LEGISLATIVE COUNCIL

Thursday 26 June 2003

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

The President offered the Prayers.

PETITIONS

Stem Cell Research

Petition praying that the House support adult stem cell research and oppose the creation and use of embryos for stem cell extraction, received from **Reverend the Hon. Fred Nile**.

Freedom of Religion

Petitions praying that the House reject legislative proposals that would detract from the exercise of freedom of religion, and retain the existing exemptions applying to religious bodies in the Anti-Discrimination Act, received from **Reverend the Hon. Dr Gordon Moyes** and **Reverend the Hon. Fred Nile.**

Berowra Valley Regional Park

Petition praying that Berowra Valley Regional Park be reserved as a national park, received from **Mr Ian Cohen**.

BUSINESS OF THE HOUSE

Postponement of Business

Business of the House Notice of Motion No. 1 postponed on motion by the Hon. Greg Pearce.

Government Business Notice of Motion No. 1 postponed on motion by the Hon. Tony Kelly.

BUSINESS OF THE HOUSE

Suspension of Standing and Sessional Orders

Ms LEE RHIANNON [11.08 a.m.]: I move:

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 40 outside the Order of Precedence, relating to the take-note debate on the report of the review of the Office of the Inspector-General Department of Corrective Services dated May 2003, be called on forthwith.

Question—That the motion be agreed to—put.

The House divided.

Ayes, 16

Mr Breen	Mr Gay	Ms Rhiannon
Dr Chesterfield-Evans	Ms Hale	Mr Ryan
Mr Clarke	Mr Lynn	
Mr Cohen	Ms Parker	*Tellers,*
Ms Cusack	Mrs Pavey	Mrs Forsythe
Mr Gallacher	Mr Pearce	Mr Harwin

Noes, 20

Mr Burke	Mr Hatzistergos	Ms Tebbutt
Ms Burnswoods	Mr Jones	Mr Tingle
Mr Catanzariti	Mr Kelly	Mr Tsang
Mr Della Bosca	Reverend Dr Moyes	Dr Wong
Mr Egan	Reverend Nile	*Tellers,*
Ms Fazio	Mr Obeid	Mr Primrose
Ms Griffin	Ms Robertson	Mr West

Pairs

Mr Colless	Mr Costa
Miss Gardiner	Mr Macdonald

Question resolved in the negative.

Motion negatived.

HUMAN CLONING AND OTHER PROHIBITED PRACTICES BILL

RESEARCH INVOLVING HUMAN EMBRYOS (NEW SOUTH WALES) BILL

Second Reading

Debate resumed from 25 June.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister Assisting the Minister for Natural Resources (Lands)) [11.17 a.m.], in reply: I commend the bills to the House.

The PRESIDENT: Pursuant to the request of Reverend the Hon. Dr Gordon Moyes, I will put the questions on these bills seriatim.

Question—That the Human Cloning and Other Prohibited Practices Bill be now read a second time—put.

Motion agreed to.

Human Cloning and Other Prohibited Practices Bill read a second time.

Question—That the Research Involving Human Embryos (New South Wales) Bill be now read a second time—put.

The House divided.

Ayes, 29

Mr Breen	Mr Gay	Ms Rhiannon
Mr Burke	Ms Griffin	Ms Robertson
Ms Burnswoods	Ms Hale	Mr Ryan
Mr Catanzariti	Mr Hatzistergos	Ms Tebbutt
Mr Cohen	Mr Jones	Mr Tingle
Mr Costa	Mr Kelly	Mr Tsang
Ms Cusack	Mr Macdonald	Mr West
Mr Della Bosca	Ms Parker	*Tellers,*
Ms Fazio	Mrs Pavey	Mr Harwin
Mrs Forsythe	Mr Pearce	Mr Primrose

Noes, 6

Mr Clarke
Mr Lynn
Reverend Dr Moyes
Dr Wong
Tellers,
Mr Gallacher
Reverend Nile

Question resolved in the affirmative.

Motion agreed to.

Research Involving Human Embryos (New South Wales) Bill read a second time.

In Committee

The CHAIRMAN: Order! The Committee will deal first with the Human Cloning and Other Prohibited Practices Bill.

Clauses 1 to 3 agreed to.

Clause 4

Reverend the Hon. GORDON MOYES [10.29 a.m.]: There are three major problems with this legislation. To deal with the first problem, I move Christian Democratic Party amendment No. 1:

> No. 1 Page 2, clause 4. Insert after line 22:
>
> ***embryo*** means:
>
> (a) the cell formed by the fusion of an egg with a sperm and the organism that develops from that cell, or
>
> (b) a cell or organism, however formed, that has potential, if placed in a suitable environment, to develop in a similar way to the cell or organism described in paragraph (a).

We are seeking to insert this definition into the bill because the existing definition is inadequate. The definition of "human embryo" is circular. The definition in the Commonwealth legislation states:

> *human embryo* means a live embryo that has a human genome or an altered human genome and that has been developing for less than 8 weeks since the appearance of 2 pro-nuclei or the initiation of its development by other means.

That definition sounds reasonable. The problem—which obviously slipped past the attention of our Federal colleagues—is that the definition is circular. It states:

> *human embryo* means a live embryo …

You cannot define a term by using the same term. The legislation also does not offer a definition of an embryo that is formed by other means, which the legislation allows. There is a broad range of possibilities for experimenting with somatic cells and germ cells and their constituent parts. When could a court conclude, as a matter of law involving severe penalties, that what was formed was no longer just cells but an embryo initiated by other means? The definition offers no clarity as to what a human embryo essentially is or what conditions are required before one must conclude, as a matter of law, that an embryo has come into being. The existing definition creates legal uncertainty for scientists. More importantly, it will make unenforceable prohibitions in relation to human embryos initiated by other means, which are allowed under the Act, due to uncertainty as to whether experimentation resulted in the formation of an embryo. That would be contrary to the intention of the law. We need a definition of "embryo" to complement the existing definition of "human embryo". My amendment seeks to extend the existing definition.

The Hon. TONY BURKE [11.32 a.m.]: Every argument that has been advanced in support of this bill could also be offered in support of the amendment moved by Reverend the Hon. Dr Gordon Moyes. Regardless

of what people think about cloning, this amendment seeks simply to plug a loophole. The definitions in the Human Cloning and Other Prohibited Practices Bill presume that there is a commonly agreed definition of "embryo". The problem is that two ideas are starting to come through in the literature and the advocacy on this issue. Some people say that, regardless of their potential to grow to adulthood, organisms can be defined as being embryos only if they were created through the standard fertilisation process. Therefore, some would argue that an embryo created through a cloning process and not a fertilisation process is not in fact an embryo.

However, according to every argument offered in support of this bill, embryos created by both methods should be considered to be embryos. That is common ground throughout the debate. Instead of handing discretion in this regard to the courts, this amendment makes clear the Parliament's view that cloning an embryo involves the cloning of any organism that, no matter how it has been formed, has the capacity to develop to adulthood. This is a sensible amendment that does nothing more than affirm the views expressed by members on all sides of the debate regarding the clear intention of Parliament.

The Hon. Dr PETER WONG [11.34 a.m.]: I support the Christian Democratic Party amendment and I agree totally with the argument advanced by Reverend the Hon. Dr Gordon Moyes. This amendment raises no ethical or moral issues; it simply offers a scientific definition. We must determine what constitutes an embryo as science can now clone embryos—they are no longer produced only through fertilisation. An adequate definition is required in the legislation and I think the amendment proposes a better definition than exists at present. I urge the Committee to support this amendment.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister Assisting the Minister for Natural Resources (Lands)) [11.34 a.m.]: The Government does not support Christian Democratic Amendment No. 1. I am advised that it is unnecessary as it adds nothing to the current definition of "human embryo" in the Human Cloning and Other Prohibited Practices Bill. A human embryo created by any means that still contained a human genome would be covered by the bill's definition of "human embryo"—which is wider than the definition proposed in the amendment.

The research and cloning laws outlined in the bill are part of a nationally consistent scheme that regulates the use of human embryos and prohibits human cloning and other practices. Inserting this additional definition in the New South Wales bill would create uncertainty for those covered by the Commonwealth legislation and those covered by the State legislation. At worst, this confusion might cause the biotechnology industry in New South Wales to operate at a disadvantage to industries in other States. It is important to point out that this amendment will have effect only in respect of those performing research covered by State law. The Commonwealth law will continue to apply to corporations and others.

I am advised that the definition of "human embryo" was the subject of broad consultation and debate when developing the Federal Government's Prohibition of Human Cloning Act 2002 and Research Involving Human Embryos Act 2002. This consultation included the State and Territory governments, which agreed to the terms in the legislation that was ultimately tabled in Federal Parliament, and key stakeholders in the embryo research debates, including researchers, in-vitro fertilisation services and community leaders. I am also advised that various definitions of "embryo" were proposed by commentators, including the Catholic Archdiocese of Melbourne, whose proposed definition was similar to that which appears in the amendment. However, extensive consultation, a parliamentary inquiry and parliamentary debate regarding the Federal legislation led to the conclusion that the existing definitions of "human embryo" are appropriate and that to introduce further definitions is likely to confuse rather than clarify the meaning of that term.

The Hon. ROBYN PARKER [11.37 a.m.]: I do not support Christian Democratic Party amendment No. 1. I agree with the Minister for Rural Affairs that the purpose of the Human Cloning and Other Prohibited Practices Bill is largely to ensure that all States follow the standards introduced by the Federal Government. If we tamper with definitions we will begin to unravel those standards and cause confusion. I am aware of the current definition and from where it was derived. However, I am not aware of the origins of the definition in the amendment or whether it is supported by the scientific community. Therefore, on the grounds of consistency and of maintaining clarity, I do not support the amendment.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.38 a.m.]: I am sorry that I missed my opportunity to speak this morning during the second reading stage of these bills. Some people have asked why I abstained from voting in the division on the second reading of the bills and I would have liked to clarify my decision. The Human Cloning and Other Prohibited Practices Bill has two functions: first, it introduces a uniform standard that is consistent with the Federal standard; and, secondly, it determines what science will be allowed to do in this area.

If this amendment is passed it will cause New South Wales to deviate from the Federal standard. That is generally an unwise course to take but in this case I believe the bill is so silly—it is a product of compromise by people who do not understand science—that it will be remembered alongside the locomotive legislation, which stated that cars could be driven only when someone walked in front of them waving a red flag. This is an anti-science bill. It is almost like asking Copernicus to recant. The bill is an unfortunate compromise of a number of theological positions in relation to science, where the theological people do not understand the science at all. It is extraordinary that those people should be legislating in an area in which they do not have a clue.

The Hon. Duncan Gay: Point of order: I ask you to draw the Hon. Dr Arthur Chesterfield-Evans back to the amendment. I am sure that his dissertation would have been welcomed at the second reading stage, but many of us want to listen to discussion on this serious amendment before we make up our minds. Given the background of the Hon. Dr Arthur Chesterfield-Evans, he could make an interesting contribution to the amendment. However, he is not addressing the amendment.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: To the point of order: I was talking about the importance of having a uniform Federal standard. This amendment deviates from the national standard and creates an inconsistency in New South Wales, which I was addressing.

The CHAIRMAN: Order! The comments of the Hon. Dr Arthur Chesterfield-Evans are similar to those made by other members earlier in the debate that were relevant to the amendment before the Committee. The member may continue but should remain relevant to the amendment.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Given that the Federal standard is a highly flawed compromise that will go the way of the red-flag legislation, if we are consistent it will only make minor inconveniences. I abstained from voting at the second reading stage because this is red-flag legislation and it tells Copernicus to recant. We are telling science what to do. Paragraph (b) of the amendment states:

> (b) a cell or organism, however formed, that has potential, if placed in a suitable environment, to develop in a similar way to the cell or organism described in paragraph (a).

Effectively, that says that whatever is done in science is governed by this legislation. I use the analogy of a financial transaction. If someone transfers money across the world it is not crime. However, if it is part of an elaborate scheme to defraud, by way of a complicated chain of money laundering, it is tax evasion. An individual action by a scientist should not be judged, but it should be judged in its context. That is the intelligent way to deal with the issue of human cloning and morality where science and morality come into contact. That is why the bill is silly and why this highly prescriptive amendment makes it even sillier. I do not support the amendment because it will not make any difference.

The Hon. PATRICIA FORSYTHE [11.43 a.m.]: The Hon. Dr Arthur Chesterfield-Evans is right: We are trying to give scientists a message and to give direction. That is an appropriate role for Parliament. I do not want to get bogged down by the illogical statements in his argument. This is an enormously complex issue. As I said last night, we are dealing with a significant ethical issue. We have to draw conclusions. We have a free vote with respect to these bills. I am concerned about the points made in the briefing paper provided by Reverend the Hon. Fred Nile in relation to amendments Nos 2 and 3. There have been new discoveries in relation to stem cells since the Commonwealth legislation was passed. Therefore, we are asked to give consideration to the fact that that legislation may now be inadequate. I refer honourable members to the second dot point on page 2 of the briefing paper.

The Hon. Duncan Gay: We are dealing with amendment No. 1.

The Hon. PATRICIA FORSYTHE: I will return to that matter when the Committee is dealing with the amendments seriatim.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.45 a.m.]: I object to the cheap shot taken by the Hon. Patricia Forsythe, who said that I am not concerned about morality. That is not the case at all. I made the point that a financial dealing may not be illegal but, in the context of a number of other dealings, it becomes a tax evasion scheme. Transferring money is not banned just because it may be used in a tax evasion scheme. By the same token, this Parliament should not be debating scientific minutia to try to stop the cloning of humans. Obviously, we do not want human clones in a *Brave New World* sense with people making armies in test tubes. We will not prohibit that by simply interfering in scientific minutia. My point was that we should take a moral position on the overall aspect of science.

Reverend the Hon. Dr GORDON MOYES [11.46 a.m.]: Honourable members, particularly the Minister, have not addressed the major issue—namely, that the definition of "human embryo" is circular. That point still stands and that is why I believe the amendment needs to be agreed to. Most honourable members have said that we must be concerned with conformity with the Commonwealth Act. However, if the Commonwealth Act is insufficient on scientific grounds we are not stopped from adding to it. We would provide a lead for other States and for the Commonwealth. It is another issue if we do not want to be in the lead. However, in an effort to be correct, this amendment is important. I appreciate the comments of the Hon. Dr Arthur Chesterfield-Evans, whom I will consult in the future if I need information on the red-flag legislation or the laundering of money. The main theme of telling science what it can do is precisely the point because scientists, paid by commercial firms, take out proprietary issues on discoveries. We have recommended a scientific argument, which does not deny the rest of the definition but adds to it to make sure that a loophole is covered. I commend the amendment to the Committee.

The Hon. Dr PETER WONG [11.48 a.m.]: In relation to the comments of the Hon. Dr Arthur Chesterfield-Evans, I am sure that this definition has been drafted by scientists. It is a purely scientific definition of what an embryo is, maybe now, in 10 years' time or even before. The amendment states:

> (b) a cell or organism, however formed, that has potential, if placed in a suitable environment, to develop in a similar way to the cell or organism described in paragraph (a)

That is exactly how a scientist would describe an embryo. It is really a scientist telling us how to define an embryo, not the other way around.

Amendment negatived.

Clause 4 agreed to.

Clauses 5 to 18 agreed to.

New clause 19

Reverend the Hon. Dr GORDON MOYES [11.50 a.m.], by leave: I move Christian Democratic Party amendments Nos 2 to 4 in globo:

No. 2 Page 8. Insert after line 5:

19 Offence—creating a human egg or a human sperm outside the body of a human

A person commits an offence if the person intentionally creates a human egg or a human sperm outside the body of a human.

Maximum penalty: Imprisonment for 10 years.

No. 3 Page 8. Insert after line 5:

19 Offence—distributing stem cells for reproductive purposes

A person commits an offence if the person disposes of a stem cell created from a human embryo knowing or having reasonable grounds to suspect that the stem cell will be used for reproductive purposes.

Maximum penalty: Imprisonment for 10 years.

No. 4 Page 8. Insert after line 5:

19 Offence—destroying a human embryo

A person commits an offence if the person intentionally destroys a human embryo that:

(a) has been created outside the body of a woman, and

(b) has not been used to attempt to achieve pregnancy in a particular woman, knowing that it is such an embryo.

Maximum penalty: Imprisonment for 10 years.

I move amendments Nos 2, 3 and 4 in globo on the understanding, having taken advice, that the question on amendment No. 4 will be put separately. I want to speak on amendment No. 4 quite separately. Amendments Nos 2 and 3 relate to offences. The first creates an offence of creating a human egg or a human sperm outside

the body of a human. The second creates an offence of distributing stem cells for reproductive purposes. I have moved these amendments because new developments have occurred since the Commonwealth Act was passed. The problem arises from the discovery that stem cells can be used reproductively. The absence in the Commonwealth legislation of regulation regarding embryonic stem cells means that couples cannot prevent their embryonic stem cells being used to produce offspring. I specifically indicate, as I have in briefing notes, that since the Commonwealth Acts were passed last December there has been a major scientific breakthrough on this matter.

The Germline Development Group of the School of Veterinary Medicine at the University of Pennsylvania has discovered that embryonic stem cells can be cultured to produce eggs. That was not known before December. That discovery has been published in a major peer-reviewed scientific journal. The publication details I have already given. At the time that the Commonwealth legislation was passed it was assumed that cultured embryonic stem cells are generally considered pluripotent—that is, having the ability to develop many different causes—rather than totipotent, in the sense that all cells of the human body can develop from them. It was thought impossible to create germ cells, sperm or eggs, from human embryonic stem cells. Thus it was thought that embryonic stem cells had no reproductive use. But the discovery since the Commonwealth legislation changes all of that.

The problem now is that it is clear that embryonic stem cells can be used reproductively by generating ova that might then be fertilised by sperm in an in-vitro fertilisation procedure. The legislation does not restrict the use of stem cells, which under the legislation can be sold or exported to jurisdictions that might allow them to be used reproductively. I understand that there has been in the history of this country stem cells sold to China and to other places before that was outlawed. Under the legislation, the couples consent to the use of their embryos for research, but they have no say over embryonic stem cells derived from those embryos once they have been donated. The embryonic stem cells are de-identified and may be imported, exported, bought or sold. The couples are not informed about the use of the stem cells once they are separated from the embryos, and they lose all connection with them.

One would imagine that the couples would be concerned that children could be produced, without their knowledge, using eggs developed from their embryos via the embryonic stem cells. To know that they might have a child somewhere in the hands of strangers could be upsetting to many. It is significant that very few women are willing to donate eggs to others for that very reason. There is a need to amend the legislation so that at least there is control of end use, to prevent the embryonic stem cells being sold or distributed to those who might develop eggs from them for use in reproductive procedures. I might also say there could be possible uses in other forms in countries that do not have the same kind of legislation that we have. There is a strong pressure on the supply of eggs. Human eggs are hard to obtain, as they normally can be obtained only from a woman surgically. The discoveries that I have mentioned mean that there may be unlimited supplies of human eggs available for reproductive purposes from embryonic stem cells. The legislation places no restrictions on the use of eggs generated in this fashion. Amendments 2 and 3 would cover those offences. This new possibility needs to be considered before the Committee votes on the legislation.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.56 a.m.]: It is interesting that the Christian Democratic Party has information on new scientific advances made since the Federal legislation was passed. That really highlights my point: if we cannot pass laws that are up to the moment scientifically, we need to put in place a general framework—as would happen with respect to tax—not to ban each individual scientific act or procedure, but to identify that the overall pattern is important. In this case, if it is accepted that the science actually works and human eggs can be produced from embryonic stem cells, that is the nightmare of the cloned human, where there is an endless supply outside the body of potential human embryos, I presume potentially coming from the one source. If so, one could decant—as I think is said in *Brave New World*—large numbers of people who are all the same, though with at least one common parent, the mother in this case. Clearly, it is undesirable that that source should be but one person.

Sydney's Child is an excellent free magazine that is available in all child care centres and has advice on how to bring up children, and where to take them for their birthday parties and so on. Each month it has at least half an A2 page of people desperately seeking eggs, with their potted biographies as to why they are worthy acceptors of eggs. These people are searching for an egg in order to have a child. The amendment effectively says it is an absolute no-no to manufacture an egg and give it to somebody. In each month's edition of *Sydney's Child* is one little advertisement that says, "We may be able to have eggs for you. There are other possibilities you may not have considered. Please give us a call." The question is: Is that somebody from overseas who is harvesting eggs from a number of women from a poorer country? Is it a place where one can buy and sell eggs? Is it another jurisdiction that can get around this type of legislation?

Many awful things are happening with intercountry adoption, and the buying and selling of children. If we impose a blanket ban, as suggested by the amendment, we should discuss seriously the options for childless couples: how it would affect them and what is happening to the buying and selling of these embryos, or children whose mothers sell them because they are poor. These options should be discussed humanely rather than imposing a blanket ban on technology that may be used for purposes other than producing cloned humans.

Pursuant to sessional orders progress reported from Committee and leave granted to sit again.

QUESTIONS WITHOUT NOTICE

MILLENNIUM TRAINS

The Hon. MICHAEL GALLACHER: My question without notice is directed to the Minister for Transport Services. Will he explain to the House why State Rail has continued to accept delivery of Millennium train sets, the most recent on 6 and 19 June, despite ongoing technical problems? When does he expect the latest trains, tagged M13 and M14, to enter revenue service? Will he assure the travelling public that these trains and others that have been delivered but are yet to enter revenue service will not require extensive work before they reach acceptable levels of reliability?

The Hon. MICHAEL COSTA: Clearly, the Opposition is running out of questions. This question relates not only to matters that I have already made public statements about but also matters that I have already commented on in the House.

The Hon. Michael Gallacher: Well, do it again.

The Hon. Don Harwin: Obviously, you have not answered it sufficiently.

The Hon. MICHAEL COSTA: Obviously not to the honourable member's comprehension, and that is a different matter altogether. I advised the House that a week or so ago I had discussions with the manufacturers of the Millennium trains about a number of problems. Those discussions did not relate to the problems that were the basis of the withdrawal from service earlier in the year. Those problems relate primarily to overseas-sourced components involved in the auxiliary power system, the control system and other related matters. As a result of those discussions it was decided to increase the testing regime. I am awaiting a report from the independent consultant from Victoria—a technician on trains—to ensure that the inconvenience to the public is minimised or eliminated, if that is possible. The State Rail Authority is obliged, under contract, to accept Millennium trains. As I have stated previously, I put the company on notice about the problems—

The Hon. Michael Gallacher: You shouldn't have accepted them if they weren't complete.

The Hon. MICHAEL COSTA: The honourable member is making the allegation that they are not complete.

The Hon. Michael Gallacher: But you're the one saying that there are problems with them.

The Hon. MICHAEL COSTA: No, I am saying that there are teething problems. There is a difference in the wording. English may be my second language, but I can tell the difference between "complete" and "problems". I suggest that the honourable member look in the dictionary.

The Hon. Michael Gallacher: Because the public is more interested in problems than they are in the trains being complete.

The Hon. MICHAEL COSTA: If the honourable member were to use the word "problems" rather than word "complete" he would probably get an answer directed to his question.

The Hon. Michael Gallacher: So you are accepting trains with problems?

The Hon. MICHAEL COSTA: We are certainly accepting trains at the moment. The testing regime has to be undertaken, and that has been increased from approximately 50 kilometres to 400 kilometres.

The Hon. Michael Gallacher: Wow! Instead of from here to Hornsby it is from here to Newcastle.

The Hon. MICHAEL COSTA: I have been advised that the testing regime is the standard testing regime under which other trains have been accepted, even under the Coalition Government. The honourable member should not make comments about matters of which he has no knowledge.

The Hon. Michael Gallacher: But we didn't accept lemons.

The Hon. MICHAEL COSTA: The Coalition Government brought out the tilt train and took it all over the State before the election.

The Hon. Michael Gallacher: We didn't accept lemons. We got paid for it. You're paying for lemons.

The Hon. MICHAEL COSTA: The Coalition Government paid for the tilt train. It took them all over the State for election purposes. It had barbecues and all other sorts of paraphernalia, pretending to the public of New South Wales that it would provide a service. But the Coalition Government was caught out because it had no intention of providing those services. This Government takes great pride in the fact that it provides new rolling stock because the Coalition Government provides phantoms.

The Hon. Michael Gallacher: It's not rolling, that's the problem. It is stationery.

The Hon. MICHAEL COSTA: The Coalition Government brought out trains that it had no intention of using and paraded them around the country to pretend that it was interested in railways. I know that members opposite are not interested in railways and they have never been interested in railways. The budgets during the period of the last Coalition Government showed massive reductions in funding to State Rail. The Coalition is not interested in public transport or what the travelling public requires. The Coalition is interested only in grandstanding and, unfortunately, trying to fill question time with badly researched questions.

The Hon. Michael Gallacher: That was a very good answer for what I wanted.

The Hon. MICHAEL COSTA: No, it was a very bad answer.

The Hon. Michael Gallacher: You buy lemons. The public chequebook has no bounds when it comes to Michael Costa. Just keep writing cheques. Would you buy a brand-new car from this man?

The PRESIDENT: Order! I call the Leader of the Opposition to order.

The Hon. MICHAEL COSTA: I have just received some interesting information about the Tangaras that were put into operation during the period of the last Coalition Government. The trains had 205 faults that had to be rectified. Those opposite should not come in here, grandstand and pretend that there are not teething problems with new technology, because there are. The former Coalition Government experienced it and we are experiencing it, but we are seeking to deal with them. The Opposition is exposed because it really is not interested in providing better rail services. I have already challenged the Leader of the Opposition to provide a submission to the Parry inquiry, but he has not done that.

NEW SOUTH WALES FIRE BRIGADES COMMISSIONER APPOINTMENT

The Hon. AMANDA FAZIO: My question is addressed to the Minister for Emergency Services. What is the latest information on the appointment of a new Commissioner for the New South Wales Fire Brigades?

The Hon. TONY KELLY: Recently, I announced that Greg Mullins would be the new Commissioner of the New South Wales Fire Brigades. When I was at the City of Sydney fire station to announce Greg's appointment, I was able to witness first hand the pride the firefighters have in one of their own being selected for the top job. It is clear to anyone who talks with Greg that firefighting is in his blood. His dad is still a volunteer firefighter with 47 years of service with the Rural Fire Service and Greg was a bushfire brigade volunteer for six years before making the transition to becoming a career firefighter. Greg brings to the role of commissioner vast operational and managerial experience. He has a masters degree in management. He is an expert in emergency management, having studied extensively in Europe, the United Kingdom and Canada, and at the United States Fire Academy. He has been instrumental in forming stronger working partnerships with

other agencies and in developing the brigades' response capability in areas such as rescue, bushfire, natural hazard response and, more recently, counterterrorism response.

Greg is the first in-house Fire Commissioner in 119 years. He has big boots to fill. His predecessor, Ian MacDougall, has steered the Fire Brigades through some major changes. During his nine years as commissioner he oversaw the massive refurbishment program undertaken by the Government, upgrading 80 fire stations and building 22 new ones. These included the jewel in the crown of the Fire Brigades, No. 1 fire station in Castlereagh Street. He put full-time firefighters in the country and, more important, he oversaw the Fire Brigades' increased role in counterterrorism. Thanks to Ian the families of New South Wales have a world-class fire service. It is the largest urban fire service in Australia and the seventh largest in the world. It boasts 337 fire stations; 3,226 permanent firefighters; and 3,248 part-time, on-call, or retained, firefighters.

I know that the previous Minister for Emergency Services has the highest regard for Ian, as do I and as do all members of this House. I wish Ian every success in his next endeavour. I thank him for his service to this Government and to the people of New South Wales. He has left a fine organisation that Greg will lead into the future. I wish Greg the best of luck and congratulate him on his appointment.

RURAL ASSISTANCE AUTHORITY LOAN APPLICATIONS

The Hon. DUNCAN GAY: My question is directed to the Minister for Agriculture and Fisheries. Will he explain why, despite telling the House on two occasions including yesterday, that he would do his best to address specific problems with Rural Assistance Authority loan applications, he has so far failed to respond to me about representations I made to him at the end of April on behalf of a farmer who has been waiting since December for the authority to respond to his application? What is the point of my bringing any more specific examples to his attention when he has not responded to representations that already have been made?

The Hon. IAN MACDONALD: Yesterday the Hon. Rick Colless asked me a question about special conservation loans, and I took some time to answer parts of his question. I think the problem that the Deputy Leader of the Opposition has with this program is that he does not understand fully how the program works. It is not the same program as some of the other drought programs that can be turned over fairly quickly. There have been 437 conservation scheme loan approvals since 1 July 2002 to a value of in excess of $17.36 million. That is on top of approvals valued at $14.2 million for 347 approvals in the previous three years. As I have said, I am unable to comment on the budget, except to say that it makes provision for an extensive increase for the scheme over the next few months.

I remember that representations were made. I am not sure that it was referred by way of a particular example, or name. The Hon. Rick Colless raised issues with me in relation to the Rural Assistance Authority and I have attended to those matters, which were of a rather sensitive nature. The matters were looked into and his representation was detailed. I cannot recall the specific details of the representations made by the Deputy Leader of the Opposition, but I will quickly check it. If there is an actual case before my department, we will quickly look into it and provide a reply to the honourable member.

REGIONAL OBSTETRIC SERVICES

The Hon. Dr PETER WONG: My question without notice is directed to the Special Minister of State, representing the Minister for Health. I direct his attention to today's *Sydney Morning Herald* editorial, headed "No Doctor in the House", which reports on the shortage of regional obstetric services and rising indemnity costs that are deterring general practitioners and specialists who provide regional obstetric care. While I welcome the greater involvement of midwives, the prospect of many childbirths occurring in the absence of immediate specialist supervision is worrying. Will the Government revisit the medical indemnity issue to limit the risk to mothers and babies in regional areas? Will the Government also consider further incentives and complete indemnity cover to attract and retain general practitioners and obstetricians to provide obstetric care in regional hospitals?

The Hon. JOHN DELLA BOSCA:. Although the honourable member has directed the question to me in my capacity as the Minister representing the Minister for Health, there are obviously overlapping implications with the Treasurer's portfolio regarding medical indemnity insurance in the public health system. I can indicate to the honourable member that I will take the question on notice and ascertain from my colleague an appropriate answer.

PRISONER ESCAPE RATE

The Hon. PETER PRIMROSE: My question is directed to the Minister for Justice. Will the Minister provide information on the escape rate of prisoners for this financial year?

The Hon. JOHN HATZISTERGOS: When the Coalition came to government in 1988, it inherited an escape rate of approximately 1.7 per 100 inmates in a prisoner population that was about half of what it is now. Over a period of eight years in office, the Coalition managed to get the rate up to 2.7 inmates per 100 in a smaller prisoner population than exists currently. Now there is a prisoner population of 8,100, and I am able to advise the House that the escape rate for this financial year is 0.4 per 100.

The Hon. John Ryan: That is because you have put more people in gaol.

The Hon. JOHN HATZISTERGOS: The rate is based on per head of prisoner population. I am able to advise the House that no-one, except from minimum security units, has managed to escape this financial year. That represents a big difference from the Coalition's record when rapists, child molesters and murderers went through the revolving door—people such as Raymond Denning and Shane McManus, Anthony O'Sullivan, Mr Bargashoun and Mr Saxon—managed to make their escape. Do members opposite remember them? The list goes on and on. They escaped from maximum security facilities.

The policy response from the Opposition has already begun. Of course, during the recent election campaign, we criticised them for not having policies, but the Opposition's policy formulation has already started. The Opposition spokesman on Justice—what is his name—Mr Humpherson said on radio last week that if the Coalition is elected, there will be no escapes because the Coalition will put everyone up to medium security and increase the facilities in minimum security units up to medium. The Leader of the National Party interjected and said, "Yep, yep, yep", but what he did not tell the people is that three country gaols would have to be closed. As if it is not bad enough that the Coalition closed 40 courthouses, they are after the three country gaols in Ivanhoe, Brewarrina and Oberon. Those would go and a number of others would be under threat.

The Hon. John Ryan: Point of order: The Minister was asked a question specifically about the escape rate in New South Wales gaols. He appears to be now discussing Opposition policy for country gaols and just about any other issue other than the escape rate.

The PRESIDENT: Order! The Minister is reminded that an answer should be relevant to the question asked.

The Hon. John HATZISTERGOS: It is relevant. It is how we are going to improve.

The PRESIDENT:. However, some generality is always allowed to a Minister in answering a question.

The Hon. JOHN HATZISTERGOS: The cost of all this is $247 million. The meter has started to run already. That is what it would cost—$247 million—and 150 jobs in country towns would go. They would disappear.

The Hon. John Ryan: Is this a hypothetical?

The Hon. JOHN HATZISTERGOS: Very hypothetical. The honourable member is dead right about that because the Coalition is never likely to implement it. It was the Opposition spokesman who was talking about it. A short time ago the Hon. John Ryan interjected. Honourable members will recall that this is the gentleman who came into this Chamber yesterday and asked me a question about a breach of security in the high risk management unit at Goulburn. I told him after that that if he wants to discuss the issue, I am prepared to do so. I am prepared to discuss it with him but I do not believe that security and intelligence information should be revealed in the House. What he did not do was come to me and ask. [*Time expired.*]

The Hon. PETER PRIMROSE: I ask a supplementary question. Will the Minister elucidate his answer?

The Hon. JOHN HATZISTERGOS: The Hon. John Ryan did not ask. He made out at a press conference that Ivan Milat was about to be released. It is a shocking revelation to the Opposition that there are

doors in the high risk management unit and that from time to time they are actually opened. If the Hon. John Ryan wants to know about the door in question, I am able to advise that it is a door that leads from the inner chamber to the outer chamber of the cell, which provides such luxuries as a radio and a kettle for coffee making. These are luxuries that I am prepared to extend to the honourable member. If he wants to, he can have a cell, right next to Ivan Milat, Baker and Van Krevel, the satanist, who is there too and I am sure would relish the opportunity of exchanging views on prison reform and rehabilitation with the Hon. John Ryan.

CONTAINER TRAINS INFRASTRUCTURE

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: My question without notice is directed to the Minister for Transport Services. Does the Government have any plans to increase the height of the loading gauge on the rail network by lifting the clearance of bridges, tunnels and overhead wires to enable the double stacking of container trains? If so, on what routes, and when?

The Hon. MICHAEL COSTA: I do not know precisely what the honourable member is seeking.

The Hon. Duncan Gay: Don't you know about double stacking?

The Hon. MICHAEL COSTA: I certainly know about double stacking, but I do not know precisely what the Hon. Dr Arthur Chesterfield-Evans is seeking, or to what bridges he refers. If the honourable member is concerned about any specific bridge, he could inform me of that. The Government is investigating improvements to the freight haulage arrangements and has discussed that with the Australian Rail Track Corporation [ARTC], as I have already advised the House. It is premature to make any announcement pending finalisation of those discussions. Ultimately the ARTC would have that responsibility if the Government were to be involved with the Federal Government on the transfer.

The Hon. Duncan Gay: That is why you are not fixing it.

The Hon. MICHAEL COSTA: No, that is not the reason. If the honourable member has any specific concern about specific bridges or infrastructure I am happy to take that on board. In reply to his general question, that matter will be subject to the discussions that the Government has with ARTC concerning what infrastructure is required to meet our national freight task.

SILVERWATER CORRECTIONAL CENTRE TRANSSEXUAL OFFICER

The Hon. JOHN RYAN: My question without notice is addressed to the Minister for Justice. Are female Department of Corrective Services officers at Silverwater gaol objecting to being forced to share changing rooms with a male officer who identifies himself as a transvestite? Has that officer published images of himself in revealing women's underwear and lingerie on the Internet? I do not know whether the underwear was from Victoria's Secret, or Triumph; it is amazing what one can do in scallop-like suspenders. What action will the Minister take to protect the reasonable sensitivities of the women officers who have to share change rooms with that exhibitionist?

