinary police powers without good reason, not to mention the considered agreement of the Minister for Police.

However, many in the community think that this process is flawed. For example, journalist Margo Kingston wrote in an article in the *Sydney Morning Herald* of Friday 22 November that at the very least consent should come from an independent source of authority. She suggested a number of other people, such as the Chief Justice of the New South Wales Supreme Court, Justice James Spigelman; the New South Wales Governor, Professor Marie Bashir; or the former New South Wales Chief Justice, Sir Laurence Street. I share her view. Basically, she and other members of the public are worried that these new powers may be used by the Government to crack down on any acts of political advocacy or protest.

Other peak legal organisations have also expressed concern about the Terrorism (Police Powers) Bill. For example, I received correspondence from the Law Society of New South Wales dated 20 November. The Law Society is particularly troubled by the lack of judicial review under the bill, and referred to clause 13, which effectively states that an authorisation "may not be challenged, reviewed, quashed or called into question ... before any court, tribunal, body or person in any legal proceedings". The Law Society argues that immunity from judicial review is anti-democratic and strikes at the fundamental principle that the Government's actions should always be subject to judicial review. I strongly support the Law Society's objection to this clause.

As it stands, clause 13 would vest entire and unfettered authority with the Government. This goes against the most basic tenets of our legal system, namely, the separation of powers doctrine. Without an avenue for judicial review, members of the Police Force will essentially be answerable only to themselves. I cannot accept that, particularly considering the enormous impact these new police powers will have on the civil liberties of the people of this State. As I have said many times in this House, courts are the people's greatest watchdog over government. The judiciary must have an oversight role over these new police powers. Because I feel so strongly about this issue, I will move an amendment to remove clause 13 from the bill.

The New South Wales Young Lawyers Human Rights Committee sent me an email on 21 November. The committee pointed out that there is no hard evidence to suggest that existing police capabilities in this State are inadequate in dealing with a terrorist attack. It also noted that the Federal Government is already trying to extend the powers of the Australian Security Intelligence Organisation [ASIO] to give ASIO agents greater capabilities to search, interrogate and detain individuals. As such, the New South Wales Young Lawyers Human Rights Committee takes the view that the extra police powers are at best premature and at worst potentially oppressive and open to abuse. I agree.

I understand that there are times in life when we must balance the freedom of the individual against the rights of the community generally. In times of emergency or crisis civil liberties will sometimes have to be curtailed. In its present form, the bill places far too much power with the Government. I hope that my amendment will address this problem in some way. I urge all honourable members to support my amendment. I support the spirit of the Terrorism (Police Powers) Bill, and I will not oppose it.

**Ms LEE RHIANNON** [8.45 p.m.]: The Greens support measures aimed at bringing to justice those responsible for acts of terrorism. Nobody can dispute the challenge facing this State and this nation. It is both serious and real. One of the four principles underpinning the Greens is peace and non-violence, and we abhor the use of violence in political, ethnic or religious conflicts. Violence only begets violence, and as such precludes paths to peace. The horror of the Bali bombing deeply affected us all and touched many of us personally. The period of grief and mourning has not yet come to an end, and the rawness of the emotions in the community are there for us all to see. At such times of national tragedy it is our role as political leaders to provide both an appropriate political response and whatever comfort we can. It is our role to support the community in its grief, to seek answers to what has happened and why, and to do what we can to ensure that such a tragedy never occurs again.

Many Australians tragically lost their lives in the Bali bombing. Those deaths were totally unjustified, and whoever perpetrated the bombing certainly has not succeeded in advancing whatever cause he or she was

pursuing. The perpetrators clearly must be brought to justice. However, the Greens believe that it does no honour to those who died to turn a debate that should be about justice and prevention into a debate about revenge and the suppression of democratic rights. Australians share certain values, and one of those values is a commitment to an open, free and democratic society. No matter what terrorist outrages may occur, we must never abandon that value. As political leaders we are entrusted with the protection of our open, free and democratic values. We must never allow them to be lost.

We cannot defend our democracy by dismantling our democratic structures and processes. We cannot protect our open, free and democratic society by making our society less open, less free and less democratic. Yet, sadly, this is the path that the Howard and Carr governments are seeking to take us down. Both Premier Carr and Prime Minister Howard sail close to the wind when they use the tragic events of Bali and of New York to justify new laws which wind back our democratic freedoms. Both of those governments have a history of scaremongering over law and order issues. We talk, particularly prior to an election, of border protection and ethnic descriptors, which fuel uncertainty, insecurity and divisions within our community. There is a fine line between seeking to reassure the community and seeking to exploit its new fears and insecurities. The Greens believe that both the Prime Minister and the Premier have at times overstepped that line. It is a cheap political tactic and one that a cynical populace is capable of seeing through.

The Greens believe the Terrorism (Police Powers) Bill is unnecessary. The police in New South Wales already have a wide array of powers that allow them to deal with suspected or actual terrorist incidents. The Olympics came and went with fears voiced of terrorist incidents, yet no mention was made about the need for these laws. New South Wales has a well-equipped Police Force which is empowered by a wide range of laws and is more than capable of dealing with any security threat. Legal advice the Greens have received is that the courts will be willing to grant police extensive search powers in the light of a terrorist threat because the nature of the threat is so profound and so dangerous. Police have substantial powers of arrest on reasonable suspicion in respect of any potential terrorist offences such as conspiracy to murder or attempt to plant explosive devices.

The Greens also believe that the bill unacceptably erodes our democratic freedoms. It runs counter to our commitment to an open, free and democratic society. It blurs the separation of powers by dangerously removing power from the judiciary and giving it to the Executive. Allowing Ministers to approve warrants and prohibiting any judicial oversight of the new powers are unacceptable erosions of our democratic freedoms. We do not believe it is valid to defend democracy by dismantling it in this way. We should defend democracy by reaffirming our democratic values, not by chipping away at them. The role of the judiciary is to act as a check of Executive power. At times in this State one feels that the decision makers have forgotten that. This is the cornerstone of our democracy and there is no basis for thinking that this check would be unwieldy or dangerous. It is impossible to conceive of a court denying police powers in the face of a genuine terrorist incident. However, the court would safeguard against any possible abuse or arbitrary exercise of State power.

The Greens are also disturbed by the undemocratic way that the Carr Labor Government is conducting itself with regard to this bill. One of the questions relevant to this debate is why the Government is rushing this legislation through. The Premier has said that this is one of the most important bills ever to come before this Parliament. If that is so one would expect that it would need a greater degree of community consultation and adequate time for members of Parliament to analyse it. Yet the opposite is the case. In one of the Premier's media interviews he had the arrogance to boast "Parliamentarians will have an opportunity to debate this important bill." That is an extraordinarily revealing statement: the Premier sees fit to announce that Parliament will get to debate a bill! Obviously, that is Labor's idea of proper consultation. It must also be the ultimate in spin.

Considering the far-reaching implications of this bill for civil society, greater parliamentary and public scrutiny are needed. While I am not holding up the Federal Coalition Government as providing a model on how to consult on controversial legislation, it is interesting to note that members of Parliament had months to consider the Federal legislation that responds to terrorism, and there have been three separate Senate inquiries. Those inquiries have led to significant improvements to the bill and have removed several sections that undermine democratic freedoms. That is how Parliament should work, and it contrasts sharply with the bullying tactics of the Premier today when he threatened that he would not tolerate any amendments by this House.

The Terrorism (Police Powers) Bill is similar in form to the United Kingdom's Terrorism Act, so it would seem reasonable to ask how the British emergency powers have worked. One of the major complaints from lawyers and civil rights campaigners in Britain and Ireland has been that because emergency legislation introduced to deal with terrorism bypassed the normal checks and balances of the legal system, it fuelled

alienation and extremism. The Irish community, which is clearly the target of the United Kingdom legislation, had a novel quip when British police were given special powers: "Innocent until proven Irish." One wonders whether we will end up with the slogans "Innocent until proven Muslim", "Innocent until proven picketer" or "Innocent until proven protestor".

We need to ask whether the New South Wales legislation makes our society a safer place, because that is its stated purpose. Neither the Premier nor the Minister for Police has been able to demonstrate that that will be the case. The Greens believe that the legislation is being rushed through to suit the Carr Labor Government's electoral agenda. The Government has not demonstrated that the bill is necessary. This is where the incredible weakness of the Opposition is evident. The Opposition could have jumped over the Government on this issue, addressed the lack of necessity for the bill and pointed out some of the omissions, but it has been wedged into a narrow space and is showing its irrelevance in another area.

The Federal Government has already introduced a raft of regulations since the September 11, 2001 attack in New York. Apart from the recent laws that give ASIO powers to apprehend and detain terrorist suspects, we have had three significant developments. One is the Criminal Code Amendment (Offences Against Australians) Act, which includes the offence of murdering or harming Australians outside Australia. The State and Territory Attorneys General then agreed to pass legislation to refer constitutional counter-terrorism power to the Commonwealth to strengthen the validity of the Federal laws in that area, and on 27 October Jamaah Islamiah was outlawed, an act that could easily be repeated for other suspected terrorist organisations. With all that, why does the Carr Government think that the New South Wales community is not adequately protected? No reasonable arguments have yet been presented.

This debate should also involve a consideration of the diverse nature of terrorism today. Terrorists are not merely confined to secret sects. They can be found operating in official military forces. That aspect of the debate is relevant as it should obviously influence our response to terrorism and what overseas military forces we co-operate with. In early November the *Washington Post* reported that the highest levels of the Indonesian armed forces, including General Soeharto, were involved in the 31 August ambush of employees of the Freeport McMoRan mine in West Papua. That was a terrorist attack. Two citizens from the United States of America and one from Indonesia were killed and another 12 wounded. At first a local West Papuan group was blamed but it is now widely accepted that the Indonesian military conducted that terrorist attack. People died in that terrorist attack, and it was conducted with the approval of the higher echelons of the Indonesian military.

The *Washington Post* article made it clear that intelligence sources in Washington and Canberra had known for weeks about the involvement of the upper echelons of the Indonesian military in the attack but kept silent so as not to compromise efforts by the United States and Australian governments to forge closer links with Indonesia. The Indonesian Kopassus special forces are effectively operating as terrorists in West Papua and other parts of Indonesia, as they did in East Timor. But in Australia, the Minister for Defence, Robert Hill, is advocating that our military and intelligence forces work with Kopassus. He told Channel 10 in a recent interview that Kopassus' wrongdoings in East Timor and Papua and any associations with terror groups should be put to one side because Kopassus was Indonesia's front-line counter-terror agency. The Minister stated:

There is a good argument for it in terms of protecting Australians.

He said Australia had not dealt with Kopassus in recent years because of its human rights record. The Minister said:

We now have to, in the light of the Bali bombing, in the light of the Bali terrorist threats, I think we need to debate that issue seriously. I know some have simply been dismissive, but Kopassus is the counter-terrorism capability in Indonesia.

I understand that members of Kopassus in the past have been trained in Australia using this country's military aid budget. Hill's move to again tie Australia to this State terrorist organisation is deeply worrying, and further highlights why our response to terrorism warrants a detailed debate. It is deeply disturbing that sections of the government in this country are willing to associate with state terrorism—and not just associate with, but use taxpayers' money to support it. This involvement undermines any attempts we might make to counter terrorism and certainly undermines any moral imperative that the Government thinks it might have.