The Hon. JOHN HATZISTERGOS: The Hon. John Ryan has asked me a series of questions in the House, but so far the facts contained in every one of them have been wrong. I have not been able to find a single question that was factual. One of the first questions that he asked me was about a prisoner who was denied psychiatric treatment at Emu Plains. The chief executive officer of Corrections Health said that that question was based on a furphy. The Hon. John Ryan then asked a question about Wagga Wagga court cells. He wrote me a letter in which he conceded that the information he had revealed to this Chamber was incorrect. He made a number of other accusations which, incidentally, are not covered by parliamentary privilege, and which lack rigour.

Yesterday he and the shadow spokesman, who is present in the gallery, said that Ivan Milat was about to be freed. He said that Milat could get out of the high-risk management unit, enter another part of the maximum-security gaol, and get free, because a couple of doors were open between an inner chamber and an outer chamber of the cells for 15 minutes longer than they should have been.

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

The Hon. JOHN HATZISTERGOS: It gets worse. The Hon. John Ryan is a serial complainant at the ICAC and has made all sorts of accusations there.

The Hon. Don Harwin: Point of order: According to sessional orders the Minister is required to give an answer that is relevant to the question. The question was specifically about a correctional officer at Silverwater and the Minister is nowhere near close to answering that.

The PRESIDENT: Order! I ask the Minister to return to the subject of the question.

The Hon. JOHN HATZISTERGOS: It is very important that people understand the accuracy implicit in the questions put to me. As I indicated, the Hon. John Ryan managed to get this Parliament to refer a matter to the ICAC. A few days ago we got a report back. In relation to all the allegations by the Hon. John Ryan, the report stated, "No evidence", "No evidence', "No evidence" and "No evidence"—four times the words "No evidence" appeared in that report.

The Hon. Don Harwin: Point of order: If the Minister is going to persist in that fashion, he should be reminded that the standing orders require him to do so by way of substantive motion. Question time is not the avenue for that sort of allegation.

The PRESIDENT: Order! I have asked the Minister to be relevant to the question. Has the Minister finished?

The Hon. JOHN HATZISTERGOS: No. I refuse to accept the validity of anything that the Hon. John Ryan puts to me in a question. I refuse to accept the factual accuracy of anything until I investigate it and ascertain an answer.

The Hon. John Ryan: Point of order: The Minister had the opportunity to make the most of those comments in a substantive debate today, which he wimped out of. The Government voted against that motion, would not go ahead with it. The Minister should not be allowed to use question time to make points he should have made during that debate.

The Hon. JOHN HATZISTERGOS: To the point of order: The honourable member is referring to a proposal by Ms Lee Rhiannon to debate the report of the inspector-general.

The Hon. John Ryan: Let's have the debate we should have had this morning.

The Hon. JOHN HATZISTERGOS: We have actually had a debate about that.

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

The Hon. JOHN HATZISTERGOS: The inspector-general is the person whom the Hon. John Ryan now embraces and supports, the same inspector-general— [*Time expired*.]

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

DRUG ACTION WEEK

The Hon. IAN WEST: My question without notice is directed to the Special Minister of State. Will the Minister inform the House of the efforts families and communities are taking to tackle drug abuse?

The Hon. JOHN DELLA BOSCA: Drug Action Week allows communities and families across New South Wales to demonstrate their activities and their initiatives on drug issues. As part of this year's Drug Action Week, 26 projects have been funded to provide drug education and information to local communities. Those grants are funding locally driven projects such as community forums, information days and the development of local information resources. A range of community members, including school students, teachers, parents and local business, support the projects. Drug Action Week is a national initiative organised by the Alcohol and Other Drugs Council of Australia. It raises awareness of the problems associated with drug abuse and identifies ways to better address drug problems.

Each day of Drug Action Week has a different theme, with the week finishing on Saturday with the theme "Families and Communities". Families play an important role in the prevention of alcohol and other drug problems and can also be vital in supporting people through treatment. Although governments can help to reduce the problem of drug use, family and community input and support is the first crucial step in making a

breakthrough. Access to information is essential for helping to educate and support families and communities in coping with drug issues. This Government developed the Community Drug Information Initiative in response to the 1999 Drug Summit.

The initiative provides a wide range of resources to make accessing drug information easier for young people, families and communities. The initiative comprises "Family Matters", an easy-to-use guide to help parents answer questions about drugs and suggests ways to deal with difficult situations; a community drug education program, including a range of resources tailored for multicultural communities; the Drug Information at Your Local Library Project [DI@YLL], that provides communities with greater access to a range of drug-related information through local libraries across New South Wales. The Drug Information at Your Local Library project has been extremely successful, providing quality drug information to local communities in a friendly setting. This week, there are DI@YLL functions in Tamworth, Armidale, Glen Innes, Tenterfield, Inverell, Shellharbour, Casino and Taree. Other Drug Action Week activities include photography displays in Walgett, educational videos in Mudgee, street theatre in the northern rivers area and Future for Families workshops in the Illawarra.

It is important to acknowledge that Drug Action Week not only is a reminder of the challenges that we face as a community; it is also a celebration of the achievements we have already made. The New South Wales Government has embarked on a new four-year $230 million plan that will build on the momentum generated by the New South Wales Drug Summit. It is a substantial commitment to help turn around lives—a program that is greatly assisted by community groups, councils, health workers and volunteers who are participating in events this week. I thank the communities, the drug action teams, the Alcohol and Other Drugs Council and every individual who helped to make Drug Action Week a success. It is helping to raise awareness about drug issues and it is celebrating the positive difference that groups and individuals are making in communities around New South Wales.

LORD HOWE ISLAND MARINE PARK SANCTUARY ZONE PROPOSAL

The Hon. IAN COHEN: My question without notice is addressed to the Minister for Agriculture and Fisheries. Is the Minister aware that the marine science community made submissions declaring that the area proposed for a sanctuary zone in the draft plan for Lord Howe Island Marine Park is inadequate and will not protect the 500 fish species, including threatened species in the park such as the Ballina angelfish, the half-banded angelfish and the doubleheader? Have marine scientists asked for a sanctuary zone that is greater than 50 per cent of the park? Did New South Wales Fisheries assess that a 50 per cent sanctuary zone would still enable locals to take all the fish they need, both for themselves and tourists? Will the Minister ensure that the voices of scientists are heard and that at least 50 per cent of the new Lord Howe Island Marine Park is in the sanctuary zone?

The Hon. IAN MACDONALD: My department is currently canvassing and assessing this issue in great detail. The Lord Howe Island Marine Park is one of four marine parks created by the Carr Government. The island, which is surrounded by some of the most unique and pristine marine habitats and endemic species found in New South Wales waters, is listed as a World Heritage site. A discussion paper for the marine park was released in 2002 for community consultation. That paper outlined three possible draft zoning plans for Lord Howe Island Marine Park. The Government wants to make certain that aquatic life in the park is well protected—one of the first principles to be considered—and, at the same time, it wants to ensure that fishing activities are sustainable and that they continue to be enjoyed by residents and tourists. The Marine Park Authority, in conjunction with local community representatives, is currently preparing a draft zoning plan that will be released to the public for a final round of community consultation. When that occurs in the not too distant future I expect to hear again from the honourable member.

POLICE OFFICERS RAIL COMMUTERS TICKET INSPECTIONS

The Hon. CATHERINE CUSACK: My question without notice is directed to the Minister for Transport Services, and Minister for the Hunter. Is he aware that armed, uniformed police officers are being used to check tickets of rail users at stations such as Kingswood—a station where, on a number of occasions in recent months, up to six uniformed officers have been checking tickets? As the former Minister for Police, can the Minister explain why police officers are being used for such duties when, at nearby St Marys, police have spent 12 months searching for a serial sexual predator?

The Hon. Michael Gallacher: That is an excellent question.

The Hon. MICHAEL COSTA: Unfortunately, the honourable member did not ask an excellent question; she asked a silly question which should have been directed to the Minister for Police. If the honourable member had any knowledge or understanding of the rail security system, she would realise that we employ transit police, and by definition transit police officers have certain responsibilities in relation to the transit system. It is a simple proposition. If the honourable member talked to members of the community and to the police, she would discover that all police officers in this State are armed. That is a requirement in this State. I do not know what emphasis should be placed on the honourable member's reference to the fact that these officers were all armed. All our police officers are armed.

The Hon. Catherine Cusack: Transit police?

The Hon. MICHAEL COSTA: Transit police are police officers and they are armed.

The Hon. Catherine Cusack: Are they armed?

The Hon. MICHAEL COSTA: Of course they are armed. What an absurdity! The honourable asks me a question when she obviously does not understand what she is talking about.

The Hon. Michael Gallacher: She asked if they were armed.

The Hon. MICHAEL COSTA: That is right. She emphasised in her interjection that transit police were armed, as though that were some revelation. Of course our police are armed.

The Hon. Catherine Cusack: Checking tickets?

The Hon. MICHAEL COSTA: I inform the honourable member that our police have a responsibility to apply the laws of this State, and that includes checking to ensure that rail commuters are paying for their tickets. Are Opposition members suggesting that people who travel on the public transport system should not have to pay for their fare?

The Hon. Catherine Cusack: Do you need a gun for that?

The Hon. MICHAEL COSTA: They are police officers. The honourable member should not be silly. She should not compound the silliness of her question with silly interjections.

The Hon. Michael Gallacher: What is happening in St Marys, next door?

The Hon. MICHAEL COSTA: We have transit police. I take it from that interjection that the Opposition intends to take transit police off our system. I hope that that is not the case. I would like Opposition members to clarify their position. Unfortunately, the Hon. Catherine Cusack was set up with a very silly question. Our police are armed. To prove that fact I would be happy to introduce the honourable member to some of our police officers. As I said earlier, we have transit police as well as police officers in our system. The honourable member should not accept any questions from the Leader of the Opposition as he does not understand the transit system and he does not know how the police system works. If the honourable member is concerned about St Marys, her question should have been referred to the Minister for Police.

AUSTRALIAN DEFENCE INDUSTRIES PATROL BOAT TENDER

The Hon. TONY BURKE: My question without notice is directed to the Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests). Will the Minister advise the House about the loss by a Hunter company, Australian Defence Industries Pty Ltd [ADI], of the Department of Defence contract to supply up to 15 vessels for the Royal Australian Navy?

The Hon. MICHAEL COSTA: It is a sad day for the Hunter. Today the Federal Coalition Government made an appalling decision that will significantly affect the Hunter in relation to direct and indirect jobs. An appalling decision has been made by the Federal Coalition Government—and I note that there are representatives of those Coalition parties in this House—to award the contract for 15 new patrol boats for the Royal Australian Navy not to the Hunter company—which is best qualified to build those boats—but to a Western Australian company.

The Hon. John Della Bosca: Shame!

The Hon. MICHAEL COSTA: It is a shame. If Opposition members care to listen to my answer I will tell them about the technology that is involved.

The Hon. Duncan Gay: Point of order: The Minister indicated that ADI was better qualified than the Western Australian company. Ministers, when answering questions, cannot make assumptions. I want to know what evidence he has to back up his statement.

The PRESIDENT: Order! There is nothing in the sessional or standing orders that requires a Minister not make an assumption when answering a question.

The Hon. MICHAEL COSTA: I know that I should not address the silly point of order taken by the Deputy Leader of the Opposition, but I want to inform honourable members why that Hunter company should have been awarded the contract. It is a simple proposition. The advice that I have received from those who have knowledge of this project is that the proposal put forward by ADI was for it to build patrol boats out of composite materials. I have been advised that composite materials—a smarter and more advanced technology—are increasingly being used by international navies and by the commercial sector. That is why ADI's bid should have been supported by the Federal Government. As I said earlier, the Federal Government made an appalling decision.

The Hon. Robyn Parker: And you went in to bat for them, did you? What did you do about it?

The Hon. MICHAEL COSTA: The Hon. Robyn Parker, who purports to represent the Hunter, seems to be a bit upset. The fact of the matter is that the State Government did a lot about it. It provided this company with financial and marketing support and facilitation assistance. But the Commonwealth Government chose, once again, to ignore the Hunter and to ignore jobs in a region that has a great deal of expertise. This Federal Government decision follows the constant ridiculing by Opposition members of the Millennium train work force. The Leader of the Opposition, who was invited to go to Cardiff to meet with the Millennium train work force, has not taken up that offer. Only last week derogatory comments were made in this House about that work force. It is clear that the Opposition does not support the Hunter. I will give a further example of that lack of support. Energy Australia—

The Hon. Duncan Gay: Point of order: I refer you, Madam President, to the comments the Minister has made about the Opposition. No Opposition member has made derogatory comments about the Hunter work force. If the Minister continues to make such scurrilous allegations, he should be required to produce some definitive evidence in support of the allegations. No Opposition member has made such comments. The Minister is trying to start a class war. The Minister is back in the 1950s trying to start a war to excuse his own ineptitude.

The PRESIDENT: Order! I have warned honourable members not to use points of order to make debating points.

The Hon. TONY BURKE: I ask a supplementary question. Will the Minister please elucidate his answer?

The Hon. MICHAEL COSTA: It is appalling that Opposition members take points of order in order to waste time because they do not want the public—particularly the people of the Hunter—to hear about the appalling decision that the Commonwealth Government made today. Some 260 direct jobs and more than 2,000 indirect jobs will be lost to the region as a result of that decision. That reinforces the Federal Government's consistent record of ignoring the Hunter. I remind the House that the Federal Government has not provided any funding for EnergyAustralia Stadium and the State Government has provided $23.6 million for the project.

The Hon. Michael Gallacher: Only after we did.

The Hon. MICHAEL COSTA: You have not provided it; the Leader of the Opposition does not know what he is talking about. I call on the Leader of the Opposition to lobby his Federal colleagues to provide that money today. Opposition members could show a real commitment to the Hunter by lobbying their Federal colleagues today about providing that funding. That is the least they could do given the appalling decision taken today by their Federal colleagues to cripple the Hunter and ignore the world-class engineering skills in that region. Those opposite constantly downgrade those skills. They did so last week. I suggest that Opposition members read *Hansard*—

The Hon. Michael Gallacher: Point of order: We will not put up with any more attempts by the Minister to create the impression that Opposition members are denigrating in any way engineering standards in the Hunter. The Minister is misleading the House. I ask you, Madam President, to direct him to withdraw his comment or to return to his answer. The Minister's behaviour is absolutely offensive.

The Hon. Dr Arthur Chesterfield-Evans: To the point of order: The Minister is obliged to answer questions asked of him. Most of his responses largely comprise either personal abuse of Opposition members or the member who asked the question or unsubstantiated allegations about what Opposition members did or did not say. That is no way to answer questions. The standing orders state that Ministers must answer the questions asked of them, yet half of all answers given in this Chamber are simply diatribes. We put up with those diatribes in the hope that Ministers' answers will contain a grain of information. They hardly ever do—as the response by the Minister for Transport Services on this occasion has demonstrated.

The Hon. MICHAEL COSTA: To the point of order: There is no point of order. This is clearly a debating point. Opposition members constantly make unsubstantiated allegations about Ministers and Labor backbenchers in this place. If we were to apply the unsubstantiated allegations test to questions, those opposite would not be able to ask a single question during question time.

The Hon. Patricia Forsythe: To the point of order: Madam President, I find the Minister's remarks personally offensive and I ask you to direct him to withdraw them. The Minister's comments are a reflection on us all and, according to standing order 81, they should be ruled out of order.

The PRESIDENT: Order! The standing orders that refer to offensive language apply to an individual, not a group. President Willis ruled:

> Offensive words must be offensive in some personal way. When a person is in political life it is not offensive that things are said about him or her politically. There may be occasions on which remarks offensive to an identifiable Member may not be regarded as unparliamentary when applied to a group where Members cannot be identified.

I therefore rule that the Minister was in order but remind him that he should refer to the subject of the question. The time allowed the Minister to answer the question has, however, expired.

LOCAL COUNCIL BOUNDARY CHANGES

Ms SYLVIA HALE: I direct my question to the Minister for Local Government. Is the Minister aware of the recent poll taken by Hume shire that found that 96 per cent of voters are opposed to any boundary changes or amalgamations with Albury City Council? What is the difference between forced amalgamations and what is currently happening to Hume shire and its residents—against their wishes—in light of the proposed boundary changes, whereby Albury council will take over 80 per cent of the shire thus making it unviable?

The Hon. TONY KELLY: I am not aware of that poll conducted in Hume shire. I presume that a sample of residents was polled; I doubt that a survey exists depicting the views of 96 per cent of all residents in the shire. I have received no proposals from any council in that area. I think I have about eight formal proposals from various council areas—some of which I received as late as this morning.

The Hon. Duncan Gay: I thought you said on radio today that you had 30.

The Hon. TONY KELLY: No. I have had discussions with 50 or 60 councils and I expect to receive at least 30 proposals. Councils are voluntarily proposing various boundary changes throughout the State. I expect by tomorrow night to have about eight or nine formal proposals and I have undertaken to refer them all to the Boundaries Commission for investigation. The commission will then report back to me. I cannot comment further until I receive those formal proposals. Furthermore, I have no intention of commenting favourably about any proposals until such time as the Boundaries Commission completes its full and proper process.

DROUGHT RECOVERY STRATEGIES

The Hon. MELINDA PAVEY: My question is directed to the Minister for Agriculture and Fisheries. Is the Minister aware of significant concerns from drought-affected farmers about the lack of plans for long-term drought recovery? When does the Minister plan to release details of long-term drought recovery strategies?

The Hon. IAN MACDONALD: On the issue of drought relief, the State budget outlined the provision of $48.1 million over the next six months for the various programs that we have in place. The Government's

view is that we will assess our programs later in the year when and if the drought appears to be easing. Alternatively, we will assess our programs on an ongoing basis if the drought continues. The Government considered a number of propositions, many of which were quite expensive and well beyond what could be afforded at this point. We have also looked at other ways of assisting farmers to get through this drought.

The point that honourable members and the community must realise in relation to drought is that the main form of funding is exceptional circumstances funding, which is a Commonwealth responsibility. That funding has been slowly rolled out in New South Wales. The figures produced on 20 June by the Federal Minister for Agriculture, Fisheries and Forestry, Warren Truss, indicated that about $28 million—one whole side of the program—has been spent over the past two years on drought relief in New South Wales. We estimate that in addition between $17 million and $25 million has been spent on other sides of the program. Exceptional circumstances—

The Hon. Duncan Gay: Point of order: My point of order is on relevance. The question asked what the Minister was doing, not what was happening federally. The Minister's answer relates to the Federal area not his area. I ask that the Minister's answer be relevant to the question.

The PRESIDENT: Order! I remind the Minister that answers must be relevant to the questions asked. However, as I have previously stated, there needs to be some general discussion about a question.

The Hon. Duncan Gay: Yes. Some general discussion about a question, not what he wants to say.

The Hon. IAN MACDONALD: You can have a chance to speak later on. In fact, I said that we would review our situation as this drought continues or breaks later in the year. I said that the funding was pitched for six months because at this point no-one can predict exactly what will happen. Good rains have fallen in some parts of the State but vast areas still have not received winter rains. On our last figures, only about 30 per cent to 35 per cent of crops have been put in across the State, and this will be a very big hit for croppers. The most important aspect of recovery under the national protocols is the use of exceptional circumstances funding. It was for that reason that I referred to exceptional circumstances funding. in response to the question asked by the Hon. Melinda Pavey. One cannot discuss recovery without discussing the impact and extent of exceptional circumstances funding in this State. To run away and hide behind a point of order is to obscure where the responsibility lies for the provision of such funding.

We have asked the Federal Government over and over again during the past two months to change the rules in relation to exceptional circumstances funding—to loosen them—so that a farmer is not prevented from receiving income support or other forms of assistance if, for instance, his wife earns $29,000 or more from a second job. That would discount large numbers of farmers who have been encouraged by the banks to seek an income separate from their farming enterprises to ensure that their businesses are viable. The reason that there has not been a huge uptake of exceptional circumstances funding is that the additional income of $29,000 disqualifies many farmers from receiving such assistance. Farmers all around the State have asked me about exceptional circumstances and not once has the National Party, State or Federal— [*Time expired*.]

PERIODIC DETENTION COMPLIANCE

The Hon. HENRY TSANG: My question is directed to the Minister for Justice. Will the Minister advise the House about the compliance rate with the periodic detention scheme?

The Hon. JOHN HATZISTERGOS: Yesterday I tabled in the House a Parole Board report that indicated that compliance with periodic detention has now reached an attendance rate of 80 per cent. Before we came into government the compliance rate for weekend detention under the Coalition was less than 60 per cent. Under the scheme that existed when the Coalition was in office, when persons did not attend periodic detention their detention orders were revoked by a court. This procedure caused frustration and lengthy delays because the courts did not readily grant such applications. We changed the law, took away the right of the courts to determine revocations of periodic detention orders and vested that right in the Parole Board. The efficiency of the Parole Board in revoking periodic detention was demonstrated yesterday when the board revoked the periodic detention orders of a number of inmates who on the weekend in the western suburbs of Sydney thought it was an opportunity for them to consume alcohol.

Warrants for the arrest of those individuals are now being processed. They will be brought back into full-time custody to serve the balance of their sentence. The reform of bringing the matter under the Parole

Board has radically changed the number of periodic detention orders that were revoked. In 1995-96, the last year that the Coalition was in office, 435 periodic detention orders were revoked by the courts. The annual report of the Parole Board reveals that 780 periodic detention orders have been revoked. If one reflects on the time lag and the efficiency with which that is done, one will see a major improvement. Indeed, I noted in the course of my research an article on periodic detention written during the period of the previous Coalition Government. The article is headed "Detention Scheme a Farce" and was written by a person of great eminence by the name of Louis Garcia—a name that has resonated around the halls of Parliament House. I think he was the chief of staff of former Leader of the Opposition, Mrs Chikarovski.

The article referred to the case of a person who, during the period the Coalition was in office, failed to attend for periodic detention on 11 occasions before being taken to court. The person kept getting the matter adjourned. On one occasion of the person's non-appearance he was said to have been sailing on the harbour. But still nothing was done. That is the way periodic detention operated under the Coalition Government. Now periodic detainees who give an excuse for not attending are randomly checked. Officers investigate what they are doing on the days that they do not attend. Detainees are required to give advance notice, and after the date of the periodic detention has elapse they are required to provide documentary evidence of the reason for their absence. The hit and miss approach that used to operate under the Coalition—which saw 4 out of every 10 periodic detainees not bother to show up on any weekend—is over. This matter is being taken very seriously. [*Time expired.*]

The Hon. HENRY TSANG: I ask a supplementary question. Will the Minister elucidate his answer?

The Hon. JOHN HATZISTERGOS: Under the laws we have put in place the periodic detention orders of those with three consecutive unauthorised absences are automatically revoked. Those whose sentences are revoked must serve six months in full-time imprisonment before they are eligible to apply for a review. An offender must serve at least that time before the Parole Board can consider whether to give relief from the full-time period in custody. This reform was applauded by the former shadow Minister, Mr Peter Cochrane, who said in Parliament:

> I give credit to the Minister … the Opposition will not oppose this bill … the legislation will enhance the general effectiveness and efficiency of the Department of Corrective Services and of periodic detention.

He was deadly accurate.

PETROL LEVIES

The Hon. MALCOLM JONES: My question is directed to the Assistant Treasurer, in the absence of the Treasurer. As the Federal Government has discontinued petrol excise indexation, which will have an adverse long-term effect on State revenue, does the New South Wales Government plan to impose extra levies on petrol sales?

The Hon. JOHN DELLA BOSCA: My best course of action is to seek advice from the Treasurer. I undertake to obtain an answer and provide it to the honourable member at the first opportunity.

MILLENNIUM TRAINS

The Hon. ROBYN PARKER: My question is directed to the Minister for Transport Services. Will the Minister outline what action he has determined will be taken against EDI Rail if all the problems affecting the Millennium train's traction system, operating system and auxiliary power system are not fixed by August, which will mean that the Minister's self-imposed deadline will not be met?

The Hon. MICHAEL COSTA: It is not self-imposed. Earlier in question time I outlined a range of measures in relation to Millennium trains—and I can advise the honourable member that those measures have not changed in the meantime—and I outlined them publicly a week or so ago. If Opposition members do not have the material, and it appears that they do not have it, I am happy to forward it to them. I will take them through it again. We have undertaken a range of measures following discussions with the management of EDI and the State Rail Authority [SRA] at the Cardiff workshop. The principal components of those changes were the introduction of a new testing regime, which I have broadly outlined previously, and the placement of a technician on trains. Until I receive the report from the Victorian expert who is reviewing the management practices of the SRA in terms of resolving those issues—

The Hon. Duncan Gay: Eight years in government and you have got to bring in experts from Victoria.

The Hon. MICHAEL COSTA: The interjection of the Deputy Leader of the Opposition is both unfortunate and silly. I always use experts for expert tasks, and I wish the Opposition would do the same. It may be that if the Opposition had done that, New South Wales would have received the EDI boats—I am sorry, would have received the ADI boats in the Hunter because the experts would have determined that those votes were the right votes for the nation and we would have secured the 260 jobs and the 2,000 indirect jobs.

The Hon. Don Harwin: Point of order: The Minister is clearly not complying with the standing orders and is straying to matters that are not relevant to the question asked, which referred to EDI not ADI.

The Hon. MICHAEL COSTA: That was a slip of the tongue.

The PRESIDENT: Order! The Minister will return to the question.

The Hon. MICHAEL COSTA: I acknowledge human frailty.

The Hon. Michael Gallacher: In others, not in yourself, because you're not human.

The Hon. MICHAEL COSTA: I have less of it than you do, and that is an issue. But quite often we do make a slip of the tongue, particularly when members are interjecting. I meant to say ADI. I freely acknowledge that. If that is the point to be scored off me in question time today, I stand humbled by the Opposition. The point still remains that if you use experts you get expert opinion; and if proper process had been used, by any standard the Hunter would have got those boats. In relation to the Millennium trains, I have detailed what we have done. I suggest the Opposition read that detailed material.

The Hon. JOHN DELLA BOSCA: I suggest that if honourable members have further questions, they should place them on notice.

NORTH BONDI BUILDING SITE WORKERS COMPENSATION INSURANCE

The Hon. JOHN DELLA BOSCA: I would like to provide the following response to a question I was asked yesterday by Ms Lee Rhiannon. Since coming to office the Carr Government has doubled the maximum fines for employers who fail to provide a safe workplace or fail to protect the health, safety and welfare of non-employees in the workplace. Penalties available under the New South Wales Occupational Health and Safety Act are currently the highest of their kind in any Australian jurisdiction. The legislation provides maximum penalties for a first offence of $550,000 for a corporation and $55,000 for an individual.

During 2001-02 WorkCover successfully prosecuted 455 parties for breaches of occupational health and safety law. The level of fines awarded in New South Wales is also significantly higher than those awarded in other jurisdictions. During 2000-01 WorkCover prosecuted more than double the number of cases conducted in all other Australian jurisdictions combined. In a judgment handed down earlier this week a construction company was fined $1.5 million for breaches of occupational health and safety law. WorkCover's investigation of the tragic death of a bricklayer on 16 June 2003 in Bondi is continuing.

CANNABIS MEDICAL USE

The Hon. JOHN DELLA BOSCA: On 22 May Reverend the Hon. Dr Gordon Moyes asked me a question without notice concerning the research the Government relies on in order to claim that medicinal use of cannabis is a compassionate scheme. I now supply the following answer:

> The Government has taken into account the following list of parliamentary, government, medical and clinical trial reports in developing the proposal for the Compassionate Scheme for the Medicinal Use of Cannabis.
>
> **Parliamentary Reports**
>
> - United Kingdom Parliament, House of Commons, (May 2002), *UK House of Commons' Select Committee on Home Affairs – Third Report – The Government's Drugs policy – Is it working?*
>
> - United Kingdom Parliament, House of Lords, (March 2001), *UK House of Lords' Select Committee on Science and Technology– Second Report – Therapeutic Uses of Cannabis*.

- United Kingdom Parliament, House of Lords, (November 1998), *UK House of Lords' Select Committee on Science and Technology– Ninth Report – Cannabis: The Scientific and Medical Evidence*.

- G. Griffith and M. Swain, (1999), *The Medical Use of Cannabis: Recent Developments – Briefing Paper 11/99*, Sydney: NSW Parliamentary Library Research Service.

Government Reports

- NSW Government, (2001), *Report on consultation on the findings and recommendations of the working party on the use of cannabis for medical purposes*.

- NSW Working Party on the Use of Cannabis for Medical Purposes, (2000), *Report of the Working party on the Use of Cannabis for Medical Purposes August 2000*.

- US Congress, General Accounting Office (GAO), (November 2002), *MARIJUANA: Early Experiences with Four States' Laws that Allow Use for Medical Purposes*.

- Dutch Ministry of Health, Welfare and Sport, (2002), *The medicinal use of cannabis in the Netherlands.*

- Oregon State Government, Department of Human Services (June 2001) "Summary of findings of Oregon's Medical Marijuana Program", (http://www.hr.state.or.us/dhrinfo/factsheets/facts-medmar.html).

Medical Reports & Clinical Trials

- US Institute of Medicine, J. Joy, S. Watson and J. Benson, (1999), *Marijuana and Medicine: Assessing the Science Base*, Washington: National Academy Press.

- W.K. Scholten, (2001) "Dutch measures to control medical grade marijuana: facilitating clinical trials", Vol 35 *Drug Information Journal* 481.

- GW Pharmaceuticals, (2003) *Annual Report for the year ended 30 September 2002*, (www.gwpharm.com).

- GW Pharmaceuticals, (January 2003), *Preliminary Results for the Year Ended 30 September 2002*, (www.gwpharm.com).

- GW Pharmaceuticals, (November 2002), *Positive Results From Each of Four Phase Three Clinical Trials*, (www.gwpharm.com).

- GW Pharmaceuticals, (September 2002) *Release of Positive Data from Completed Phase II Pain Trial*, (www.gwpharm.com).

- GW Pharmaceuticals, (13 June 2002), *Interim Results For The Six Months to 31 March 2002*, (www.gwpharm.com).

YOUTH DRUG COURT

The Hon. JOHN DELLA BOSCA: On 27 May the Hon. Catherine Cusack asked me a question without notice concerning the Youth Drug Court Program. The Minister for Juvenile Justice has provided the following response:

During 2001-2002, the Department of Juvenile Justice had contact with 6,508 individual young people, including conferencing. The department's Annual Report for 2001/02 counts contact with young people in a number of categories. An individual may be counted in more than one category.

Of these, 202 were specifically for drug related offences. Further information relating to drug dependency issues is not recorded.

Since 31 July 2000 to 28 May 2003, 224 referrals to the Youth Drug Court Program were made, with 102 placed on the program. To enter the Youth Drug Court program, a young person must be referred by a NSW Children's Court. They are subject to a health assessment prior to making a referral. Those young persons found not to be suitable at the initial screening are returned to the Children's Court to have their matters heard. The remainder then undertake a more detailed Youth Drug Court Comprehensive assessment, which determines whether a young person should enter the Youth Drug Court.

Not all young persons referred to the Youth Drug Court Program are specifically for drug charges. The program is for offenders who have drug and/or alcohol use problems and their criminal offences are a result of these problems.

As at 28 May 2003, 48 young persons had ceased their participation and 29 young persons had successfully completed the program.

The pilot program is being fully evaluated by the Social Policy Research Centre, University of NSW. The evaluation will concentrate on the health and justice outcomes of program participants and is scheduled to be completed by the end of 2003.

RURAL ASSISTANCE AUTHORITY LOAN APPLICATIONS

The Hon. IAN MACDONALD: Further to my answer to a question asked earlier today by the Deputy Leader of the Opposition, I inform the House that I have been advised that the applicant whom I believe the honourable member was referring to in his question has been contacted by the authority and advised that his loan has been approved subject to technical certification by the Department of Natural Resources. I will write to the honourable member shortly.

SILVERWATER CORRECTIONAL CENTRE TRANSSEXUAL OFFICER

The Hon. JOHN HATZISTERGOS: During question time the Hon. John Ryan asked me a question relating to an officer at the Silverwater complex. I actually get annoyed with these sorts of questions, but I have obtained some information, and I say for the benefit of the honourable member that I am advised as follows. His question actually rolled two different situations into one, making something completely different out of the mix.

The transvestite officer who disseminated images of herself is not at Silverwater now, and there was never any issue with the use of toilet facilities. There is a separate officer who is a transgender person, not a transvestite, with the transport unit at Silverwater who is in what is described as a "transitional phase" of gender change. This officer still dresses as a male and uses the male facilities. Female officers have raised concern about what may happen in the future, and management has indicated that appropriate facilities separate from the female officers facilities will be available when required.

[*Interjection*]

I am not going to have a go at the honourable member; I just want him to listen to what I am going to say.

The Hon. John Ryan: You will have a chance to say it to me.

The Hon. JOHN HATZISTERGOS: Just be quiet. I also want to draw the attention of the House to what the Hon. John Ryan said on 5 June 1996, when we were debating the Transgender (Anti-Discrimination and Other Acts) Amendment Bill. He said this:

> I largely agree with the comments that were made yesterday most eloquently by the Hon. Ian Cohen, who summarised instances of discrimination and their impact on people who choose to live a transgender lifestyle. No-one could endorse that discrimination. They need to have free access to services without their lifestyle being an issue that they confront every step they take.

Questions without notice concluded.

APPROPRIATION BILL

APPROPRIATION (PARLIAMENT) BILL

APPROPRIATION (SPECIAL OFFICES) BILL

STATE REVENUE LEGISLATION AMENDMENT BILL

Bills received and read a first time.

Declaration of urgency agreed to.

Second readings to stand as an order of the day.

[*The President left the chair at 1.08 p.m. The House resumed at 2.45 p.m.*]

BUSINESS OF THE HOUSE

Suspension of Standing and Sessional Orders

The Hon. JOHN RYAN [2.46 p.m.]: I move:

> That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 40 outside the Order of Precedence, relating to the take-note debate on the report on the review of the Office of Inspector-General of Corrective Services, dated May 2003, be called on forthwith.

During question time it appeared that the Minister wanted to comment on the report, and it is probably relevant that his comments be debated. The report has been tabled and will result in a decision before the House meets again. During the banter in question time the Minister agreed that we should debate the report. Therefore I challenge the Government to support us in bringing on the debate forthwith.

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [2.49 p.m.]: I indicated that I was happy to debate the matter. During the adjournment a number of people informed me that they had not read the report, which I find surprising because it has been available for a couple of weeks. As the House has already resolved this matter once today, I am happy to oblige them. The future of the Inspector-General of Corrective Services will be debated in the very near future because a proposal will be taken to Cabinet. I am happy to debate it at any other time.

The Hon. Dr Arthur Chesterfield-Evans: Will you give us a time in the next week?

The Hon. John Ryan: You said you would debate it now.

The Hon. JOHN HATZISTERGOS: I have *Hansard*. We have had a debate on that. I am happy to have it debated, but apparently there are other priorities today. The matter has been resolved.

The Hon. John Ryan: You said "Bring it on now."

The Hon. JOHN HATZISTERGOS: I will try to facilitate a time.

Ms Lee Rhiannon: Next week?

The Hon. JOHN HATZISTERGOS: Fine. I am happy to have it debated next week.

The Hon. John Ryan: No, you said now.