It is not the first time that conservative Australian governments have promoted dubious causes to serve sectional interests. In the 1950s then external affairs Minister Dick Casey arranged for Australia to support the CIA in its work in helping Islamic fundamentalists in Sumatra and Sulawesi who were in armed rebellion against the then Indonesian Government. If we are to be successful in building a world free of terrorism, we

need to have integrity in our own political process. Clearly, addressing the issue of what military forces Australia is supporting has to be part of that debate. Any debate about terrorism needs to consider the causes of this phenomenon. Waging war on the terrorists will not stop the terror unless we also admit and correct our blatant double standards in maintaining world order. Mr Scott Burchill, a lecturer in international relations at Deakin University, has written in detail about this approach. The following comments come from a moving speech he gave for a work colleague of his who was killed in the Bali bombings on 12 October, together with her husband and her husband's brother. Mr Burchill stated in his tribute:

Comparing standards of behaviour is unavoidable. How do we think the non-Western world reacts to claims in Canberra, London and Washington that the future of the UN Security Council is in doubt if it fails to do the bidding of the US with respect to Iraqi, but not when it fails the people of Srebrenica, Rwanda or East Timor? How do we think the Arab world responds to Canberra's insistence on Iraqi's compliance with UN Security Council resolutions while making ridiculous excuses for Israel's non-compliance?

The Western world urgently needs a more accurate sense of how its own behaviour is interpreted outside of metropolitan centres in Europe, North America and Australasia, before it can begin to thwart further dangers.

The whole human race has a common interest in the apprehension and punishment of those who commit terrible acts of violence such as the Bali bombings. These were crimes against humanity. This view should direct the way individual states most directly affected by acts of terror form their responses.

Portraying this tragedy as part of a war between civilisation and evil may initially galvanise support for a new front in the war against terrorism, but it only divides the world into friends and foes, with no possibility of neutral ground. This seems to be precisely how those responsible for the bombings think. It's a mindset that won't take us very far towards understanding events which would be better seen as part of a longstanding revolt against the West, and it represents an enormous disservice to the innocent victims of such a despicable crime.

Mr Burchill's speech was indeed very moving. His poignant tribute to a lost colleague certainly puts this bill into perspective. In order to ensure that terrorism does not claim the lives of more Australians, we must be brave enough to look through the grief, to look beyond the nationalism which is an automatic response to such a horror, and confront the big issues of global politics, the hypocrisy of the wealthy nations and the deprivation and alienation of the poor nations, which give rise to terrorist impulses. We must treat not only the symptoms but also the underlying causes of violence.

The Greens amendment will address the most obvious shortcomings of the bill. We will move to amend the bill so that the initial decision for an authorisation of the special powers will have to be made in writing. This is simply logical. If a superintendent or commissioner is not able to send an email, or handwrite a note triggering these extraordinary special powers, then the police would presumably be in such disarray that one would question the value of their intelligence reports and the effectiveness of their response operations. The Greens will move to amend the unnecessary protection against challenge to special powers authorisations. No court in the land would be so irresponsible as to deny the police the right to invoke special powers in the rare cases they may be needed, so it is unnecessary to protect an authorisation from challenge. Officers need to act explicitly in accordance with the authorisation. The current clause is unclear, and unnecessary at best, and should be removed.

The Greens believe the bill should require police to provide information to persons subject to the special powers. Under Federal law written in the lead-up to the Olympics authorising the Army to act against terrorism, the Army was required to explain the exercise of its extraordinary powers. There is no reason that the police should need to keep secret why they are searching, moving on, identifying or detaining a person, or implementing post-attack emergency procedures.

The involvement of the Minister for Police in operational police matters is unacceptable. Our amendment will make the Parliament the arbiter, not the Minister for Police. Surely, all honourable members should be able to support this amendment. The enormous powers being given to police require a commensurate increase in the power of scrutiny by courts and parliaments over the exercise of these police powers. This amendment will make sure that democracy keeps up with the terrorism response and is not left behind. Without this amendment, abuse could go unchecked. Without this amendment, politicisation of the Police Force could go unchecked. Our amendment requires reports about the use of special powers to be made to the Parliament. Our amendment would still allow the Minister for Police and the Attorney General to hide certain facts from the Parliament on the basis of security, thereby striking an appropriate balance between the demands of security and democracy.

This bill in part goes much further than similar Federal legislation. It is not necessary to provide that children as young as 10 years of age can be searched. The Commonwealth provisions set a minimum age of 14

years. We will move to prevent the bill from undercutting by four years the Commonwealth powers to search children—that is, down to 10 years of age. It is absurd that 10-year-olds would be routinely searched under the exercise of special powers, away from proper court review. Our amendment takes very seriously the terrorist threat and does allow extraordinary searches in a situation where an explosive device is present or a court agrees and approves the search.

We are also considering the Terrorism (Commonwealth Powers) Bill. The Greens have no problem with transferring to the Commonwealth powers with respect to terrorism. However, the Greens do not support the legislation. Our colleagues in the Senate, Senator Bob Brown and Senator Kerry Nettle, opposed similar legislation when it was considered by the Senate. The Greens' opposition to this law is already on the record, but I will quote briefly from Senator Bob Brown's speech:

The existing criminal law, with offences such as murder, criminal damage, conspiracy, and aiding and abetting, can and should be used to prosecute and penalise anything that can sensibly be described as terrorism.

Senator Brown described in a nutshell why the Commonwealth Government's legislation is not needed. It is also relevant to this debate to note that at the Australian Labor Party [ALP] State Conference, members of the Labor Party expressed great concern about the Commonwealth Government's legislation. But tragically, as we see time and time again, ALP policy does not relate to the activities of Labor members in Parliament.

Because we must all be optimistic that the terrorist threat will not be a permanent fixture of our national life, all terrorist laws should have a sunset clause. There is no inconvenience or security risk associated with reviewing terror laws and, indeed, rewriting them on the basis of experience; rather, that would be a responsible approach to take. After a period of seeing the bill in operation, we should come back and decide at that time which police powers are necessary. We were all devastated by the horror of Bali and the September 11 attack in New York and I believe that the memories of those incidents will stay with us forever. We shared the shock and outrage of the Australian people, and we acknowledge the tremendous grief being suffered by the families and friends of those who lost their lives. Although it is the role of parliamentary representatives to bring comfort at times of tragedy, sadly, there is very little that a politician can say or do to alleviate the pain of the loss of loved ones. It is in this context that the Greens cannot support this bill.

The Greens will support any lawful measure to bring the perpetrators to justice, but we cannot support a bill that dramatically reduces the democratic freedoms of the people of New South Wales without any substantial justification. The Government has failed completely to demonstrate that the new police powers are necessary and has not presented a credible argument to justify defending democracy by reducing democratic freedoms. We do not believe that undermining the very qualities of openness, freedom and democracy, which makes Australia such a special place in which to live, honours those who lost their lives.

**The Hon. RICHARD JONES** [9.12 p.m.]: Indeed, we are moving inexorably towards a police state, and the New South Wales Minister for Police would be very happy if that were to happen. He is the worst Minister for Police that I have encountered in more than 15 years in this Parliament. He is a very aggressive man who should not be in the position of Minister for Police. His appointment shows the danger of appointing somebody from Sussex Street straight into the Ministry. Clearly, it has not worked at all. The Terrorism (Police Powers) Bill gives police immense powers and undoubtedly takes New South Wales one step closer to being a total police state. I guess that that is the direction in which the Government wants to head. Fortunately, I will not be here when it happens. The Commissioner of Police or any other senior police officer may, with the concurrence or confirmation of the Minister for Police, give an authorisation for the exercise of special powers for the purpose of finding a target person, a target vehicle, or preventing or responding to a terrorist act in a target area. An authorisation enables a police officer to demand that a person give his or her name and address if the officer reasonably suspects that the person is the target person or is in the target person's company, or that the person is in a target vehicle or is in a target area. Any person or any vehicle can also be searched without a warrant.

A police officer can enter and search, without warrant, any premises, and seize and detain anything. The bill was introduced only two weeks ago. There was no consultation. The Government is pushing this legislation through before the election. The Law Society's criminal law committee conducted an urgent review of the bill and has expressed concerns. Part 3 gives police special powers with respect to people who are suspected on reasonable grounds of being the target of an authorisation, or who are in or on a vehicle that is suspected on reasonable grounds to be the target of an authorisation. The powers require disclosure of identity by virtue of clause 16, although without warrant, and empower police to stop and search a person by virtue of clause 17, a vehicle by virtue of clause 18, or premises by virtue of clause 19. These powers will be available to

be exercised whether or not the officer has been provided with or notified of the terms of the authorisation, in accordance with clause 14 in part 2. The question I wish to have answered is this: How can a police officer act under an authorisation, or form a suspicion based on reasonable grounds, if he or she does not even know the terms of the authorisation?

It is of even greater concern that the powers under part 3 can be triggered merely by a person's presence in a target area, by a person being about to enter the area or by having recently left the area. There is no need for police to suspect on reasonable grounds that a person is, was, or will be involved in suspected terrorist activity. Furthermore, by virtue of clause 21 police will be allowed to use "such force as is reasonably necessary" in exercising these powers. The application of the powers to people or vehicles which are not the target of an authorisation should be predicated on police forming a suspicion on reasonable grounds that the powers must be exercised to prevent a terrorist attack or to apprehend the persons who are responsible for committing a terrorist attack. It is unacceptable that people who happen to be in a target area can be subjected to searches on the basis of where they are, not who they are or what they may have done. The bill effectively gives police a loophole in the requirement for authorisation because it will be sufficient to obtain authorisation for an area, as opposed to authorisation relating to a person or vehicle, as the current warrant regime requires. Clause 13 means that an authorisation is not subject to any form of judicial review. The clause, which relates to "Authorisation not open to challenge", states:

(1) An authorisation (and any decision of the Police Minister—

believe it or not, that means the current New South Wales Minister for Police—

under this Part with respect to the authorisation) may not be challenged, reviewed, quashed or called into question on any grounds whatsoever before any court, tribunal, body or person in any legal proceedings, or restrained, removed or otherwise affected by proceedings in the nature of prohibition or mandamus.

(2) For the purposes of subsection (1), **legal proceedings** includes an investigation into police or other conduct under any Act (other than the *Police Integrity Commission Act 1996*).

Those provisions clearly show that the Minister for Police has total powers that may not be challenged, reviewed, quashed or called into question on any grounds whatsoever before any court, tribunal, body or person in any legal proceedings, nor can the Minister for Police be restrained, removed or otherwise affected by proceedings in the nature of prohibition or mandamus. These are quite extraordinary powers. We must remember that many Australians died for freedom in this country, yet it is proposed that in an instant we should allow that freedom to be frittered away in this House.

The limitation of clause 13 is exacerbated by clause 29, which provides that if the proceedings are brought against any police officer for acts done pursuant to an authorisation the officer cannot be convicted or held liable "merely because ... the person who gave the authorisation lacked the jurisdiction to do so". In other words, the authorisation cannot be contested except by the Police Integrity Commission, and if the authorisation has been given by someone who had no power to do so an officer acting on it cannot be held liable. Thus the citizens of New South Wales are at the whim of police officers, who effectively answer to no-one. This unacceptable and extraordinary state of affairs is more akin to a regime of Soviet Russia than to life in New South Wales.