The Hon. JOHN HATZISTERGOS: No, I am happy to have it debated next week. I have no problem with having it debated now, but apparently there are other priorities and some people have not read the report.

Ms LEE RHIANNON [2.55 p.m.]: I support the motion and I urge other members to do so. I heard the Minister and I certainly welcomed his saying he was willing to debate it now. He also said, "Bring it on." It is important to acknowledge that he seemed to be quite passionate and interested in bringing on the debate. It is necessary to bring it on now because, as the Minister said, it will be discussed by Cabinet. But I understand that the Cabinet decision will be made during August, and we will not resume until September. This matter should be debated now. To leave it until September, which is what the Minister said this morning when we divided, would be completely unsatisfactory. The prison system is one of the most difficult and sensitive areas of government, and we need full and frank discussion on it. At present the Cabinet decision will be based solely on a flawed, one-sided, secretive review. That is why we need this debate. It is absolutely necessary.

The Hon. Amanda Fazio: Point of order: The Hon. Lee Rhiannon is debating the substantive motion; she should be debating whether sessional orders should be suspended. Madam President, I ask you to call her to order.

Ms LEE RHIANNON: To the point of order: I understand that at this time I am able to give reasons for suspension, and that is what I was doing.

The PRESIDENT: Order! I remind the member that all that may be debated at this time is whether to suspend standing and sessional orders. Ms Rhiannon may continue.

Ms LEE RHIANNON: I was making a point about the time line. Cabinet is due to discuss this matter in August, and this House will not sit again until September. If we could have this debate today, that would be very important because it would give Cabinet an alternative source of information and argument.

[*Interruption*]

Yes, next week is possible, but at the moment members are not getting any clear dates from the Government. All the Minister has to do is get one Labor member to stand up and give us a clear commitment. We would prefer the debate to take place today.

The Hon. John Hatzistergos: We have done that.

Ms LEE RHIANNON: No, the Minister has not been clear about this matter. The only opportunity to present another point of view is by a debate in this House. I urge members to support the motion.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [2.54 p.m.]: It is interesting to hear Government members say that the matter will be debated next week, when only a short time ago in this Chamber the Minister for Justice said he wanted to debate the matter now, that he wanted to bring it on now. If we had had the opportunity to suspend standing orders to postpone question time, we would have brought on the debate at the exact moment in time when the Minister had that look in his eye that showed he wanted to get on and fight it out. But of course, in the hour and a half since then, he has left the Chamber, spoken to people, and changed his mind.

The Hon. Patricia Forsythe: Spoken to, I should think.

The Hon. MICHAEL GALLACHER: Yes, he has probably been spoken to, as the Hon. Patricia Forsythe suggests. The Minister is saying that we should debate the matter next week, but next week we will have a raft of legislation to deal with. Next week we will have a very important matter that needs to be discussed in this Chamber, on which every member will want an opportunity to place comments on the record: the budget. It will be jammed through this Chamber next week.

The Hon. Malcolm Jones: Which budget?

The Hon. MICHAEL GALLACHER: Which budget? The 2003 budget, but I am sure that the honourable member will have the opportunity to reflect on budgets for the past two years. The Minister is now saying he did not really mean what he said, and that is completely false. Members of this House are giving the Government the opportunity to do exactly what the Minister wanted to do an hour and a half ago. He cannot hide, and he cannot say that he does not want to debate the matter now but will do so next week. This is it: the chance for him to debate the matter and put his views on it on the record. There should be no more suggestion of putting the debate off until next week. I urge honourable members to vote in favour of the motion.

Reverend the Hon. FRED NILE [2.55 p.m.]: My contribution to this discussion will be brief. As has already been said, we voted on this motion earlier today and overwhelmingly rejected it. We voted to postpone private members' business today. This is private members' business; this is a backdoor way of reverting back to private members' business, leaving aside the emotive or emotional aspect of this issue. The other argument advanced in favour of urgency is that we should discuss this matter before Cabinet discusses it. I think that is back to front. Normally, if Cabinet makes a recommendation and a decision, the House debates that decision. If we start to debate matters before Cabinet has made a decision, we may be debating a non-issue. Cabinet may decide to do nothing. Moreover, if this debate is held right now, honourable members will not have had time to study the report or prepare a speech.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [2.56 p.m.]: The problem with contingency suspensions is that it is difficult to be prepared for the debate. If the Minister can guarantee that we will definitely debate this matter before the end of next week, that would clarify the matter. It is a shame to spend half the day discussing what we should debate, thereby debating the matter twice. I certainly do not accept as in any way valid the argument that Cabinet normally decides matters before we do and that we should only debate matters post facto, that is, after Cabinet decisions are made. If the Minister guarantees that the matter will be debated next week, that should be accepted.

The Hon. PATRICIA FORSYTHE [2.57 p.m.]: Let us be clear about this. This morning the House voted not to support contingency but since then we had the theatrical performance of the Minister during question time.

The Hon. John Hatzistergos: The performance of John Ryan.

The Hon. Amanda Fazio: It was John Ryan.

The Hon. PATRICIA FORSYTHE: No. This is not a question of the performance of the Hon. John Ryan. This is not about a Coalition member; it is about the attitude and the performance of the Minister. That is why we are again discussing this matter this afternoon. This is the Minister who said he would be happy to

debate the issue now, who said he would be happy to debate it today. This is the opportunity for him to provide the facts and go through the issues.

The Hon. John Hatzistergos: I have actually already done that.

The Hon. PATRICIA FORSYTHE: The Minister was the one who in question time took up the issue and said he would be happy to debate it. We are happy to debate it. We would like the opportunity to debate it. It is one thing for the Minister to berate the Opposition, as he did during question time, but this is the Minister's opportunity to put his side of the case clearly on the record. The only reason this motion is back before the House this afternoon is the Minister's performance during question time today.

Question—That the motion be agreed to—put.

The House divided.

Ayes, 17

Mr Breen	Mr Gallacher	Mr Pearce
Dr Chesterfield-Evans	Mr Gay	Ms Rhiannon
Mr Clarke	Ms Hale	Dr Wong
Mr Cohen	Mr Lynn	*Tellers,*
Ms Cusack	Ms Parker	Mr Harwin
Mrs Forsythe	Mrs Pavey	Mr Ryan

Noes, 20

Mr Burke	Mr Hatzistergos	Mr Oldfield
Ms Burnswoods	Mr Jones	Ms Tebbutt
Mr Catanzariti	Mr Kelly	Mr Tingle
Mr Costa	Mr Macdonald	Mr Tsang
Mr Della Bosca	Reverend Dr Moyes	**Tellers**
Mr Egan	Reverend Nile	Mr Primrose
Ms Fazio	Mr Obeid	Mr West

Pairs

Mr Colless	Ms Griffin
Miss Gardiner	Ms Robertson

Question resolved in the negative.

Motion negatived.

HUMAN CLONING AND OTHER PROHIBITED PRACTICES BILL

RESEARCH INVOLVING HUMAN EMBRYOS (NEW SOUTH WALES) BILL

In Committee

Consideration resumed from an earlier hour.

New clause 19

Reverend the Hon. Dr GORDON MOYES [3.05 p.m.]: Christian Democratic Party amendment No. 4 states that it is an offence to destroy a human embryo. In this debate on embryonic stem cell use, which results in the destruction of embryos, it is important that we understand why it is we think that life is to be respected rather than used. The debate concerning the science of stem cell research, which we are now having, is being echoed around the world. Cells in our body usually divide and multiply to form cells of the same type and function. However, there are some cells, known as stem cells, which have the capacity to develop into different types of tissue. Given the right stimulation a stem cell could grow into a nerve, a muscle, a bone, a gland or, as I mentioned this morning, an egg or sperm.

Stem cells occur in embryos. However, they also occur in adults, children, placentas and umbilical cords. Over the past four years scientists have developed techniques for extracting stem cells from living human embryos, which, of course, results in the destruction of the embryo. The question is: Is this right? The debate has its antecedents in the rise of a new philosophy concerning the origins of life, which were made by the French philosopher, mathematician and scientist, René Descartes, who lived 400 years ago. Descartes emphasised that human reason was the main tool of inquiry and understanding, and all else should be doubted. So began the age of reason and enlightenment—thus the argument continues. Our reason alone decides some of the most vexing moral issues of our day, such as abortion, assisted suicide, euthanasia, stem cell research and genetic engineering The questions arise: What does it mean to be a human? How should human life be valued and respected? Are those questions to be decided by reason alone?

The "reason alone" rationale was behind Dr Mengale's experiments in the 1930s with deformed children and the killing of disabled people. That rationale was used in the United States of America court decision that impacted on the destruction of the human foetus in the 1970s. The United States Supreme Court ruled that only a mother could make a decision about her body and the child within her womb. In the 1980s the United States court decision about the famous baby Doe case allowed for the killing of life outside the womb as well as inside the womb, for example, deformed or disabled children. That was allowable because reason said that the child, who would not have had quality of life, therefore ought to be terminated. That was the reason given in Australia by pro-euthanasia proponents who argued that the old, the frail and the terminally ill should be assisted to die, as their quality of life was limited. Embarrassingly, some who were assisted to die were not terminally ill, as was claimed.

Professor Peter Singer, a well-known Australian academic, went further and advocated that parents should be permitted to kill disabled babies on the basis that they are non-persons until they are rational and self-conscious. This argument of choice, based upon how we see things, ties abortion, infanticide, euthanasia and other moral issues, including the right to destroy embryos for research, into whatever amounts to be a useful social policy. This changes the parameters of a victim's right to die to the researchers', doctors' and relatives' right to kill. Monash University has advocated that not only embryos should be used. Aborted foetuses, possibly months old, could be used for growing stem cells. It is irrational that, in the current debate, when it is presented that research using adult stem cells possesses vast biomedical potential to cure diseases such as diabetes, Parkinson's disease, heart disease and so on, people do not accept it. Where is their logic?

When nothing is stopping technological development, what can be done will be done, especially if commercial gain is involved. Commonwealth legislation allows embryo destruction pre-April 2002—the so-called spare embryos. There is no morally relevant distinction between what is spare and what is specially created. The fact that embryos are not likely to be transferred to a woman and will be moved from storage and allowed to die does not mean to say that they are dead. It is the moral equivalent of harvesting organs from someone who is dying but not yet dead. It is worth noting that the European Parliament, the United States of America Congress and the German and French parliaments have placed bans on destroying human embryos. The question is: Do we kill an embryo or do we simply allow it to die a natural death? In the case of a terminally ill patient, at some point the life support systems are turned off and the patient is allowed to die. The patient is not put to death, but rather allowed to die with a sense of dignity.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [3.13 p.m.]: I am concerned about Christian Democratic Party amendment No. 4. The Human Cloning and Other Prohibited Practices Bill is a disastrous bill, but this amendment is the pièce de résistance. It states:

> A person commits an offence if the person intentionally destroys a human embryo that:
>
> (a) has been created outside the body of a woman, and
>
> (b) has not been used to attempt to achieve pregnancy in a particular woman, knowing that it is such an embryo.

The penalty for such an offence is 10 years imprisonment. Currently there are embryos in storage, some of which have been created outside women's bodies through the process of intracytoplasmic sperm injection. Those unused embryos have not been used to achieve pregnancy in a particular woman because not all of them were needed. In such a case those embryos cannot be destroyed. Do those embryos then have to be implanted in women because they cannot be destroyed? If those embryos are destroyed the penalty for such an offence is 10 years imprisonment. If a woman who was having difficulty falling pregnant had 10 eggs fertilised and kept in the refrigerator she would be obliged to have those 10 babies. Clause 9, one of the rather pernicious provisions in this legislation, states:

> A person commits an offence if the person intentionally creates a human embryo outside the body of a woman, unless the person's intention in creating the embryo is to attempt to achieve pregnancy in a particular woman.

These embryos can be implanted in the women for whom they were created, but most women do not want 10 children. The doctor who was left with those embryos and who would be in quite a dilemma might want to give them to someone else. However, if he did that he would be breaking the law and he would receive a term of imprisonment of 10 years. If doctors implant those embryos in other women those doctors will be imprisoned for 10 years. If they destroy those embryos they will also be imprisoned for 10 years. Many couples in Australia are desperate to have more children. The Christian Democratic Party's amendments will not assist those people who require help from in-vitro fertilisation [IVF] programs. Honourable members wax lyrical about morality and about creating a better society when that is not really what they are setting out to achieve. Clause 9, which I believe is a silly clause, will not assist those many people in society desperately requiring assistance through IVF programs. This bill, which is repressive, seeks to interfere with scientific advances. This amendment is a classic example of a technological amendment being quite foolish in practice and internally inconsistent with existing legislation.

Reverend the Hon. GORDON MOYES. [3.17 p.m.]: I thank the Hon. Dr Arthur Chesterfield-Evans for his contribution to the consideration of my amendment. I do not claim to be an intellectual person, but I am logical—a good subject for the honourable member to study.

The Hon. Michael Costa: Unparliamentary language.

Reverend the Hon. GORDON MOYES: Madam Chair, I am happy to withdraw the comment that the Hon. Dr Arthur Chesterfield-Evans is not logical.

The CHAIRMAN: Order! I remind the Hon. Michael Costa that interjections are disorderly at all times. The honourable member has to take offence and ask for a comment to be withdrawn.

Reverend the Hon. GORDON MOYES: The Hon. Dr Arthur Chesterfield-Evans failed on a matter of logic. If a woman has 10 eggs fertilised she is not required to be impregnated 10 times. I do not know from where the Hon. Dr Arthur Chesterfield-Evans obtained that information. I said earlier that when nothing is done to stop people who develop scientific technology, particularly if a commercial gain is involved, they use that technology. The amendment is quite clear in relation to the question of multiple eggs. The question is: Do we kill the embryo or simply allow it to die a natural death? In the case of a terminally ill patient, at some in point the life support systems are turned off and the patient is allowed to die. The patient is not put to death, but rather allowed to die a natural death with dignity. That was the point I made earlier, which has nothing to do with impregnating a woman 10 times with all the surplus embryos. The honourable member missed the point.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [3.19 p.m.]: My earlier statements were entirely logical. The wording of the amendment moved by Reverend the Hon. Gordon Moyes is as follows:

> A person commits an offence if the person intentionally destroys a human embryo that:
>
> (a) has been created outside the body of a woman, and
>
> (b) has not been used to attempt to achieve pregnancy in a particular woman, knowing that it is such an embryo.
>
> Maximum penalty: Imprisonment for 10 years.

An embryo created by the in-vitro fertilisation process would be created outside the body of a woman. Clause 9 of the bill states that such an embryo must be created for a particular woman. Reverend the Hon. Dr Gordon Moyes argued that an embryo is not destroyed intentionally if it is removed from the refrigerator and left on the bench to die a natural death—there is actually nothing natural about it because in the normal course of events the embryo would not have been in the fridge! That embryo is still allowed to die. It is immaterial whether an embryo is killed by immersion in boiling oil or left on the bench and allowed to die, the end result is the same: someone controlled the embryo and killed it. That is my point.

The amendment refers to "a particular woman". This wording would prevent an embryo being given to someone else, which is what can happen during IVF treatment. Clause 11 of the bill makes it an offence, punishable by 10 years imprisonment, for a researcher or IVF technician to keep an embryo for more than 14 days. It is okay for researchers to keep an embryo for 13 days but if they keep it for 14 days—whammo—they will get 10 years in gaol! Is it okay for a researcher simply to leave an embryo on the bench? Was an embryo that died in those circumstances destroyed intentionally or did it simply die of neglect—which is presumably okay?

The Hon. TONY BURKE [3.21 p.m.]: Prior to question time the Hon. Dr Arthur Chesterfield-Evans asked why we could not let scientists and those with scientific backgrounds make all the decisions in this area. He just answered that question by completely misrepresenting the issue at hand. I am attracted to the principle that he described: I would love to see people with industrial relations backgrounds making all trade union law. But we have not yet reached that point. I believe each of the three amendments before the Committee has merit. Amendments Nos 2 and 3 moved by Reverend the Hon. Dr Gordon Moyes deal with a new situation. It is now possible to create a human ovum using stem cell lines. This means that it is possible for a child to be born through the in-vitro fertilisation process with no genetic mother.

That is a new and significant issue and, apart from stressing the need for consistency, no argument has been offered as to why that procedure should not be banned. It is impossible for this bill to be consistent with Federal legislation because when the Federal bill was enacted the science was not sufficiently advanced to allow that procedure to occur. We now have the necessary scientific know-how and this prohibition is reasonable. Although I do not expect the majority of members to support amendment No. 4, I hope that the Committee will divide on it. In my speech during the second reading debate I pointed out that defeating the second of these two cognate bills will not of itself provide a prohibition on this form of research. The carriage of amendment No. 4 will provide that prohibition. Pressing amendment No. 4 to the vote will offer members their only opportunity to formally record their personal desire to ban destructive research on embryos.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister Assisting the Minister for Natural Resources (Lands)) [3.23 p.m.]: The Minister does not support Christian Democratic Party amendments Nos 2, 3 and 4. I am advised that amendment No. 2 appears to have been moved in response to recent articles about how scientists have created eggs using embryonic stem cells from mice. The concern is that the same technique could be used to create human eggs and sperm outside the body of a human, with the intention of using them for reproductive purposes. If human eggs and sperm were created from existing human stem cells for reproductive purposes clause 12 of the bill would prohibit the use of those cells to create a human embryo. Therefore, clause 12 obviates the concern underlying this amendment.

If the technology were developed using human embryos to extract stem cells to create human eggs and sperm for research purposes rather than for reproductive purposes the researcher involved would need to obtain a licence from the National Health and Medical Research Council [NHMRC] Licensing Committee pursuant to the applied provisions in the New South Wales research bill. If a licence were approved the research would be regulated stringently. If existing stem cell lines were used to create human eggs and human sperm this process would be regulated by the NHMRC interim advice on stem cell research, which requires that all research proposals involving the use of stem cell lines derived from human embryos be presented to a human research ethics committee for consideration. Research using human embryonic stem cells will be dealt with further when the review of the NHMRC assisted reproductive technologies [ART] guidelines is completed in late 2003.

If a researcher wished to use a somatic cell nuclear transfer to create an egg containing the DNA of a specific donor—for example, the intended mother—the application of this technique would be prohibited pursuant to clause 5 of the bill. Therefore, this technique could not be used in New South Wales. The research and cloning laws outlined in these bills are part of a nationally consistent scheme regulating the use of human embryos, the prohibition of human cloning and other prohibited practices. The amendment would create uncertainty between those covered by the Commonwealth legislation and those covered by the New South Wales legislation. At worst, the confusion might lead to the New South Wales biotechnology industry operating at a disadvantage to industries in other States.

The Minister does not support amendment No. 3. I understand the concerns that prompted Reverend the Hon. Dr Gordon Moyes to move this amendment but the bill already addresses his concerns. Clause 12 of the bill prohibits using precursor cells from a human embryo or foetus to create another embryo. I am advised that the definition of a precursor cell is broad and would definitely include stem cells. The existing provision in the bill is targeted more directly at the problem sought to be addressed as it focuses on the activity of creating a human embryo. In these circumstances, the Minister opposes the amendment. The Minister also opposes Christian Democratic Party amendment No. 4. This amendment would make it an offence under the Human Cloning and Other Prohibited Practices Bill to intentionally destroy an embryo that has been created outside the body of a woman and that has not been used to attempt to achieve pregnancy in a particular woman. This offence would extend to the destruction through the course of research of an excess ART embryo created before 5 April 2002. However, I am advised that research on embryos is the very activity that is sought to be permitted by the Research Involving Human Embryos Bill, albeit in a highly regulated, ethical framework.

Most researchers will operate under a licence issued pursuant to the Commonwealth Research Involving Human Embryos Act. That Act allows for the issuing of a license to use excess ART embryo created before 5 April 2002 in a way that may damage or destroy those embryos. I am advised that Commonwealth legislation will override the State legislation. This proposed defence will, therefore, have no effect on those with a Commonwealth licence. The amendment will create uncertainty and complexity that not only will undermine the goal of national uniformity but may force otherwise legitimate and valuable IVF research activities outside the State. This could have a significant impact on the biotechnology industry in New South Wales. I note also that if the Research Involving Human Embryos Bill is passed the amendment would result in inconsistency between the two pieces of New South Wales legislation as the destruction of excess ART embryos might be sanctioned by one Act and prohibited by the other. Scientists and medical practitioners should not be left in an uncertain position as to their legal obligations.

It is noted that a number of commentators draw an ethical distinction between the active destruction of an embryo through research and allowing an embryo to succumb. However, criminal law may make no such distinction. As proposed, the amendment would arguably prevent embryos that are excess to a couple's treatment needs from being allowed to succumb. This would require the indefinite storage of embryos created for IVF treatment needs. The Minister opposes this amendment. The Hon. Dr Arthur Chesterfield-Evans is not correct when he suggested that excess embryos that are created cannot be used in another woman. Clause 9 makes it an offence to intentionally create an embryo for a particular woman. However, that clause does not prevent an embryo, once created, from being used in another woman if a choice is made to donate the embryo.

Reverend the Hon. FRED NILE [3.31 p.m.]: I seek clarification. Are we dealing with these bills by way of conscience votes?

The Hon. Tony Kelly: Yes.

Reverend the Hon. FRED NILE: I appreciate the factual material in the Minister's response, but the response contained the words "the Minister opposes". Is that the Minister's opinion?

The Hon. Tony Kelly: I did not say this Minister.

Reverend the Hon. FRED NILE: No, I assume you are referring to the Minister for Health.

The Hon. Tony Kelly: No, Minister Sartor.

Reverend the Hon. FRED NILE: I suggest that the response should have been presented as Minister Sartor's opinion, not as the Government's position.

The Hon. Tony Kelly: When there is a conscience vote there is no government opinion.

Reverend the Hon. FRED NILE: That is why I am saying that it should have been presented as his opinion. It sounded as though it was the Government's position when the words "the Minister opposes" were used.

The Hon. Tony Kelly: I have to put the bill forward as an item of Government Business but the vote will be a conscience vote.

Reverend the Hon. FRED NILE: It is the considered opinion of the Government or the Minister.

The CHAIRMAN: Order! The status of decisions taken by different parties—whether or not a vote is a conscience vote—is really not a matter that should be discussed while we are in Committee. It is probably a matter better discussed individually with the Minister. My understanding is that the comments made by the Hon. Tony Kelly were the views of the Minister in the other place who introduced this legislation in that House.

The Hon. Tony Kelly: But it is a Government bill, and we will have an opportunity to vote with our conscience.

The Hon. PETER BREEN [3.32 p.m.]: I also understood the views presented by the Minister, who used the words "I am advised by the Minister", to represent the views of the Minister in the other place and not this Minister. I was quite clear about that. The Minister suggested that clause 12—I assume he refers to the

Federal legislation—is the operative provision that covers amendments Nos 2 and 3 proposed by Reverend the Hon. Dr Gordon Moyes. My reading of clause 12 of the Federal legislation is that a person commits an offence if the person intentionally engages in conduct et cetera contrary to an in-vitro fertilisation [IVF] licence. It seems to me that when the IVF licence was created no-one could have possibly contemplated research in respect of stem cell development to the point where an ovum might be created. If that is the explanation offered by the Minister, I have to say that in my opinion he is incorrect. I support amendments Nos 2 and 3, but the penalties are tough.

Reverend the Hon. Fred Nile: It is the maximum.

The Hon. PETER BREEN: Yes, but I do agree with the principle behind the amendments. I particularly endorse amendment No. 4. As the Hon. Tony Burke said, this amendment is really the only opportunity that we have to vote against the principle of the destruction of embryonic stem cells. There is no other opportunity. The law as it stands does not offer any protection at all and, for those reasons, I will support the bill. I certainly do not support the principle of destruction of embryonic stem cells. The amendment proposed by Reverend the Hon. Dr Gordon Moyes seeks to create the offence that I have just outlined, that of intentionally destroying a human embryo. It is the first and probably the only opportunity that any of us will get to express our concerns about this destruction of embryonic stem cells.

Reverend the Hon. Fred Nile: The destruction of embryos. Forget the stem cells.

The Hon. PETER BREEN: Of embryos, that is correct. I often make that mistake, and it is a mistake commonly made in the popular press. They are called embryonic stem cells without any real thought given to whether we are talking about embryos or stem cells derived from other sources. The important part about this amendment is that it refers to embryos, and that is what we are concerned about. The question is whether we believe that the embryo is entitled to certain protection on account of its humanity. We will all have different views about that. Perhaps more accurately, rather than describing embryos as humanity, they ought to be described as the potential for humanity, or prospective humanity.

However embryos are described, they certainly are human in the sense that the genetic information in the embryos relates to information pertaining to an individual. In that sense, the destruction of an embryo is the destruction of what some authorities call a potential human being or a prospective human being, but certainly it is human material. Interestingly, today the press is covering the proposed Byron's law, which will give the human foetus a status in law it does not otherwise enjoy. The offence of killing a foetus will carry a penalty up to a maximum of life imprisonment when the foetus has been growing for more than six months.

I do not always agree with the Hon. Dr Arthur Chesterfield-Evans but he also expressed concern about the maximum penalty of 10 years in amendment No. 4. I note that the offence of killing a full-grown human being can often carry a penalty of 10 years. In fact, the average penalty for murder in New South Wales at the moment is 16 years, but it has been down to as low as 14 years. On the face of it, 10 years for destroying an embryo is certainly a harsh penalty, given that we do not really know what the status of that embryo is. If we introduce laws in relation to a six-month-old foetus, then that ought to be some kind of benchmark, and we ought to keep it in perspective when we talk about human material or embryos. With those few words, I endorse the amendments, particularly amendment No. 4. I repeat that, in relation to whether we should be destroying human embryos, this will be our only opportunity to vote on the question and I, for one, will be supporting the amendment.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister Assisting the Minister for Natural Resources (Lands)) [3.37 p.m.]: On a point of clarification, clause 12 of the Human Cloning and Other Prohibited Practices Bill creates the offence of creating an embryo from precursor cells.

The Hon. PATRICIA FORSYTHE [3.37 p.m.]: I wanted to hear the Minister's advice about the direction the Government might take. Many of us are facing a dilemma. On the one hand we would say the way forward is to have uniform legislation, but on the other hand we would say that we are being presented with an argument in relation to amendments Nos 2 and 3 that suggest that there has been new research since the proposal for uniform legislation came about and the Commonwealth and other States commenced to introduce the legislation. I am disappointed about the way the Minister presented the argument against amendments Nos 2 and 3. I am disappointed also that the position of the Government—if we can call it that—has been framed on the basis of the argument presented by the Minister. It seems to me that we should always have the capacity to

be flexible. I would have preferred an undertaking from the Minister that any issues raised would be considered by a ministerial council meeting or the National Health and Medical Research Council [NHMRC] as a precursor to further amendment of the uniform legislation.

Uniform legislation of itself is not incapable of being amended. The better way forward, I would have thought, is for us to accept the legislation as it is today with an undertaking from the Minister either that he will go forward to the next ministerial council or correspond with the NHMRC so that those bodies can consider the issue in the context of the guidelines and the work they are doing. One would have to say that generally, in the framing of this legislation, a very conservative approach has been adopted by all the States and the Commonwealth, and considerable efforts have been made to accommodate a vast range of opinions, in the best interests of medical research and the outcomes that we want to achieve.

However, honourable members have been presented with persuasive argument by Reverend the Hon. Dr Gordon Moyes in the light of new research and new developments, and we cannot ignore those. It seems to me that the Government has now presented us with a dilemma, and it would be better if the Government were more flexible. I do not want New South Wales to be held back with regard to medical research and biotechnology. I want this State to be at the forefront, notwithstanding that other States were well represented at the Biotechnology Conference in Washington this week but not, it would seem, New South Wales. I want this State to be at the forefront in the development of those industries while at the same time responding appropriately to moral and ethical issues raised by this legislation. I put it to the Minister, for consideration by the Government, that it be more flexible in the way in which it responds to amendments, even if we do not accept all the amendments today.

The Hon. Dr PETER WONG [3.41 p.m.]: I fully endorse what the Hon. Patricia Forsythe said. During the luncheon adjournment I consulted an in-vitro fertilisation specialist on this issue. I should say from the outset that he has no problem with stem cell research and embryo research. But amendment No. 3, which relates to distributing stem cells for reproductive purposes, is of major concern. He is concerned that, even at the moment, there be clear genetic material rights. Even in the United State of America that is happening now. If this amendment is carried, it will raise a number of legal issues. Secondly, the donor may not intend that the stem cell be used to create embryos.

Thirdly, if embryos are to be exported for commercial use, that will be a very dangerous step. However, the counter argument is that at the moment there is a severe shortage of human egg donors in Australia. Perhaps, in that regard, the amendment has a worthwhile purpose. That is another argument that honourable members should consider. I totally endorse what was said by the Hon. Patricia Forsythe. I can understand that the Government may not be able to support the amendment at this stage, but it should take into consideration what is an excellent amendment, and decide whether it should put forward a Government amendment after that consideration.

Reverend the Hon. FRED NILE [3.43 p.m.]: I wish to clarify the point made by some honourable members about the penalty provisions in the amendments. When arranging for the amendments to be drafted our party did not demand that the penalty be imprisonment for 10 years. Parliamentary Counsel drafted the bill in accordance with the provisions of the human cloning bill, which provides for 11 offences carrying penalties of a maximum of 10 years. I think the Parliamentary Counsel, purely for reasons of consistency, included 10-year penalties when drafting the amendments. If he had included five-year penalties, we would have accepted that figure. I make the point that there was no intent to demand a penalty of 10 years. Honourable members may think 10 years is a severe penalty for this offence, but 10 years is the penalty provided for most other offences dealt with in the bill. In fact, the Government included a couple of 15-year penalties in the bill.

An analysis of the reply by the Minister in the other place suggested that we should trust the system, that licences would be issued and other things would be happening. That is the whole point of legislation. If we had no fear, there would be no legislation at all. The point is we want the legislation to control the licensing and operation of the bill. If there is no legislation, matters become very subjective and various bodies are left to make their own decisions—for instance, the four or five people on the licensing board. It is a question of what comes first, the licensing procedure or legislation. We are trying to get the legislation right in the hope that it will then influence the licensing procedure.

I would like to touch on questions posed and concerns raised by the Hon. Dr Arthur Chesterfield-Evans. In some ways it is like turning off a patient's life support system. When such a decision is made for medical reasons, action is taken and natural processes may lead to death, but no-one is charged with murder.

The Hon. Peter Breen: There is no intention to cause death.

Reverend the Hon. FRED NILE: It is not intentional. That is the whole point with embryos. If at some point they deteriorate and cease to be of any use, in other words die, there is no crime. That is the distinction made by the amendment in creating an offence for an intentional act against an embryo that causes its destruction.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [3.45 p.m.]: Many aspects of this legislation have been raised during this discussion. I support the point made by the Hon. Patricia Forsythe: we need flexibility in dealing with the issues as science changes. We should set a direction rather than be specific about what can occur in the laboratory. Specificity has got us into so much trouble in this debate and it has made the legislation plain silly. We are specifying to scientists what they may or may not do in a rapidly changing environment, notwithstanding definitional problems.

The Hon. Peter Breen made the point that an embryo has humanity, but did not seem to think a stem cell has. When sperm and egg fuse a zygote is formed. I do not know whether it could be argued that a zygote is not a stem cell. It is a question of the plasticity of the cell, in other words, how many different things it can become. Obviously, a zygote can become a human, but perhaps with a little manipulation so also could a stem cell in that it does have the entire genetic blueprint of an individual. So defining "humanity" and "non-humanity", in the context of a debate on genetic material, is impossible, and the definitions will change as science changes.

The Hon. Tony Burke directed my attention to the fact that I had not spoken to amendments Nos 2 and 3. I am concerned that one group of people being overlooked by the legislation are infertile people who are trying to have a child, in other words, having IVF treatment. It is interesting that almost all IVF treatment in New South Wales is done in the private sector and there is little government commitment to IVF. Perhaps it could be said that the treatment is so expensive that that attitude is fair enough. On the other hand, those who would think that dollars are not driving this bill are living in fairyland and need to come to terms with the issues by means other than supporting prohibitive laws. Amendment No. 2 provides:

> A person commits an offence if the person intentionally creates a human egg or a human sperm outside the body of a human.

If one can get a somatic cell to have the potential of an egg, that would be very important for a woman who had lost her ovaries. If that were successfully done, why should the benefit of that technology be denied her? Amendment No. 3 provides:

> A person commits an offence if the person disposes of a stem cell created from a human embryo knowing or having reasonable grounds to suspect that the stem cell will be used for reproductive purposes.

Does that mean that used stem cells cannot be disposed of? I repeat the provision:

> A person commits an offence if the person disposes of a stem cell created from a human embryo...

Does that mean that all stem cells created from human embryos must not be destroyed if they have been used for reproductive purposes? If that is the logic, hundreds of stem cells would have to be retained in refrigerators forever. If by the terms "disposing of" or "destroying" Reverend the Hon. Fred Nile means destroyed in the process of making the embryo into something else, that is a different issue, but that is not what the amendment states. If the petri dish is left in the sun and the embryo dies naturally, obviously it is not intentionally destroyed and amendment No. 4 becomes a complete nonsense. My interpretation of amendment No. 4 is that every embryo that is created has to be put into one woman, which would mean that one woman could have 10 kids.

The Minister made the point that "a particular woman" does not mean the particular woman for whom it was created. Therefore, if an embryo is created for use by a particular woman and that particular woman does not want it, it could then go to another particular woman. The use of the word "particular" is nonsensical. An embryo is created for a particular woman but it can be used in any particular woman—that is, it can be used in any other woman. Ergo, so long as it is used in a woman it is okay!

When a woman enters into an IVF contract she agrees that any eggs that are created but not used will be destroyed after a specific period, generally three years. During that time it is assumed that the woman will decide whether she wants to attempt to have another child. If her decision is not to attempt to have children, the eggs are then the property of the IVF clinic. Generally, people expect them to be destroyed. I assume they are

the embryos to which Reverend the Hon. Fred Nile is referring. Is he saying that they may not be destroyed intentionally but may be put into a particular woman? If "a particular woman" means any woman, that is fine because then they are available to be given away. But that may not be the wish of the original particular woman for whom the embryos were created. The alternative is that they are not allowed to be destroyed. According to Reverend the Hon. Fred Nile, embryos that are left on a bench and die—which they will do inevitably—are not destroyed. If that is the case, the amendment means nothing at all.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister Assisting the Minister for Natural Resources (Lands)) [3.52 p.m.]: The Hon. Patricia Forsythe raised the concern that new scientific advances may have occurred since the Commonwealth developed the legislation. I note that she has asked for an undertaking from the Minister for Science and Medical Research that he will raise this matter with other jurisdictions to determine whether the legislation is adequate to cover emerging technologies referred to in the debate. The Minister has advised that he will seek advice from the Commonwealth Chief Health Officer.

Amendment No. 2 negatived.

Amendment No. 3 negatived.

Question—That amendment No. 4 be agreed to—put.

The Committee divided.

Ayes, 13

Mr Breen	Mr Gay	Mr Oldfield
Mr Burke	Mr Kelly	
Mr Catanzariti	Reverend Dr Moyes	*Tellers,*
Mr Clarke	Reverend Nile	Mr Gallacher
Mr Egan	Mr Obeid	Mr Lynn

Noes, 26

Dr Burgmann	Ms Hale	Mr Ryan
Ms Burnswoods	Mr Hatzistergos	Ms Tebbutt
Dr Chesterfield-Evans	Mr Jones	Mr Tingle
Mr Cohen	Mr Macdonald	Mr Tsang
Mr Costa	Ms Parker	Mr West
Ms Cusack	Mrs Pavey	Dr Wong
Mr Della Bosca	Mr Pearce	*Tellers,*
Mrs Forsythe	Ms Rhiannon	Mr Harwin
Ms Griffin	Ms Robertson	Mr Primrose

Question resolved in the negative.