Police officers who purport to act under the auspices of this legislation should be able to have their actions reviewed if it becomes known that they were abusing their powers or were acting incorrectly. It is insufficient to leave the exercise of such powers to be reviewed by the Police Integrity Commission alone. At the very least clause 13 should be removed from the bill, and I shall vote against it at the Committee stage. Clause 17 (3) and clause 18 (2) relate to powers to search people and vehicles and are inconsistent with the provisions of the Law Enforcement (Powers and Responsibilities) Bill. They should be amended to be consistent with clause 204 of that bill; that is to say, a police officer who detains a person or a vehicle for a search must not detain the person or vehicle any longer than is reasonably necessary for the purpose. Clause 23, which relates to supplying a police officer's details and other information, provides that an officer exercising powers under the bill does not have to provide evidence that he or she is a police officer and the reason for the exercise of power unless they are asked.

This provision is inconsistent with clause 201 of the Law Enforcement (Powers and Responsibilities) Bill. In Committee I will endeavour to amend this provision to provide that, rather than providing the information "if requested to do so", a police officer should supply details and other information "unless the urgency of the circumstances would make it unreasonable to do so". I am aware of the security implications of



the tragic events of September 11 last year and the tragic Bali bombing this year. I am mindful also of the obligation of this Parliament to ensure that our laws are adequate to deter and to pursue terrorists. But the Terrorism (Police Powers) Bill is not balanced, fair or transparent in any way. It proposes a quite extraordinary set of measures that are generally not consistent with core civil rights and the rule of law. Community concern about possible terrorist threats should not be used as an excuse to enact unwarranted, unnecessary and undemocratic legislation.

The New South Wales Young Lawyers Human Rights Committee contends that the bill is riddled with problems and is hopelessly open to abuse, owing mainly to its protection from review or scrutiny. It says that the bill "will allow police to go beyond the limits of their current powers in that they will be able to act without warrant, which is a situation that is untenable to the committee for a number of reasons." Firstly the committee notes that there is no evidence that this kind of legislation is required. The Minister has not presented any proof to the public that NSW Police is in any way capable of protecting New South Wales from the threats of terrorism. There have been no reported instances of prospective terrorists having slipped through the net. In addition, the absence of any review of the bill is unacceptable. It is an unnecessary step in light of recent developments at a Federal level in relation to the strengthening of the powers of the Australian Security Intelligence Organisation. It is also inappropriate considering that sufficient powers currently exist to allow police officers to protect the citizens of New South Wales. I will propose amendments in Committee to at the very least provide some desperately necessary balance. Without some balance the Minister has effectively turned New South Wales into a complete police state.

Barrister and New South Wales Council for Civil Liberties Vice-President David Bernie wrote in the *Sydney Morning Herald* that the problem is made even worse because the authorisation need not always be in writing—leading to doubt with both the police and the public as to what an individual's rights will be. The bill takes away the rights of any member of the public to sue police who are acting pursuant to a purported authorisation, even if it turns out later that this authorisation did not exist.

Comparisons will be made with laws in the United States, Canada and Britain, but in all those countries there are now Bill of Rights provisions that provide for some review of the legislation, in a more sober setting at a later date. Australia is now alone among comparable democracies by not having a bill of rights structure. The question remains: Can anyone in the Government provide examples of the laws already in place being inadequate to address the terrorism problem? Instead of looking seriously at the causes of terrorism the Government is asking us to weaken essential safeguards, the right to a fair trial and civil liberties.

The Terrorism (Police Powers) Bill will do little to protect us against the threat of an attack. But the hysteria will help to create a climate conducive both to getting the bill through and preparing for war. It is a terrible shame that the Premier's response to the threat of acts "involving serious injury or danger to people, serious damage to property, or serious interference with an electronic system" should lead in the end to such simplistic, reactionary and counter-productive legislation.

**The Hon. MALCOLM JONES** [9.23 p.m.]: Terrorism is a new phenomenon in modern Australia. Whilst world events are loudly heralded on television and other media, we failed to appreciate the impact until the Bali bombings brought issues so much closer to home during October. The lifestyle enjoyed in this country is almost invariably taken for granted. Perhaps now it is time to consider the message of the Returned Services League that "the price of peace is eternal vigilance".

We have to accept that we are threatened—whether we like it or not. Not accepting this vulnerability is both irresponsible and a dereliction of duty to society. Terrorism is a specific type of warfare—I do not care what the causes are—but to achieve political goals by using terror is totally unacceptable in any circumstances. Whether we feel that we should be obliged to the United States of America for past services to Australia or that John Howard should desert our proven ally, terrorism is a real threat. People, indeed many people, will probably die if terrorism commences in Australia.

I lived in the United Kingdom during the early 1970s when the Provisional IRA was actively bombing the major cities. I was in London when a bomb went off about a quarter of a mile away, in the Prudential building. The fear and sense of vulnerability were just dreadful. At the time, special powers were given to the police. Members of the public did not mind; they understood that it was for their protection. The Terrorism (Police Powers) Bill is the first in what I believe may be a series of powers which, if terrorism commences, will be granted to police. They possibly will form paramilitary units. There may also be an extension to the military powers.

Australians are not used to the military taking an active, visible role on our streets. However, in the light of terrorist threats it may become inevitable. We are potentially on the threshold of big problems. By using special powers, technology and perhaps small restrictions limiting freedom we can begin to commence fighting terrorist activities. Only by fighting terrorism can we address the risk. We cannot address the causes of terrorism in other parts of the world. We cannot remedy what goes on elsewhere in the short time available. We cannot remedy the religious differences and social inequalities in the very short term, which potentially is all we have. We can only prepare to protect our people.

Ms Lee Rhiannon questioned whether the legislation was necessary. We have already been threatened by Al Qaeda. It or people associated with it perpetrated an outrage against Australians and others in Bali. What constitutes necessity? Or do we have to wait until after the next disaster to determine what is necessity? I have not heard too much in the debate tonight about the civil rights of the victims of terrorism or the civil rights of the public to feel safe. I have heard a lot of inexperienced statements about how we may have our rights infringed upon in some way or another. But if terrorism starts—and we might argue that it has already started—the problems we will face are far greater than a few civil rights activists getting their noses out of joint. I support the bill.

**Reverend the Hon. FRED NILE** [9.27 p.m.]: The Christian Democratic Party supports the four bills that we are considering, particularly the Terrorism (Police Powers) Bill. The second bill is the Terrorism (Commonwealth Powers) Bill. We also support the related bills, which deal with terrorism's effects on motor accidents and workers compensation: the Motor Accidents Compensation Further Amendment (Terrorism) Bill and the Workers Compensation Amendment (Terrorism Insurance Arrangements) Bill. In criticising the legislation some members have spoken as if the bills are simply a response to what happened on 11 September 2001 in New York with the attack on the twin towers and the attack on the Pentagon. That was a great shock not only to the United States but to all the free nations around the world. Then there was the more recent attack in Bali.

But I do not see the bills as a response to those two attacks. I understand that the bills have been introduced into the State and Federal parliaments because real threats have now been made against Australia. We are not sure of the nature or source of the threats, but the Prime Minister and other Federal Ministers and the Premier of New South Wales have said that we are now in a high state of alert—I think level 3—because of threats against Australia made in the past weeks. So the bills do not relate to what happened in Bali, horrific though that was. There are now direct threats against Australia and we would be fools if we did not put into place legislation to deal with them. Such threats are unprecedented: there is no comparison with any previous happening. The closest would be during World War I and World War II, but in times of war special emergency powers and laws are implemented.

We are now dealing with a war on terrorism, or, conversely, a war of terrorism is being waged on Australia and its citizens. Neither the Prime Minister nor the Premier are experts on security. When they appeared on television and were asked what Australians should do, they spoke generally about people remaining alert. The media attempted to ridicule them for saying that people should be on the lookout for suspicious individuals or people with video cameras. Thousands of people carry video cameras in tourist locations throughout Australia, particularly around Sydney Harbour and the Opera House. Obviously, not everyone carrying a video camera could be arrested. But both the Prime Minister and the Premier were trying to get the message across that all citizens should be involved in trying to identify or anticipate an attack.

It is not easy, when living in a free and open democratic society, to ring up the police to report a panel van parked outside a building when it could be either a courier delivering a package or a van full of explosives. Australia has never had to face these types of situations. Nevertheless, we cannot avoid dealing with them, which is exactly what these bills seek to do. The Premier referred to potential targets in Sydney. If there were an attack on Australia it seems that Sydney would be a high priority. Within Sydney, icons such as the Opera House or the Sydney Harbour Bridge—symbolic buildings—would be targeted in the same way that the twin towers were targeted in New York to achieve maximum damage and maximum impact on the nation and its psyche. Other targets mentioned were the nuclear reactor at Lucas Heights, power plants, the Burratorang catchment, the airport at Mascot, the port development at Botany, and the naval vessels in Sydney Harbour.

Because of safety precautions to protect those working in the High Commission in Singapore and security developments in East Timor it appears that terrorists have moved away from what they call hard targets to focus on soft targets, where they will not have to deal with security or military guards. The nightclubs in Bali were soft targets. Some Islamic fanatics believed that the people in the nightclubs deserved to die because they

were indulging in immoral activity. If that is so, our authorities should remain vigilant at similar soft targets in Sydney—sporting events, the Entertainment Centre, Kings Cross and Oxford Street—where large crowds gather to enjoy themselves. Even as I list those places it seems unreal to think of them as places of possible danger for the general public.

The most recent taped message by Osama bin Laden—which has been confirmed as genuine by the American authorities, who I would think have the technology to prove that it is his voice; although a recent report questions that—threatened Australia for the first time. We have moved up the scale of targets. In the past week Kenya was targeted. It is interesting to note that in the taped message Osama bin Laden linked the recent terrorist attacks and took responsibility for inspiring them. We do not know whether he planned each one himself. The taped message said:

From the worshipper of Allah, Osama bin Laden, to the people of the countries that are allied with the unjust American Government: the road to safety starts with stopping aggression and it is only fair to establish equal treatment.

The events since the New York and Washington raids until today, such as the killing of Germans in Tunisia and the French in Karachi, the blowing up of the French supertanker in Yemen, the killing of marines in the [Kuwaiti] island of Faylakah, the killing of the British and Australians in Bali, the recent [hostage-taking] operation in Moscow, and other operations here and there, were only reactions based on equal treatment.

He is justifying those attacks in his mind—but there is no justification. He continued:

They were carried out by pious Muslims defending their religion and heeding Allah's orders and those of his prophet.

He attacked George W. Bush and called him "the Pharaoh of the time". He continued:

We had warned Australia about its participation in Afghanistan ... it ignored the warning until it woke up to the sound of explosions in Bali.

In his mind we made ourselves a target because we assisted in peacekeeping efforts in East Timor, an action that received unified support throughout the country and joint party support. The result of those peacekeeping efforts was the establishment of a democratic, independent nation. Apparently, in the minds of Osama bin Laden and his supporters, the action taken by Australia took East Timor out of their sphere of influence. They hoped to make East Timor some sort of Islamic empire. But its independence will make it more difficult to do that, particularly when a large percentage of its population is Catholic, which has very strong Christian churches, bishops and other clergy.

It would be irresponsible of the Government not to respond to warnings. The Federal and State governments have other information that justifies issuing the most recent alert. We do not know the details, and perhaps for security reasons that information cannot be revealed. Perhaps agents working on behalf of Australia or other nations, such as Indonesia, who are seeking to counter terrorism have been able to infiltrate some of the cells, which would be very difficult because of the way in which the cells are organised. It would take a very committed Australian agent to survive in one of those three- or four-person cells and not be identified.