Amendment No. 4 negatived.

New clause 19 negatived.

Clauses 19 to 20 agreed to.

Title agreed to.

CHAIR:. The Committee will now deal with the Research Involving Human Embryos (New South Wales) Bill.

Clauses 1 to 5 agreed to.

Clause 6

The Hon. PETER BREEN [4.03 p.m.]: I move my amendment:

No. 1 Page 4, clause 6. Insert after line 26:

(4) Any provision of the Commonwealth Embryo Act that is repealed by the operation of section 46 of that Act continues to apply as a law of this State after that repeal.

The intention of the amendment is to limit research involving human embryos to the existing stock of embryos. As the Minister said in his second reading speech:

> Only embryos created prior to 5 April 2002, and deemed excess, will be available for research purposes.

Without this amendment, the legislation will be a green light to in-vitro fertilisation [IVF] companies to create additional banks of embryos for research. That would be completely at odds with the intention of the bill, which is to limit research to excess embryos created prior to 5 April 2002. When the Commonwealth Research Involving Human Embryos Act 2002 was introduced into the Federal Parliament, Prime Minister Howard said:

> Importantly, research will only be allowed on excess IVF embryos that were in existence at 5 April 2002.

Unfortunately this intention is defeated by the sunset clause in section 46 of the Commonwealth legislation. My amendment will allow the object of the Commonwealth and the State legislation to be achieved. Research will be limited to the existing stock of excess embryos beyond 5 April 2005, which is the date in the sunset clause in the Commonwealth legislation, or at any other time. Researchers will gain access to any additional stock of human embryos only after further debate in this Parliament. One of the speakers—I think it was the Hon. Robyn Parker—said in the second reading debate that she was concerned that this Parliament might be tampering with or unravelling the Federal legislation. I will address that point very briefly. It is certainly not my intention to do that.

As I said earlier, I believe the Commonwealth legislation is a bonus in view of the existing common law, which does not provide any protections at all. To suggest that my amendment might somehow defeat the Commonwealth legislation would be an inaccurate interpretation of the amendment. Not only does it not unravel the legislation, but it will allow the legislation to remain in force so far as it relates to the existing stock of human embryos.

I will summarise very briefly the problem as I see it. Currently in Australia there are approximately 65,000 embryos available for research—that is, embryos that are excess to the needs of IVF programs. My understanding is that when the legislation was introduced into the Federal Parliament it was specifically intended to deal with the existing supply of embryos, that is, the 65,000 embryos. As a result of negotiations in the Federal Parliament and with the State Attorneys General, the original intention was subverted by the sunset clause in the Federal legislation. In my view, the sunset clause is contrary to the object of the bill. Section 3 of the Federal legislation states:

> The object of the Act is to address certain concerns, including ethical concerns... in relation to the use of certain human embryos created by assisted reproductive technology.

That object is repeated in the State legislation, which says in part:

> The object of this Act is to adopt in this State a uniform Australian approach to the regulation of activities that involve the use of certain human embryos created by assisted reproductive technology.

The objects indicate the original intention of the legislation, which is to protect the integrity of research into human embryos and to limit that research to existing stock. Without my amendment there will be no limitation on the existing stock of embryos. I will repeat that: There will be no limitation on the existing stock of embryos. Once the sunset clause comes into effect on 5 April 2005, it will be open slather for the research companies, IVF clinics, and anybody else who is interested in promoting and securing an interest in this industry.

The purpose of the legislation is to regulate the industry; yet that purpose is defeated by the operation of the sunset clause. My amendment provides that the Federal sunset clause will not apply in New South Wales. I ask members to support my amendment, bearing in mind that the effect of their support will be that the legislation will continue to operate after 5 April 2005. When the Federal sunset clause comes into effect, it will

not automatically come into effect in New South Wales. Our Parliament would have to assess the current state of research and determine how legislation can best protect and regulate the industry. This amendment is a very important addition to the bill. It does not diminish the Federal legislation in any sense; indeed it prolongs it in New South Wales. I urge honourable members to support the amendment.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [4.10 p.m.]: I do not support the amendment, because it would inhibit necessary research on human embryos. It is silly that only embryos created before 5 April 2002 can be authorised for experimentation. That would be like the requirement established in about 1865 that a man waving a red flag had to walk 50 yards in front of a train or a car because it was considered that trains and cars were so dangerous. This legislation inhibits scientific technique and is quite invasive. The idea of a restriction on embryos after 5 April 2002 is bad enough, but we should not prolong that restriction forever. That prohibition will retard research until 5 April 2005, and clearly that will cause difficulties for researchers. I am amazed that 65,000 embryos are available. Each month in the publication *Sydney's Child* I read that people are desperate to obtain embryos to assist them with their infertility. We have to look at the overall ethical framework and allow scientists to do their work, with a sensible inspectorate rather than this sort of legislation.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister Assisting the Minister for Natural Resources (Lands)) [4.11 p.m.]: The Minister does not support this amendment. I am advised that under the Commonwealth's Research Involving Human Embryos Act, any licensed use of excess in-vitro fertilisation [IVF] embryos is authorised only in respect of embryos created up to 5 April 2002. Pursuant to section 46, that moratorium will be lifted on 5 April 2005 or such earlier date as the Council of Australian Governments [COAG] may decide. The moratorium does not apply to the other provisions of the Research Involving Human Embryos (News South Wales) Bill or the human cloning bill, both of which will remain in place to provide a robust regulatory system. The amendment would prevent the lifting of the moratorium in New South Wales. This means that the prohibition on the use of excess IVF embryos created after 5 April 2002 would continue indefinitely under New South Wales law.

The Research and cloning measures in these bills are intended to operate on a consistent national basis. The amendment will have effect only in respect of researchers operating pursuant to State law. The Commonwealth law will continue to apply to corporations and others covered by that legislation. The continuation of the moratorium in New South Wales after it has been lifted in the Commonwealth will cause confusion and uncertainty for those engaged in research in New South Wales. At worst, it might lead to the biotechnology industry in New South Wales operating at a disadvantage as against the industry in other States because of that confusion. COAG comprises representatives of all Australian jurisdictions and is well placed to consider the views of all participants with respect to the operation of the laws of the country, including the lifting of the moratorium.

Several honourable members have raised concerns about section 46 of the Commonwealth research Act being mirrored in the New South Wales research bill, so that once the moratorium is lifted, researchers will create embryos solely for the purposes of research. I am advised that that is not correct. Even after the moratorium is lifted the same stringent regulations will apply to the use of embryos for research. Excess IVF embryos—embryos created for IVF treatment that are excess to the treatment and in respect of which relevant consents for research to be conducted have been given—can be the subject of a research licence. Researchers will not be able to create embryos solely for the purposes of research, because the New South Wales cloning bill prohibits the creation of an embryo for any purpose other than to achieve pregnancy in a woman. The Minister does not support the amendment.

Reverend the Hon. FRED NILE [4.14 p.m.]: Some honourable members are concerned that our legislation will be out of step with the Federal legislation. In the second reading debate I said there had been a lot of compromises in drafting the Commonwealth legislation. It was not designed to provide a perfect set of rules or laws: it was to achieve the best result following detailed negotiation between the Commonwealth and the States, with input from the minor parties in the Senate; to achieve a formula that everyone would agree to and that would be passed by the Federal Parliament. One contentious factor was the moratorium cut-off date, and we should remove it.

The moratorium was a compromise in the Federal legislation, but we do not have to compromise in this State. If we give the lead, the Minister in the other place could contact the Federal Minister, who could then move an amendment to the Commonwealth legislation. The amendment moved by the Hon. Peter Breen would make the Commonwealth and State legislation uniform. In other words, the Federal legislation could be amended to bring it into line with this State's legislation.

The Hon. ROBYN PARKER [4.15 p.m.]: We are attempting to provide some sort of clarity on a very difficult and complex issue. We have to keep this bill in line with the Federal legislation. It would be ridiculous to introduce a provision that would put our bill out of step with the Federal legislation. Once the moratorium is lifted the Federal regulations come into play. To my mind that is enough of a check and balance. If we create a situation in which we are out of step, there will be confusion. I am firmly convinced that there are enough checks and balances in place to cover the existing circumstances and what might happen after the moratorium is lifted. I do not support the amendment.

The Hon. TONY BURKE [4.17 p.m.]: If there were enough checks and balances in place there would be no need for the moratorium. The fact that the moratorium was included in the legislation in the first place was an acknowledgement at the Commonwealth level that the prohibition on creating an embryo for the purpose of research on its own was not enough. With assisted reproductive technology [ART] it would be too easy to produce more than is needed, and years down the track the parents of the embryos would be in an impossible situation. As the embryos are going to die anyway, the parents will ask what should be done with them.

The moratorium was put in place to avoid the deliberate creation by ART of surplus embryos. The Commonwealth legislation puts the moratorium in place for three years, with nothing to then take its place. The Minister acknowledged in his reply to the second reading debate in the other place that in three years time, when the moratorium is lifted, appropriate legislative mechanisms will need to be in place. This amendment gives us the opportunity to do that. If the moratorium is lifted, an amending bill will be debated and members will check that the appropriate legislative protections are in place. I expect that at that time the numbers in the Parliament will not be very different from what they are now.

The argument that the embryos will be destroyed anyway has convinced some honourable members to support the legislation. Therefore, if there is to be a loophole that gives ART an opportunity to create many more embryos than might be needed, new checks and balances will have to be put in place. The only way to make sure that happens is for the Parliament to reconsider the legislation when the moratorium is lifted.

The Hon. PETER BREEN [4.20 p.m.]: I will refer briefly to a few matters raised by the Minister on behalf of the Minister for Health. In moving this amendment it was not my intention to cause any disadvantage to researchers in New South Wales. As a result of this amendment, researchers will have in place a system that will be subject to review by this Parliament. After 5 April 2005 there will be no mechanism in place to protect the unlimited creation of embryos. That is the problem. The Minister said the human cloning legislation is a suitable restriction on the creation of excess embryos. But, as the Hon. Tony Burke said earlier, that legislation does not have the effect that the Minister suggested it has.

A person who creates an embryo and keeps it alive for more than 14 days will be subject to the provisions of the legislation. However, the creation of embryos is not otherwise restricted, certainly not to the extent that researchers will be prevented from doing what they like, completely unregulated. The Minister referred to inconsistencies between Commonwealth and State laws. If there is a conflict between the two laws, the Commonwealth law will prevail. Section 109 of the Constitution provides that Commonwealth law prevails over an inconsistent State law. If the moratorium was discontinued under Commonwealth legislation and it continued under State legislation, the Commonwealth law would have effect. People would be bound by the Commonwealth law and not by the State law.

My amendment would give the Parliament an opportunity to examine the situation, determine the stage that research had reached, and closely consider whether the existing regulatory system is satisfactory. I am seeking to put in place a mechanism that provides some regulation. Members of Parliament should be given an opportunity in three years time to determine what stage that regulation has reached. Without this amendment there will be no regulation, and there will be more human embryos floating around than we can count, with nobody to control the process. My amendment is an appropriate way to put a mechanism in place by 5 April 2005 so that this Parliament can reconsider the whole matter and determine whether the Commonwealth legislation is doing what it is supposed to do, which is to regulate the industry. I commend the amendment.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 21

Mr Breen	Mr Kelly	Mr Tingle
Mr Burke	Mr Lynn	Mr Tsang
Mr Catanzariti	Reverend Dr Moyes	Dr Wong
Mr Clarke	Reverend Nile	
Mr Della Bosca	Mr Obeid	
Mr Gay	Mr Oldfield	*Tellers,*
Mr Hatzistergos	Mr Primrose	Mr Egan
Mr Jones	Mr Ryan	Mr Gallacher

Noes, 17

Dr Burgmann	Ms Griffin	Ms Robertson
Ms Burnswoods	Ms Hale	Ms Tebbutt
Dr Chesterfield-Evans	Mr Macdonald	Mr West
Mr Cohen	Ms Parker	*Tellers,*
Mr Costa	Mrs Pavey	Mr Harwin
Mrs Forsythe	Ms Rhiannon	Mr Pearce

Question resolved in the affirmative.

Amendment agreed to.

Clause 6 as amended agreed to.

Clauses 7 to 22 agreed to.

Title agreed to.

Human Cloning and Other Prohibited Practices Bill reported from Committee without amendment and Research Involving Human Embryos (New South Wales) Bill reported with an amendment, and report adopted.

Third Reading

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [4.35 p.m.]: I move:

That these bills be now read a third time.

I speak against the Human Cloning and Other Prohibited Practices Bill. I listened intently to the second reading stage of this bill. I have studied the details of the bill and sought advice from the relevant ministerial support staff. I cannot support the bill as I have intense reservations about the restrictions that it places on science. I appreciate that compromise is necessary when establishing a nationally consistent regime. I did not seek to amend the bill in Committee; I simply wish to put my concerns about the bill on the record. I do not think the Human Cloning and Other Prohibited Practices Bill in its current form gives enough latitude to science in the area of therapeutic cloning. That is my primary concern. When the legislation was proposed I was assured that therapeutic cloning—which I and many other members support—would not be prohibited. However, I am advised that it is prohibited, which concerns me greatly.

I know that there are strong and passionate views about other aspects of the bill, particularly about when an embryo has a human dimension. I do not intend to get into that debate other than to say that I think 14 days is an arbitrary figure. On many occasions the debate was the proxy for a discussion about other values about which I am not concerned in the context of this bill. We need to establish a regime that affords a degree of certainty to the scientific community. That is my primary concern. The community's ethics and values are certainly important and offer a framework for debate. However, I think clear rules would give our scientists the latitude to explore important therapeutic processes without throwing up the spectre of Frankenstein science. That has been alleged in some quarters as the consequence of allowing our scientists to continue to use the techniques in which they have developed expertise. I believe that, in the majority of cases, scientists apply those techniques fairly and ethically, having regard to the concerns of the broader community or sections of it.

The legislation contains several serious criminal offences that establish the community's ethical boundaries. That is appropriate. These include bans on embryo cloning and human cross-species cloning. I do not think anyone could sensibly question the cross-species provisions. That would be very silly. No-one is in the business of breeding Minotaurs or wolf-men—to use the emotive language that some people adopt in debates such as this. I am not concerned with that part of the bill. However, the ban on embryo cloning falsely legitimises the ethical superiority of stem cell research over therapeutic cloning. I do not understand why that is so, and nobody offered in debate an argument based on science rather than on ethical concerns, which I have acknowledged are appropriate but which I do not necessarily share. I think the arguments advanced were flawed and illogical.

Therapeutic or research cloning—or, to use the scientific term, somatic cell nuclear transfer—offers the prospect of growing human tissue for a complete human organ transplant. We must all recognise that this important technology should be allowed to advance, but this bill does not permit that to occur. Cloning from the genetic material of the recipient offers the best prospect of a match for the donor. The result of that process would not be a human being but merely a replacement organ or a piece of nerve tissue or skin. The therapeutic cloning process never creates or destroys a viable human embryo. The moral debate seems to have dominated the agenda on both sides of the House. I do not criticise people who have strong ethical views and speak passionately about this matter because it is appropriate, but I do have a problem with the framework that is being proposed and the ability for people to be involved in research in relation to therapeutic cloning.

By contrast, stem cell harvesting involves a potentially viable embryo. We accept that, but we do not accept a process that does not even impact on the debate in relation to embryos. Surely a process that involves no viable embryo should be less, not more, contentious. I am surprised that there has not been a genuine debate about that component. Therapeutic cloning offers the prospect of growing compatible donor organs and other transplant material with the result of fewer children waiting on life support for compatible organs and fewer people suffering and dying from critical injuries and disease. I do not argue for cloning in favour of other techniques that have been part of this debate. I think research should be allowed in that area. Certainly there are increased prospects for adult stem cell research. I researched articles in the *New Scientist* that indicate that researchers at the University of Minnesota, for example, have discovered multi-potent adult progenitor cells, apparently capable of generating all tissues in the body, just like embryonic stem cells.

Alternative technologies are being explored, yet I do not think the debate focused on that. I am concerned that people have used this debate as a proxy for what are broader values and political positions. They have sidestepped the debate and limited the scope for important research in relation to therapeutic cloning, which should be supported by everybody. The multi-potent adult progenitor cells could be taken from an individual and used to generate any kind of tissue needed by that person, such as muscle tissue for repairing damaged hearts. Developments of that nature may save a lot of hand wringing and soul searching around the place about these particular issues. I observed that this debate seemed to be a proxy for other value debates that people ought to legitimately bring out in the open rather than seek to restrict what I think are appropriate scientific processes. The fact remains that at the moment the most promising form of research is stem cell research, and therapeutic cloning appears to be the most promising of the categories of other research.

I am reluctant to set arbitrary limits on one form of research over another on spurious ethical grounds. They may be well-meaning grounds, and people may have held those grounds on the basis of deeply felt positions, but I am concerned that this bill will restrict research involving processes that could lead to a very rapid development of technologies in terms of therapeutic cloning that could help people in need. I put on the record that many honourable members who have listened to this debate are not necessarily protagonists in that broader value debate that seems to be going on—and for which this debate is being used as a proxy—and are very concerned that this bill bans therapeutic cloning. I accept the proposition that regulatory powers may be able to be used in the future to implement such changes. However, we have seen an ideological debate and a proxy debate rather than a debate focused on where progress can be made in this area and benefit human beings currently in need in relation to therapeutic cloning. Given that this bill does not allow therapeutic cloning, I cannot in good conscience support it.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [4.44 p.m.]: The principle on which medicine works—and which this Parliament should work—is above all do no harm. People look at human cloning in two ways: first, in terms of Dolly the sheep or a *Brave New World,* where huge numbers of people may be cloned in test tubes to effectively invade the world; and second, in relation to morality, where people see every sperm as sacred. Those two groups have different motivations.

The Hon. John Ryan: I think that is Monty Python.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Far be it for me to draw a connection with Monty Python. We must adopt the principle that we must not do harm. Earlier, when speaking to an amendment, I said that a financial transaction is not harmful unless it is part of an overall tax avoidance scheme. It is not a question of looking at individual parts, but of having a holistic view of what a scientist is doing. The Minister was right when he said that it is bad to fetter the scientists with the acts they can carry out. A number of fetters are imposed on scientists by people who do not really understand the possibilities. It is legion. Clause 8 of the Human Cloning and Other Prohibited Practices Bill provides that there must be no fertilisation of eggs, except for a particular woman. Clause 10 states that there must be no hybrids of humans, so we cannot improve genetic material from other sources.

Clause 11 states that we must not have an embryo survive outside the body for more than 14 days—a totally arbitrary number for someone working in a laboratory. Clause 12 states that we may not create an embryo, which may be quite unreasonable for someone who does not have an ovary and could use a sematic cell. Clause 13 states that we must not have germ line gene therapy and we cannot improve cells. Clause 14 states we may not flush out human embryos, which is common in animal husbandry. Clause 15 states that we must not create chimeric embryos—no part of an animal cell in a cell—which may indeed correct some genetic disorder and be immensely helpful. Clause 16 states that there must be no hybrids, so that a whole animal cell and a human cell may not be put in any hybrid component even if it has a therapeutic benefit. We cannot put human embryos in another animal, for instance, in surrogacy.

Clause 17 states that we cannot use a prohibited embryo. Clause 18 states that no money must change hands for the supply of a human egg, sperm or embryo, despite the fact that the whole in-vitro fertilisation industry is basically private. It is private because it is too expensive for the public purse. People are desperate—they go overseas and pay money to women in developing countries to have babies. Everyone turns their back on those adoption practices, but they are options. A lot of things are interfering in the Commonwealth human cloning legislation. It is a poor compromise at a political level, taking into account that members are going well beyond their level of competence in terms of what they should be passing. That is why I believe we should make a philosophic statement as to the objectives of the legislation—as occurs in the tax Act—and the courts, inspectors and people who have an understanding of the technology should enforce the law.

The Federal Human Cloning and Other Prohibited Practices Bill is most unfortunate. The New South Wales bill effectively empowers the Commonwealth bill and contains silly things, such as that all embryos must be older than 5 April 2002. That totally arbitrary date has been taken from nowhere, without any particular rhyme or reason. If the principle of legislation is to above all do no harm it is nonsense to set arbitrary dates and inflict them on scientists who are working under sufficient difficulties when they are at the frontier.

I am very concerned about these bills. The whole philosophy of trying to separate things in semantic ways by people who really do not understand what is happening is the wrong approach. I am particularly concerned about the Federal legislation, and obviously instruments that empower it concern me as well. Although the New South Wales bill does allow scientific work within the regulatory framework, the imposition and unscientific restrictions of the Commonwealth legislation, which underpins the New South Wales bill, makes the whole area fraught with difficulty. I wonder whether a much less regulated regime, applying the common law principles of effectively doing no harm, might be better applied. As such, it might be better if these bills fail.

Reverend the Hon. FRED NILE [4.50 p.m.]: I would like to comment on the contribution of the Hon. Dr Arthur Chesterfield-Evans. He had no reservation about mixing animals and humans, et cetera. The honourable member just proved absolutely the need for this legislation, and how dangerous it would be to have a scientist with his mentality let loose in a laboratory.

The DEPUTY-PRESIDENT (The Hon. Christine Robertson): Order! As a request has been made under standing order 106, I shall put the questions with regard to the third reading seriatim.

Question—That the Human Cloning and Other Prohibited Practices Bill be now read a third time—put.

Motion agreed to.

Human Cloning and Other Prohibited Practices Bill read a third time.

Question—That the Research Involving Human Embryos (New South Wales) Bill be now read a third time—put.

Motion agreed to.

Research Involving Human Embryos (New South Wales) Bill read a third time.

ALCOHOL SUMMIT

The DEPUTY-PRESIDENT (The Hon. Christine Robertson): I report the receipt of the following message from the Legislative Assembly on the holding of a Summit on Alcohol Abuse:

MADAM PRESIDENT

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

(1) That this House, recognising the problem of the abuse of alcohol in the community and its impact on society, agrees to hold a Summit on Alcohol Abuse, at Parliament House, involving members of both Houses of Parliament and invited community representatives, in order to:

- Create a better understanding by members of Parliament and the community of the causes, nature and extent of the problem of alcohol abuse.
- Better inform members of Parliament and the community through a forum bringing together a range of alcohol experts, public health experts, law enforcement, industry and community representatives who reflect the spectrum of views on alcohol.
- Examine existing approaches to the problems arising from alcohol abuse and consider new ideas and new options in a bipartisan forum.
- Consider evidence regarding those strategies that work and those that do not, and in particular, to consider:
  - The effectiveness of existing NSW laws, policies, programs and services.
  - The cost to the community of alcohol related harm.
  - The impact on human services and their effectiveness in responding to problems and needs.
  - The effectiveness of current resource allocations in targeting the problem of alcohol abuse.
  - The role of Commonwealth Government agencies, programs and strategies.
- Implement specific strategies to ensure the views of women, young people, Aboriginal people, rural and regional communities and people from culturally and linguistically diverse communities are fully represented at the Summit.
- Identify ways to improve existing strategies, programs and services.
- Build political and community consensus about future policy directions which target alcohol abuse and deal with its impact.
- Recommend a future course of action so that the best and most cost effective strategies, policies and programs, both long and short term, are available to address and impact on the problem of alcohol abuse.

(2) That the services of the Parliament of New South Wales be provided for the hosting of the Summit on Alcohol Abuse from Tuesday 26 August 2003 to Friday 29 August 2003, with Plenary Sessions in the Legislative Council Chamber and Working Groups convening in the various meeting rooms.

(3) That the Summit be chaired by Mrs Kerry Chikarovski and the Honourable Neil Blewett.

(4) That members of both Houses attend as Parliamentary Delegates and fully participate in all proceedings in accordance with the proposed Summit rules to be agreed on by the Summit.

(5) That the non-Parliamentary Delegates and Associate Delegates, as invited by the Premier, be admitted to participate in Plenary Sessions and Working Group meetings in accordance with the Summit rules to be agreed on by the Summit.

(6) That this House request the Summit to provide a communiqué outlining an agreed framework and directions for the Government to consider.

Legislative Assembly
26 June, 2003

J. J. Aquilina
Speaker

Consideration of message deferred.

HUMAN TISSUE AND ANATOMY LEGISLATION AMENDMENT BILL

Second Reading

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [4.53 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.

During the spring sitting of Parliament last year the Government introduced the Human Tissue and Anatomy Amendment Bill 2002. The bill received unanimous support in the other place but, owing to the pressures of last session's legislative program, did not proceed in this House and consequently lapsed. That bill was the outcome of a lengthy consultation process as the legislation dealt with matters of great sensitivity and concern to the community.

As part of the consultation process the 2002 bill's predecessor, the Human Tissue Amendment Bill 2001, was introduced into Parliament the year before and allowed to lie on the table to provide an opportunity for public comment.

Shortly afterwards the report on the "Inquiry Into Matters Arising from the Post-Mortem and Anatomical Examination Practices of the NSW Institute of Forensic Medicine" - the Glebe Morgue - was published.

The report, prepared by Mr Bret Walker SC, contains a number of recommendations relating to the legislation that currently governs the use of human tissue and the conduct of anatomical examinations.

Consequent upon the submissions received in relation to the Human Tissue Amendment Bill and the recommendations in the Walker report, the Government prepared revised legislation in the form of the Human Tissue and Anatomy Legislation Amendment Bill 2002. The Human Tissue and Anatomy Amendment Bill 2003, which is now before you, is substantively the same as the lapsed 2002 bill.

The underlying purpose of the proposed legislation is to ensure that public confidence in the conduct of post-mortem examinations and the use of human tissue in New South Wales is maintained. To this end, the bill provides for amendments to the Human Tissue Act 1983, the Anatomy Act 1977 and the Coroners Act 1980.

The main features of the proposed legislation provide for the following:

Tissue removed during medical, surgical or dental procedures, or for the purposes of a post-mortem examination, is not to be used for other purposes without written consent;

All non-coronial post-mortem examinations are to be carried out in accordance with the wishes of the deceased or their senior available next of kin;

It will be unlawful to use tissue removed from a body during a non-coronial post-mortem examination for any other purpose without written consent;

The purpose for which a coronial post-mortem examination may be conducted is to be clarified;

In the conduct of any post-mortem or anatomical examination, regard must be had to the dignity of the deceased person;

More effective provisions covering the prohibition in the trade in human tissue and the enforcement of this and other provisions under the Human Tissue Act generally; and

The making of regulations to deal with human tissue collections in an accountable manner.

For the information of honourable members I would now like to provide some further background to the proposed legislation and to discuss the amendments in greater detail.

The law in New South Wales allows for two kinds of post-mortem examinations. A post-mortem examination may be ordered under the Coroners Act to assist a coroner in investigating a death. Owing to the nature of the Coroner's jurisdiction, the consent of the next of kin to perform the post-mortem is not required.

Nevertheless, there are provisions in the Coroners Act that allow next of kin to object to a coronial post-mortem examination. The majority of post-mortem examinations undertaken in New South Wales are ordered by a coroner.

The second kind of post-mortem examination is one that is authorised under the Human Tissue Act. Such a post-mortem examination can be authorised where the deceased expressed a wish or consented to such a procedure during their lifetime.

Where the deceased did not express any views, the Act sets out two different sets of rules as to when a post-mortem examination may take place. If the body of the deceased is not at a hospital, a post-mortem examination can only be authorised by a senior available next of kin. If there is no next of kin to consent to the procedure, no post-mortem may be undertaken.

On the other hand, if the body is at a hospital and no next of kin can be located, a post-mortem examination can be authorised by a designated officer of the hospital.

These two sets of rules are inconsistent with each other. The bill amends these rules to ensure that, where the deceased expressed no views about a post-mortem examination during his or her lifetime, a senior next of kin must be consulted. Where there is no next of kin available, a post-mortem examination will not be able to take place. The amendment ensures that consent is always obtained for a non-coronial post-mortem examination, regardless of whether or not the body is at a hospital.

A similar anomaly exists under the Act in respect of tissue donation. The bill amends the relevant provisions so that tissue may only be removed for donation according to the written consent or wish of the deceased, given whilst alive, or where a senior next of kin gives written consent, irrespective of whether the deceased's body is at a hospital or elsewhere.

Another area of reform introduced by the bill relates to how tissue that is removed during a post-mortem examination may be used. At present, section 31 of the Human Tissue Act allows tissue that is removed during any post-mortem examination to be used for other therapeutic, medical or scientific purposes. The consent of the deceased or their next of kin is not required for these other uses.

"Tissue" is defined in the Act as an organ or any part of the human body. In the past, this provision has led to tissue, such as hearts and lungs, which are removed as part of a post-mortem examination, being used for research. In some cases, such organs and tissue have been kept in hospital tissue collections. Families have often been unaware that bodies released to them after post-mortem examination have had organs or tissue missing from them.

This practice has caused great distress for some families, especially for those whose cultural or religious beliefs require the burial of the whole body intact. It is a particular issue in coronial post-mortem examinations, where the next of kin do not have a role in consenting to the post-mortem examination itself.

The proposed bill also addresses cultural sensitivities by allowing a next of kin of a deceased person to authorise another person to exercise his or her functions under the legislation.

The proposed provision recognises the kinship and other familial relationships that exist in cultural groups such as the Aboriginal and Torres Strait Islander cultures. For example, in the case of a death of an Aboriginal person or a Torres Strait Islander, the powers and duties of the senior next of kin would traditionally be exercisable by the designated culturally appropriate person of the family, extended family, clan or tribe to which the deceased person belonged. By allowing consent to be delegated, the bill provides a means of addressing these important cultural differences.

The provisions in the Human Tissue Act, which currently allow tissue to be used for other purposes without consent, are based on the recommendations of the Australian Law Reform Commission in its 1977 report on human tissue transplants.

The Law Reform Commission recommended that body parts removed during post-mortem examinations should be available for use for other therapeutic, medical and scientific purposes.

However, it is clear that the community no longer considers it appropriate that tissue removed during post-mortem examinations may be used for medical research or other scientific or therapeutic purposes, without the need for consent. The bill will render such a practice unlawful.

The bill inserts new provisions in the Act which state that an authority to use tissue removed during a post-mortem examination for other purposes may only be given if the deceased consented in writing whilst alive. Alternatively, if the deceased did not indicate their wishes whilst alive, or the deceased was a child, their senior available next of kin may consent in writing. However, no such consent may be given if the designated officer is aware, after making reasonable inquiries that the deceased person had objected to the use of their tissue.

An authority to use the tissue must be given by a "designated officer" who is a person appointed under the Act to authorise the use of human tissue obtained through donation or from a post-mortem examination. Where the death is in the jurisdiction of a coroner, the coroner's consent will also be required.

A person giving consent to the use of tissue may limit that consent as they see fit. For example, they may limit the use of tissue to one particular research project.

Under the proposed legislation, the requirement to obtain written consent will also be extended to tissue removed from a living person during medical, dental or surgical treatment. It is anomalous that consent is required for the use of tissue removed after death, but not for tissue removed or expelled in the course of medical, dental or surgical treatment.

Thus, the use of such tissue for therapeutic, medical or scientific purposes will be permitted if the patient, or if the patient has died, the senior available next of kin, has given consent in writing to the use of the tissue for that purpose.

However, a general exception has been included in the legislation with respect to persons for whom the Minister administering the Children and Young Persons (Care and Protection) Act has parental responsibility. After consultation with the Minister for Community Services, the view was taken that children and young persons who are under the Minister's care should not be subject to the provisions of the legislation enabling consent to be given to the use of their tissue.

For the purposes of consistency, the bill also amends the Human Tissue Act to require consent for the removal of tissue from a deceased person and its use for transplantation or other therapeutic, medical or scientific purposes to be in writing or by other prescribed means. The reason it may be necessary to have consent recorded by means other than writing, in the case of donation for transplantation, is because of the time constraints on the retrieval of viable human tissue. For example, in respect of potential cornea donation there is only a short window after death during which the tissue remains medically viable for retrieval. In many

instances tissue banks have advised that it is necessary to discuss prospective donation with and obtain the consent of the deceased's family by telephone, as they are not present on hospital premises to provide their consent immediately in writing.

Accordingly consensually recorded verbal consent, or other means of equivalent record to that of written consent, can be prescribed. This will ensure there is no reduction in the availability of tissue for donation whilst adhering to the principle of requiring clearly documented consent to tissue removal.

The bill renders it an offence to use tissue removed during a medical dental or surgical procedure, from the body of a deceased person, or during a post-mortem examination, unless an authority has been given for its use under the Act. It is also unlawful to use tissue outside the terms of the authority.

The proposed legislation provides for two exceptions in respect of the requirement for consent for the use of tissue removed from a deceased person or during the course of therapeutic, medical or scientific procedures.

First, no consent will be required for the retention and therapeutic, medical or scientific use of small samples of any tissue that is lawfully removed from the body of a person (whether living or deceased) and retained in the form of a tissue block or slide. An exception in these terms has also been included in the proposed amendments to the Anatomy Act and the Coroners Act.

The retention of such material is essential in assisting in determining the manner and cause of death under the Coroners Act. The Walker Report also noted the strong justification for the indefinite retention of tissue blocks and slides without specific consent requirements to allow for their use in teaching and research.

The second exception allows for the retention of tissue for a prescribed period for the purpose of obtaining a written authority under the Human Tissue Act for the use of the tissue for therapeutic, medical or scientific purposes. This exception is designed to enable tissue removed in certain circumstances, such as emergency surgery, to be retained until the wishes of the person from whom the tissue was removed, or, if the person dies, their senior available next of kin can be ascertained.

The proposed bill also provides for improved enforcement powers. The updated and improved enforcement provisions will assist in monitoring compliance with the legislation generally. More particularly, these new powers are generally aimed at ensuring that the prohibition on the trade in human tissue contained in section 32 (1) of the Act can be appropriately investigated and enforced.

Section 32 (1) provides that it is an offence to enter into a contract or arrangement under which any person agrees, for valuable consideration, to the sale or supply of tissue from a person either living or deceased, or to the post-mortem examination of any person after death. Section 32 has been updated to ensure that it not only captures any contract or arrangement that might breach section 32 (1) but also captures an *offer* to enter into such an arrangement.

The Act provides for an exception regarding the prohibition on contracting for the sale or supply of human tissue. This exception allows for the sale and supply of therapeutic goods, which contain human tissue.

At present, this exception applies only to goods that are to be used "in accordance with the direction of a medical practitioner". Since this provision was enacted, a number of therapeutic goods have been developed which contain processed human tissue, but are not necessarily used "in accordance with the directions of a medical practitioner".

These include serological tests for certain human diseases (which contain human serum), cell feeder lines for culturing viruses, and other scientific and therapeutic goods.

These products, which are regulated by the Commonwealth Therapeutic Goods Administration, may be used by persons such as laboratory scientists and researchers, rather than in accordance with the directions of a medical practitioner. The bill therefore also updates the current exception to take such therapeutic goods into account.

The further matter addressed by the bill is that of human tissue collections. The Chief Health Officer's audit of human tissue collections indicated that much stored tissue is unidentified. This makes it difficult for comprehensive audits of tissue collections to be undertaken.

The bill addresses this issue by inserting new regulation making powers into the Act. This will allow regulations to be made regarding record keeping for tissue collections, or use of tissue under the Act. Regulations may also be made for the forwarding of such information to the Director-General of the Department of Health. This will allow the Department to properly monitor human tissue collections.