When honourable members took part in the Day of Remembrance for victims of the Bali bombing, we acknowledged and shared in the horror of the terrorism and indiscriminate murder, maiming and subsequent suffering of so many Australian citizens, and its effects on their families. Unfortunately, those who have survived terrific burns are still struggling to recover their health. Sadly, in recent days some have passed away although it was hoped they might recover fully. All honourable members were shocked by the attack in Moscow and the complete willingness of the terrorists to kill 700 or 800 innocent civilians—families, women and children from all parts of the world, including Australia—enjoying a musical program. We cannot say there are no signs of danger in Australia. A Perth resident and convert to Islam, Mr Roach, has been charged with conspiring to bomb the Israeli Embassy in Canberra and the consulate in Sydney. He indicated that he had been given orders to recruit other non-Arabic Australian converts to be involved in terrorist activities. Their appearance would not alert security forces because, unlike people from the Middle East, men who look like Australian wharfies would not worry security guards.

I experienced a fear of terrorism early this year on a Sunday afternoon during a Celebration of Life march from Circular Quay to Martin Place. A musical program and speeches were being conducted in Martin Place. The gathering was scheduled to move to Parliament House for a prayer session and then to conclude its journey at St Mary's Cathedral. While hundreds of people, primarily mothers with children, some in strollers, were enjoying the musical program in Martin Place—which was held with police and council approval—I was approached by a very worried police inspector who told me to move everyone very quickly out of Martin Place

to the top of Macquarie Street. I told him that that was our next destination and that we would then move to St Mary's Cathedral but that we had not finished the musical program. He repeated that we should move immediately because we were in the path of a very aggressive group of people, many of Arabic appearance, that was heading to Martin Place protesting about the situation in Palestine and many other issues.

Apparently the marchers intended to attack the Israeli Consulate. I remember the officer saying that the 20 or 30 men leading the march had covered their faces with scarves like those traditionally worn by terrorists in the Middle East. They looked as though they were going to cause trouble, and they did. They tried to smash glass doors and roughed up police officers, who were wearing summer uniforms, not riot gear. I understand that a number of officers, including one or two female officers, were injured trying to protect the consulate, which I understand has now been closed. It is a disgrace that the Israeli Government feels its Sydney consulate is not safe. Along with others, I received a memorandum from consulate staff advising that the consulate has been closed.

I assume the embassy in Canberra will remain open. I hope the closure is not the result of security concerns, but I suspect that it may be. Rather than implement security arrangements, the Israeli Government has decided to close the consulate. It is a poor reflection on our authorities if that has happened because the Israeli Government does not believe we can guarantee protection. We have heard much about the Jemaah Islamiah [JI] group that is operating in Indonesia and other parts of Asia. The leader of that organisation, Abu Bakar Bashir, a Moslem cleric, has made a number of visits to Australia. The suspicion is that he has been establishing JI cells in Sydney, Perth and elsewhere. I hope that is not true. All those events justify this legislation.

Some honourable members have attacked the Terrorism (Police Powers) Bill. They are exaggerating its impact in saying that we will have a police state. This bill is a reasonable response to the terrorist threat. It simply provides that the Commissioner of Police or a deputy commissioner—or a police officer above the rank of superintendent if those officers cannot be contacted—may, with the concurrence of the Minister for Police, authorise the use of additional powers to respond to a terrorist act. A "terrorist act" is defined in accordance with the Commonwealth Criminal Code. It requires that authorisation may be given only when the authorising officer reasonably suspects a terrorist act is imminent or a terrorist act has just occurred, and the exercise of the power will substantially assist in preventing the act or in apprehending a terrorist offender.

These powers are not permanent; they have time frames. The bill also provides that the authorisation to prevent a terrorist act lasts for seven days, and it can be extended to 14 days. The authorisation to respond to a terrorist act lasts for 24 hours and can be extended to 48 hours. How can that be regarded as creating a police state in Sydney? Some honourable members compared the situation that will exist in this State with the Soviet Union and other places. There is no comparison. The bill also provides that the Police Integrity Commission can review those authorisations, and that is included in the proposed framework for matters involving the New South Wales Police Force. I do not believe it requires the involvement of the Independent Commission Against Corruption or any other body.

The bill provides that additional powers can be used in respect of a specified person, specified vehicle or class of vehicles or a specified area. Those additional powers are to obtain disclosure of identity, to search a person, to stop and search a vehicle, to enter and search a place, and to seize things found. I do not see how that can be interpreted as establishing a police state in New South Wales. Members who are critical of the bill should look more closely at its provisions. It is a reasonable response to what is now a genuine terrorist alert in Australia, and particularly in Sydney. We must take urgent action to combat terrorism. That is the purpose of this legislation and that is why the Christian Democrats support it.

**The Hon. Dr PETER WONG** [9.47 p.m.]: The Terrorism (Police Powers) Bill and the related bills are important. I do not think any honourable member condones acts of terrorism. What lies at the heart of the bill is the troubling and tumultuous times in which we live. For many Australians the events of September 11 and the Bali bombing have come as a complete surprise and their world has been shattered. However, many democratic countries have lived for a long time with the reality we now face. Despite experiencing terrorist activities on their shores, they have balanced with considerable success the competing values of liberty and security. We must ensure that our legislative efforts to deal with this new and difficult problem also balance concerns for individual and social liberty, and individual and public security. This is a most important consideration, because to sacrifice one for the other in many respects sends a terrible message to those who seek to harm our way of life that their actions have been successful and that even the threat of terrorist activity has had a substantial impact.

Despite Premier Bob Carr's rhetoric in the other House about the new police powers, we must carefully monitor the police and their behaviour, and ensure that they are subject to the oversight of the Police Integrity Commission and the Ombudsman. We want accountability to apply even when police are responding to a terrorist incident.

I do not believe that this can happen once the horse has bolted. We often pay attention to laws of the United Kingdom, where, until the latest legislative changes, independent oversight on behalf of the public has been paramount. The review provisions of the Anti-terrorism, Crime and Security Act 2001, section 122, ensure that the Secretary of State shall appoint a committee to conduct a review of the Act, that the Secretary of State must seek to secure that at any time there are no fewer than seven members of the committee and that a person may be a member of the committee only if he is a member of the Privy Council. I will not continue to cite that section further, other than to note that the Privy Council is the last avenue of appeal in the legal system in the United Kingdom. Until recent times, the Privy Council was the last avenue of appeal from our High Court.

Recent changes in the United Kingdom have dropped that traditional oversight mechanism on the grounds that the United Kingdom has enshrined, through its Human Rights Act, the European human rights laws. This is considered an appropriate safeguard for the public. As New South Wales does not have that type of legislation nor, as is common amongst Westminster-style democracies, a bill of rights, we must ensure that our legislation seeks to reflect the level of oversight traditionally prescribed by the United Kingdom Parliament. The Premier stated that, "The bill has been properly crafted. We have created the balance that people would expect. It will be followed by other States around Australia." I am not sure whether we have created the balance that people would expect. As the Premier noted, other States will follow our Act. Therefore, we have a responsibility not only to the citizens of New South Wales but to all citizens of Australia that we get it right. Today I issued a media release that stated:

The passing of Terrorism (Police Powers) Bill 2002 will deal a heavy blow to democracy and human rights in the state of New South Wales.

The reason that such a draconian law can be passed is because there is no effective opposition to this bill. Indeed, Bob Carr has out flanked the Opposition from the right ...

This Bill has attacked the fundamental basis of Westminster democracy of an independent judicial system. The role of the judiciary is being undermined by both major political parties in the "Law and Order" bidding war ...

Bob Carr's agenda is for all to see, by playing the game of "terrorists", he instils fears into the citizens of New South Wales and creates his own "Tampa" ...

As stated by Benjamin Franklin "They that can give up the essential liberty to obtain a little temporary safety deserve neither liberty nor safety".

Like John Howard, Bob Carr will be remembered as a cynical political manipulator who risks the democratic fabric of our society for his ever thirsty political ambition of winning at all cost ...

The Bill has caused grave fears among the lawyers, civil libertarians, parliamentarians, various ethnic communities and especially members of the Islamic community.

Silma Ihram, spokesperson for the Unity Party says "The Muslim community will be vilified and victimised even further as a result of the passing of this legislation. I fear for the safety of our women and children".

With so much fear, one cannot help but wonder, who is it that is terrorising the citizens of New South Wales.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [9.54 p.m.]: The Democrats do not support the Terrorism (Commonwealth Powers) Bill. The Federal Government has said that we need education on how to recognise a terrorist. I say that we need education on how to recognise a decent foreign policy. If we strut about, slavishly following the United States of America and basically blockading, with the Australian Navy, a country half a world away that had been buying our wheat we will get a reaction. We will identify ourselves as a country that is totally committed to whatever the United States of America does with its foreign policy, and we will get a response of terrorism such as only the United States and Israel seem to elicit.

We do not need to be involved in this fight. We have been foolish when we have fought the wars of other countries without any real benefits to our country. This is but another example. The United States of America stands at the crossroads of a global world. Its foolish foreign policy states that this is a global world and it will try to fix the problems of inequality, poverty and disease or else, having achieved a military dominance, it will grab the resources and relish its position of unprecedented power. Sadly, fanned by the military lobby, which needs an enemy in order to keep its large share of the American gross domestic product, and the oil industry, which sees Iraq as one of the few countries still able to increase its oil output, it is grabbing all resources.

Its policy is cloaked in fine rhetoric, and that is what it is all about. The Americans may gain something out of this, although I believe that in this global world military might is not the answer. Terrorism at a citizen

level can compete with military might and seriously damage even the most powerful country. The Americans may think that they can benefit, but I believe they will not and are making a serious error. They are condemning the world to a far more extreme reaction, possibly for the next couple of generations. The Americans are at the crossroads and they are taking the wrong turn. It is foolish for the United States of America to do so. It is extremely foolish for us to do so—we do not even have the benefit of economic exploitation of the Middle East.

While we have folly at a Federal level, sadly we also now have folly at a State level. I hope it is folly, but it may be simply cynicism. If you instil fear you get votes. The net result of this fear, which is then heightened by all the talk of terrorism—and the word "terrorism" is included in the name of the bill—will make people scared of terrorism and have them accept a reduction in civil liberties. The bill also entails a fear of people who are not like us. If governments encourage that fear, life becomes more difficult for those who are not like us in appearance—often that means the Muslim community—and they will suffer vilification. Just as Hitler rose to power vilifying the Jews, the net result of this bill is that the Muslim community or people who wear headscarves will suffer from a reduction in the racial tolerance and harmony that we have built up over a long time.

Our place in the world is suffering, appallingly, from our public image. The Australian public has been somewhat shielded from articles that appear in the major editorials in Britain and Europe about our callous attitude to our refugees and our gung-ho attitude to following the Americans through their foreign policies and foolish forays. The Terrorism (Commonwealth Powers) Bill and the Terrorism (Police Powers) Bill are intended to protect the citizens of New South Wales from terrorist violence. However, in reality the two bills are a concession to terrorists. It is foolish to give up our civil liberties. We are believers in liberal democracy, but it seems that the Government is diminishing our democracy because of the potential threats made by people who want to destroy it.

Our faith in plurality has been shaken and we are now giving in to terrorists. The police bill itself is loosely drafted; it is rife with loopholes and inconsistencies with other legislation, such that it is inappropriate to attempt to rush it through Parliament without adequate consultation and feedback from appropriately qualified experts. There is no evidence that this kind of legislation is required. The Government has not presented to the public any proof that the New South Wales police service is in any way incapable of protecting New South Wales from the threat of terrorism. There have been no reported instances of prospective terrorists having slipped through the net. Moreover, the Federal Government is at present trying to strengthen the powers of ASIO, which traditionally watches over terrorism.

My Federal colleagues have spoken about that bill and produced a minority dissenting report on the conclusions of the committee. ASIO itself has recently broken down the doors of people who attended the Dee Why mosque, though they had offered to speak to ASIO about what they knew about the visit to their mosque by an imam from Indonesia. Rather than talk to them, ASIO broke down the doors and threatened the families, frightening them terribly, particularly the children. What was the purpose of this, and why give people more power when they are doing such silly things?

The best way to ensure that New South Wales is adequately protected from terrorist threats is to ingrain a culture of co-operation between ASIO, the Australian Federal police and the New South Wales police service, rather than try to beat each other to the title of police state enforcer. There is a lack of empirical evidence suggesting that increased powers will lead to, or have in the past led to, greater protection of citizens against terrorist threats, or indeed lead to any decrease in terrorist activity. In the United Kingdom, following the 1974 amendments there was no tangible reduction in terrorist activity—evidence that such an increase was not effective in achieving the aims of legislation that weakens civil liberties.

Under the new legislation, people within a target area can be searched, without necessarily being a target themselves. This effectively gives police a loophole in the requirement for authorisation, it being sufficient to obtain authorisation for an area only. It is unacceptable that people who happen to be in a target area can be subjected to searches on the basis of where they are, and not who they are or what they may have done. The suspicion does not even have to be based on reasonable grounds, and can be relied on even if it exists as a result of rumour, prejudice or speculation. Furthermore, the area stipulated as coming under the scope of an authority under the bill can be as general as "the State of New South Wales". Potentially, every home in the State could be searched without warrant if a non-specific terrorist threat is identified through intelligence reports.

The bill takes away an individual's right to silence. Ordinary people can be forced to answer certain questions and provide proof of their identity, merely because they were in a particular area at a given time, or drove a particular type of vehicle, or fitted a particular description. It should be noted that in 1974 the United

Kingdom Parliament legislated to remove the right to silence in situations involving potential terrorism, in response to IRA attacks—what the United Kingdom now sees as a complete removal of the right to silence for suspected criminals. The Government has offered no evidence as to why such a sacrosanct right should be eroded here.

Police investigations are more open to political interference as the police Minister can veto an authorisation without having to give reasons, and as such a veto is unable to be challenged. This will compromise the work of the New South Wales Police Force. Furthermore, the concern over political influence on police action is increased when one notes that the very wide definition of "terrorist act", which includes intentional damage to property, could result in the activities of groups such as trade unions—which may not fit into traditional categories of industrial action or protest—being targeted by these powers. In its practical application, the inclusion in the definition of "terrorist act" of actions taken with the intention of advancing a religious cause clearly targets people of a particular religion. This opens the way for unfair targeting of religious groups, an unsatisfactory situation given the current anti-Islamic climate in this State.

The authorisation to use such special powers is not open to scrutiny as it cannot be challenged, reviewed, quashed or called into question on any grounds whatsoever before any court. In order to safeguard the New South Wales population from improper use of such far-reaching powers, authorisations ought to be able to be challenged in the New South Wales Supreme Court, in the same way that powers proposed by the recent ASIO amendments can be challenged in the Federal Court. This lack of accountability is potentially worrying when one considers that such authorisation can be grounded on a rumour, or speculation by an officer. Such invasive powers should only be authorised on reasonably certain grounds and should also be open to scrutiny.

As a member of the International Commission of Jurists, I support the comments made by former High Court Judge and President of the International Commission of Jurists, Justice Dowd, reported in the *Sydney Morning Herald* of 27 November 2002. Justice Dowd is quoted as saying that the anti-terrorism measures "eroded citizens' fundamental rights and gave encouragement to oppressive overseas regimes". Justice Dowd said in evidence before the Senate committee inquiry into the Federal ASIO powers bill that the proposed anti-terrorism measures eroded citizens' fundamental rights in "an atmosphere of hysteria". The Law Society of New South Wales expressed its concerns about the bill as follows:

There has been no public consultation about the terms of this Bill, and Standing Orders have been suspended to allow its passage to be expedited.

The Law Society's Criminal Law Committee has conducted an urgent review of the *Terrorism (Police Powers) Bill* and highlights the following matters:

#### **Wide-ranging Powers**

Part 3 gives police special powers with respect to people who are suspected on reasonable grounds of being the target of an authorisation or who are in or on a vehicle that is suspected on reasonable grounds to be the target of an authorisation. The powers require disclosure of identity (clause 16) or, without warrant, empower police to stop and search a person (clause 17), a vehicle (clause 18) or premises (clause 19).

The Law Society is concerned that these powers will be available to be exercised "whether or not the officer has been provided with or notified of the terms of the authorisation" (clause 14). The Law Society does not understand how a police officer can act under an authorisation, or form a suspicion based on reasonable grounds, if he or she does not know the terms of the authorisation.

It is of even greater concern to the Law Society that the powers under this Part can be triggered merely by presence in a "target area", by being about to enter an area or having recently left the area. There is no need for police to "suspect on reasonable grounds" that a person is, was or will be involved in suspected terrorist activity. Further, police are allowed to use "such force as is reasonably necessary" in exercising these powers (clause 21).

The application of the powers in the Bill to people or vehicles who are not the target of an authorisation should be predicated on police forming a suspicion on reasonable grounds that the powers must be exercised to prevent a terrorist attack or to apprehend the persons responsible for committing a terrorist attack.

Clauses 16 (1) (c), 17 (1) (c) and 18 (1) (c) should be amended accordingly.

#### **Lack of Judicial Review**

Clause 13 means that an authorisation is not subject to any form of judicial review. This limitation is exacerbated by clause 29, which provides that, if proceedings are brought against a police officer for acts done pursuant to an authorisation, the officer cannot be convicted or held liable "merely" because "the person who gave the authorisation lacked the jurisdiction to do so".

In other words, the authorisation cannot be contested (except by the Police Integrity Commission) and, if the authorisation was given by someone who had no power to do so, an officer acting on it cannot be held liable.

Clause 13 should be deleted from the Bill.

#### **Provisions relating to personal searches**

Schedule 1 Conduct of personal searches is consistent with Part 4 Division 4 of the *Law Enforcement (Powers and Responsibilities) Bill 2002*. However, the Law Society has sought amendments to that Part and proposes that the following amendments should also be made to the *Terrorism (Police Powers) Bill*:

Remove:

- current clause 6(2) (presence of parent/guardian/personal representative if practicable), and
- clause 6(3) (obligations re same if strip search of a child 10-18 years, person with impaired intellectual functioning)

and insert those provisions in clause 5 (Preservation of privacy and dignity during search), so that the provisions will apply to all searches, not just strip searches.

Clause 5(5), which provides that police must conduct the least invasive kind of search practicable in the circumstances, should be a separate section in its own right, and be given greater prominence earlier in the Schedule.

#### **Inconsistencies with Law Enforcement (Powers and Responsibilities) Bill 2002**

Clauses 17(3) and 18(2) (Powers to search people and vehicles) should be amended to be consistent with section 204 *Law Enforcement (Powers and Responsibilities) Bill*. That is, a police officer who detains a person or a vehicle for a search must not detain the person or vehicle any longer than is reasonably necessary for the purpose.

Clause 23 (Supplying officers details) should be amended by deleting the words "if requested to do so" to be consistent with section 201 *Law Enforcement (Powers and Responsibilities) Bill*.

So the Law Society is experiencing many problems in relation to this draconian bill. Unfortunately, if it is experiencing problems how much more ostracised will Australian citizens who are followers of Islam be under this legislation? On 2 December the Islamic Women's Welfare organisation sent me a facsimile in which it said that the last two weeks had seen an unprecedented attack on the civil rights and liberties of Muslims, and Muslim women in particular, in Australia. It stated:

It comes as some surprise to us to find that legislation is being introduced in New South Wales to give powers to police officers that severely curtail people's personal freedoms. This comes on top of the Federal ASIO bill that is currently under review.

It is the Muslim community who will bear the brunt of these pieces of legislation. In fact, in giving an example, Michael Costa, the Police Minister, even discussed the example of someone of "middle Eastern appearance", and the level of specificity of the description. Yet the focus remains: this is legislation, as Justice John Dowd has pointed out, targeted directly at Muslims.

Many people wrongly associate the actions of a vile few with all Muslims. This bill has the potential to make it "official"—and for this kind of suspicion of all Muslims, especially Muslim women, to be sanctioned legally.

The laws give powers for police to search anyone once an act of terrorism has been declared, meeting certain criteria. This criteria will inevitably include "middle Eastern people in appearance", thus targeting Muslims specifically. To many people, anyone wearing Muslim dress, even if they are Anglo-Australians, are considered of "middle Eastern appearance". Furthermore, the legislation takes away certain rights of review. For example, the police minister under the legislation is not accountable to anyone under the legislation. Section 13 of the act says:

"An authorisation (and any decision of the Police Minister under this part with respect to the authorisation) may not be challenged, reviewed quashed or called into question on any grounds whatsoever before any court, tribunal, body or person in any legal proceedings, or restrained, removed, or otherwise affected by proceedings in the nature of prohibition or mandamus."

This is a massive licence that is incredibly open to abuse. This allows the police to frisk search or strip search Muslim women—an issue of particular concern to us.

If this legislation is absolutely necessary because of the current situation and it is, as Bob Carr says, an "emergency bill", then why not introduce a sunset clause to ensure that it is properly reviewed.

The Australian Democrats also oppose the Terrorism (Commonwealth Powers) Bill. The Senate Constitutional and Legal Affairs Committee report on the Security Legislation Amendment (Terrorism) Bill found many loopholes in that bill. Australian Democrat Senator Brian Greig wrote a dissenting report to that committee's report, which concludes as follows:

The Australian Democrats oppose this legislation.

The proposed definition of terrorism is incredibly broad, and could catch a range of political activities not remotely connected to terrorism.



The exceptions for advocacy, protest, dissent and industrial action are totally inadequate. It is dangerous to assume that no future government will use these excessively broad powers to suppress opposition and dissent.

The very broad proposed power of the Attorney-General to ban organisations is entirely inappropriate. It is reminiscent of the failed Communist Party Dissolution Act and has no place in a democratic nation.

The bill also takes the unprecedented and unjustified step of imposing absolute liability in relation to offences carrying life imprisonment.

The proposed changes to the privacy of e-mail and other forms of digital communication are deeply concerning.

These bills are an attack on some fundamental democratic principles and should not be enacted. It is vital that in defending democracy, we do not compromise the very ideals we are seeking to preserve.

The Australian Democrats ran a campaign against that Commonwealth legislation. Now we are fighting against a conservative Government in New South Wales. This conservative Government, which pretends to be a Labor Government, is introducing its own legislation to coincide with Commonwealth legislation. I believe that this Government is also trading on fear, just as John Howard traded on fear in Canberra. The Premier saw how John Howard won the last Federal election by exploiting fear and uncertainty. He appears to be taking a leaf out of John Howard's book and is utilising that fear for his purposes. The Motor Accidents Compensation Further Amendment (Terrorism) Bill will just extend the temporary exclusion of acts of terrorism from compulsory third party from the current date of 1 January 2003 to 1 January 2004.