The bill before the House also amends the Anatomy Act 1977. Consistent with the proposed amendments to the Human Tissue Act, the legislation introduces a requirement for written consent by the deceased prior to their death, or by the senior available next of kin, for the use of a body for anatomical examination.

A number of other amendments have been included in the bill by way of updating and clarifying the operation of the Act.

The Walker report took the view that the current provisions of the Anatomy Act only allow for the dissection of bodies. This means that bodies donated under the Anatomy Act cannot be used for the purposes of other medical or scientific research, such as teaching or practising surgical techniques.

A new definition of "anatomical examination" has therefore been included in order to make it clear that such examination includes the use of the body for medical and scientific purposes. A reference to medical or scientific purposes includes educational purposes connected with medicine or science. This will ensure bodies donated under the Act will be able to be used for such purposes as instructing students studying medicine.

The bill also introduces a provision stating that, in the conduct of an anatomical examination, regard is to be had to the dignity of the deceased. The bill provides for the inclusion of a similar provision in both the Human Tissue and Coroners Acts.

The comment might be made that neither anatomical examinations nor post-mortems are, of themselves, inherently dignified procedures. However, it is considered important that there be some acknowledgement by way of general principle that the process surrounding these procedures should reflect the ongoing dignity that should be accorded to any person between the time of their death and burial or cremation.

Presently, a licensee may retain a body that has been donated under the Anatomy Act indefinitely, provided an authority to do so is given by an inspector, as required. However, in keeping with the principle propounded in the Walker report that regard is to be had to the dignity of the deceased, it is proposed that a maximum period of 8 years be set for the retention of bodies donated under the legislation.

Specific provision has been made for the permanent retention of tissue where express written consent has been given by the deceased prior to death. Where no consent has been given and the wishes of the deceased in this respect are unknown, the senior available next of kin may consent. However, as previously noted, no consent is required for the retention of tissue in the form of tissue blocks and slides.

The Anatomy Act currently makes provision for the transfer of bodies between institutions licensed under the Act. However, the legislation is silent regarding the transfer of tissue between licensees.

The proposed bill allows for the transfer of human tissue from a body that is in the possession of a licensed institution to another holder of a license, an authorised officer of a hospital, or a person approved by the Director General for use for medical or scientific purposes. Such transfer will not be permitted where it is contrary to the authority given by the deceased or the next of kin.

This amendment will ensure that activities, such as the practice of surgical procedures on particular tissue or body parts, can be conducted at hospitals and licensed facilities. Provision is made in the bill requiring the licensee to have arrangements in place for the return of the tissue, unless it has been wholly or substantially destroyed in the process.

Finally, the proposed legislation amends the Coroners Act in a number of respects.

The bill clarifies that the purpose of a coronial post-mortem is to assist in the investigation of the manner and cause of death, the time and place of death or the identity of the deceased.

I am sure honourable members will agree that it is imperative that the proper administration of the justice system not be impeded. To this end, provision has also been made in the bill to allow tissue from a coronial post-mortem examination to be used for the Coroner's investigation of a death.

Tissue so removed may also be used for the investigation of any offence, or in any offence proceedings. The provision is essential to ensure that forensic evidence is preserved for the proper investigation of a person's death by the Coroner, and for the proper investigation and prosecution of crime.

The new provision in the bill also allows small samples of bodily fluids, such as blood, to be retained from a coronial post-mortem examination. Small samples of skin, hair and nails may also be kept.

Other small samples of tissue may only be kept where a Coroner makes a direction in a particular case. The direction is required to be made in writing, so that a record of the retention exists. Such a direction may not be made as a general practice, but only in a particular case.

The small samples of tissue that are retained under this provision can only be used for certain purposes. These are as follows:

the exercise of a coroner's functions;
the investigation of an offence;
for use in legal proceedings;
for any use that is authorised by the deceased or their next of kin under the Human Tissue Act; and
a purpose prescribed by the regulations.

The ability to prescribe further purposes for the use of such tissue samples is necessary to deal with contingencies that may arise in the future. For example, a particular Government Inquiry or a Royal Commission may require such samples to be re-examined for the purposes of its inquiry.

The capacity to retain these small samples of tissue is necessary to ensure that the coronial system and the justice system continue to function effectively. For example, retained samples of tissue may be used in cases of unsolved deaths. New evidence may come to light several years later, and retained tissue samples may be needed in the re-investigation of the death.

As previously noted, tissue slides and blocks may be retained and used for any therapeutic, medical or scientific purpose. Honourable members will appreciate that the retention of these small samples of tissue is necessary to preserve important interests of society, being the proper investigation of suspicious or unusual deaths and the proper administration of the criminal justice system.

The Government is committed to ensuring that the interests of individuals and the community regarding the use of human tissue from deceased persons are respected. It is also committed to ensuring the proper and effective administration of the justice system.

The Human Tissue and Anatomy Legislation Amendment Bill represents an appropriate balance between:

the community's expectations concerning the dignified and respectful treatment of deceased persons,
the right of individuals, or their families on their behalf, to determine how their bodies should be used,
the interests of justice; and
the need for ongoing medical and scientific research, teaching and inquiry.

I commend the bill to the House.

The Hon. ROBYN PARKER [4.55 p.m.]: I speak on behalf of the Opposition. The Human Tissue and Anatomy Legislation Amendment Bill will amend the Human Tissue Act 1983, the Anatomy Act 1977 and the Coroner's Act 1980, and replace the Human Tissue Amendment Bill. It was first introduced in the other place during the spring sitting of Parliament last year and passed with unanimous support. This bill is the Government's response to the removal and retention of body tissue, including organs, without consent during post-mortem examinations. The Opposition found that the practice was widespread and common in New South Wales and that at any one time up to, but sometimes more than, 25,000 specimens of human tissue were being held in collections in New South Wales. It was estimated that about one-third of those specimens had been retained after post-mortems. It was true of many cases that tissue collections had been held for a number of years without families being aware that the bodies that were returned to them for burial had had organs removed.

This matter was raised last year. It is horrifying for the families. Imagine the trauma caused to a family who did not know that organs had been removed from loved ones. The bill will allow tissue to be used for therapeutic, medical or scientific purposes only with the consent of the person from whom the tissue was removed or, if the person has died, a senior available next of kin. "Tissue" is defined as an organ or other part of the dead human body removed from the body of a living or deceased person for the purposes of medical, dental or surgical treatment. The bill removes current inconsistencies regarding authorisation to remove tissue or body parts from a deceased person. At present, even if a person died directly outside a hospital's front doors a post-mortem can be authorised only by a senior available next of kin. If there is no next of kin to consent to the procedure, no post-mortem may be conducted. However, if the person died in hospital and no next of kin can be found, a post-mortem may be authorised by a designated hospital officer.

The two sets of rules applicable in the past are inconsistent with each other. This bill requires next-of-kin authorisation regardless of where a person died. The amendment ensures consent must always be obtained, regardless of place of death. The same consent requirements apply to the issue of human tissue for transplantation. The person giving consent for the use of tissue may limit that consent to a particular purpose, such as a specific research project.

A number of practices that use donated tissue or organs from deceased persons have only a small window of opportunity for retrieval if the tissue or organ is to remain medically viable. At times it is necessary to discuss with a deceased's family by telephone the prospect of donation and consent. The bill allows for the use of consensual tape-recorded verbal or other consent equivalent to written consent, which provides adherence to clearly documented consent rulings whilst not reducing the availability of tissue in such situations. Under the bill a taped teleconference would satisfy the consent requirement. Honourable members would appreciate the need to act quickly in these circumstances. The bill renders invalid the practice of tissue used for other purposes outside post-mortem examination without consent.

The Australian Law Reform Commission's 1997 report on human tissue transplants recommended that body parts removed for post-mortem be available for other use at the conclusion of examination. The community does not support the recommendation. In response the bill requires prior written consent from the deceased or written consent from a senior next of kin if the deceased is a child. The bill provides for the retention of a small sample of tissue in the form of a tissue block or tissue slide—minute amounts—without explicit authority. It also provides for the retention of a small sample of bodily fluids. For example, blood can be retained after a coronial post-mortem examination. Small samples of nail and hair may also be kept. However, the bill prohibits a person consenting to or authorising the removal of tissue from the body of a deceased child who is in the care of the State. It is important that a child who is a ward of the State is protected. Post-mortem examination of such a deceased child must be authorised. The bill prohibits entering into contracts or arrangements for the sale or supply of human tissue. Body parts and tissue cannot be sold. In some Third World countries, body parts have become a tradeable commodity.

The bill provides exceptions for the sale and supply of therapeutic goods that contain human tissue, such as human serum products that are regulated by the Commonwealth Therapeutic Goods Act. The bill deals

with the collection practices of human tissue. Previously much of the human tissue stored in collections was unidentified. New powers built into the legislation will regulate record keeping for, or the use of, tissue. It also provides improved enforcement powers aimed primarily at prohibiting the trade in human tissue. You cannot sell your kidneys or other body parts.

The Hon. Henry Tsang: You can donate.

The Hon. ROBYN PARKER: You can donate them, but you cannot sell them. You cannot sell someone else's body parts either. The bill provides that bodies that are donated for such purposes may be kept for only eight years out of respect for the dignity of the deceased. The bill clarifies the position of a coronial post-mortem as assisting in an investigation into a death. Small samples may be kept for this purpose, and written records of the practice may be kept. Obviously, that practice, which assists in the subsequent examination of circumstances that preceded a death, may take into account developments in forensic science that enable additional investigations.

It is important to note that the greater majority of post-mortems undertaken in New South Wales are ordered by a coroner. Under the Coroners Act the consent of the next of kin is not required for the conduct of a post-mortem examination. However, provisions remain for the next of kin to object to a coronial post-mortem. Penalties for the unauthorised use of tissue range up to a maximum of 40 penalty units or imprisonment for six months, or both. As in all such situations, it would take some time for those who work in this area to understand fully what is now expected of them. But the new criteria should, nonetheless, be implemented and upheld immediately. Improved enforcement positions in the bill have been updated primarily to ensure the prohibition of trade in human tissue.

The community would take comfort from knowing that it is not possible to take body parts without authority. The bill will encourage people to indicate on their driver's licence or some other document that they wish to donate their organs and tissue. Many people fear that if they indicate their willingness to donate an organ people will pounce on them. It is not an ideal situation. The bill will provide security not only for those people but also for parents and children who are wards of the State. The bill is important in a number of respects. It upholds the respect of treatment and use of human tissue from the deceased so that we at all times respect the deceased. A strong tenet of the medical profession is respect for human life as well as the deceased.

The bill puts in place more effective and accountable administration practices regarding the retention of tissue; it strengthens the ability of the justice system to negate bad practice; it provides for the sustaining requirement of medical and scientific research, and the need for access human tissue samples for that work; and it allows us to continue to use human tissue and small samples for scientific research. It is important to note that the bill goes some way to address cultural sensitivities and differences regarding the use of human tissue, and the cultural or religious beliefs requiring the burying of bodies undisturbed by making allowances for the delegation of consent. The next of kin will have some confidence that no action will be taken without their approval. The Coalition reinforces its support for the legislation. I support the bill.

Ms SYLVIA HALE [5.07 p.m.]: The Greens support the bill, which will ensure that the right of an individual to determine the treatment of his or her body after death is properly respected. Death is a moment of major cultural or religious significance throughout the world. Therefore, it is no surprise that the physical treatment of the body after death is often strongly associated with, or prescribed by, cultural or religious customs. The ethnic and religious diversity of our society requires a sensitive and informed response to different beliefs about the treatment of the body after death. The bill will go some way to achieving that by ensuring that non-coronial post-mortems require prior consent in writing from the deceased or senior available next of kin.

The bill will also require the same written consent from these parties for all anatomical examinations, and for the removal and use of tissue for other purposes—therapeutic, medical or scientific—from all post-mortems. Activities contrary to cultural, religious and individual beliefs can thus, one would hope, be avoided in most cases. These measures will also go some way to protecting bereaved relatives from further distress about the treatment of deceased kin who, often, have died in difficult or violent circumstances. The ability of relatives to influence the treatment of the body is often very important to them at times when other parts of their world are falling around them.

Under existing laws, relatives' experiences of powerlessness and the apparent secrecy relating to post-mortems and the treatment of a deceased's body have often added considerably to their trauma and grief. An important aspect of the bill is to ensure that if no existing consent in writing is available and no next of kin can

be found then a non-coronial post-mortem examination will not be able to take place in any circumstances. This gives primacy to the respectful treatment of the body of the deceased whereas current laws do not. The bill also provides protection for children who are in the care of the State from any potential exploitation of the legal position by ensuring that no person can authorise the removal or use of tissue from, or authorise the post-mortem examination of, the body of a deceased child who has been in the care of the State.

Amendments to the Coroners Act are important because the majority of post-mortems are ordered by a coroner and therefore will not require consent from the next of kin. The clarification that the bill provides of the purposes for which a post-mortem examination is to be conducted is, accordingly, important and welcome. It is also critical that education be provided about the changes in the law to ensure that they are rapidly and effectively implemented by practitioners. It is disturbing that existing collections of stored human tissues are not comprehensively recorded. The new regulation-making powers should be used in future to ensure that record keeping in relation to human tissues is mandatory and systematic and is carried out in accordance with appropriate guidelines. Annual monitoring of this documentation should be conducted by the Department of Health.

Reverend the Hon. FRED NILE [5.11 p.m.]: The Christian Democratic Party is pleased to support the Human Tissue and Anatomy Legislation Amendment Bill. This very important bill will amend the Human Tissue Act 1983 and the Coroners Act 1980 and will replace the Human Tissue Amendment Bill, which was introduced late last year but left to lie on the table of the House. The legislation is a response to the review undertaken by the former Minister of Health. It was found that over 25,000 specimens of human tissue were being held in collections in New South Wales. It was estimated that approximately one-third of those specimens had been retained after post-mortems and that in many cases tissue collections had been held for many years without families being aware that the bodies of loved ones returned to them for burial had had organs removed. As honourable members are aware, that caused considerable anguish to relatives of deceased persons and was the subject of much controversy in the media.

Bret Walker, Senior Counsel, undertook an inquiry into practices at the Glebe morgue following graphic descriptions of what was happening to bodies at that facility. From memory, video cameras were set up in the morgue. Everyone was disgusted by the actions of some of the staff, not only in their dealing with the bodies but also in the way searches were conducted for valuables—such as rings and watches—and of pockets in the clothing of deceased persons. That was a disgraceful episode, and it was resolved as it should have been. This machinery bill will provide levels of protection that have not existed to date. It will change the current law to require the written consent of the deceased person, given while alive, or their senior available next of kin for tissue from a post-mortem examination to be used for therapeutic, medical or scientific purposes.

The bill will also require written consent for the use of tissue in medical, surgical or dental procedures and for the purpose of organ donation. The bill will also prohibit a non-coronial post-mortem examination from taking place unless it is authorised in writing by the deceased while alive, or by a senior available next of kin. The bill provides for the indefinite retention of tissue blocks and slides without specific consent requirements to allow for their use in teaching and research only. No-one would disagree with such a positive provision. The bill deals with a number of other minor aspects and provides various protections, and the Christian Democratic Party is pleased to support it.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.14 p.m.]: I support the bill, which results from publicity that was given to sloppy practices associated with the care of bodies of dead persons, particularly at the Glebe morgue, where practices regarded as disrespectful and dishonest—for example, taking teeth and valuables from the deceased—were discovered. In addition, many bottles containing the brains of deceased persons were found stored at the morgue. In post-mortem examinations, it is very common to remove brains, which later were sometimes used to assist students to understand immuno-anatomy. That discovery upset relatives, who expected to bury intact their deceased loved ones. Particularly in cases of traumatic death, people regard meddling with the deceased person's body as the final insult.

I recall a case in Port Kembla when a child had been run over by the family car, which was being reversed out of a driveway. The child died of internal blood loss. A post-mortem examination was conducted. After the examination the body was sewn up and stored in a refrigeration unit. The father of the child demanded to see the body and became very distressed that it had been cut. He had not been aware of the practice, and it was some time before he was calmed down. That matter was examined very seriously and thoroughly by Bret Walker, a Senior Counsel of high repute. David Storey, a friend of a friend of mine and the clinical director of

the Eastern Collaborative Health Training and Education Centre [ECHTEC]—a joint venture in which the University of Sydney is involved—wrote to me in the following terms:

> This is a very important Bill for the future of surgical (and other medical) training in NSW. As you will be aware, the review of the current Acts by Bret Walker SC (following the problems at Glebe) made it clear that the use of human anatomical material that went beyond a strictly interpreted "anatomical examination" was very likely to be against the law, thus ruling out any manoeuvre that used human material to emulate any sort of operative procedure while the current Act was in force.
>
> The new Act (if passed in its present form) will make such use legal so long as consent has been given by the person before their death, or by the senior next of kin (with appropriate safeguards).
>
> In its current form, the Bill is the result of a long consultative process to which this College was a party, and is consistent with the College's educational requirements and ethical principles.
>
> The new Act will have special relevance to the development of ECHTEC - the Eastern Collaborative Health Training and Education Centre - to be built under a joint venture with the University of Sydney on its Camperdown campus. I have the role of Clinical Director of that project.
>
> It is part of the vision for ECHTEC that there will be appropriate facilities and agreements with the Anatomy Department, so that human cadaveric material can be used to teach practical anatomy.
>
> There will be occasions where that process will need to go the extra step so that the human material is used to emulate an actual operative procedure. It is envisaged that this will only occur in the setting of a high level intensive training course, and there will be structures in place to ensure that the environment in which such use takes place is exemplary in all respects.
>
> The plans for ECHTEC have passed the schematic design phase, and the schedule calls for completion by the end of 2004.

Because I know David Storey personally, I am able to say that he has great respect for the body of deceased people and he is very thoughtful of the sensibilities of grieving relatives of deceased people. He is also very thorough in his training of young surgeons. I have confidence in the way this bill will be used and the way its provisions will be implemented. The bill will be in very good hands.

The Government should be congratulated on clarifying these matters in an excellent consultative manner. The Australian Democrats support the bill. I mention in passing that I am in discussion with officers of the Department of Health about my Advance Medical Directives Bill—also referred to as the living wills bill—the purpose of which is to empower people prior to their death to organize what will happen to them should they become incapacitated or dependent upon a ventilator, or should they suffer from a terminal condition. My bill will give people clarification and input before death; this bill clarifies what happens after death. These matters are important, and I am pleased that they have been taken in hand. Hopefully my bill—I had hoped that it would be cognate with this bill, but that was not achievable—and other legislation that I will introduce in the near future will complement the Government's bill.

The Hon. HENRY TSANG [Parliamentary Secretary] [5.20 p.m.], in reply: The Government thanks Opposition and crossbench members for their support for the Human Tissue and Anatomy Legislation Amendment Bill. The bill amends the Human Tissue Act 1983, the Anatomy Act 1977 and the Coroners Act 1980. These amendments protect the rights of individuals to control what happens to their bodies after their death. They also protect the rights of families to be informed of, and give consent to, procedures that are undertaken on the bodies of their family members who have died. The bill balances this respect for individuals' rights with the recognition that society has some legitimate interests in the use of human tissue, which should not be contingent on an individual's consent. Accordingly, the bill protects the use of tissue for coronial purposes, for the investigation of crime, and the proper functioning of the judicial system.

The Hon. Dr Arthur Chesterfield-Evans has highlighted the underpinning principle of personal autonomy common to both the bill and the issue of advance directives on medical treatment generally. An advance directive, or "living will" as it is sometimes known, documents in advance the kind of medical treatment and care a person consents to or, as the case may be, does not consent to, should they not be capable of indicating their wishes at the time treatment is contemplated. Currently the Department of Health is actively developing a policy on advance directives for medical treatment that will assist people to make directives that can be relied upon by health professionals in the treatment context. Consideration will also be given to incorporating into this current project the issue of advance directives by people as to the use of their bodies or tissue after death.

The bill recognises the importance of medical teaching and research, and allows these important interests to be advanced, without offending the values of the general community. The bill represents a balance between the benefits that accrue from access to human tissue for therapeutic purposes, research, education and

training on the one hand, and respect for diverse cultural, religious and individual values and personal autonomy on the other. The balance is a fair and reasonable one. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

LOCAL GOVERNMENT AMENDMENT (ELECTIONS) BILL

Second Reading

The Hon. HENRY TSANG [Parliamentary Secretary] [5.23 p.m.]: I move:

That this bill be now read a second time.

As the second reading speech is lengthy, I seek leave to incorporate it in *Hansard*.

Leave granted.

This Bill reflects the Government's continuing commitment to providing a transparent and effective legislative framework for the administration of local government in New South Wales. The Government is committed to ensuring that local government is able to properly deliver its services to the community that it represents.

The amendments contained in this Bill will ensure continuing support for reform to enable local councils to deliver efficient, timely and quality services to ratepayers and ensure that the Government's focus on the proper functioning of local government is maintained.

The Bill amends the Local Government Act 1993 in relation to the timing of the conduct of local council ordinary elections and makes consequential amendments. Currently, ordinary elections are held every four years in September in the year in which State elections are held. The proposal is to move ordinary elections to, in the first instance, 27 March 2004 and then every four years thereafter in the year following a State election.

This change follows representations on the issue to the Government from LGOV NSW, the Local Government Association of New South Wales, and is consistent with our policy of continuing to maintain a close dialogue with the local government industry, particularly through industry peak bodies like LGOV NSW.

This change will remove the current unsatisfactory situation where newly elected councils are bound—from September in the year of their election until the next strategic planning process is settled in June of the following year—by the budgetary and policy decisions made by the outgoing council.

The Government is moving quickly to address the situation.

Changing the date of ordinary elections to March will mean that newly elected councils will be immediately able to commence work on budgetary and strategic planning for the year ahead. Newly elected councils will have greater financial responsibility, greater control over budgets and be more accountable to ratepayers.

Now that councils' financial years run from 1 July to 30 June, it makes good sense to have council elections in March so they can prepare and settle their budgets for the next financial year. It may also provide the opportunity for important issues like council budgets and strategic planning to become more relevant to the election processes—particularly as the March election date would fall squarely within the period when councils are developing their budgets and strategic planning for the future.

Councils will continue to have fixed four-year terms.

The change in dates will also mean that local government ordinary elections will not be held in the same year as the State election, easing the workload of the State Electoral Office and ensuring that the voters of New South Wales do not have to go to the polls for State-based elections twice in one year.

Current councillors, mayors, deputy mayors, chairpersons and deputy chairpersons of county councils will continue to hold office until the elections in March 2004. This will also apply to councillors who are members of the State's 20 county councils.

The Bill also amends the Local Government Act to allow for an increase in the period prior to ordinary elections during which a council can make application to the Minister to seek an order that a casual vacancy in the office of a councillor not be filled or that in the alternative a by-election be held.

Currently that period is 9 months and the Bill proposes to increase that period to 12 months. This extended period provides councils with a reasonable extension of time within which they can, where a casual vacancy occurs, apply for an order that the vacancy not be filled. This option allows councils to save ratepayer's money by not having to conduct a by-election.

The Minister retains the power, where necessary or desirable, to order that a by-election be held to fill a casual vacancy.

The Bill also provides a one-off opportunity allowing councils to make application, following the making of a resolution, to reduce the numbers of councillors on that council.

> Councils making such an application will be required to give notice of the proposed resolution and the public will have 21 days within which to make submissions concerning the proposal.
>
> At the end of the 21-day notice period, and if the council decides to proceed, it will be required to provide a summary of, and council comments on, all submissions received. If a council's application is approved then the number of councillor positions available for nomination at the March 2004 ordinary elections will be the number referred to in Council's application.
>
> This option of voluntary councillor reductions will be available to councils for a limited time up to December 31 of this year, and will allow councils to avoid the costs associated with the conduct of a constitutional referendum. This option was previously extended to councils in 1993 and will again provide opportunity for communities to shape the future direction of the reform process at the local level.
>
> The Bill also contains consequential amendments of a minor nature to the timetable for the phasing-in of the new membership requirements for the registration of local government political parties that were introduced by the Local Government Amendment Act 2000.
>
> The changes to the Local Government Act proposed in this Bill are consistent with the Government's policies of ensuring that the local government sector remains financially accountable and is better equipped to deliver efficient and effective services to ratepayers.
>
> I commend the Bill to the House.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [5.24 p.m.]: On 19 March, just three days before the recent State election, the *Goulburn Post* reported:

> The Premier, Mr Bob Carr, has asserted a re-elected Labor Government had no plans to change its policy of no forced council mergers.
>
> "This has been Labor policy since 1995 and will continue to be policy. We have no plans for wholesale rationalisation of councils," he said.

Those were the Premier's words just three days before the recent State election. He was re-elected and is still Premier. On 15 April the Premier issued the following press release:

> The Premier of NSW, Mr Bob Carr today announced that State Government would re-schedule local government elections for March 2004 …
>
> The main reason for the change was to allow for more financial responsibility and control for newly elected officials.

The newly appointed Minister for Local Government, the Hon. Tony Kelly, a great stalwart of local government, has often spoken against forced amalgamations. On 17 May my colleague the Hon. Greg Pearce asked the Minister for Local Government a question. In answering the question the Minister said:

> The Government has announced a delay in the local government elections of six months for two very good reasons. On 15 April the Premier announced the deferral and rescheduling of those elections.

Perhaps that is one reason. The Minister continued:

> This followed a request from the Local Government Association that the local government elections be rescheduled for March next year.

I will talk about that request later, and about the instantaneous reaction to an overnight request. The Minister continued:

> It did so for two reasons; firstly, to allow an incoming council to take control of its own budget shortly after being elected; and secondly, and more importantly, for the ratepayers of New South Wales, and more particularly the voters of New South Wales, to ensure that we do not have consecutive elections six-months apart.
>
> This Parliament has fixed four-year terms, and local government also has fixed four-year terms. Unless we change this system, forever and a day State and local government elections will be six months apart. I would hope that the Federal Government would look at having fixed four-year terms also. Having said that, I am of the view that this decision will also provide an opportunity to local government, members of local government, local government councils and ratepayers around the State to consider the options for boundary adjustments and voluntary amalgamations.

That was the first time that we heard about that change. Yesterday at 1.00 p.m. the radio news program *ABC Statewide* reported:

> New South Wales Local Government Minister Tony Kelly is expecting at least 30 local councils in New South Wales will agree to merge by the end of next month.

I suspect the word "agree" could be construed to have been in inverted commas, but one cannot tell that from a radio script. These were big changes three days before the election. The *Goulburn Post* article stated:

> The Premier, Mr Bob Carr, has asserted a re-elected Labor Government had no plans to change its policy of no forced council mergers.
>
> "This has been Labor policy since 1995 and will continue to be policy. We have no plans for wholesale rationalisation of councils," he said.

I will leave it to honourable members to determine whether that is a lie. Everyone says that this bill is not about forced amalgamations. Hello! It does not appear to me to be a bill that will provide the tools that are required by this Government to force amalgamations and boundary changes on local communities across this State, but that is what it is. Anyone who speaks privately to the Minister or to local government organisations would be aware that this Government has put council against council, mate against mate, and community against community.

This bill, masquerading as legislation to lessen the workload of the State Electoral Office and to allow incoming councillors more say in the financial affairs of their council, is little more than a Carr Government push for wholesale forced reforms of the 172 councils in New South Wales. The first of those forced reforms has been set in motion with the news that the Minister for Local Government referred a proposal to the Boundaries Commission that would result in Yarrowlumla council disappearing altogether. To my mind, that is forced reform, that is a forced boundary change, and that is the real reason why the Government introduced this legislation. It is a vehicle for forced amalgamations and forced dissolutions of councils. It is a vehicle that will be used to cut a swathe through the local government landscape prior to the next local government elections.

The net effect of this legislation is to allow the new Minister for Local Government to wield the axe over a longer period so that that concern and angst festers like an open wound in local government areas across New South Wales. Instead of having to rush out and force amalgamations and boundary changes before September, the Minister will now have until March to complete some of Labor's plans. The question is simple: Why did Labor not put structural council reform before the New South Wales voters at the March election? Why did the former Minister for Local Government not make it clear that forced dissolutions, boundary changes, and amalgamations would become a hallmark of a third-term Labor Government?

Government members talk about benefits now, but why did they not talk about those so-called benefits in the lead-up to the State election? Honourable members would remember what the Premier said, which I quoted earlier. In case Labor members in the Chamber have forgotten, I will remind them once again of what the Premier said, as I will on a number of occasions before the next election. I repeat: the Premier said:

> The Premier, Mr Bob Carr, has asserted a re-elected Labor Government had no plans to change its policy of no forced council mergers.
>
> "This has been Labor policy since 1995 and will continue to be policy. We have no plans for wholesale rationalisation of councils." he said.

There is no rider to that. The Premier, the leader of the Labor Party, who was elected to lead this State, made that statement, not the former Minister for Local Government. Government members are not able to say, "The former Minister made that statement, but as he no longer has that portfolio he does not represent anyone." The Premier made that promise to the people of New South Wales, but this bill will break it. The answer is pretty clear: this bill is yet another broken promise. We have seen quite a few of them since the last election—promises made by this Government relating to clubs, teachers, hospitals, and other secret agenda items. These things will come back to haunt Government members. The voters will ensure that they are sitting on the other side of the House after the next election.

The Government apparently thinks it can do anything as long as it gets its way. That is why it kept that agenda item hidden. The secret is out now. The people of New South Wales will have four years to establish just how the Government broke its promise. The mainstay of the Labor Party's election policy at the 1999 election was that the electricity industry would not be privatised. Currently, Labor members in the lower House are going through the farce of acting as a Federal Opposition and taking the Federal Government to task on the Telstra sale. Government members should remember that part of the Premier's election policy was that the electricity industry would not be privatised.

How do members of the Labor Party talk to workers at Pacific Power International? How do they talk to PowerCoal workers, or to workers in areas where they promised to protect jobs? Labor's policy document

"Our communities, Our Future" makes no reference to the forced dissolution of councils. It certainly makes no reference to the Premier's reported comments to journalists at the recent Shires Association conference that the Government would push councils if they did not take the initiative and look at reforms and amalgamations. That is what the Government would do.

The clear message that was sent to councils was, "If you do not do it, we will," which is a pretty sneaky and underhand way of gaining more time within which to implement more reforms. I said at the outset that the bill appears to be fairly innocuous. Anyone listening to or reading the stunning contribution of the honourable member for Tweed in the other place and the fairly innocuous contribution of the Minister in this place would have thought that the bill made some sort of sense, that there was nothing much to it, and that there was no reason for me to get upset.

The Hon. Henry Tsang: Why are you getting upset?

The Hon. DUNCAN GAY: That is a good question. I am upset because the Labor Party—the party the Hon. Henry Tsang represents—lied to the people of New South Wales. It is about to ditch an important policy that affects communities that I represent, particularly in regional New South Wales. The Hon. Henry Tsang is an honourable man, and I accept that he was sincere when he asked me that question. I say to him with the same sincerity that that is why I am upset. An equally contentious provision in this legislation has caused considerable concern to councillors across the State: a reduction in the number of councillors. The only councillors who will not be concerned about these provisions are Labor councillors.

This bill states that at any stage before 31 December a council may resolve to apply to the Minister for Local Government to decrease the number of councillors in accordance with limits under section 224 of the Local Government Act. That section states that a council must have a minimum of five councillors. It also states that any change to the number of councillors must be approved by a constitutional referendum. This bill removes the need for a constitutional vote on a proposal to reduce the number of councils. That is the provision in the bill that concerns the Opposition and that is the provision that resulted in Opposition members in the lower House not supporting the bill. The honourable member for Coffs Harbour in the other place, who is the shadow Minister for Local Government, outlined some possible scenarios that could result from that provision.

The honourable member used the example of a council with a ward system with three councillors per ward. If two of the councillors in each ward were Labor oriented and the third was of another political persuasion, the majority of councillors could resolve to reduce the number of councillors who could stand for election at the next local government poll in March. This legislation is about the Labor Party tinkering with the rules to suit itself. Labor members will claim that the former Coalition Government afforded councils the same opportunity in 1993 when Parliament considered the Local Government Bill. That is partly correct, but the situation at that time was markedly different. That great former Minister for Local Government, Gerald Beresford Ponsonby Peacocke, explained why councils would be offered the opportunity to pass a motion to reduce the number of councillors.

The Hon. Henry Tsang: He got into trouble.

The Hon. DUNCAN GAY: No, he did not. He is a fine man. On 11 March 1993 he told the lower House that the aim of the move was to reduce inordinately large councils to a maximum of 13 members. The legislation set the minimum number of councillors at five, but the Labor Party amended the bill to increase the maximum number to 15. Given that the Labor Party amended the 1993 bill to increase the number of councillors, it is interesting that it now wants to reduce their numbers. The differences between what happened in 1993 and what is happening now are clear. In 1993 the intent was to put in place a mechanism to allow a one-off change to the number of councillors within defined limits. The provision under consideration would allow a one-off change to reduce the number of councillors. It is nothing more than a proposal to do away with some councillors.

As I said earlier, this provision stands to benefit the Labor Party the most, and I expect that no Labor councillors in the State will oppose it. However, I am surprised that there appears to be little or no resistance to this proposal from Lgov NSW. I would have thought the local government representative body in this State would have something to say about a proposal to reduce councillor numbers. But that appears not to be the case. I wonder what has happened. Has a deal been struck to ensure that the bill does not receive any criticism from Lgov NSW? I will briefly revisit some comments made by a member in the other place in 1993 when the proposal to reduce councillor numbers was debated. The member said, "It is illogical to reduce their number."

Honourable members may be wondering who said that. The Hon. Henry Tsang is certainly interested in learning the identity of that member.

The Hon. Henry Tsang: It is sensible.

The Hon. DUNCAN GAY: I agree. The member who made that comment was none other than a former Minister for Local Government, the Hon. Ernie Page. I am sure that Ernie would have put his view forcefully to the new Minister in caucus if he had still been in Parliament. Ernie had a way of making his views known on issues about which he had strong opinions!

The Opposition is also concerned about registration for elections. Under the existing rules, which this House put in place less than two years ago, a political party must have 100 members if it wishes to run a ticket in the next local government election, and those members must be registered with the State Electoral Office by 31 May. If the date of an election can be transferred from September to March, why cannot the date of registration of political parties or groupings be shifted to December? What will happen to a group of like-minded people who want to stand for the March election on the platform of no forced boundary changes or forced amalgamations? They will effectively be denied the opportunity to stand as a registered political party, which is their right. We believe the Minister must address this issue. The Greens have foreshadowed that they will seek to amend this provision in Committee. Although their amendment does not specify "December" it goes close enough and we will view it favourably.

According to State legislation, a list of members of each political party must be registered with the State Electoral Office. For example, if a crosscheck is made of the list of members of the ratepayers group on a local government ticket, any person on that list who is a member of another political party will be ruled ineligible because he or she is a member of that other party. That is a concern, and we look forward to the Minister responding to that issue when he replies to the debate.

I have spoken to a number of local government councillors and their professional staff who have expressed significant concerns about this legislation. Like me, they are concerned about the true motives behind this bill. They are worried that their representative body has sold them down the river on this issue and on the broader issue of local government reform. They are concerned that there was virtually no consultation on this matter. It is strange that the Minister received a letter from Lgov NSW and then said one or two days later that legislation would soon follow.

Ms Sylvia Hale: It was a real put-up job.

The Hon. DUNCAN GAY: Indeed. I am highly suspicious of circumstances in which the president of the local government association writes a letter to the Minister and receives a response instantaneously. I had responsibility for the local government portfolio for seven years and I know that one does not receive a meeting with the Minister at such short notice, let alone secure a promise of new legislation. Many cynics around the State claim that the correspondence probably went in the opposite direction.