Earlier this year when the first bill was debated I said that if people in Zurich did not want to provide reinsurance the New South Wales Government would quickly fix the definition so that if someone was hit by a car driven by a terrorist it would just be tough luck. That is another example of the Government backing out of a problem rather than solving it. It could conceivably come up with an alternative solution without a great deal of thought. We might be small fish—a State Government in a relatively small country—but it would not have been impossible to make WorkCover the reinsurer for acts of terrorism and to have made a small change along those lines for temporary reinsurance cover. I am disappointed that the Government has not been more brave and adventurous. It blames other governments for flogging off the GIO and for not providing a reinsurance company that assesses rates irrespective of fluctuations on the world market after September 11.

WorkCover could potentially play that role, a fact that has been pointed out to the Government. The Government capitulated by taking away insurance cover. If Australian citizens are killed their families will be expected to manage as best as they can, presumably with the help of some sort of pension. The Australian Democrats support the Workers Compensation Amendment (Terrorism Insurance Arrangements) Bill, which is an attempt by this Government to establish a reinsurance fund. Overall, the Government has a conservative and timid view of terrorism. It has not made out a case for its draconian changes and it is discarding our civil liberties without so much as a whimper.

**The Hon. DAVID OLDFIELD** [10.16 p.m.]: In general I support the Terrorism (Police Powers) Bill. To some the bill might appear to be harsh. I note the usual raft of amendments from those in this place who regard themselves as the guardians of all perceived rights. The fact is that security cannot be assured without some loss of privacy and without security forces being able to act with immediacy against a possible threat. Muslim terrorists do not wait for due process. Those of us who acknowledge the danger that our country faces understand the need to have intrusion into areas of our lives that had previously been untouchable. The bill is appropriate in that it provides the necessary powers for police to act in the overall interests of the people of New South Wales.

The tragedies that we have witnessed around the globe will soon make their way to our shores. We face a new era in Australia: one of uncertainty, indeed, one of terror and one of changes that in many respects we can only imagine at this time. We saw the commencement of those changes on September 11 last year. For those not fully paying attention the Bali murders should have been the final wake-up call. We have Muslim terrorists in our midst. They await the signal to strike what, for all we know, may already be designated targets. They plan that their attacks should succeed in murdering as many of us as possible and strike fear into the hearts of those who will be left wondering when their turn will come. We are not dealing with people like ourselves; they do not act or think as we do. They are alien to us. If we are to combat their terror we must accept tactics that have, until now, been foreign to our way of life.

We see our icons under guard now as never before. Most recently the Sydney Harbour Bridge was the subject of much-publicised foot patrols by unarmed personnel wearing fluorescent vests. The new guards on the bridge have been described as the eyes and ears of the police. Let's get serious! Those well-meaning souls are

defenceless targets wearing glow-in-the-dark bullseyes. It is entirely inappropriate that those human security alarms are not armed. Be assured that any terrorists they meet will be armed. They will not think twice about gunning down anyone who interferes or who may raise the alarm. If Muslim terrorists wish to be more silent about getting rid of the fluorescent vest-wearing foot patrols on the bridge, they will simply kill them with knives. The fact that the guards are not armed is, of course, ridiculous. The lack of weapons is not in their interests from a self-defence point of view and it is not in the interests of those who expect the people who are now guarding the bridge to raise an alarm or to secure the bridge in any way.

While this bill is an example of the sort of measures necessary for our security, the Government's new bridge watchers are an example of a tokenistic approach that does not fully appreciate the need for such personnel to at least be able to defend themselves. Given the need for our security forces to be appropriately expanded and properly trained in the use of weapons and tactics for general security, self-defence and counter-terrorism, I submit for the record an issue relating to those needs as generally put to me by a former member of this House, Lloyd Coleman.

I bring to the attention of the Parliament an important issue, one that, if overlooked, could affect the security of many people in Sydney, and even those who will in the years to come sit in this Parliament. The issue of which I speak is the long-term future of the Anzac Rifle Range, which is situated on a headland in the Premier's electorate of Maroubra. Those not familiar with the Anzac range would be unaware that after September 11 hardly a day went by without at least one, and often two or more, of either the State and/or Federal security services or forces using the range for training directly related to the security of the people of Sydney or those visiting. One service, whose duty includes airport security, has increased its training schedule at the range by over three times that prior to September 11.

In spite of the size and diversity of the Anzac Rifle Range, to guarantee access to the range it is now essential to forward book range time and requirements. That was not so before September 11. Those out on the range the day after the terrorist attacks on New York and Washington would have thought we were already under attack as members of many different arms of our security services were doing additional training. The use of the Anzac range at Malabar has increased greatly and a constant stream of people are undertaking a broad range of security and anti-terrorist training, both on the range and in the large auditorium of the New South Wales Rifle Association.

Activities include accreditation for the use of Styer—the military service rifle—and police marksmen and members of Australian Protective Services, NSW Police special services, New South Wales Corrective Services, State security and protective services all undertaking various forms of anti-terrorist and upgraded guard duty training. Recently the new Special Air Service [SAS] unit assigned to protect Sydney spent a number of days on the range. Given those needs, the State, in conjunction with the Federal Government, must reassess the future of Malabar. A great deal has been made of the preparedness of Sydney to handle possible terrorist attacks during the Olympic Games but do not forget that we had the additional services of some 5,000 army troops, Black Hawk helicopters, a number of heavy-lift helicopters with troops at a minute's call and security guards and personnel drawn from as far away as Western Australia.

The Parliament must look closely at tomorrow's requirements and plan for those needs today. As the Malabar range is a Commonwealth facility, at present many State organisations may be unaware that its future is uncertain. Because of its size and position, once the Malabar range is lost it cannot be replaced. Strategically the range is well placed for any anti-terrorist training facility and firearms accreditation venue as it is within 15 minutes drive from the central business district and 10 minutes drive from the airport. In addition, it is situated between Sydney Harbour and Botany Bay. The range is being used by the army, the SAS and New South Wales police helicopters for anti-terrorist training.

Serious consideration must be given by both State and Federal governments to retaining the Malabar range and developing it as an area for a range of police, security and military firearms and anti-terrorist training facilities. That can be done without detracting from its present sporting and recreational use. We need to develop the best training facilities possible under the most desirable conditions for things such as close support, driver training, security training, marksmanship, tactical response, specialist weapons use and helicopter support, to name only a few. Like a top sports professional, anyone aspiring to attain a high standard of proficiency in anti-terrorist and security measures needs good equipment, modern facilities, time and regular practice to maintain proficiency.

I ask this Parliament and those with a direct responsibility for developing future safeguards and maintaining Sydney as a secure terrorist-free region to note what I have said and to give the future

redevelopment of the Anzac range at Malabar appropriate attention. I do not want to sound alarmist but, with the exception of a small number of our security forces, the standard of shooting training and the ability to shoot accurately under pressure leave a great deal to be desired. Compared to a few years ago there are now few active members of the security industry who are not armed when on guard duty—apparently, of course, with the exception of those on the Sydney Harbour Bridge.

Unfortunately, firearms training has not kept pace with the increased use of firearms by the security forces. Given the present circumstances, it is wrong that the future of Malabar range is under a cloud. The range is the headquarters for the New South Wales Rifle Association. It is owned by the Federal Government, which has tried to close it since about 1986. At present the Federal Government is looking at a number of proposals for the future of the shooting venue of the New South Wales Rifle Association. If the Federal Government relocates the New South Wales Rifle Association's shooting facilities to Holsworthy or another site, the Anzac range will be redeveloped for other usage and/or handed over to the State Government for recreational use. Either way the Sydney metropolitan area will lose its last significant outdoor range. If the Malabar range closes only a 12-target range at Hornsby—compared with 130 targets at Malabar—will be left for the training of police and other tactical response groups.

Like the Australian Army before Timor, most of our security services are underresourced and undertrained in the use of the firearms necessary to deal with Sydney's future security and anti-terrorist requirements. In spite of the many warnings over the past decade by experienced personnel, it took Timor and over 100 accidental discharges—or unauthorised discharges—in the first few months of the Timor campaign to get the army to understand the importance of regular training with live ammunition and the need for complete firearm familiarity when on active service. That is not a criticism of the present training by the many and varied State and Federal security services. Rather, it is a timely warning that yesterday's standards will be either inadequate or unacceptable to tomorrow's public and the security they rightfully expect and, indeed, demand.

I agree with the concerns raised by Lloyd Coleman and I thank him for taking the time to record those matters for my use here this evening. We are being dragged forward into the consequences of world events that are not of our making. In some respects it is clear we are preparing for the many changes ahead. When it comes to guns, not only are many of Australia's security services unprepared, including those who guard us here, but our irrational Prime Minister is hell-bent on disarming every law-abiding citizen in the country. The agenda of the Prime Minister on guns will leave us in a state where, apart from some members of our security services, only terrorists and other criminals will own guns. Who will be helped by that? Certainly not law-abiding Australians.

This is not a debate on guns as such so I will go no further on John Howard's dishonest and irresponsible nonsense, except to say that as terrorism strikes at our homeland and such actions grow from that first act, the more law-abiding Australians who own guns the better off we will be. I will add that, given the way things are going in relation to guns, I hope and pray that when the day comes for this nation to once again defend itself from the growing threat to its existence, there will still be some of us who own and know how to use guns. I regret the necessity for the Terrorism (Police Powers) Bill, but I recognise that such times call for us to give up elements of the freedoms we have blissfully enjoyed. Unfortunately, the more freedom we give ourselves the more capacity we extend to Muslim terrorists to succeed in killing us.

**The Hon. IAN COHEN** [10.27 p.m.]: All of us feel the weight of the recent terrorist acts that have caused loss of lives, particularly when those acts were committed close to home. However, the sense of injustice and concern within our community should not be exploited by governments to erode our fundamental democratic rights. The Greens are strongly opposed to the Terrorism (Police Powers) Bill for a number of reasons. The bill defines a terrorist act in apparently identical terms to the final definition used in the Federal bill, now part 5.3, division 100 of the criminal code Act that came into force earlier this year. It is a long, convoluted and broad definition that appears to exempt advocacy, protest, dissent or industrial action.

**Debate adjourned on motion by the Hon. Ian Cohen.**

#### **GENERAL PURPOSE STANDING COMMITTEE No. 1**

#### **Government Response to Report**

**The Hon. Michael Egan** tabled, according to the resolution of the House of 5 September 2002, advice from the Director-General of the Cabinet Office in relation to the Government's response to report No. 22, entitled "NSW Workers Compensation Scheme: Final Report", tabled on 3 September 2002.

**Ordered to be printed.**

## ADJOURNMENT

**The Hon. MICHAEL EGAN** (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [10.34 p.m.]: I move:

That the House do now adjourn.

## TRIBUTE TO Dr TED FREEMAN

**The Hon. TONY KELLY** [10.34 p.m.]: On 1 March 1989 the then New South Wales Minister for Health, Peter Collins, stated in another place:

Dr Freeman is not conducting his work within any research framework. He does not even try to respond to requests for justification of his concepts and beliefs: he seems totally unconcerned about the rightness and wrongness of his ideas.

The Hon. Peter Collins was understandably reliant upon advice from his advisers, who in turn relied upon a report prepared by management—not medical—consultants. That report is known as the Cuff report. I am now pleased to be able to correct the views expressed by the Hon. Peter Collins in 1989 with respect to Dr Ted Freeman. Some years ago Dr Freeman's son, Matthew, died as a result of a brain injury sustained in a motor accident. Shortly before that Dr Freeman had become interested in the longer term rehabilitation of people with brain injuries, and it became his mission in life until his retirement several years ago.

By walking the same path as the families of people with acquired brain injuries, Dr Freeman gained insights that few of his professional colleagues shared and that, sadly, some of them dismissed as irrelevant. Dr Freeman's internationally recognised approach to assisting patients with brain injuries and their families became known as community-based rehabilitation. It entailed learning from his patients in the best tradition of pre-technological medicine and distilling from his learning a compassionate wisdom that was to offer hope to many amid a barren mind-set of therapeutic nihilism. Dr Freeman achieved a rare combination of humanitarian and cost-effective outcomes with his patients.

The reality and extent of Dr Freeman's achievement in pioneering a new response to brain injury can be best appreciated by noting assessments from two disparate sources: patients' families and international authorities on rehabilitation after brain injury. A request made in the mid-1990s by the then member for Gilmore, who had taken a strong interest in the subject of brain injury, was answered with scores of letters from the families of people whom Ted had helped. Any medical practitioner would have been honoured to receive testimonials such as these.

This pioneering work on brain injury therapy and intense rehabilitation was recognised recently by Justice Barry O'Keefe in a case in the Supreme Court of New South Wales, *Northbridge v Central Sydney Area Health Service*, in which Dr Freeman was called as an expert witness. Justice O'Keefe acknowledged the value of seeking the views and opinions of the family of a person suffering brain injury. I will close with a few recent assessments of Dr Freeman's calibre and contribution to the field of brain injury rehabilitation. George A. Zitnay, Chairman of the World Health Organisation, President Emeritus of the International Brain Injury Association and former President of the Brain Injury Association of America, stated:

I am writing to express my deepest appreciation to you for your outstanding work in the field of Brain Injury Recovery and Rehabilitation. You have contributed so much to families of persons with brain injury.

Keith Andrews, Director of Medical and Research Services, Royal Hospital of Neuro-disability, London, stated:

Dr Freeman has an international status for his work with patients and families who have been affected by the trauma of such profound brain damage.

Sarah Wilson, senior lecturer in psychological medicine at the University of Glasgow, said:

Dr Freeman is recognised internationally for his expertise ... His work has generated further research and is undoubtedly of benefit to patients with severe brain injury.

Henry Stonnington, founding editor of the journal "Brain Injury" and retired professor and chair of the Department of Physical Medicine and Rehabilitation at the Virginia Commonwealth University, said that Dr Freeman's "concept of working with brain injury victims and their families early as well as later, when others have given up, is something we all need to follow". I am pleased to report the significant contribution made by Dr Edward Freeman to brain injury therapy and rehabilitation. I am pleased to be able to correct what has been said in the past about Dr Freeman's professional status and to restore his reputation.

## REGULATION REVIEW COMMITTEE REPORTS

**The Hon. DON HARWIN** [10.38 p.m.]: On 21 November I spoke about a number of reports of the Regulation Review Committee. When my speaking time expired I was referring to the Retail Leases (Sydney Airport) Regulation. The committee's report led to voluntary codes of practice being put in place to protect business operators at Sydney airport. The focus of report 3/52 is the prohibition on the use of liquefied flammable gas in motor vehicle airconditioning systems provided for in the Dangerous Goods (General) Regulation 1999. That was one of a number of examples in which we found that WorkCover did not follow the provisions of the Subordinate Legislation Act before remaking the 1978 regulation requiring adequate consultation.

At the briefing held by the committee in October 1999 there was, to quote from the report at page 4, "... general agreement from industry representatives that, with one exception, no direct consultation with them had taken place." Had WorkCover consulted, it would have found that there was now evidence that hydrocarbon refrigerants could be safely used in motor vehicle airconditioning systems. In fact, we found that Victoria, South Australia and Western Australia had moved to permit their use. The committee moved for disallowance and that was subsequently successfully pursued in the Legislative Council, if I recall correctly.

As I live about 100 metres from the Jervis Bay Marine Park, report 7/52 covers a subject of particular interest to me, the Marine Parks Regulation 1999, which provides for the management and zoning of marine parks. There was a farcical attempt to comply with the regulatory impact statement provisions of the Subordinate Legislation Act, with three pro forma options being assessed. Those options were to do nothing, to remake the existing regulation or to make the proposed regulation. In short, they were so general that they could apply to any regulation. The committee was assured by the Marine Parks Authority that there would be a full consultation process before any zoning and operational plan was put in place. In relation to the Solitary Islands Marine Park there was consultation and an economic impact statement was prepared to inform these consultations. But with the Jervis Bay Marine Park no economic impact statement was prepared, so the impact on business is largely unknown.

Report 11/52 has impacted upon the electoral politics of Lord Howe Island. The regulation clearly did not follow the regulatory impact statement process and the community was not consulted at all. As a result of our action the Minister held a plebiscite and changed the voting system from proportional representation to first past the post. Report 12/52 deals with the regulatory controls on dingoes. Our interest arose from the opposition of the Australian Dingo Conservation Association to the regulation of dingoes under the Companion Animals Act 1998 and a regulation promulgated in 1999. It was an absolutely fascinating inquiry and the report still awaits attention by the State Government because it is obvious that the matter should be dealt with under the Companion Animals Act.

Report 13/52, which focused on the oyster industry, was also interesting. We followed up the issue raised with a second report, that is, report 22/52. Those reports deal with the Fisheries Management (Aquaculture) Regulation 1995 and the Fisheries Management (Aquaculture) Amendment (Administration) Regulation 1999. The committee made 12 recommendations concerning the need for sanitary surveys of the State's oyster-producing areas and other actions. In our second report we note that six of those recommendations have already been implemented.

Report 15/52 covered the Harness Racing NSW (Appeals) Regulation 1999. As a result of our inquiry the way in which harness racing is governed has been revised through statute law revision. In report 16/52 we looked at what the University of Sydney Senate, with the connivance of the Government, tried to do to Dame Leonie Kramer. Sadly, by then the horse had bolted. We made a number of adverse remarks about the way that matter was handled. In report 18/52 we looked at the regulation that adopted the Australian Road Rules and the non-compliant regulatory impact process undertaken. That was a good example of the problem of national schemes legislation being looked at by the Working Group of Chairs and Deputy-Chairs.

Report 21/52, which dealt with the Boxing and Wrestling Control Regulation, followed another inquiry. It was perhaps the worst example the committee has seen of non-compliance with the Subordinate Legislation Act. It was clear that the Department of Sport and Recreation had treated the regulatory impact statement [RIS] process with complete contempt. The RIS considered only two options: the status quo or having no regulation whatever. On the surface perhaps the latter might work but the department did not even bother to ask the stakeholders, which was extraordinary. No attempt was made at consultation. To make matters worse, in relation to the same regulation, the committee had pointed out five years earlier that it had made this mistake.

In the next Parliament I hope the committee spends more time working on developing a scrutiny culture within the bureaucracy. Commencement of the Legislation Review Act will advance that objective. It is unacceptable that a government department can behave like the Department of Sport and Recreation has in relation to the boxing regulation. I thank the House for the opportunity to serve on the committee for the past four years. It seems arcane to some members but I believe we have made a worthwhile contribution on a diverse range of subjects.

### LUCAS HEIGHTS NUCLEAR REACTOR

**The Hon. IAN COHEN** [10.42 p.m.]: Recently I have been made aware that there are significant differences of opinion about the radiological consequences of a serious accident at Lucas Heights. What is most disturbing about those differing opinions is that they are held by the Australian Nuclear Science and Technology Organisation [ANSTO], which operates the facility, and the Australian Radiation Protection and Nuclear Safety Agency [ARPANSA], which has the job of regulating it. That in turn gives me a real sense that it is possible that we are not prepared for the worst. ANSTO's line—and this has largely determined our Government's current policy—is that there will be no off-site consequences under any of the more likely circumstances and, therefore, there is no need for off-site emergency procedures. I ask member to keep the phrase "more likely" in mind. We have not been given an ironclad guarantee that nothing will happen under any circumstances; things that will require all of us to take that facility seriously have simply been screened out.

Sabotage and accidents resulting from the fact that the facility backs onto a munitions range, large public roads and rail infrastructure, and its proximity to an international airport, have not been factored in. Sabotage has not been factored into safety analyses of the proposed new reactor. ARPANSA has stated that off-site consequences will be a feature of a major accident. Indeed, in 2001 ARPANSA's chief executive officer, John Loy, told a Senate estimates committee that the radiological consequences of a serious accident will be felt for up to 50 kilometres around the site. In March this year he repeated that claim to the *St George and Sutherland Shire Leader*. He has also required ANSTO to undertake an evaluation of the consequences of a direct hit from a commercial airliner. The results of that evaluation have not yet been made public.

At the same time as these things were revealed to me I had the opportunity to talk with a woman who has been intimately involved with the off-site emergency procedures that being developed in Sutherland. As a representative of Sutherland Shire Council, Genevieve Rankin has had the job of chairing the Sutherland Shire Local Emergency Management Committee. It was a revelation to me that up until recently the reactor has not even had a place in the disaster plan. Every other hazardous facility is listed, but no mention is made of reactors. That is a situation engineered by ANSTO so as not to panic the locals. Ms Rankin's work has been made much harder by the fact that this committee has been denied information that would help it make realistic and potentially life-saving decisions.

I refer particularly to the review by ANSTO of radiological consequences and the review by ARPANSA of radiological consequences following a major accident or a successful act of sabotage, including a strike by a large jet aircraft at the proposed second Sydney reactor. In the current context of terrorist threats, it is incredibly important that we meet our responsibilities to the people of New South Wales by ensuring that we are prepared for the worst consequences of a terrorist strike on any of our hazardous facilities. That the reactor is not part of our jurisdiction will hardly matter when there is an enormous cloud of radioactive iodine descending over Bankstown or the central business district. We may not be given any control over the reactor, but we are kidding ourselves if we think that that will be an acceptable excuse when a good portion of this city has been contaminated by iodine 131, strontium 90 and various other unstable isotopes. We need to be sure that whatever happens we are not unprepared.

As our State emergency services will be picking up the pieces, the State Government has a responsibility to ensure that those services have adequate training, policy and procedures to deal with such an emergency. We need to be certain that they will work adequately and effectively. At present we cannot even assure the community within 4.6 kilometres that that is the case. Contradictions abound even within the newly emerging planning for the Sutherland shire. At the moment locals are expected to collect potassium iodine tablets at a central point in Sutherland. They will need this stable iodine to counteract the most common aspect of a nuclear reactor accident, that is, exposure to radioactive iodine. However, that is plainly inconsistent with internationally recognised practice, which states that the first thing people should do in case of a nuclear accident is to shelter to minimise the exposure to radiation. Clearly, this does not make sense.

This cannot seriously represent a well thought out response to radiological risk. This bizarre situation has occurred because door-to-door delivery is impossible. We are talking about a population of about 41,000

just in that area. Are our emergency services willing and able to take on that task? We have no idea. What we do know—and I am indebted to Genevieve Rankin for this information—is that there has been no real-time testing of what procedures exist, and that in terms of willingness the most likely candidates for the task of distributing the stable iodine have said that they will not be entering a hot zone.

The Ambulance Service will not be willing to be irradiated to distribute potassium iodine, yet that is still being offered by New South Wales Health as a viable option. Will schools be adequately supplied with the necessary medicines and skills and the information to use them? That has not even been canvassed in an area that supports 17 schools in the near vicinity of the reactor. In the United States, the United Kingdom and even Ireland, where the proximity of certain areas to Sellafield makes that course seem advisable, populations near nuclear facilities have received emergency instructions and iodine tablets. That is because those measures are only effective if taken within an hour or two of the accident. After four hours the efficacy of the stable iodine goes down to 20 per cent.