A well-respected general manager of a regional council—I will not name him as he has strong Labor connections—sent me a list of problems that he has identified with this legislation. I will share them with the House. First, there was no consultation with the broader body of local government in New South Wales. Second, councillors' terms have been extended from four years to four and a half years, also without consultation. If the New South Wales Government tried to do the same for State parliamentarians there would be a huge public and media outcry. Third, if councillors resigned in September 2003 when the term for which they were elected should expire, there would be chaos and councils would be rendered inoperable. Many councillors who did not intend to stand for re-election are talking about doing so because their terms will expire in September and their contract with their communities will expire at that time.

Fourth, if the Government wishes to change the cycle and have elections in March in order to meet the supposed aims of not having two elections in one year and fitting in better with the local government budget cycle—setting aside the obvious need for consultation—that change should occur next term, not this term. In other words, it should be prospective not retrospective. Terms could be for either three and a half years or four and a half years to shift the local election cycle away from the State election cycle. In any event, it is not unrealistic to expect the people of New South Wales to vote at two elections in one year. I remind honourable members that they did so in the past two election years without any problems. We believe that that highlights the fact that the Government has another reason for introducing this legislation.

Fifth, many councillors have no intention of standing again, and they do not want another six months. Sixth, many councillors see this as telling them they have to stay on for another six months. Seventh, the real agenda is about the amalgamation of councils, regardless of what has been publicly said. Yet no program of amalgamation has been outlined by the government. Nor has the case for the amalgamation of councils been made, other than bland utterances about some councils being unviable. Eighth, many councils have been made unviable as a result of 26 years of rate pegging, costs have outstripped allowable rate increases, and the rise in unfunded mandates—cost shifting from the State to local government. Finally, boundary adjustment between the States is well overdue and it too is never tackled—for example, Coolangatta-Tweed Heads, Wodonga-Albury, and Canberra-Queanbeyan.

Those comments are a fairly concise and accurate summation of many concerns that have been expressed to me. When the Premier announced the deferral of the elections, he said the Government had acted on a request of the Local Government Association of New South Wales, to which I alluded earlier. My understanding is that the request was made on a Friday and that the Government announced the deferral on the following working day, Tuesday—which must be some sort of record. No wonder people are suspicious of the link and hint about connivance between the Local Government Association and the Minister. Interestingly, it appears that the Shires Association of New South Wales was not consulted at all. In a letter to member councils on 22 April, the former Shires Association President, Mike Montgomery, stated:

> I know that many of you have concerns about the lack of consultation with Councils prior to the Premier's announcement. I can confirm that the Shires Association was not consulted before the announcement, a disappointing start to the incoming Government's partnership with local government which I will raise with the new Minister.

It is interesting that the Local Government Association apparently endorsed these overnight changes, whereas the country councils represented by the Shires Association were not even consulted. These changes will affect city communities and councils, and to a greater extent the ramifications of the changes will be felt by country councils and communities. This Government acted with undue haste and did not consult with the Shires Association. Perhaps in his reply the Minister would explain this apparent discrepancy. Maybe Mike Montgomery is wrong, although I have not found him to be wrong in relation to this kind of matter. As a former shadow Minister for Local Government, I watched with great interest the progress of the reform debate. This legislation is undoubtedly the first step towards the Government forcing reforms. It is based on an illogical and dishonest argument, and therefore the Opposition will not support it.

Ms SYLVIA HALE [5.55 p.m.]: This bill is flawed and the Greens cannot support it in its current form. It is not, as the Government claims, a minor housekeeping bill that is simply designed to shift local government elections from September 2003 to March 2004. It makes far-reaching amendments that could change the structure and shape of local government for years to come. I will come to those in time, but first I want to say a few words about postponing the September elections.

The Greens see merit in shifting local government election cycles to avoid State and local government elections falling in the same year. This will help to avoid the election fatigue of candidates, electoral workers and, not least of all, the general voting public. But the manner in which the Government has tried to introduce this change has been both rushed and inherently undemocratic. The announcement in April that the local government elections would be—not might be—delayed, and the notice to that effect currently on the web site of the State Electoral Office, is yet another indication of just how vulnerable local government is to manipulation by the State Government.

Within three weeks of the State election, and without any consultation with the community, the Government dropped its bombshell. The bill allows no time for public consultation or debate about the benefits or otherwise of moving election dates. Voters have not been consulted. Even the Shires Association of New South Wales was not consulted—and I believe it has made a formal complaint to the Government about that. The emphasis has been on speed at the expense of accountability.

The spurious justification for moving the elections from September to March is that it allows greater involvement by councillors in the formulation of a council's budget and strategic planning processes. Yet the earliest opportunity for a newly elected council to meet will be in the first week of April. Councillors will need to be presented with detailed draft management plans, fees and charges and a draft budget at that meeting so that the proposed plans and budget can go out for public discussion and submission during May, and return to council in June for amendment and adoption. Far from increasing the input of new councillors into the formulation of the budget, it will actually inhibit and effectively stifle it.

New councillors need time to adjust to the protocols of local government. To immediately ask them to tackle the complexities of detailed budgetary discussions is, in fact, to leave them at the mercy of council bureaucrats at the very time that their knowledge base is perhaps at its lowest. Councillors aligned with political parties might have party networks to call upon, but Independent councillors would be at an extraordinary disadvantage. A general manager of a council rang me to discuss an issue that is concerning many council administrators: impending councillor vacancies. Many councillors stand for local government on the assumption that they will serve a fixed four-year term and, if elected, go on to plan their lives accordingly. Council duties are onerous in terms of time and energy, and most councillors have full-time jobs and other commitments.

Most councillors make specific arrangements to juggle council commitments with the rest of their lives, based on the expectation that theirs will be a four-year fixed term. The general manager is particularly concerned that some councils could see a wave of resignations in September by councillors who have already made arrangements based on the fair and reasonable assumption that their current term would end this year. Some councils may well be rendered inoperable as a result of an unsustainable number of vacancies in the period between September this year and March next year. At the very least, the Government should have announced its intention to seek a deferral of local government elections before the March State election. Not to have done so illustrates the Government's contempt for the electorate and for local government.

It also illustrates only too well how aware the Government is of community unease at the prospect of boundary changes and amalgamations. Everyone knows that forcing and facilitating amalgamations is the real intent of this bill. My office has been inundated with emails and letters, from both councillors and residents, expressing their concern. For this reason the Greens believe this proposal should have been put to the voters at a referendum held in conjunction with the September 2003 council elections, with the change, if acceptable to residents, coming into effect in March 2008. Nevertheless, we recognise that planning for a postponement to March 2004 is now well under way and that not to postpone the elections would create even greater difficulties. Although the Greens are critical of the undemocratic and heavy-handed manner in which the Government has put this proposal, we will not oppose this element of the bill. The Government's actions are, however, yet another example of why local government should be accorded constitutional autonomy and independence from State government manipulation.

The part of this bill that is of most concern to the Greens and the community generally is the proposal to allow councils to reduce the number of councillors simply by resolving to apply to the Minister by 31 December this year. If passed, this provision would circumvent the requirement under the Act for a referendum of the residents on any proposal to increase or decrease councillor numbers. Local communities would thereby be deprived of their right, via the ballot box, to have a say in how they want their local communities to be run. It hands the decision to the Minister. The Greens believe that changes to the number of councillors should be determined by a referendum of residents and not by ministerial discretion. It is easy to conceive of Labor-dominated councils applying to the Minister to dramatically and permanently reshape the structure of their councils, against the wishes of their residents.

Let us take Cessnock Council as an example. It currently has four wards of three councillors. In September 1999 Labor councillors won the top two positions in each ward, and an Independent filled the third spot. How tempting will it be for Labor to use its majority of eight councillors on Cessnock Council to pass a motion requesting the Minister to reduce each of that council's wards to two councillors? How tempting will it be for the Minister to agree—thus ensuring that no-one other than Labor is represented on council and the voice of Independents is silenced? Nothing is more irritating to this Government than to have vocal dissidents speaking out about its deplorable policies. Indeed, as Ms Lee Rhiannon indicated in this House two days ago, Cessnock councillor Katie Brassil, electorate staff officer to the Minister for the Hunter, abusively attacked residents saying that she would like to run a bulldozer over 37 opponents of a local development application.

But wards of two councillors have other dangers. Section 285 (a) of the Local Government Act provides that where there are no more than two councillors per ward the optional preferential system of voting is to be used at an election. Under this method, a candidate receiving a majority of votes is elected. The same ballot papers are then recounted with votes for the first candidate being passed on in their entirety to that person's next preference. Voters who have already voted to elect the first candidate are, in effect, given a second vote to elect the second candidate. It is possible under the optional preferential system of voting in a two-councillor ward for a candidate to get 49.9 per cent of the vote and still not win a place! Optional preferential voting is one of the better ways to gerrymander an electorate.

The city of Botany Bay is a prime example of such a gerrymander. Botany has three wards of two councillors. The Labor Party is in total control. So much so that in 1999 no-one else bothered to contest the

council elections. It is extraordinary! Not one of Botany's 37,000 residents felt disposed to run. At least one member of this House claims that this is because Botany is such an outstandingly good council no-one felt the need to contest the elections. That member may be of that view, but everyone else has a more honest interpretation: no-one was willing to waste their time or money contesting an election they had absolutely no chance of winning.

Optional preferential voting in wards with two councillors or less is a gerrymander plain and simple. It represents a fundamental erosion of local democracy, and that, I believe, is the Government's real objective. What this bill is about is disposing of councillors "excess to needs" or "surplus to requirements" in the wake of so-called "voluntary" amalgamations. And further, even where no amalgamation is contemplated, it provides the mechanism by which Australian Labor Party controlled councils may reduce councillor numbers to the point where adoption of a voting system that shores up Australian Labor Party domination is obligatory. What better outcome for the Government than to surround itself with compliant councils only too ready to do the Government's bidding?

This is a Clayton's bill: the forced amalgamation and gerrymander you have when you are not having forced amalgamations or gerrymanders. That being the case, the time has come to take a long hard look at the rationale underlying the push to reduce councillor numbers—that is, at the benefits that the community will supposedly derive from council amalgamations. The mantra that local government is inefficient and long overdue for reform has not been critically examined in the context of community need. It has been a debate driven by cost-cutting assertions and little else—cost-cutting, that is, that both State and Federal governments are demanding of local government.

While economies of scale undoubtedly offer savings in some cases, the assertion that larger councils with fewer councillors representing more citizens will automatically deliver overall economic benefits have not been proven—and there is certainly no evidence to suggest bigger government is more responsive to the needs of local communities. A case may well be made for council mergers in some instances. Some boundaries cut across communities of common interest. Some natural geographic areas and agricultural zones could be better managed by one governing body. Some council areas and boundaries have been determined by historical considerations that are no longer relevant today.

But local government has been undergoing a prolonged period of change. In the past decade councils have dramatically improved efficiency and increased the range of services they provide to the community. Councils are working increasingly through Regional Organisation of Councils networks, offering economic benefits through economies of scale, while at the same time allowing individual political autonomy to their constituent council members. This model has worked well, although there is obviously room for ongoing improvement. For more than five decades the number of councils in New South Wales has been declining. In 1946 the State had 289 local government areas. By 1972 this had reduced to 223. The past 30 years has seen a further dramatic reduction from 223 to the current 172.

Local government today plays a pivotal role in the provision of essential services. Councils are involved in roads, water and sewerage, environmental management, protection of the built and natural environment, town planning and development controls, housing and welfare, waste and recycling, public health and safety, and the provision of community recreational, educational and cultural services. Although the role of local government has grown to include almost all areas of community service provision—community expectations of local government have risen commensurately—funding from Federal and, particularly, State governments has declined dramatically. The demands on individual councillors are greater than ever before. For this Government to reduce councillor numbers when their workload has increased substantially and without community consultation is unacceptable.

Councils are now required to provide many of the services I outlined previously as a result of obligations placed upon them by both State and Federal governments. But the shift of responsibilities and costs to local government have not been accompanied by a corresponding shift in resources. State funding of local government fell from 14.8 per cent in 1975 to 7.1 per cent in 1998. Over the same period, user-paying fees charged by councils rose from 13.4 per cent total revenue to 24.7 per cent. I refer to just one tiny example of the dramatic shifting of costs from State to local government. In 1939 local councillors entered into an agreement to provide library services that were to be funded 50 per cent by councils and 50 per cent by the State. Today councils meet 93 per cent of the cost. So much for the knowledge nation!

It is imperative to outline some of the demands and costs that are placed on councils as a result of cost shifting by the State Government. The Local Government Act requires councils to prepare social plans for their

area. This requires considerable consultation, research and report preparation. The Contaminated Land Management Act and the Environment Protection Authority require councils to identify, research, obtain specialist advice, and introduce management and remediation systems to deal with contaminated land. All councils are required to produce stormwater management plans that oblige them to research, test, plan, construct, monitor, maintain and find new approaches to the management of water cycles. The list goes on and on: state-of-the-environment reporting, biodiversity, coastal management, community land management, competition policy, companion animal management, brothels, food regulation and food business notification, skin penetration procedures, waste management and fire levies, to name but a few.

A decade of aggressive cost shifting has not only resulted in a reduction of funds provided to local government but also steep increases in fees charged to local councils for services provided by State Government entities. One example is EnergyAustralia, one of the State Government's more profitable utilities. EnergyAustralia now charges councils for the assessment of customer complaints about public lighting, and for the preparation of design and quotation for improvement to public lighting infrastructure. EnergyAustralia's infrastructure has been allowed to deteriorate over many years, and now councils are expected to foot the bill for design upgrades. The same applies to transport. The State Transport Authority may provide the buses, but councils are now expected to provide the bus shelters, signage and furniture for bus stops, road pavement and concrete embankments. They even have to clean up the oil and diesel spill from defective buses.

The same applies to Sydney's network of ferry wharves. Leichhardt Municipal Council will spend more than $1 million over the next five years to maintain and upgrade wharves used by State Transit ferries. Newcastle Council estimates that the increased responsibilities and costs imposed by the State Government—including new and more demanding roles in the planning process, environmental management and public health—and increased levies and charges add up to an additional cost to council of $2 million every year. The obvious question that springs to mind is: Why are councils not charging the State Government for the use of council facilities? The consistent refrain is that local councils do not manage efficiently. However, the wonder is how they manage at all. It is rank hypocrisy to reduce councillor numbers as part of the process of amalgamating councils while ignoring the issue of the adequate resourcing of councils.

At the same time as increasing charges to local Government, the State Government has stymied the ability of councils to generate revenue by pegging rates—the main source of revenue for local government. This might be an electorally popular move on the part of the State Government, but it cripples local councils. Nothing highlights the hypocrisy of this Government—its Jekyll and Hyde relationship with local government—than rate pegging increases that fail to keep up with increases in State Government charges. In 2002-03 the State Government permitted a maximum rate increase of 3.3 per cent. In the same year the Government obliged councils to increase payments to the New South Wales Fire Brigade by 13.3 per cent. In some years rate pegging limits have not even met the consumer price index increases, and they have fallen short consistently of increased costs foisted on local government.

The result has been an ever-increasing gap between the services councils are expected to provide to their residents and the revenue options open to councils to provide those services. Those who suffer are not the State or Federal governments but the members of local communities who watch as libraries are closed, aged care services are withdrawn, and parks and public spaces deteriorate or are sold off as councils frantically endeavour to find the funds to provide services. The decades of State government shifting responsibility of services to local government while increasing the fees and charges imposed on councils and depriving them of an adequate revenue base must stop. Blaming local government for inefficiencies is not the answer. Amalgamating councils is not the answer. Arbitrarily reducing councillor numbers is not the answer.

[*Debate interrupted.*]

DISTINGUISHED VISITOR

The DEPUTY-PRESIDENT (The Hon. Tony Burke): Order! I draw the attention of members to the presence in the President's Gallery of former President of the Legislative Council, the Hon. Johno Johnson.

LOCAL GOVERNMENT AMENDMENT (ELECTIONS) BILL

Second Reading

[*Debate resumed.*]

Ms SYLVIA HALE: The only answer is sustainable long-term funding. This is not the time to slash local government funding. The time has come to recognise the critically important role councils play in the lives

and daily provision of services to local communities, and to fund it sufficiently to meet those community needs. My office has been inundated with phone calls and emails about the bill. In the past few days I have received 41 emails from councillors of all political colours, and from senior councils staff. I had intended to read to the House the letter read by the Hon. Duncan Gay, which encapsulates all the concerns of local government about the bill. I endorse all the comments made in the letter, which sums up the real concerns of local government and the community. The Greens challenge the Government's assumption that big local government and fewer councillors is, somehow, almost by definition, better local government.

Rather than force hasty, ill-conceived amalgamations and ad hoc reduction of councillor numbers, the Greens call on the Government to establish a far-reaching commission of inquiry into local government. The inquiry should examine the full function and role of local government in the twenty-first century. It must include an assessment of the whole gamut of services currently provided by councils. It should also include options for providing sustainable revenue for the provision of those services, and it must examine responsibility of State and local government in the delivery of services. Finally, such an inquiry must canvass the expectations and needs of communities. Only with a comprehensive and holistic examination of this nature can this House and, indeed, local councils make an informed decision about the best structure for local government in the twenty-first century. The Greens do not support forced amalgamations. We do not support backdoor gerrymanders and manipulation of the democratic process. We will not support the bill in its current form.

Reverend the Hon. FRED NILE [6.19 p.m.]: The Christian Democratic Party supports the Local Government Amendment (Elections) Bill, with reservations. As previous speakers have indicated, amendments to various aspects of the bill are anticipated. As honourable members would know, the Christian Democratic Party has always strongly supported local government in our policy documents. We believe in devolution of power, not revolution. We believe in the transfer of power from the Federal Government, where there is duplication, to State Government and the transfer of responsibilities from State Government to local government. That requires a greater allocation of funds to local government. More and more responsibility is being shifted to local government, which is a transfer of costs, but the councils are not provided with the necessary funds to meet the increased responsibilities.

To cover the cost of those increased responsibilities, local councils could be allocated a percentage of the GST. At present State governments receive an allocation of the GST. That money could go to local government on a pro rata basis in accordance with the population in each local government area. Local government is effective because it is close to the people. The Christian Democratic Party opposes the regional amalgamations of councils. A huge regional council would be impersonal and just another large bureaucracy. There would be fewer councillors, and they would have little time for personal involvement with the community. People would have to wait months to see their councillors because they would be too busy.

Currently, most councillors make themselves readily available to their communities. They work hard and spend many hours on their duties. Training classes run by the Local Government Association advise that councillors should allocate at least 20 hours per week to undertake council duties. If they cannot do that, they should not nominate as a candidate for the position. Some councillors may work more hours, but that is an indication of their workload. If the number of councils were reduced, the remaining councillors would have heavier workloads. For that reason, we do not support forced amalgamations. Some amalgamations could be based on efficiencies and mutual interest. In country areas small shire councils could use the facilities of a nearby city council. The large city council could have a pool of equipment and make available, on a financial basis, equipment to the shire councils. In that way, the shire councils would not need to buy capital equipment. That would be one way to reorganise the financial requirements of local councils and help smaller councils.

When looking at a bill, I try to put myself in the shoes of the people behind it. I ask: What are the objectives of the bill and who drafted it? My criticisms of this bill are not necessarily directed at the Minister for Local Government. I am sure the Treasurer would agree that often the Cabinet Office or the Premier's office play a major role in planning strategies and making recommendations. Although this bill was drafted quickly, it does not mean that it was not given proper consideration. Someone has given a great deal of thought to it over five years and the present bill is the result.

The bill has created a lot of suspicion in the community. Like many members, I have been lobbied by people from all over the State. I have received telephone calls and emails from councillors, Labor Party supporters, Liberal Party supporters and others saying that they are concerned about the bill. We have received feedback from people across the State and there is a great deal of suspicion about the real objectives of the bill. They may not be the objectives of the Minister, but there is a suspicion that they are the objectives of the

Government. For example, what is the real reason for changing the date of local government elections to March? Although it is not a critical issue, the bill changes the date to March forever. Item [1] of schedule 1seeks to insert:

> An ordinary election of councillors for an area is to be held on the fourth Saturday of March 2004 and on the fourth Saturday of March in every fourth year after 2004.

The date needs to be changed because the Electoral Office cannot hold two major elections—the State and the local government election—in one year. That is the rationale behind changing the date to March next year. However, the bill provides for the election to be held permanently in March. Previously the local government election was held in September. I have not heard any criticism of that. Leaving aside the State election issue, September is the ideal month in which to hold local government elections. The bill should have provided that the election be held on the fourth Saturday in March in 2004 and, thereafter, on the fourth Saturday of September in every fourth year. Therefore, the State election would be held in 2007 and the local government election would be held in September 2008. They would be completely separate. That would allow plenty of time between the elections and would remove any pressure from individual candidates and small parties. I will move an amendment. in Committee to that effect.

Over the years the local government election. has been held effectively in September. Why does the Government want the election to be held in March? I will put forward a practical reason for the change. It is difficult for minor parties and Independents to get ready for election by March. I know that it is difficult for the Christian Democratic Party, being a minor party, to get mobilised for an election in March. That may not be the case for the Australian Labor Party, the Liberal Party or the National Party. It is difficult for minor parties because staff go on holidays over Christmas and January.

The Hon. Michael Egan: Don't talk us out of it. You are doing well.

The Hon. Duncan Gay: You are not helping the argument now. You are reminding them why they changed it, rather than saying why they should hold it in September.

Reverend the Hon. FRED NILE: I am giving reasons why the election should continue to be held in September. I believe the Government knew that all along. I am giving credit to the Government's think tank. I know how difficult it is for small parties to get organised for elections. I believe this change has been clearly planned; it is not an off-the-cuff measure. After the election in March 2004, the election date should revert back to September. That is fair and just and allows people, who are busy with their jobs and families, the opportunity to get involved in a local government election campaign. The Hon. Henry Tsang, who has been involved with local government, knows how difficult it is to plan for a September election. It would be much more difficult to plan for an election between January and 24 March.

The change of election dates is one of the provisions of the bill that raises suspicions. A further matter which has been raised by previous speakers is whether council amalgamations are planned. The Government has given an assurance that there will be no forced amalgamations. However, it is not difficult to bring about amalgamations by way of political and economic pressure. Amalgamations may be justified in some areas. Although the Government has not been upfront about forced amalgamations, obviously it would like to have a number of amalgamations. I believe the Government would like to have a great number of amalgamations in New South Wales because the Labor Party tends to favour the big picture. We saw that during the Whitlam years, when the Labor. Party wanted to get rid of State governments and set up huge regional councils. Such large bodies are easier for a government to control and, in many cases, easier for the Labor Party to control.

The Hon. Duncan Gay: Why are you supporting this bill?

Reverend the Hon. FRED NILE: I am supporting it with reservations, subject to amendment. The other concern is why the Government wants to reduce the number of councillors. The reason has been stated pretty clearly by Ms Sylvia Hale. Obviously a reduction in the number of councillors will not affect the Labor Party at all. However, it will affect the minor parties and Independents, who can be a thorn in the side of major parties—the Coalition and Labor Party alike. New South Wales has had a Labor Government for a long time, so obviously the minor parties are a thorn in the side of the Labor Government. I do not always agree with the position adopted by some people in the minor parties, and I do not necessarily want to see more Greens representatives in local government because I have noticed that they adopt some strange policies. Whenever someone wants to establish a brothel in a country town, two Greens always vote in favour of the proposal, and

they are usually female Greens! There is a negative element in that, but that is democracy. It simply means that everybody else has to work more effectively and select good candidates.

The other point I wanted to make was that the registration dates will also disadvantage community groups that are formed as a result of issues that need to be resolved in a particular area. I have outlined some of the concerns that the Christian Democratic Party has with the bill. We have formulated an amendment that is designed to change the election date for the future, not for next year. After 2004 we hope that the relevant date will be September. The amendment will also delete the provision in the bill that will result in a reduction in a number of councillors. The amendment in item [15] of schedule 1 to the bill states:

> A council may, at any time before 31 December 2003, resolve to make an application to the Minister for approval to decrease the number of councillors in accordance with the limits under section 224.

The Christian Democratic Party's amendment would remove that provision completely. If the amendment is passed, a minor change to the long title of the bill will be necessary. Experience has shown that more councillors, not fewer councillors, are needed. We should at least retrain the ones that remain so that they can be effective in the role that they perform in their spare time.

[*The Deputy-President (The Hon. Tony Burke) left the chair at 6.32 p.m. The House resumed at 8.00 p.m.*]

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [8.00 p.m.]: I dream of being able to say, "This is a Government that has thought something out well. This is a government that has done a good job. This is a government that is trying to do the right thing by the people. This is a government that has presented the evidence to the Parliament, which has been impressed by that evidence. This is a government that is in control and is thinking of the future of New South Wales." I live in hope. I pick up legislation and say, "Perhaps today is my day." But sadly, when there is no information of any substance given to me, I ask myself the same question: "Do I trust these guys?"

The Hon. Don Harwin: The game is up when you have to ask that.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: It is a worry. And the conclusion I come to is, "No. Sadly, I do not trust these guys." We are told that this legislation is a reform of the local government election system. However, this proposal was not mentioned in the 2003 election campaign. One other aspect of this legislation makes me deeply distrustful of the Government. In the past when the Local Government Act has been changed with regard to the amalgamation of councils, this Government has fought tooth and nail to avoid conducting referendums because it has known that the electorate has not wanted the changes. I remember a deal being struck with this Government in the anteroom of this Chamber that we thought would force the Government to conduct referendums.

The Hon. Dr Peter Wong: It was not watertight.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Sadly, it was not watertight. I thought it was watertight, but it was not—and I was very disappointed in the position adopted by Reverend the Hon. Fred Nile because I think he knew that it was not watertight. When the Canada Bay problem arose, a type of referendum was conducted but voting was not compulsory. Fewer than half the people voted, but over 70 per cent of those who voted in each council did not want amalgamation. The Government determined that all the people who did not vote—more than 50 per cent, between the two councils—wanted the amalgamation, so it decided to go ahead. Statistically, that is an appalling and unreasonable methodology. If one were looking for a way to bully people, to ignore the results of a referendum and proceed irrespective, that would be it. Now, when the Government says, "We care—we have thought about things", I am afraid I do not trust it at all.

The Canada Bay incident was clearly an example of bullyboy tactics. It showed that this Government does not care what the people think. It did not try to take the people with it on that issue. The Government thinks that it has the power, so it does not care what people want or what people think. This bill is supposed to be innocuous; its purpose is to delay the local government election. A ministerial staff member put it to me in this way, "You will have to agree, otherwise you will cause a huge mess because the State Electoral Office is not capable of running an election in September." In other words, the Government announces legislation as a fait accompli, assuming that it will be rubber-stamped by Parliament because the crossbench will either be bullied into passing it or be told that to do other than pass the legislation would cause a mess because the State Electoral Office could not handle an election in September. The Government seems to rely on that tactic as a very strong lobbying point.

The State Electoral Office has been chronically underfunded. Its ability to check votes has not been good and its management of the 2003 election attracted quite a deal of criticism. I must admit that I think some of the criticism of its web site and its counting is justified, not to mention its computers. This Government's tactic is to announce a proposal, then bully the crossbench and make it impossible for the crossbench to vote against it because of the inconvenience that will be caused if it is knocked back. That seems to be very much the way that this Government operates. Added to that is the wish of the Government to reduce the number of councillors. The Government has offered some lame reasons for wanting to do that, such as councillors in tiny little towns in the middle of nowhere wasting public money. Generally speaking, the allowances of councillors are a pittance compared. with the overall cost of government in New South Wales.

What is more likely to happen is the introduction of optional preferential voting. The Government changed the voting system for the upper House to produce for itself a more beneficial gerrymander than it ever enjoyed. The Government holds more seats in the upper House than it was entitled to according to the percentage of votes it received. The previous voting system, even taking into account all the criticism about the tablecloth ballot paper, ensured that the proportion of representation in the upper House for major parties and minor parties of similar political outlooks actually delivered proportional representation because the seats won were in proportion to the votes won. Under the optional preferential system of voting, which has allowed voters to make a single selection above the line on the ballot paper, Labor won a greater percentage of seats than its percentage of the votes entitled it to, and that fundamentally constitutes a gerrymander.

This Government now wants to reduce the number of councillors in local government. Minority representatives who enter an election later are often Independents, and clearly they will simply be cut off, with more power flowing to Labor. The idea is that councillors who are already predominant will support a proposal for a reduction in their number. Obviously dominant councillors will attract most of the votes and they will simply lop off those less prominent. That is a highly suspect process in a democracy. I acquired some knowledge of statistics analysis from my experience in epidemiology, comparing two sets of statistics to determine the significant differences between two groups or populations—the purpose being, for example, to prove that one drug was better than another for a particular group of animals. Basically it was a comparison of two sets of numbers governed by two sets of statistical indices to determine the similarities between groups.

Applying that science to the outcome of an election, the relevant factors are the number of people who voted and the parties they voted for. I believe that democracy is achieved when the number of seats won by people elected to Parliament or to council are in proportion to the number of votes they receive from the community. That is what democracy is all about. In a first-past-the-post system, in which the winner takes all, the electorate is hugely skewed. An optional preferential system is also skewed because many of the votes of the unsuccessful candidates are not allocated as preferences. A full preferential system produces a far more even distribution.

The other distorting feature is the number of candidates, and single-member electorates are the most distorted. The more candidates there are the less distortion there is because the candidates with fewer votes still have a chance of winning a seat, particularly if a preferential system is used. The lower House has a huge gerrymander—the Government attracted 43 per cent of the votes but it won 56 per cent of the seats and has 100 per cent of the power. I rang the Proportional Representation Society of Australia to discuss this problem and discovered the Gini index, which is an effectiveness rating system for Parliaments, governments and voting systems. It indicates the validity of elections in relation to the way people voted.

Given the nature of this legislation I expected honourable members to be conducting erudite discussions about statistical models of systems that deliver what the people want. I do not believe any honourable member has heard those words in this debate. There has been no discussion of that concept, nor has there been any mention of it in the information the Government has provided to promote these reforms. Surely giving the people what they want is a fundamental ground rule in a democracy. I am concerned about these changes to the voting system and I anticipate a Greens amendment to introduce preferential voting for council elections. I await the Government's positive response. Given its track record, I am not hopeful.

The size of electorates is another important issue. If a ward has three councillors, it will be more democratic than if it has two, and if it has two, it will be more democratic than if it has one. Small councils might be better off with proportional representation because minority views will still be represented, and that is important for a working democracy. The winner-takes-all system with two dogs barking at each other, which is a common model in Australia, has disillusioned voters. Issues are not discussed intelligently, many points of view are not represented and people are unhappy with the outcome. Rather than admitting that problems exist

and discussing those problems, those in power spread the myth that they have the answers and that anyone who does not understand what they say is a fool. Solutions are imposed and unrealistic promises are made but never honoured, and no discussion will be entered into. I am afraid that is this Government's approach. The Greens will move an amendment relating to the number of councillors, and I will closely examine the Government's response.

The Government also wants council elections to be held in March. March may be better for the State Electoral Office because elections will be evenly spaced. I have faced two March elections, so I know what I am talking about. It is a difficult time for small parties. The period from mid-December to mid-January is generally referred to as the "silly season". Everyone goes to parties or is away on holidays. When people return to their work to organise their year they are not thinking about politics. At times like that people are inclined to think that everything is okay politically. That represents a considerable advantage to the incumbent. It may be a better use of the State Electoral Office's time, and I would like to believe that that is the Government's motive—but sadly, I do not trust the Government.

The Hon. Tony Kelly referred to the abolition of councils and said that some councils might save us some trouble by abolishing themselves. That may be true for many councils. I am sure that Labor councillors could get control and reduce the numbers themselves. National Party supporters might do the same thing in country areas. They might also want to reduce the diversity of councils. What is the ideal council size? The assumption has been that larger is better because of economies of scale. It is said that small councils cannot afford to build or repair swimming pools, to repair bridges and so on. That may be true. Populations in some council areas are declining, particularly in rural areas. Obviously, councils are responsible for works such as bridge maintenance. Some councils have had their rates pegged for many years to make the State Government look good. Councils' inability to carry out those works is partly a size issue, but it is also an effect of rate pegging. Very conveniently, rate pegging has made the State Government look good while it passes more and more tasks to local government without providing appropriate funding. Of course, the Government then criticises councils for managing money poorly.

No information has been provided about how to manage money well, nor has there been any qualitative discussion. If major changes were required, a government that cared would outline the approach and the problems facing councils in a systematic way to assist voters to understand and accept the changes. Australians seem to be the victims of a conspiracy on the part of those in power to avoid telling the voters anything. Manning Clarke referred to the three classes: the squatters, the overseers and the convicts. The squatters were given large tracts of land because they were the right sorts of chaps. Today they have been replaced by the multinationals, or "the big end of town". Of course, they deserve these things because they have power and influence.

The overseers tugged their forelocks to the squatters and bullied the convicts. This Government fulfils the overseer's role today. The convicts are the voters, who wish they could get a better deal but always get the overseer's boot. That is an appropriate model to apply to today's scenario. If we had a more mature society, our leaders would take the people into their confidence and explain any problems. These are society's problems and we should solve them collectively. The idea that the Government has all wisdom and will inflict solutions is authoritarian.

[*Interruption*]

It is an interesting irony that the interjections are coming from Opposition members rather than Government members. If the Government were concerned about council inefficiencies it would be searching for solutions. The *Australian Financial Review* said in response to the budget that this Government is lazy and keeps imposing taxes rather than introducing reforms, and that it does not manage its money well or examine its priorities. That is not an isolated view. Those in the know in the financial sector are saying the same thing.As the Hon. Sylvia Hale pointed out, the number of councils in this State is decreasing. In 1946 there were 289 councils, in 1972 there were 223, and in 2003 there are 172. Perhaps that number is not decreasing quickly enough, but size is not as important as management.

The Hon. Henry Tsang: What about Hunters Hill?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I think Hunters Hill Council is doing quite well.

The Hon. Henry Tsang: It's too small.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: It is said to be too small. However, despite its small staff it delivers very good services for the aged.

The Hon. Henry Tsang: It has very high rates.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: It does have high rates, and I confess that I suffer them. If the Government wants to change these things, it needs to take the community into its confidence, provide the evidence, and then invite the community to put forward its views. It cannot simply refuse to hold referendums. If it does hold a referendum, it cannot simply refuse to acknowledge the result of it and introduce legislation, saying, "You have to do it now, because the SEO cannot run the elections anyway. We have pushed the thing to such an extent that it has had it."

If the Government accepts my amendments relating to the voting system and the Greens amendments relating to the number of councillors, we will consider voting for the legislation. Neville Newell's speech in the other place was absolutely vintage government stuff. It had some platitudes about the Government's good intentions, which are not borne out by the facts, and about the fact that the Government is representative and transparent, which it is not, and about how it has listened to the people, which it has not. Neville Newell did not say anything of substance. The Government has not provided my office with any information, and it has not said anything substantial in the Parliament, but it expects members' support on this legislation and acts as though they are disloyal if they do not give it.

The Government should provide data on councils and consider the representativeness of government and the formula for proportional representation—I think that means having a reasonable number of councillors in each ward, or a global vote for each council—so that smaller parties have a chance of being elected to councils. The Government must educate and communicate with the people about good news and bad news so they can contribute their wisdom. I will not support the bill as drafted. I do not have great faith that the Government will accept the amendments, and I am concerned that it will simply find someone to help it bully the legislation through.