The largest nuclear research reactor ever to be built in the Southern Hemisphere is now under construction in a city of more than four million people and with a 50-kilometre radius fall-out zone. I am certain that we lack adequate emergency procedures, and in an international context of terrorist threats that is serious. I call on the Premier to make clear his position on the reactor. The International Atomic Energy Agency says it is a legitimate terrorist target. Do we or do we not need the military to defend it? The Premier's office recently responded to a concern expressed about these issues with this remark, "As the subject you have raised primarily relates to areas of Commonwealth responsibility"—[*Time expired.*]

#### APPRENTICESHIP AND TRAINEESHIP EDUCATION INDUSTRY REFORMS

**The Hon. JAN BURNSWOODS** [10.47 p.m.]: Tonight I congratulate the Minister for Education and Training on a number of steps he announced a couple of weeks ago to weed out incompetent and shonky operators from the apprenticeship and traineeship education industry. Those changes are designed to improve the quality of training in employment areas that have boomed over the past five years. To give an example, traineeships in New South Wales have increased by a massive 343 per cent from 15,000 in 1997 to 52,402 last year. The changes will include compulsory quality audits of interstate trainers, who are a growing problem in New South Wales; strengthened minimum quality standards for all trainers; and restrictions on new trainers entering the market.

The concerns that have arisen are that in many cases the traineeships, which are incredibly important for our young people, are not delivering quality training and the resulting skill levels are low. The Federal Government's incentive payments to employers have produced an explosion in low-skill traineeships at the expense of higher skill training. The rapidly expanding market has also encouraged training organisations which are registered interstate, often under lower standards than ours, to flood into New South Wales, where the current rules enable them to operate with little restriction.

To give examples of some of the problems that have occurred recently in a minority of training organisations—but, nevertheless, an important minority—in the hospitality, information technology and retail industries, one organisation with 80 trainees could not produce any student assessment or attendance records when it was audited. The organisation tried to charge \$3,000 to train a person who reported that he had met members of the organisation only once, and that was for 15 minutes. Another organisation in the security industry and based in Queensland had 200 trainees and claimed payments for training and assessment when no training had occurred. One person the company claimed it had trained was in hospital at the relevant time.

A Sydney-based organisation in the retail and fast food industries had only four people complete training out of the 378 who had begun but later claimed continuing payment under the Federal Government's scheme for trainees who had dropped out months before. None of the 42 trainees with a training provider in the transport industry had completed their courses. When records of 12 of the trainees were audited there was no evidence that any training had been provided for 10 of the 12. One more example is a Victorian training provider in the cleaning industry who did not have any qualified trainers.

Some of the reforms that are to be introduced at the beginning of next year include inviting only those organisations with track records of delivering high-quality traineeship training to take part in the New South Wales apprenticeship and traineeship program. New trainers will be approved only when there is a market demand that cannot be met by existing providers. Requirements for trainers to meet minimum quality standards will be strengthened. Payment schedules for trainers will be amended to encourage higher completion levels,

and all interstate trainers will be required to undergo, and pay for, audits to demonstrate compliance with the Australian quality training framework of their operations in New South Wales.

This is an area that has been in need of reform for some considerable time. It is important, particularly as private trainers based in various parts of Australia have moved into the field and increasingly tried to complete on a sometimes not level playing field against the fantastic New South Wales TAFE system. The losers, of course, are our young people, who, in good faith, embarked on training to qualify themselves for jobs in particular industries. The comprehensive review planned by Minister John Watkins and the Department of Education and Training next year will assess how well the changes to be introduced in January are meeting the needs of the industry and the needs of trainees for high-quality training.

Part of the problem has been that Federal Government incentive payments made to employers have, in some cases, been used by less-than-reputable employers as a source of income and have not been passed on to the young people doing the training. The New South Wales Government is determined not to allow Commonwealth policies to put the long-established New South Wales training system at risk. We do not want incompetent and shonky training providers in New South Wales. I congratulate the Minister on a fine achievement, and I look forward to the reforms being put in place.

### **BROKEN HILL COMMON BOUNDARY CHANGES**

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [10.52 p.m.]: This evening I will detail the problems faced by a hard-working farming family near Broken Hill. I believe that these problems have resulted from bureaucratic bungling, and they are problems that can be easily resolved. In 1997 the Broken Hill City Council wrote to the Department of Local Government seeking a boundary extension to include the area commonly known as the Broken Hill Common. The usual processes ensued, and the Department of Local Government advised council that the proposal for boundary changes would be published in the *Government Gazette* of 28 November 1997 and also in the *Barrier Daily Truth* of 1 December 1997. The proposals were displayed, and public notification periods were advertised.

In September 1998, almost 10 months after the original public notification period, the altered boundaries were published in the *Government Gazette*. The proclaimed boundary change varied from that which was placed on public display, and that is where the problems began. Chuck and Gail Cresswell owned a property called "Gum Paddock", which is about 10 kilometres east of Broken Hill. Prior to the boundary change, the property was outside the common boundary of the city, and had been since the Broken Hill Common was gazetted in 1885. The original boundary change proposal did not include "Gum Paddock", so one could imagine the concern of the Cresswells and two other property owners to find that their properties had been brought within the boundary of the City of Broken Hill when the proclamation was made in September 1998.

Put simply, the expanded boundary change means that property owners who did not have to pay rates because their land was part of the unincorporated area suddenly found out that their properties were rateable. I am concerned that the Cresswells have been significantly disadvantaged by a mistake at some point in the process, most likely between the time the public notification period closed in 1997 and the time the boundary change was gazetted in September 1998. This problem can be fixed. It can be resolved, and a mistake can be rectified.

The Local Government Act is clear. The Minister for Local Government could initiate a proposal to make appropriate changes to rectify this mistake. That would avoid the need for the Cresswells to continue expensive and time-consuming legal action. That has not happened. I wonder why the Minister is failing to act. What advice is he receiving from his department? I note that the former mayor of Broken Hill, the current member for Murray-Darling, has stated that the original intent of the council in this case was to make land used by the Potosi mine rateable for the purposes of the Local Government Act. Furthermore, the member for Murray-Darling has requested the Minister to look at ways of mediating this situation. But to date the Minister has been sitting on his hands, and there has not been a satisfactory response.

The Minister for Local Government has ignored the request of one of his own Country Labor mates, so what hope do the Cresswells have? Recently I met with Chuck Cresswell when I was in Broken Hill, as did the Minister for Local Government and one of his advisers. The Cresswells were convinced that the Minister would help them. They met the Minister and they told me, "It is good what politicians can do. They are not as bad as people say. The Minister is going to help us. We are so happy." I am convinced that the Cresswells have been treated badly in this case. I call on the Minister to now make good his commitment that lifted the Cresswells'



spirits so much on that day in Broken Hill and examine ways of righting this clear wrong. At this time of extreme drought the last thing that Chuck and Gail Creswell need is the threat of potentially expensive legal action hanging over their heads. It is time for sensible action to prevail.

I have indicated to the office of the Minister for Local Government that there will be bipartisan support to resolve this problem and I now repeat that offer in this House. It is time for the problem to be resolved. The Minister can, and there is no reason why he should not, act immediately. After all, he gave his word to the Creswells on the steps of the Broken Hill Civic Centre when he lifted their spirits by promising that he would fix this appalling situation. Their hopes have now been dashed.

#### **AUSTRALIAN NAVY CADET UNIT TRAINING SHIP *SIRIUS***

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [10.57 p.m.]: A problem concerning the Australian Navy Cadet Unit's training ship, *Sirius*, has been drawn to my attention by Chris McEwan, who works in Building Services here in Parliament House. The cadet unit has had its headquarters at Cahill Park, Arncliffe, for 44 years, since 1956, and has provided a valuable service to generations of young people in the area by keeping children off the streets and turning them into mature adolescents. Chris is a former TS *Sirius* cadet. In May 2001 the buildings occupied by the unit were condemned because of asbestos contamination, and the unit was moved to temporary accommodation on the understanding that a new building would be provided on the existing site. According to an article in the *St George and Sutherland Shire Leader* of 28 November, in September this year the Rockdale City Council received a letter from the Navy requesting permission to use the site for a new cadet building to be constructed over the next two years. The article states that Rockdale City Council does not want the Australian Navy Cadet Unit to redevelop a new cadet unit on the existing site next door to the St George Rowing Club.

The article stated that the Rockdale City Council recommended that the request be denied and that the site be converted to parkland, leaving the cadet unit homeless. This will almost certainly mean the closure of the TS *Sirius* and the loss of a longstanding institution in the St George area. The funding for the new building was to be provided by the Royal Australian Navy, and that effectively meant that the building would be constructed at no cost to the council. All that was needed from the council was permission to use the existing site. People involved with TS *Sirius* have approached the Rockdale City Council with a request for the council to reconsider its position and save the unit. They have asked people to write to Rockdale City Council and express support for a building to be constructed on the current site. People are invited to fax material to 9809 2651 or make contact by email on [sostssirius@hotmail.com](mailto:sostssirius@hotmail.com).

This project is part of the Cooks Cove development, which is being undertaken by Trafalgar Properties. Rockdale City Council proposes to sell the site for \$10 million. The St George Golf Club has been removed because it owned only half of the land occupied by the golf course and leased the other half from the council. The council gave the golf club the option of either downsizing to a nine-hole golf course from its former 18-holes, or moving to another site. The golf club decided to move to another site, which is directly under the flight path to Sydney Airport. It will no doubt prove to be difficult to maintain. The Trafalgar Properties development is on land that was formerly public land and appears to be going ahead under the auspices of the Sydney Harbour Foreshores Development Authority. Because people associated with TS *Sirius* have been concerned over the allegations of corruption concerning Rockdale City Council and feel that their development application should be reviewed, the Democrats candidate for the area, Michelle Adair, has forwarded a request to the Independent Commission Against Corruption [ICAC] to examine the matter.

The ICAC said that as yet there was no evidence and it would therefore not look into the matter. That is serious given that Rockdale council had admitted corruption on smaller issues. The sale of such a large area of land should be looked at in a broader context. The whole incident shows that small groups conducting community-based activities that are good for local children become casualties when large amounts of public land are handed over to developers. The shortage of good land for public recreation in the St George area is acknowledged. The Cooks Cove development project should be the subject of further investigation. It appears that some elements of Rockdale council want to look at the contract again. Further investigation is needed to ensure that the public gets a good deal from the development. At the moment I certainly do not believe that it is getting a good deal. The people involved with TS *Sirius* are some of the casualties in the community from the development, which is not in the public interest. It should be thoroughly reviewed.

#### **EAST ASIAN FREE TRADE AGREEMENT**

**The Hon. PETER PRIMROSE** [11.02 p.m.]: Most members of this House would consider free trade and protectionism an ongoing issue. I refer members tonight not to a debate based upon ideology but to the amount of resources available through the Federal Parliamentary Library. Our library in the Parliament of New South Wales does an excellent job but voluminous information in a digestible form is available through the

Federal Parliamentary Library. Research Note No. 19 is headed "ASEAN Plus Three: Towards the World's Largest Free Trade Agreement". ASEAN Plus Three, or APT, is the dialogue process bringing together China, South Korea, Japan and the ASEAN organisation with the aim of greater regional economic co-operation. Its natural extension would be an east Asian free trade agreement. The research note outlines the various potential changes in gross domestic product across a range of countries.

*[Time for debate expired.]*

**Motion agreed to.**

**The House adjourned at 11.04 p.m.**

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