The Hon. Dr PETER WONG [8.23 p.m.]: I support the Local Government Amendment (Elections) Bill with similar reservations to those expressed by Reverend the Hon. Fred Nile. The Unity Party supports local government in New South Wales and we congratulate councils on the many good deeds they have done. Many individuals give their time, energy and services to their communities, for very little financial reward and often much criticism. Despite that, overall no-one could doubt that councils do an excellent job. I am sure the Hon. Henry Tsang shares this view.

As many members have said, there should be no forced amalgamation of local councils, either through blatant political means or boundary changes, through which a council can be wiped off the map. There should also be no reduction of councillors without the approval of local residents. I do not believe that councillors have the power to reduce their number without the agreement of their residents. I share the concern that many councils experience financial difficulties. As Ms Sylvia Hale said, the State Government has contributed to the failure of many councils by not allowing them to raise their rates to an appropriate level. I believe that the Minister for Local Government is an excellent Minister, and it is not that I do not believe him, but I do not trust those who drafted the legislation. Therefore I will examine the amendments carefully and comment further in Committee.

The Hon. DON HARWIN [8.25 p.m.]: I wish to place on record a number of concerns about the bill. I also place on record my thanks to the Liberal Party's Local Government Advisory Committee, under the chairmanship of Councillor Schreiber, for assisting the Coalition and me on the bill. The bill speaks volumes about the Government! It says a lot about the attitude and cynicism with which the Government has approached the entire electoral process and its mandate. If ever there was a bill for which the Government did not have a mandate, it is this bill. The loud and articulate opposition of Ministers, Government members, and Labor Party activists in the lead-up to the March State election on the issue of forced council amalgamations, when the Government articulated that it stridently opposed forced council amalgamations, has been shown to be utter deceit. The bill is the foundation of a process that will lead to forced council amalgamations. The Coalition strongly opposes that.

The arguments that the Government has put forward for this bill are, at face value, plausible. Few people would argue against the suggestion that there is a benefit in not having council elections in the same year

that a general State election is held. For a long time I have believed that that is desirable. However, the Government's second principal argument, in relation to the council budgetary process, is much less plausible. The idea that a councillor elected in March can get on top of all the complexities and issues involved in preparing a budget for the coming financial year, only a matter of weeks after being elected, is complete nonsense. I was impressed by Reverend the Hon. Fred Nile's argument about the possibility, from 2008, of reverting to holding local government elections in September. I will certainly listen with interest to that argument in Committee. Other honourable members have already alluded to the fact that there are several compelling arguments against this bill, apart from the obvious problem that the Government does not have a mandate for what it is doing. However, I believe that the real problem will be the provision that allows councils to reduce the number of councillors by resolution followed by ministerial consent, rather than pursuant to provisions in the present Act.

The Hon. Michael Egan: What are they?

The Hon. DON HARWIN: A majority council faction can gerrymander anything. The current provisions require the decision of more than just a council; they require a council to ask its voters what they think about the structure of their council, which is an eminently preferable arrangement. I am not in favour of a Botany-style council; there is no diversity of representation in two-councillor wards.

The Hon. Michael Egan: But that was introduced by the Askin Government. I was a victim in 1971. I lost the first division by six votes and the second division by seven votes.

The DEPUTY-PRESIDENT (The Hon. Patricia Forsythe) Order! If the Minister wishes to contribute to the debate, he may do so later.

The Hon. DON HARWIN: In 1971 I was in year 2 at an infants school, so I do not think I should be held to account for what the Askin Government did to the Treasurer in 1971. I am not happy with the provision that will enable councils to reduce the number of councillors. In particular, I am not in favour of two-councillor wards. I would prefer it if that provision were not in the Act. I do not like councils being dominated by a major party, such as happened in Botany council. That climate, which is almost conducive to corruption, should not be allowed. As I said earlier, that provision should not be included the Act. Frankly, this legislation will make it worse.

Clearly, the aim of the legislation is to have a structure that provides for wards, a number of councillors in each ward, and a method of election that is common to all councils in Sydney. I think that would be regrettable. The Liberal Party local government advisory committee made strong representations to me in relation to that provision, which the Opposition will not support. I hope that in Committee that provision is removed from the bill. As I said earlier, Opposition members will vote against the second reading of the bill, but we look forward to the Committee stage, where we will move amendments to remove some of the more reprehensible provisions, even if we are not able to stop the Government's forced amalgamation agenda, which, after all, is the basis of this bill.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister Assisting the Minister for Natural Resources (Lands)) [8.33 p.m.], in reply: I thank all honourable members for their contributions to the debate on this bill. The changes to the Local Government Act that are proposed in this bill are consistent with the Government's policy of ensuring that the local government sector remains financially accountable and is better equipped to deliver efficient and effective services to ratepayers. This change, which follows representations on the issue to the Government from Lgov NSW and the Local Government Association of New South Wales, is consistent with the policy of continuing to maintain close dialogue with the local government industry, particularly through industry peak bodies such as Lgov New South Wales. The Government intends to support the amendment foreshadowed by Reverend the Hon. Fred Nile relating to the reduction of the number of councillors. I normally consult with associations, and I intend to do that before we go into Committee. I have contacted one association but I have not been able to contact the other. I will inform honourable members once I have done that. I commend the bill to the House.

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

The House divided.

Ayes, 20

Mr Breen	Mr Jones	Ms Robertson
Mr Burke	Mr Kelly	Mr Tingle
Mr Catanzariti	Mr Macdonald	Mr Tsang
Mr Egan	Reverend Dr Moyes	Dr Wong
Ms Fazio	Reverend Nile	*Tellers,*
Ms Griffin	Mr Obeid	Mr Primrose
Mr Hatzistergos	Mr Oldfield	Mr West

Noes, 13

Dr Chesterfield-Evans	Ms Hale	Mr Ryan
Mr Cohen	Mr Lynn	
Mrs Forsythe	Ms Parker	*Tellers,*
Mr Gallacher	Mr Pearce	Mr Harwin
Mr Gay	Ms Rhiannon	Mrs Pavey

Pairs

Ms Burnswoods	Mr Clarke
Mr Costa	Mr Colless
Mr Della Bosca	Ms Cusack
Ms Tebbutt	Miss Gardiner

Question resolved in the affirmative.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 3 agreed to.

Schedule 1

Ms SYLVIA HALE [8.45 p.m.]: I move Greens amendment No.1:

No. 1 Page 3, schedule 1. Insert after line 2:

[1] Section 224 How many councillors does a council have?

Insert after section 224 (1):

(1A) A council divided into wards must have not less than 3 councillors for each ward.

[2] Section 224 (2)

Omit "subsection (1)". Insert instead "subsections (1) and (1A)".

I will speak also on Greens amendments Nos 2 and 5. Local government, by virtue of the functions it performs, is very close to the community and should ideally reflect the diversity of views, values and priorities present within the community. This is obviously impossible where there is only one person to be elected. There is a slight improvement in the possibility of diverse voices being heard when two people are to be elected, but in the case of local councils the operation of section 285 (a), mandating the optional preferential voting system where two people are to be elected, virtually guarantees that the person who receives the preference of the first councillor to be elected will also go on to be elected. The chance of councillors representing the diversity of views within the community is thereby seriously compromised.

Section 285 (b) requires that where three or more councillors are to be elected, a proportional system of voting must be used, and the results more accurately reflect the diversity of opinions within the community. A

survey conducted by the New South Wales branch of the Proportional Representation Society, in a lengthy examination of the voting system, drew this conclusion after examining all the last local council elections:

> Survey results show that in Municipalities, well-supported candidates were six times more likely not to be elected with optional preferential, compared to Proportional representation voting.

Obviously, we face a situation that where an optional preferential system is used it severely disadvantages and disenfranchises a large proportion of the community. The society went on to analyse why this was so:

> With optional preferential voting candidates with just over 50% of the total preference vote can gain all elected positions, as all votes for the first elected candidate are passed on to the next preference candidate and used again to elect the next and subsequent preference candidates. Optional Preferential voting, by design, embraces the undemocratic principle of double dipping, and is therefore biased towards the election of candidates supported by the same group of voters, to the exclusion of possibly other high-scoring candidates who often gain substantially more votes than a candidate elected as second preference. Candidates supported by a substantial minority group, or a well supported independent candidate, will often fail to gain election, yet see another candidate, with far fewer votes, elected "on the coat-tails" of the first elected candidate. This results in an over-representation for one group of voters and under-representation on Council for another group or groups or for independent well supported candidates.

Perhaps the easiest way to illustrate the advantages from the democratic perspective is to look at the results of elections conducted for this Parliament. In one-member electorates in the Legislative Assembly Labor won 42.6 per cent of the primary vote and obtained 59 per cent of the seats. On the other hand, the Liberal Party gained almost 25 per cent of the primary vote and won only 21 per cent of the seats. Let us compare those results with the outcome in this place, where we have a multi-member electorate and a proportional system of voting. In the Legislative Council, Labor won 43.5 per cent of the vote and received 47 per cent of the seats. The Liberal and National parties won 33.3 per cent of the vote and received 33.3 per cent of the seats. The results speak for themselves: the fairness of the outcome and the process is self-evident.

The purpose of Greens amendments Nos 1 and 2 is clear: to make the system of electing councillors fairer, more democratic and more representative of the views of those who elect them. The Act obliges councils with wards comprising more than three councillors to use the proportional system of voting. The Greens maintain that the proportional system of voting should be used in all council wards—regardless of whether two, three or more members are to be elected. However, the voting system in council wards of one or two members is optional preferential. It is inherently inconsistent and unfair on voters that different voting systems are used in different parts of the State, or even in different localities within the same city. If we are interested in ensuring that the local council voting system represents the diversity of views within the community it is not desirable to tolerate the continued existence of the optional preferential system in wards where two councillors are to be elected. The Committee should take this opportunity to remove that provision from the Act.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [8.52 p.m.]: I support Greens amendment No. 1. The more councillors there are in each ward the greater the chance of diversity of opinion and accountability and the less chance of a winner-takes-all result. Ms Sylvia Hale gave an example of how influence multiplies along with the votes and how the dominant party receives far more seats than percentage of the vote won. This amendment goes some way towards solving that problem. If wards are so small that they have only two councillors, they should be combined to ensure diversity on the whole council. That arrangement is more representative and democratic. Parliament—particularly the upper House, which should understand proportional representation—should make government in New South Wales meaningful. That is what this legislation should be about. People are asking whether government will reflect the wishes of the people or play a winner-takes-all, bullyboy game. People are seeking leadership and we should provide it.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister Assisting the Minister for Natural Resources (Lands)) [8.53 p.m.]: The Government does not support Greens amendment No.1 or the other foreshadowed Greens amendments. It does not support having a minimum number of three councillors in each council ward. A council's structure should reflect the community it represents. For some councils this might mean having a larger number of wards with a smaller number of representatives per ward; for others it might be more appropriate to have a larger number of representatives in fewer wards. Other councils might decide not to have wards at all. This amendment effectively imposes a one-size-fits-all model on councils and the community without any public consultation whatsoever. It is Government policy that councils should continue to exercise discretion in choosing their number of members.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [8.54 p.m.]: The Opposition supports Greens amendment No. 1. This amendment seeks to impose a requirement regarding a minimum number of

councillors. For example, if this amendment were to be passed, a council with four wards would require a minimum of 12 councillors. This is an important amendment. Concerns have been expressed in many areas of local government that the Labor Party is trying through this bill to reduce councillor numbers on some councils in order to ensure that it does not have any opposition. That is a bad move for democracy at the local level and any amendment that would avoid the dilution of democracy should be supported. That is why we support the Greens amendment.

I foreshadow that the Opposition will not support Greens amendment No. 2. We believe in the preferential system of voting. We certainly have problems with optional preferential voting but I suspect this is not the time to fight that battle again. Although I reckon that, having introduced optional preferential voting as a deliberate ploy to wrest power from the Liberal and National parties operating as a Coalition, with the loss of preferences from the Greens—many were once its members—Labor may like to revisit that arrangement.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 15

Mr Breen	Mr Lynn	Dr Wong
Dr Chesterfield-Evans	Ms Parker	
Mr Cohen	Mrs Pavey	
Mr Gallacher	Mr Pearce	*Tellers,*
Mr Gay	Ms Rhiannon	Mrs Forsythe
Ms Hale	Mr Ryan	Mr Harwin

Noes, 18

Dr Burgmann	Mr Jones	Mr Tingle
Mr Burke	Mr Kelly	Mr Tsang
Ms Burnswoods	Reverend Dr Moyes	
Mr Catanzariti	Reverend Nile	
Mr Egan	Mr Obeid	*Tellers,*
Ms Griffin	Mr Oldfield	Mr Primrose
Mr Hatzistergos	Ms Robertson	Mr West

Pairs

Mr Clarke	Mr Costa
Mr Colless	Mr Della Bosca
Ms Cusack	Mr Macdonald
Miss Gardiner	Ms Tebbutt

Question resolved in the negative.

Amendment negatived.

Ms SYLVIA HALE [9.04 p.m.]: I will not move Greens amendment No. 2, in favour of Australian Democrats amendment No. 1.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [9.05 p.m.]: I move Australian Democrats amendment No. 1:

No. 1 Page 3, schedule 1. Insert after line 2:

[1] Section 285

Omit the section. Insert instead:

285 Voting system for election of councillors

The proportional voting system applies in a contested election of a councillor or councillors.

The proportional voting system provides better democracy; it is that simple. I have made the point many times in this House that the composition of the elected body should correspond as closely as possible to the voting intentions of the people who conduct the election. The proportional system achieves that better than a full preferential system, which is better than an optional preferential system. As we currently have a preferential system, this amendment would be two steps in the right direction towards a more democratic system of government. Honourable members should put the quality of democracy in the State ahead of any petty party considerations they may have.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [9.06 p.m.]: I said earlier that. the Opposition would oppose the Greens amendment, and I see no reason to discriminate against the Democrats. Therefore, we oppose this amendment.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister Assisting the Minister for Natural Resources (Lands)) [9.07 p.m.]: I could not agree more with the comments of the Deputy Leader of the Opposition. The Government does not support the amendment to allow for a proportional voting system. The Government believes that the preferential voting system plays an important role in ensuring diverse representative councils in New South Wales. As such, section 285 of the Local Government Act provides for a proportional voting system to be used if the number of councillors elected is three or more. However, the provision does not extend to situations where the number of councillors to be elected is one or two because the proportional voting system does not work effectively in those situations; in fact, it is impossible to employ a proportional voting system in the election of a single position.

Ms SYLVIA HALE [9.08 p.m.]: The Greens support the Democrats amendment. An example of the way in which the current system is unworkable in a two-ward councillor situation is Botany Council, where every ward contains two councillors. The citizens of Botany realise the futility of contesting the election, so much so that in the 1999 elections not one person out of the 37,000 residents in Botany bothered to vote. That certainly was not a testimony to the good works of Botany Council but a testimony to the realities of a gerrymander and recognition by the residents of Botany that they have almost no chance of winning.

Indeed, it is not true, as the Minister asserts, that proportional representation does not work in this situation. A person only has to establish a quota whereby the first person gets one-third of the votes plus one to be declared elected. The next person's quota is one-third of the vote plus one to be declared the second person elected. At the moment there is a complete system of double dipping. The entire votes of the first person who gets a simple majority of 50 per cent plus one goes back into the count. It is counted for a second time and in its entirety it goes to the person obtaining the second preference.

That means that 50.1 per cent of the voters actually get two votes, and 49.9 percent of the voters effectively get no votes at all. It is the complete antithesis of a democratic situation. It results in situations such as that at Botany, where people are dissuaded from even participating in the election. It makes a mockery of local council elections. It certainly sends the most perverse of messages to the electorate. It does nothing to make local government representative. In fact, it makes it autocratic and totally dismissive of the views of its citizens.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 6

Mr Breen
Mr Cohen
Ms Hale
Dr Wong
Tellers,
Dr Chesterfield-Evans
Ms Rhiannon

Noes, 24

Mr Burke	Mr Kelly	Ms Robertson
Ms Burnswoods	Mr Lynn	Mr Ryan
Mr Catanzariti	Reverend Dr Moyes	Mr Tingle
Mr Egan	Reverend Nile	Mr Tsang
Mrs Forsythe	Mr Obeid	
Mr Gay	Mr Oldfield	
Ms Griffin	Ms Parker	*Tellers,*
Mr Harwin	Mr Pearce	Mrs Pavey
Mr Jones	Mr Primrose	Mr West

Question resolved in the negative.

Amendment negatived.

Reverend the Hon. FRED NILE [9.18 p.m.], by leave: I move Christian Democratic Party amendment Nos 1 and 2 in globo:

No. 1 Page 3, schedule 1 [1], line 7. Omit "March". Insert instead "September".

No. 2 Page 3, schedule 1 [2], lines 8 to 10. Omit all words on those lines.

Honourable members know that the main purpose of the bill is to change the date of local government elections from September this year to March next year. The Government says the reason for the change is that the State elections in March have placed a heavy workload on the State Electoral Office. I understand that the State Electoral Office prefers the local government elections to be held in March next year. Item [1] inserts a new subsection (1) of section 287, that provides:

(1) An ordinary election of the councillors for an area is to be held on the fourth Saturday of March 2004—

We understand that, and that is agreed to in principle. However, it goes on to say:

—and on the fourth Saturday of March in every fourth year after 2004.

That means that local government elections will be held in March in 2008, 2012 and so on. My amendments simply restore the elections to September from 2008. So from 2008 we revert to the regular system that local government is used to. I understand that the Local Government Association and the Shires Association agree with these amendments. They prefer to hold local government elections in September, which is all my amendment No. 1 will do. Amendment No. 2 is simply an administrative amendment; it simply omits "September" from section 290 (1) (b), which will have an effect on mayoral elections. My amendment simply leaves the bill as is. It retains the word "September"; it does not change the word to "March".

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister Assisting the Minister for Natural Resources (Lands)) [9.21 p.m.]: The Government supports these amendments.

The Hon. Greg Pearce: What happened to the need to change the date?

The Hon. TONY KELLY: The Government's original intention in moving that local government elections be held in March was to provide consistency with the State election cycle and to provide greater opportunity for an incoming council to have control over its budgetary process.

Ms Sylvia Hale: That's nonsense.

The Hon. Dr Arthur Chesterfield-Evans: It has nothing to do with boundary changes.

The Hon. TONY KELLY: It is a pity the Hon. Dr Arthur Chesterfield-Evans does not have to tell the truth in here. Reverend the Hon. Fred Nile raised some valid points in making his case for amendment No. 1. Having consulted with both peak bodies, the Local Government Association—

Ms Sylvia Hale: Not the Shires Association.

The CHAIRMAN: Order! I remind the Hon. Sylvia Hale that interjections are disorderly at all times.

The Hon. TONY KELLY: Having consulted both bodies—Councillor Sarah Murray of the Local Government Association by phone tonight, and Councillor Phyllis Miller of the Shires Association—I am pleased to say that the Government will support these amendments. I believe they will provide a balanced compromise.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [9.22 p.m.]: First, I indicate that the Opposition supports the sensible amendments moved by Reverend the Hon. Fred Nile. Second, I acknowledge the Minister's rank hypocrisy in also supporting these amendments. Part of the rationale of the Minister and the Government in introducing this bill was that September was not the right time to have elections. If the Minister looks backs at his statements when he foreshadowed this legislation he will find that he said that September was not the right time to have elections. So the truth of this whole matter has been exposed. Not only did the Government lie to the people of New South Wales before the election about compulsory amalgamations; it totally misled councils and the people of New South Wales on the reason for introducing this bill. The Minister's support of these eminently sensible amendments is an indication of the Government's hypocrisy.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister Assisting the Minister for Natural Resources (Lands)) [9.24 p.m.]: I also acknowledge that I have been subsequently lobbied by the Local Government Managers Association—in other words, the general managers—which supports Reverend the Hon. Fred Nile's amendments.

Ms SYLVIA HALE [9.24 p.m.]: The Deputy Leader of the Opposition hit the nail on the head. The whole pretext for introducing this bill was that—shock, horror—councillors could not possibly have any involvement in the determination of budgetary papers if they were elected in September. It was absolutely critical that they had to be elected in March because they would be in a position to make a decision before June. Suddenly that has gone out of the window. It is remarkable when the Minister manages to talk to a few people, not least Reverend the Hon. Fred Nile. This time he had the courtesy at least to ring the Shires Association. I do not know why he left it to the absolute last minute to ring the Shires Association, but thank goodness he did because reality struck. The suggestion that we had to have elections in March because it would help the budgetary position was absolutely spurious. We all know the elections were moved to March to give the Government time to force councils to so-called voluntarily amalgamate. The speciousness of his arguments has been well demonstrated by the backdown we have witnessed tonight.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [9.26 p.m.]: What I was going to say has already been said by the Deputy Leader of the Opposition, but it is worth repeating. As I said in the second reading debate, I would like to trust the Government. It asks, "Why don't you trust us, Ace? Why do you always look for an ulterior motive?" Here we have the answer. The Government wants the next local government elections to be held in March because then it cannot amalgamate but merely dismember councils and rearrange the boundaries between now and March. That is what it wants. After that it does not matter, despite the fact that almost a third of the threadbare speech made when introducing this bill, which was delivered by Neville Newell in the other place, related to the importance of March.

Reverend the Hon. FRED NILE [9.26 p.m.]: I thank the Government and honourable members for their support of my amendments.

The Hon. Tony Kelly: Unanimous.

Reverend the Hon. FRED NILE: Yes, it makes it unanimous. The point is that my amendments will ensure that local government elections are held in the year following a State election. One of the main arguments for the March date was the pressure on the electoral office in having the State election and local government elections in the same year. My amendments will take the pressure off the electoral system, because we know that local government elections will be held in March next year, the next State election will be held in 2007 and local government elections will be held in 2008.

Amendments agreed to.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [9.28 p.m.]: I move Australian Democrats amendment No. 2:

No. 2 Page 3, schedule 1. Insert after line 12:

[4] Section 310A

Insert after section 310:

310A Candidate affiliation

If a candidate in a contested election for a civic office has been a member of a political party at any time within the period of five years before the date of the election, the name of that political party must be printed on the ballot paper immediately underneath the candidate's name.

The object of this amendment is transparency in government. If a candidate is a member of a political party the voters have a right to know that at the time they vote. The idea is that if a candidate in a contested election has been a member of a political party at any time within a period of five years before the date of the election the name of that political party must be printed on the ballot paper immediately underneath the candidate's name. Honourable members interjected when I made this suggestion previously, and I am waiting for an interjection now. Here it comes!

[*Interruption*]

If a candidate has been in many different political parties I am sure there will be sufficient room on the ballot paper to list all the parties. Then people can judge whether the candidate is flaky or whether he or she can be relied on for the next 4½ years. The basis of the amendment is transparency. I do not know why anyone would oppose it. It will give voters more information, at the time they need it, about candidates. It is an important provision. I know of no reason that it would not be supported.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [9.29 p.m.]: The Opposition will not support the amendment, which appears to be a product of the ongoing obsession of the Hon. Dr Arthur Chesterfield-Evans on this issue, and does not make a lot of sense. The Democrat in this instance wants to put in place a system requiring a person standing as an Independent candidate who has been a member of a political party within the previous five years to note that fact on the ballot paper. The Opposition does not support the amendment because it is not necessary. The vast majority of people who stand for council elections do so because they want to make a difference on local community issues. They may stand on a particular issue, or they might stand for a particular purpose. But if they stand as a representative of a political party, that will be a party that endorses candidates. Voters in local communities generally know the political persuasion of those standing for office. The sort of branding exercise proposed by the Democrats is not necessary.

Frankly, if the logic of the Hon. Dr Arthur Chesterfield-Evans were applied at Federal and State elections, Senator Meg Lees would be listed on the ballot paper under Democrats, as would Richard Jones. And what would have been the case with the Hon. Dr Arthur Chesterfield-Evans? Probably Liberal, I think. I have to ask: What would happen with Helen Sham-Ho, Peter Breen, David Oldfield, Malcolm Jones and Peter Wong? Many of them would have had "Lib" beside their names. The only thing that appeals to me about the amendment is its import for Richard Torbay and Tony McGrane. I don't think they would have "Lib" next to their names because we know of what party they were a member.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister Assisting the Minister for Natural Resources (Lands)) [9.31 p.m.]: Except for the last comment made by Deputy Leader of the Opposition, I have to agree with his eloquent presentation. The Government does not support this Australian Democrats amendment, which requires candidates for councils to disclose party membership of a political party within the past five years and, as the Deputy Leader of the Opposition said, that that information be printed against their names on the ballot paper.

Whilst I understand the goal of the Hon. Dr Arthur Chesterfield-Evans is to ensure greater transparency in local government elections, a number of unforseen circumstances would accompany the passing of his amendment. One was mentioned by the Deputy Leader of the Opposition. Requiring a candidate in a contested election to disclose membership of any political party may falsely give voters the impression that the candidate is still affiliated with that party or, even more importantly, has that party's endorsement. Also, the amendment does not clarify what happens in cases where the candidate is or was a member of a political party that is not registered with the Electoral Commission. For those reasons, the Government, along with the Opposition, does not support the amendment.

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [9.33 p.m.]: I must say I found the eloquent arguments of both the Deputy Leader of the Opposition and the Minister very convincing. But I did not need their contributions to enable me to understand that the proposition that the Hon. Dr Arthur Chesterfield-Evans puts to the Chamber is absolute nonsense.

The Hon. Dr Arthur Chesterfield-Evans: You have changed your mind in two seconds!

The Hon. MICHAEL EGAN: No, I haven't. The suggestion that people should note former political affiliations on a ballot paper suggests that no-one is ever allowed to change their mind. There is some superficial appeal in what was said by the Hon. Dr Arthur Chesterfield-Evans. I would like Democrats voters to know that he is a former member of the Liberal Party. I would like the members of Unity to know that the Hon. Dr Peter Wong is a former member of the Liberal Party. It seems from the long list of people mentioned by the Deputy Leader of the Opposition that I am the only one who has been true all his life to his convictions! Just li'l ol' me! But if we are to have former political affiliations, or indeed other details of that nature, put on the ballot paper, why not have an assessment of someone's intelligence? If someone is a dope, why not have "dope" next to the name on the ballot paper? I would suggest that is not a proposition that the Hon. Dr Arthur Chesterfield-Evans would ever put to the House!

Ms SYLVIA HALE [9.35 p.m.]: The Greens support the Democrat amendment. It has been suggested that voters tend to know the political or other affiliations of individual candidates in local government elections and therefore the community as a whole does not need to be made aware of those affiliations. That may be so in an extraordinarily small council area with between, say, 10,000 or 20,000 voters, but it certainly is not the case in electorates on the outskirts of Sydney that can have more than 200,000 electors. It is true that people are influenced by the political histories of candidates. If the amendment were to be carried, and were I running again for local government, I would have to disclose that I was a member of No Aircraft Noise before becoming a member of the Greens. In no way am I ashamed of that, as I have said on a number of occasions in this Chamber. In fact, I think it perfectly appropriate that people would be prepared to stand by their convictions, rather than assume that they would hoodwink the electorate by using that all-encompassing, very useful but totally uninformative description of "Independent".

I suggest it would be very useful if, in the coming local government elections, all those who ran under the party name of Our Community, Our Council would also disclose their current memberships, because everyone who ran under that title was a member of the Labor Party. It was extraordinary to turn up at the council after the elections and, lo and behold, see people who had been so assiduously handing out leaflets for Our Community, Our Council suddenly turn up at Labor Party celebrations.

The Hon. Charlie Lynn: They have no shame!

Ms SYLVIA HALE: I could not agree more. It is totally shameless. I look forward to seeing those same grubs turn out at the next local council elections.

[*Interruption*]

The Labor Party has a good share of grubs, I must confess. I look forward to seeing these people turn out on election day to hand out for the Labor Party. I would prefer, of course, that everyone was sufficiently proud of their political allegiances to be prepared to display those for all the world to see.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [9.38 p.m.]: The Australian Democrats nominated five years in the amendment because local government elections are held every four years. Therefore, first-term councillors who are standing for re-election would not be required to declare those affiliations. I left the Liberal Party 20 years ago and would not envisage declarations going back that far, although when young and politically naïve one is inclined to find out about other parties.

Mr Lynch: How come you finished up with the Democrats?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I finished up with the Democrats because it is a party of principle—the only party to stand up against the tobacco industry, not take money from it, and be a serious anti-tobacco party. That is very important for public health, as I have pointed out at some length on a number of occasions and will not go into again now. If candidates had left a party, that should also be stated on the ballot paper. If a candidate had been a member for five years, it is reasonable that the ballot paper would

show "ALP until" and then a date. Perhaps that should be included in the amendment. Certainly it should be at the discretion of the State Electoral Office—and it would be, because the State Electoral Office would not list a party that is no longer in existence. It is basically a matter of honesty.

I note the point made by the Hon. Sylvia Hale about people standing under one name when they are members of a registered political party. That is an attempt to hoodwink the voters and that needs to be addressed when we are talking about fairness in democracy. It is rather sweet that the Treasurer comes into the Chamber to speak on a matter like this. He is suffering attention deficit disorder. He is not getting enough attention in question time since the Minister for Transport Services has been taking the flak. I urge the Committee to support the amendment.

The Hon. PATRICIA FORSYTHE [9.40 p.m.]: My colleagues and I recall that, in preselections we have been involved in, a particular person had an interest in knowing our birth dates. She determined whether she would vote for us on the basis of numerology. It may be appropriate for us to list all those facts on the ballot paper as well. People might have all manner of reasons for voting for us, but that would be about as relevant as the argument that has been put forward by the Hon. Dr Arthur Chesterfield-Evans.

Reverend the Hon. FRED NILE [9.41 p.m.]: I want to clarify what is meant by this amendment. The Hon. Dr Arthur Chesterfield-Evans keeps mentioning registered parties, but that is not mentioned anywhere in the amendment. The definition of a party is up in the air. There are rumours that some Greens members were members of the Communist Party or were Trotskyites or Marxists.

Ms Lee Rhiannon: That's Michael Costa.

Reverend the Hon. FRED NILE: Him too. Would their names go on the ballot paper?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [9.42 p.m.]: I feel I ought to answer that reasonable question. The State Electoral Office would be responsible for deciding who had been in a political party. If a party had not been a registered political party—

[*Interruption*]

We could make it a crime not to declare it. That would be consistent with the general practice in this Chamber. Everything else is immediately made a crime in this place with a long penalty. Perhaps 10 years would be enough. Nevertheless, this amendment is perfectly reasonable. While it may be the cause of some mirth in this Committee, out there in voter land people are sick of being conned. They would like to see on their ballot papers who they are voting for.

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [9.43 p.m.]: I suggest that the Democrat candidates at the last New South Wales election would have done a lot better if they had not had the word "Democrat" above their names.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 4

Ms Hale
Ms Rhiannon
Tellers,
Dr Chesterfield-Evans
Mr Cohen

Noes, 26

Mr Breen	Mr Jones	Ms Robertson
Mr Burke	Mr Kelly	Mr Ryan
Ms Burnswoods	Mr Lynn	Mr Tingle
Mr Catanzariti	Reverend Dr Moyes	Mr Tsang
Mr Clarke	Reverend Nile	Mr West
Mr Egan	Mr Obeid	Dr Wong
Mrs Forsythe	Ms Parker	*Tellers,*
Mr Gay	Mrs Pavey	Mr Harwin
Ms Griffin	Mr Pearce	Mr Primrose

Question resolved in the negative.

Amendment negatived.

Ms SYLVIA HALE [9.50 p.m.]: I move Greens amendment No. 3:

No. 3 Page 3, schedule 1. Insert after line 20:

[6] Schedule 8, the note appearing after the heading to Part 17 and clauses 58 (3) and 60 (3) (a), (7), (8) and (9) (a)
Omit "1 June 2003" wherever occurring. Insert instead "1 October 2003".

[7] Schedule 8, the definition of "phasing-in period" in clause 57
Omit "31 May 2003". Insert instead "30 September 2003".

The amendment will alter the deadline for the registration of all parties, whether new or existing, to 1 October 2003. Parties had until 1 June 2003 to get everything in order and register with the State Electoral Office. New parties had to apply for registration by 1 June 2002 even though the election is not until the end of March 2004, which is a 21-month gap between registering and contesting the election. As the Deputy Leader of the Opposition said earlier, a number of parties and groups will be anxious to contest the election, whether they be the no amalgamation party or the let's defeat the Labor Party party.

If we have at least a superficial interest in a veneer of democracy in our election then we should not stand in the way of those parties registering. It is not easy to register. Registration requires 100 signatures that must be checked. If groups have until 1 October 2003 to register, the State Electoral Office will have at least two or three months in which to verify the details. Those groups that wish to form parties will then have the opportunity to appear on the ballot paper. If this reasonable requirement were refused it would unnecessarily deprive people with a genuine interest in contesting the elections as a group the opportunity to do so. I commend the amendment to the Committee.

The Hon. DON HARWIN [9.54 p.m.]: The Opposition supports the amendment, which will ensure that persons who want to form parties to contest the delayed local government election can register in accordance with the legislative requirements. The fact that the provision was not in the bill in the first instance speaks volumes about it. Surely, with the delayed election date it would have been appropriate to adjust all timetables in the Act that relate to the election. It was a major omission in the Act. Consequently, the Coalition supports the amendment.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister Assisting the Minister for Natural Resources (Lands)) [9.55 p.m.]: The Government does not support the extension of the deadline for registrations of new and existing parties to 1 October 2003, because the deadline has already passed. It is not fair to disadvantage parties that have registered in compliance with the original provisions by allowing new parties to register between now and October. The decision was made with the full support of the State Electoral Commissioner to ensure transparency and consistency in the application of the Act.

Ms SYLVIA HALE [9.56 p.m.]: It is palpably erroneous and foolish to suggest that the reason the Government will not support the amendment because it is unfair. Surely, it is unfair to prevent parties from registering for an election in March 2004 because they did not register by 1 June 2002. Apparently it is not unfair for the Government virtually unilaterally to move the entire date of council elections after the State election and after the electorate has been denied any possibility of comment. Apparently it is not unfair for the

Government to inconvenience councillors who ran for council on the assumption that they would serve a four-year term to find that they will serve a 4½-year-term.

The Hon. Tony Kelly: They can resign.

Ms SYLVIA HALE: The Minister suggests that they can resign, but the last thing I would want to do is resign and in any way contribute to the Labor domination of Marrickville Council. I suggest that many honest independent councillors would be reluctant to resign. However, some councillors may well be obliged to resign, which will mean that for a long time residents will be without representatives. If councillors are not replaced, council numbers will be reduced and the opportunities for residents to be represented by councillors will also be reduced. Not to agree to the amendment is extraordinarily unfair. But, once again, it is consistent with the Government's desire to keep the electorate uninformed and not allow the electorate to fairly and democratically express its views.

Question–That the amendment be agreed to—put.

The Committee divided.

Ayes, 15

Mr Breen	Ms Hale	Mr Ryan
Dr Chesterfield-Evans	Mr Lynn	
Mr Clarke	Ms Parker	
Mr Cohen	Mrs Pavey	*Tellers,*
Mr Gallacher	Mr Pearce	Mrs Forsythe
Mr Gay	Ms Rhiannon	Mr Harwin

Noes, 20

Dr Burgmann	Mr Jones	Ms Robertson
Mr Burke	Mr Kelly	Mr Tingle
Ms Burnswoods	Mr Macdonald	Mr Tsang
Mr Catanzariti	Reverend Dr Moyes	Dr Wong
Mr Della Bosca	Reverend Nile	*Tellers,*
Mr Egan	Mr Obeid	Mr Primrose
Mr Hatzistergos	Mr Oldfield	Mr West

Pairs

Mr Colless	Mr Costa
Ms Cusack	Ms Griffin
Miss Gardiner	Ms Tebbutt

Question resolved in the negative.

Amendment negatived.

Progress reported from Committee and leave granted to sit again.

LOTTERIES AND ART UNIONS AMENDMENT BILL

Second Reading

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [10.07 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The Government has brought forward a bill to amend the Lotteries and Art Unions Act 1901 following a National Competition Policy Review of the Lotteries and Art Unions Act.

The Act regulates community-based lottery activities, which include raffles, art unions, bingo, sweeps, tipping competitions, and trade promotion lotteries. These types of lottery activities are of significant importance to the community; they allow charities and not-for-profit organisations to raise much need funds; and they also provide community entertainment.

Commercial-based lottery activities are not affected by this legislation; they are regulated under the Public Lotteries Act.

The accepted principle upon which the gaming may proceed is that no one can claim a right to provide gaming; it is a privilege to be granted by Government subject to thorough probity controls, and only in accordance with community expectations.

Hence, the Lotteries and Art Unions Act imposes a blanket prohibition on the selling or disposing of money or property by chance. It then provides exceptions to the prohibition. Certain community-based lotteries are authorised on the basis they accord with the Act, Regulations and any applicable permit conditions.

There are restrictions on these operations that control the value of prizes on offer or the minimum value of profit that must be returned to the organisation. As a protection for the community, the Act restricts who can conduct lottery or gaming activities, what activities can be undertaken, and how those activities are to occur. Essentially, the Act restricts the conduct of fundraising lottery activities to charities and other non-profit organisations.

The proposal to amend the Act has come about because of a combined national competition policy review of the Lotteries and Art Unions Act and the Charitable Fundraising Act, which was undertaken as part of the NSW Government's commitment to the Competition Principles Agreement.

Another Act that was subject to the national competition policy review was the Charitable Fundraising Act. The Charitable Fundraising Act regulates the charitable fundraising sector—a very important sector in our community. The sector comprises donors, charities, professional fundraisers, and persons in beneficial receipt of charitable services. The Act imposes a general prohibition on charitable fundraising unless the person who, or an organisation which, conducts the appeal is properly authorised.

The national competition policy review confirmed the broad objectives of the Charitable Fundraising Act and Lotteries and Art Unions Act.

One objective is to ensure the integrity of charitable fundraising and authorised lottery activities. That is why the Act provides a regime that requires operation by responsible and accountable persons and eliminates practices that could undermine public confidence.

Another objective is to assist with the ongoing viability of organisations that conduct charitable fundraising and authorised lottery activities. This should ensure that such activities contribute positively to the community and develop and operate in the public interest. Charitable fundraising and authorised lottery activities must be conducted with fairness. This is an important objective because such activities have a significant effect on members of the community.

In line with government policy, one objective is to promote gambling harm minimisation. Community-based lotteries are no less important than other more significant forms of gambling. Another objective is to ensure that the industries are free from criminal influence and exploitation. Finally, an objective is to ensure that the proceeds are applied to the particular purpose or organisation represented during the conduct of the charitable fundraising or authorised lottery activity. The last two objectives are important because if anyone does the wrong thing it may undermine public confidence and the ability of charities to raise much needed income.

The review identified a number of restrictions on competition. These are entry restrictions, restrictions on conduct, cross-border restrictions, and that all persons or organisations are not placed on equal terms.

The review of the Lotteries and Art Unions Act occurred in an environment of increased community concern about the expansion of gaming, and the associated potential for adverse social consequences for some members of the community. The development of gaming harm minimisation and other social policy developments in New South Wales and at the Commonwealth level have shaped the recommendations of the review.

The national competition policy review of the Charitable Fundraising Act gave due regard to other inquiry processes into charitable fundraising. One was the Commonwealth's Productivity Commission Inquiry into Charitable Organisations in June 1995, which recommended, in part, that consideration should be given to achieving greater efficiency and effectiveness of fundraising regulation among the States and Territories. Another is the formation of an inter-jurisdictional working party comprising representatives from the various States and Territories to investigate the feasibility of developing greater uniformity of regulation for charities. At this stage, the working party has not resolved its position.

The review generally recommends that the current restrictions on competition in the legislation be retained on the basis that the potential public benefits of these restrictions outweigh their costs. The review considered alternatives to the restrictions. However, in each case it recommended retention of the existing restrictions. It was considered that they achieve the best result in terms of community benefits. Nevertheless, the review recommended that there should be ongoing discussion between the States and Territories to explore the possibility of greater uniformity. The main reasons for such recommendations is the need to retain controls that maintain integrity and to ensure adherence to the Government's gaming harm minimisation policy.

At the same time, the retention of these controls seeks to provide an environment that assists the ongoing viability of charitable organisations so that they may continue to contribute positively to the community and develop and operate in the public interest. The bottom line is that the national competition policy report gave due regard to the potential economic and social influences of maintaining restrictions. It is obvious that the absence of any regulation might well result in an expansion of gaming with an

associated increase in the incidence of problem gambling. There could be an increase in criminal influence and exploitation, and an increase in practices that undermine public integrity and threaten revenue for legitimate community groups and charities.

Also, community-based organisations might not be able to offer a competitive product against commercial operators, thereby losing much needed revenue to finance their worthwhile activities. Although the national competition policy report of the Charitable Fundraising Act does not recommend any amendment to the legislation, the national competition policy report of the Lotteries and Art Unions Act recommends it be amended in three areas.

Those areas are: first, to include explicit objects; second, to remove the requirement for a registered club to hold a permit to conduct certain games of chance; and, third, to remove the prohibition on a person conducting a lottery in another State or Territory of Australia from advertising and selling tickets in New South Wales, provided the lottery complies with the same standards expected of a lottery conducted in New South Wales.

The Lotteries and Art Unions Act was drafted in 1901, before the practice of stating objects, and, therefore, has no explicit objects. The review found that the underlying implicit objectives of the Act are valid but concluded they need to be explicitly stated. Accordingly, the bill proposes a new section 2 to provide for the objects of the Act. In particular, it provides that the principal object of the Act is to ensure that, on balance, the State and the community as a whole benefit from certain community-based lottery activities.

Under the Act registered clubs are authorised to conduct club bingo and promotional raffles provided a permit has been granted. Since 1998 an authorising permit has been granted to all registered clubs regardless of whether they wish to conduct the game. The review concluded that although the current system works well, far greater efficiency and less administrative burden would be attained if registered clubs were authorised to conduct certain lotteries without the need for a licence. Accordingly, the bill proposes to amend section 4C of the Act to remove the requirement that a permit be issued and makes consequential amendments to other provisions of section 4C.

The Act provides for penalties in respect to foreign lotteries. A foreign lottery—I admit is an unusual term—is any lottery conducted outside New South Wales irrespective of whether it is legal in the place where it is conducted. The foreign lottery provisions prohibit publication of advertisements for, and the sale of tickets in, foreign lotteries. The restriction means that persons and organisations in other Australian jurisdictions cannot advertise or sell tickets in lotteries in New South Wales, even if the lottery activity is lawful in that other jurisdiction.

For example, a Victorian-based charity, which is authorised under the Victorian law to conduct a fundraising lottery, cannot sell tickets in NSW. However, the restriction also means that gaming suppliers whose bona fides are questionable cannot openly establish a marketing presence in New South Wales. In order for the Government to pursue the objective of ensuring a safe and responsible gaming environment for the community, it must have regard to the marketing of gaming products into New South Wales by out of jurisdiction gaming operators. If the restriction were to be lifted, it may have an adverse impact on the ability of the Government to control the provision of gaming services to the people of New South Wales, and could potentially exacerbate any social and economic problems.

The restriction ensures that the Government remains capable of controlling gambling. Although other Australian jurisdictions do not exercise a similar restriction as New South Wales, it must be concluded that without uniform standards between Australian jurisdictions the mutual recognition of lotteries authorised in other States would be hazardous. In this respect, unscrupulous persons would choose the jurisdiction with the least restrictive controls from which to operate and to promote their lotteries into New South Wales.

Accordingly, the review concluded that to support the stated objectives of the Act, lotteries based in other Australian jurisdictions must meet the standards and probity expected of New South Wales based lotteries in order to be authorised to operate here. Where necessary, this would also require non-New South Wales based operators to be authorised under a permit scheme similar to that required of New South Wales based operators. The bill replaces the existing definition of foreign lottery and defines a foreign lottery as: a lottery that is conducted or to be conducted outside Australia and whether or not it is legal in the place where it is or is to be conducted; or is conducted or to be conducted in another State or a Territory and is declared by the Minister, by order published in the gazette, to be a lottery that fails to comply with the standards expected of lottery activities conducted in New South Wales.

The intent of the proposed amendment is to allow a person to advertise and sell tickets in a community-based lottery in New South Wales even through the lottery is conducted in another State or Territory of Australia provided the lottery complies with the same requirements as a lottery entirely conducted in New South Wales. However, a lottery conducted in another jurisdiction may be declared by the Minister, by order published in the gazette, to fail to comply with the standards expected of lottery activities conducted in New South Wales. In that case, the lottery activity would be a foreign lottery and be unable to be sold or advertised in New South Wales. The bill does not propose to amend the Act to allow gaming operators outside Australia to market their products in New South Wales.

During the drafting of the bill it was necessary to make consequential amendments to other provisions. The bill proposes that section 4B be amended to allow an interstate club within the meaning of the Registered Clubs Act to also conduct trade promotional lotteries in New South Wales, provided a permit has been granted. This is essential in respect of clubs operating in cross-border areas.

The bill also proposes to replace section 22A of the Act with proposed sections 22A and 22AA. Section 22A currently provides that the Minister may seek orders from the Supreme Court to prevent the conduct of a particular lottery activity or to prohibit a person or organisation from conducting any lottery activity for a period not exceeding two years.

Proposed section 22A provides that if the Minister is satisfied that it is likely that the provisions of the Act or the regulations of the conditions of a permit have not been, or will not be, complied with in relation to a lottery activity, or that it would be against the public interest for the lottery activity to be conducted, the Minister may give a direction prohibiting the conduct of the lottery

activity. Proposed section 22AA provides that if the Minister is satisfied that a person or organisation has persistently failed to comply with the provisions of the Act or the regulations or the conditions of a permit, and that the person or organisation is likely to continue to do so, the Minister may give a direction prohibiting the person or organisation from conducting any community-based lottery activities for a period not exceeding two years.

These new provisions are similar to current section 22A, but remove the need for the Minister to seek an order from the Supreme Court. This should provide a more efficient and less costly process. Under the proposal a person or organisation dissatisfied with a decision made by the Minister to prohibit the conduct of a lottery activity, or to prohibit a person or organisation from conducting lottery activities, may apply to the Administrative Appeals Tribunal for a review of the decision.

Sections 3 and 20 of the Act create offences relating to publishing certain advertisements, information or notices with respect to unlawful lottery activities. The bill proposes to insert a new definition of "publish" in section 2A (1). Part of the definition will include the words "cause to be published". The proposed definition will clarify the legislative intent of preventing persons from publishing or causing to publish advertisements, information or notices relating to unlawful lotteries. This will improve enforcement functionality, which may reduce the number of unlawful lotteries advertised, and therefore protect the community from unscrupulous operators.

The bill also makes consequential amendments to the Administrative Decisions Tribunal Act 1997 and the Licensing and Registration (Uniform Procedures) Act 2002.

These amendments will streamline the operation of the Act, while maintaining the worthy objectives now stated in it. It has been developed with the view of protecting the integrity of lotteries while not restricting the opportunity of charities to obtain much-needed funds. Representatives of the Charities Ministerial Advisory Committee and key stakeholders have been involved in the review of this legislation. I commend the bill to the House.

The Hon. MELINDA PAVEY [10.07 p.m.]: The Opposition supports the bill. I seek leave to have my speech incorporated in *Hansard*.

Leave granted.

I have pleasure in leading for the Opposition to amend the Lotteries and Art Unions Act 1901.

The Opposition will be supporting the bill:

- The amendment bill will provide provision to explicitly state the objects of the Act
- Remove the requirement for a club to hold a permit before the club may conduct club bingo and promotional raffles
- Remove the prohibition on a person conducting a lottery in another State or Territory from advertising and selling tickets in New South Wales
- Provide that the Minister for Gaming and Racing may in certain circumstances:

  prohibit the conduct of a particular activity or

  prohibit a person or organisation from conducting lottery activities for a period not exceeding two years.

The bill is a result of a national competition policy review with the overriding principal to ensure that on balance community based lottery activities including raffles, art unions, bingo sweeps, tipping competitions and trade promotion lotteries.

The Shadow Minister in the other place has raised various concerns about the bill, which have in turn been addressed by the Government.

That concern was in relation to the requirement in New South Wales that the 60/40 rule be adhered to in relation to proceeds from a lottery or art union be dedicated to the particular charity.

In New South Wales the 60/40 rule dictates a maximum 60 per cent in costs with 40 per cent accruing to the charity.

And that an audit be held within 60 days to ensure that the 60/40 rule was adhered to.

In other States there is no 60/40 rule—such as Queensland—and art unions could end up providing the charity with as low as 25 per cent return.

The Opposition was originally moved to oppose the bill. However amendments were passed to deal with the Liberal-Nationals concerns.

In the Shadow Minister's consultations, Charity Awareness Week Association and the Fundraising Institute of Australia were opposed to the original bill.

The Government has assured the Opposition that amendments to the regulation regarding the requirement for an audit of lotteries will be incorporated once the bill has been passed.

We have been assured the legislation when passed will not be proclaimed until the regulation requiring the audit is finalised.

I would like to acknowledge the contribution of the Shadow Minister in the other place and the advice from Charity Awareness Week and the Fundraising Institute of Australia.

We need to ensure the integrity of persons or organisations that conduct charitable fundraising and authorised lottery activities maintain the highest standards through a probity regime second to none.

The Opposition has played an important role in ensuring New South Wales continues to have the highest standards and the most equitable return to the mother charity.

On behalf of the Opposition I commend the bill to the House.

Ms LEE RHIANNON [10.08 p.m.]: The Greens have been concerned for a long time about the spread of gambling in this State. I have already spoken about this issue today. Our main concerns relate to the impact of gambling on communities across the State, the corruption of the democratic process as a result of donations to political parties, and the impact on governments themselves. In the year to 30 June 2002 the Government approved 12,870 trade competitions. That is a new record. It also approved 5,174 fundraisers, 322 charity housies, 97 other games of chance and 54 art unions. The total prize money involved was $415 million.

Now the Government wants to give the people of New South Wales even more. This bill allows the Government to scrap the licensing scheme for clubs. The reason given is that the licensing system is redundant anyway. Every club is automatically given a licence. That illustrates the Government's generous policy towards clubs in this area. Clubs are already swamped by gambling and betting. The Greens oppose legislative changes that in any way assist clubs to further ramp up gambling on their premises.

Licensing can be an effective tool and it should be contained. It is interesting to note what the former Minister for Gaming and Racing, Mr Face, had to say about this legislation, which was introduced into the Legislative Assembly by him last year. He said that if the restrictions were lifted, that may have an adverse impact on the ability of the Government to control the provision of gaming services to the people of New South Wales and it would potentially exacerbate any social and economic problems.

Mr Face said that the restriction ensures that the Government can control gaming in this State, yet he and his successor, Minister McBride, want to remove that restriction. This bill allows the New South Wales Government to decide which interstate lotteries are bona fide and which are not. Granted, that solves part of the problem; it means that the Government still controls the provision of gaming services, but it does not solve the other much more important problem that Mr Face mentioned. He said that lifting the restriction would potentially exacerbate any social and economic problems.

The Greens know that this bill will foist more lotteries and more gambling onto the people of New South Wales. It is obvious from Mr Face's comments that the Government actually concedes that the bill will increase social and economic problems. That is a huge admission, but nothing has been done about it. It is the same old problem that we see with this Government: It talks about a problem, but it actually exacerbates the problem. The Government thinks that it can prevent an increase in these problems by controlling the increase in lotteries, but will the Government exercise that control? The Greens have real concerns over this bill, so we will not support it.

Reverend the Hon. FRED NILE [10.11 p.m.]: The Christian Democratic Party regards the Lotteries and Art Unions Amendment Bill as neither pro-gambling nor anti-gambling. It is a machinery bill which has been introduced as a result of a national competition policy review. It was found that at some point there is no need for a licence or, in some areas, a permit. The most positive aspect of this bill is that the national competition policy review recommended a clear statement of objects for the Act. Those objects are included in the bill. I am sure that all honourable members will be pleased to note the principles emphasised in them: for example, ensuring the integrity and fairness of lottery activities, ensuring the probity of those involved in the conduct of lottery activities, and minimising the potential for harm from lottery activities.

The Christian Democratic Party hopes that through those positive aims and objects the Government, through Minister McBride, will act responsibly—the Minister has indicated by his statements that that is his intention—to ensure that raffles and other games run by Catholic charity groups to raise funds to meet the community needs of a particular parish or building projects are properly conducted. The Christian Democratic Party does not regard this bill as a means of promoting gambling but, rather, as a means of setting the rules and regulations that will establish a basis of sound integrity—an aim that we support.

Motion agreed to.

Bill read a second time and passed through remaining stages.

PACIFIC POWER (DISSOLUTION) BILL

Second Reading

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [10.14 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The purpose of this Bill is to dissolve Pacific Power. Its closure represents the culmination of an extensive and successful reform program undertaken by the Government over the past decade, which has delivered significant benefits to New South Wales.

From 1950 to the early 1990s, Pacific Power was responsible for the design and construction of power stations within the State, augmenting the high voltage transmission network, and managing the State's generation and high voltage transmission systems.

In anticipation of the establishment of a national electricity market, Pacific Power was restructured between 1994 and 2000. Pacific Power's transmission assets were initially separated forming TransGrid. Subsequently, its generation functions were formed into three State-owned corporations, Macquarie Generation, Delta Electricity and Eraring Energy. These entities were established with the objective of operating within the national electricity market as independent, commercially viable organisations.

These initiatives together with other electricity reforms undertaken by the Government have resulted in substantial efficiency gains from which the whole State has benefited. The Government estimates that between 1995, about the time when the electricity reforms commenced, and December 2002, New South Wales electricity customers have saved over $1.745 billion in real terms on their electricity bills. Today, small business customers in New South Wales enjoy the cheapest electricity prices in Australia, while householders pay the lowest electricity prices of any State in the national electricity market.

Following the separation of its transmission and generation assets, Pacific Power's principal activities were the operation of a coal mining business through its wholly owned subsidiary company Powercoal, and the provision of engineering consulting services and contracting through its business unit, Pacific Power International.

Powercoal operated six underground coal mines with a staff of around 1,100 in the Central Coast, Lake Macquarie and Lithgow regions. In August 2002, Pacific Power sold Powercoal to Centennial Coal Company, one of New South Wales' leading independent coal producers.

The sale of Powercoal was a great result for employees, all of whom went across to the new owner. Powercoal staff have their jobs protected for three years following the sale and all accumulated employee entitlements are also protected. Also, Centennial has committed to significant capital expenditure and to pursuing development and growth opportunities. These plans and ongoing coal supply contracts between Powercoal and the State-owned electricity generators are expected to underwrite jobs at the mines well into the future.

Pacific Power International provided engineering and technical advice and services both interstate and internationally. This business was sold to engineering consulting firm Connell Wagner in February 2003.

The successful sale to Connell Wagner was the best possible outcome for employees, as the private sector is better placed to develop the business and manage the risks inherent in its operations. The sale provides the prospect for the significant number of employees who joined Connell Wagner to broaden their skills and access a greater suite of opportunities, while ensuring that in future, the Government, and ultimately taxpayers, no longer bear the commercial risks associated with this type of business.

Throughout the restructure of Pacific Power, the Government has worked constructively with employees and their unions. Without doubt, this contributed to the success of the reforms. During this time, Pacific Power has also provided a range of support services to employees to assist their transition, including career counselling and skills development workshops. The Government is committed to continuing to provide these services to remaining Pacific Power employees.

Most of Pacific Power's remaining employees are seeking redeployment in the public sector, while all others will depart with a voluntary redundancy package.

Pacific Power has developed and implemented a redeployment program for those employees seeking placements in the public sector. This entails concentrated coaching and development of all employees and a coordinated approach with the Government's Workforce Management Centre to identify and match Pacific Power employees to public sector vacancies. These efforts will continue following the dissolution of Pacific Power to facilitate the successful redeployment of remaining employees to other parts of the public sector.

With the recent successful sale of its remaining business undertakings, Pacific Power has no remaining long-term operational activities, and should therefore now be dissolved.

The closure of Pacific Power is both appropriate, as it no longer has any ongoing activities, and necessary, as the infrastructure established to support an entity that previously employed thousands of staff and was responsible for the entire State's generation

and high voltage transmission systems is not suitable for the efficient wind-down of remaining residual activities. Accordingly, the Bill formally dissolves Pacific Power on 1 July 2003.

However, Pacific Power holds some residual assets and liabilities that need to be managed and efficiently wound up following Pacific Power's dissolution. For this purpose, the Bill establishes a successor entity called the "Residual Business Management Corporation". This Corporation will be a statutory body managed by a General Manager, with reporting and accountability lines to the responsible Minister, which in this case is myself.

The structure of the Corporation is designed to reflect the nature of the Corporation as a vehicle for wind-up activities. The Corporation has no role in undertaking new business activities. Its objectives and functions, as embodied in the Bill, are to efficiently, effectively, and responsibly manage and wind-up residual assets, rights and liabilities in a timely manner. The activities of the Corporation will be monitored through an annual business plan, which it will be required to submit to the Minister.

The Corporation will succeed Pacific Power as the employer of Pacific Power employees. This is one of the most significant aspects of this Bill for employees. It ensures they remain on their existing terms and conditions of employment with no loss or change to their entitlements including superannuation, annual and long service leave, and sick leave. The existing voluntary redundancy offer and other key employee arrangements contained in a Memorandum of Understanding applying to Pacific Power employees will also continue to apply to the employees and the Corporation.

On the dissolution of Pacific Power, the Bill provides that all remaining assets, rights and liabilities of Pacific Power become the assets, rights and liabilities of the Residual Business Management Corporation. The most significant of these assets is a Pacific Power wholly owned subsidiary company currently involved in the engineering, procurement, and project and construction management of two power plants in Queensland.

These projects commenced in 1998 and 2000 and are being delivered through a consortium structure. While the physical construction of the plants is essentially complete, both contracts require significant management during lengthy warranty and defects liability periods. Final contractual completion for the later of the two projects is expected in 2006.

The subsidiary undertaking these projects will be retained as a specific purpose vehicle solely to fulfil existing contractual obligations for the two power stations. The company will be fully wound up at the conclusion of the two contracts. Existing guarantees that Pacific Power has provided in relation to these projects will be carried forward to the State as a savings and transitional measure.

Although the Corporation will initially assume all assets, rights and liabilities of Pacific Power, the Bill provides scope to ultimately transfer ownership and responsibility for assets, rights and liabilities to other appropriate public sector entities. This is consistent with the objective of establishing the Corporation as an entity to manage the wind-up of residual Government business, and ensuring that any obligations of a continuing nature are appropriately managed.

In conclusion, I reiterate that the closure of Pacific Power represents a significant milestone in the Government's electricity reform agenda. Nevertheless, the Bill recognises that some residual matters remain to be managed. It therefore provides a sound framework for ensuring that any residual obligations can be efficiently managed and that commitments to former Pacific Power employees continue to be honoured.

I commend this bill to the House.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [10.14 p.m.]: The Opposition will not oppose this bill. I bring to the attention of members that tonight we will pass legislation that will breach an election policy of the 2003 election and ratify the breach of an election policy of the election prior to 2003. I seek leave to have my speech incorporated in *Hansard*.

Leave granted.

The Coalition will not oppose this Bill, which is designed to close the door on the long history of Pacific Power & its various entities.

It is also closing the door on a chapter of financial mismanagement by the Carr Labor Government of the New South Wales State owned electricity industry - mismanagement that saw Pacific Power engaged in some fairly questionable business practices during the early days of competition in the National Electricity Market.

I'll speak more about that in a moment.

The objects of this Bill are to dissolve Pacific Power and to put in place a Residual Business Management Corporation to manage the residual assets, rights & liabilities of Pacific Power.

In other words, the Bill sets up a company that has the sole purpose of eventually winding itself up. Or, this Residual Corporation could become the vehicle for other electricity industry restructures that the Government may be planning. I'd like some information from the Treasurer on whether this is the case.

This legislation is scheduled to come into effect from the 1s, July this year, bringing down the curtain on Pacific Power as a separate entity.

The history of Pacific Power is interesting. From the former Electricity Commission came Pacific Power. In the mid 1990s, under a program commenced by my former colleague the Hon Robert Webster and continued by the Labor Government, Pacific

Power's high-voltage transmission assets were divested into Transgrid, and the generating assets were split into three separate State-owned companies - Macquarie Generation, Delta Electricity & Pacific Power.

Pacific Power, and it's precursor the Electricity Commission of New South Wales, have played a leading role in electricity generation in this State over several decades.

In preparing to speak to this Bill, I went back to a paper delivered by the Treasurer in 1997. That paper, entitled "A Plan for a Secure NSW" contains the following quote:

"Pacific Power is the only existing Australian-based energy business that has the capacity to develop as a comprehensive international energy business. It is now capable of developing a large power project from first concept through design, construction, operations, maintenance and later refurbishment."

While that may have been the case in 1997, it is certainly not the case now, and I include that quote firmly in the context of the legislation before the House today.

The Carr Government's management of Pacific Power has seen the company split up into separate business units in preparation for corporatisation.

It has seen the breach of a major 1999 Labor election commitment with the sale of the engineering and consultancy business Pacific Power International to Connell Wagner, and the privatisation of the State-owned Powercoal mines to Centennial Coal.

It has seen the main generating asset of Pacific Power spun off to form Eraring Energy.

So, from the Treasurer's enthusiastic endorsement in 1997 of Pacific Power as a company ready to go ahead in leaps and bounds, we are here today to talk about the formation of a Residual Business Management Corporation to manage the remnants of a company gutted by the Treasurer and his highly paid razor gang in State Treasury.

In the mid 1990s, NSW became a participant in the National Electricity Market. The NEM meant trading of electricity across participant jurisdictions on the wholesale market, and it was into this market that Pacific Power went.

The end result of one of Pacific Power's earliest forays into the competitive market was an out of court settlement with the Victorian power retailer Powercor International.

The Powercor out of court settlement revolved around some disputed long term electricity supply contracts. The Supreme Court upheld 11 out of 12 disputed contracts, which at the time were estimated to be worth more than $600 million. Prior to the out of court settlement being reached, Pacific Power paid more than $40 million in an initial settlement, as well as legal fees, taking the total estimated cost of the case at almost $650 million.

In September 2000, the Treasurer stood in this House and told us that the contract dispute and out of court settlement could actually return a profit for NSW taxpayers. He may have been the only person in New South Wales to believe that, because to this day energy industry analysts and experts tell me that the dispute has cost, and will continue to cost, NSW taxpayers until the contracts expire towards the end of this decade.

The question that arises in the context of this Bill is this: Exactly where does the liability rest? Did it go to Eraring Energy when it was formed, or will it rest with the new Corporation?

A further question for the Government is also a simple one - what will be the total value of the assets & liabilities under management by the new corporation? Are there any outstanding liabilities that the Parliament should know about prior to the passage of this legislation?

I look forward to the Treasurer providing some details of those issues.

In conclusion, I am pleased to note that employee issues have been covered by this Bill. Any remaining employee of Pacific Power will be transferred to the new corporation. The Government may be hell bent on erasing Pacific Power from the NSW industrial landscape, but at least they are not putting people out of work as they do it!

The Opposition will not oppose this legislation - but I would ask the Treasurer to provide answers to the issues I have raised when he makes his reply.

Ms LEE RHIANNON [10.15 p.m.]: When the honourable member for Campbelltown, Mr West, spoke during the debate on this bill in the lower House, he described the bill as "the culmination of an extensive and successful reform program undertaken by the Government over the past decade". The Greens beg to differ: This bill is the anticlimax of a sorry saga—a broken election promise, a sell-out of the Hunter region and a betrayal of power industry workers. The honourable member for Campbelltown also informed the lower House that during the restructure of Pacific Power the Government worked constructively with employees and their unions. Again, the Greens beg to differ. Mr West seems to have forgotten that his Premier and his Treasurer were booed at the Australian Labor Party [ALP] State Conference in 1997 because of their stance on power privatisation. He has also forgotten that in March last year workers from Pacific Power International [PPI] protested outside Parliament House and that in May last year angry power workers from the Hunter travelled down to Sydney to stand outside Parliament House to oppose the sell-off of PPI and PowerCoal.

The honourable member for Campbelltown, Mr West, and no doubt many Labor Party members, particularly Labor members of Parliament, clearly have selective memories. That is how they persist with the fiction that Labor is the party of the workers. The Greens acknowledge that Pacific Power has worked hard to relocate its employees elsewhere in the public sector and to preserve jobs in the sell-off of PPI and PowerCoal, but the Government will not be able to ensure the long-term future of many of those jobs. It has left the fate of the PowerCoal workers in the hands of the private sector. When the three-year job guarantee lapses, will that be the end of the road? Will that work force remain unionised? They are questions that are still being avoided by Labor members of this Parliament. It is no wonder that Pacific Power workers and many people in the Labor Party were so concerned at the Treasurer's original privatisation agenda. That agenda has not changed. What we saw in 1997 was certainly ugly, and it appears that the only lesson that the Premier and the Treasurer have learned is that they just had to change the language, not their policy. We do not hear the privatisation word, but we are certainly seeing similar actions.

Now that the Treasurer has flogged off PPI and PowerCoal, what will happen next? The Greens believe that this bill is only the first step. Treasurer Egan has the messianic zeal of a born-again privatiser. I cannot believe that he will stop at this: He wants to privatise the whole electricity industry. I have never heard him say anything to the contrary, and I acknowledge his smile as I speak. When that happens, will Treasurer Egan be able to secure guarantees for all those other jobs? Will he be able to ensure that energy prices remain affordable? Will he be able to ensure that energy services remain widespread and inclusive? Will he be able to avoid the debacle that has occurred in other States and indeed in other countries? If the Treasurer took a long, hard look at the privatised electricity market in places such as Victoria, he would think again about whether privatisation is the good move he thinks it is and likes to smile about.

Unfortunately the Treasurer spends most of his time looking up and down Macquarie Street—his favourite place—the big end of town. Privatisation suits the interests of the companies. The Government is working in their interests. It is not working in the interests of workers and consumers. Unfortunately, the Treasurer listens to the investment bankers who want large fees. He listens to the private energy companies who can sniff a bargain in the wind. So often privatisation means letting private companies pick up global assets for a song, leaving the taxpayer short-changed. That has been the history of privatisation in this country and, indeed, around the world. It does not matter whether a Liberal or a Labor Government introduces it. Can we expect the Treasurer to listen to his party, the unions and the workers? Will he dismiss them as he dismissed the critically acclaimed economist Clive Hamilton two days ago?

The Hon. Michael Egan: It is silly, dangerous, left-wing crap.

Ms LEE RHIANNON: The Treasurer actually said, "Silly, dopey, left-wing crap".

The Hon. Michael Egan: I said "dangerous".

Ms LEE RHIANNON: Perhaps he was quoted incorrectly and he has now corrected the record. Whatever he said, it was insulting and incorrect. Can the Treasurer see the Hunter region from the executive floor of Governor Macquarie Tower? Can he hear the concerns of energy industry workers from the forty-first floor? The Greens call on the Treasurer to acknowledge that public utilities should be in public hands and to offer an ironclad guarantee that the electricity industry will not be privatised. The Greens lament the fact that Pacific Power International [PPI] has passed into private hands.

I will be surprised if I am the last speaker on this bill. Even if other honourable members do make a contribution I am sure none will be Labor members. Although Labor backbenchers cannot vote against this bill—I respect that they are bound by caucus—they can certainly speak against it. Some Labor backbenchers are unhappy about this bill, and it is tragic that they do not have the courage to speak up. That is understandable, because the Labor Party is a party of bullies and that is why its members have difficulty speaking out.

Pacific Power International was a profitable, world-class consultancy with operations in every Australian State and Territory and also in countries across Asia. It had 30 years of accumulated skills and expertise, and provided crucial security for power supplies on the east coast of Australia. Now that it has lost PPI, how can the Government guarantee maintenance of technology at electricity stations and continuity of supply? The Greens will not vote against this bill, formally because the horse has bolted: the decision has been made and the Coalition and the Government are again in cahoots. However, I warn the Government that the Greens will do everything possible to prevent the Treasurer taking his electricity privatisation push any further.

Reverend the Hon. FRED NILE [10.22 p.m.]: The Christian Democratic Party supports the Pacific Power (Dissolution) Bill. As honourable members know, this State's electricity industry has been under a great deal of stress. I have been involved in inquiries that indicated serious financial problems would occur if the Government did not take strong action to restructure the industry. This legislation is part of that process. Pacific Power International [PPI] was restructured between 1994 and 2000 and the transmission assets were put in the hands of TransGrid. The generation functions were later transferred to three state-owned corporations—Macquarie Generation, Delta Electricity and Eraring Energy—and the State has benefited from that arrangement.

Between 1995 and December 2002 customers have saved more than $1.754 billion on their electricity bills. This legislation is the final phase of the restructuring process and the dissolution of PPI. The Christian Democrats are pleased that the employees have been fully supported in their transition to alternative employment. They have been provided with career counselling, skill development workshops and a guarantee of continued employment in the private sector. Those who want to do so can take voluntary redundancy packages. We support the bill.

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [10.24 p.m.] in reply: I thank honourable members for their contributions to the debate.

The Hon. Dr Arthur Chesterfield-Evans: I wish to make a contribution to the second reading debate.

The PRESIDENT: Order! The Treasurer has replied.

The Hon. Dr Arthur Chesterfield-Evans: I was standing for the call.

The PRESIDENT: Order! I certainly did not hear the honourable member request the call until the Treasurer completed his reply.

Motion agreed to.

Bill read a second time.

Third Reading

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [10.25 p.m.]: I move:

That this bill be now read a third time.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [10.26 p.m.]: I have spoken many times about the regulation of the electricity industry in New South Wales and its fragmentation. I have urged that expertise be retained in the public sector to manage competition in the industry. Fragmentation of coal to different competing owners is not a huge problem and I do not assume that everything must be in the hands of a single entity. However, it would be useful to have Pacific Power International [PPI] in the public sector. If the public sector does not have that expertise it must take advice from people who come in fresh. The Government sheds that expertise because it is afraid of having to insure the experts providing advice to the power generators. Insurance imperatives are driving policy and that is counterproductive in many cases. Medical indemnity insurance is a good example of assets and availability being determined by the cost of insurance premiums. In this case it has led to the sad loss of PPI, which I worked hard to retain.

Electricity prices have fallen because of excess generating capacity rather than anything else. Having TransGrid functioning as a self-regulator is very dangerous. The augmentation of the central business district could have been done by embedded generation, cogeneration and demand management. It must be monitored by an independent regulator. The Government must find a way to provide neutral expertise to the public sector. I am not sure whether those experts need to be within a regulatory body, but there must be such a body, particularly when policy options need to be considered between generation and networks. I urge the Government to consider those issues as it dissolves PPI.

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [10.29 p.m.], in reply: I think we can all safely say that as far as the Hon. Dr Arthur Chesterfield-Evans is concerned the lights went out a long time ago.

The Hon. Dr Arthur Chesterfield-Evans: Point of order: Are gratuitous insults at the end of a debate par for the course? Do they pass without comment? Is this the way we conduct our business? It is beyond the scope of the bill.

Ms Lee Rhiannon: Point of order: The purpose of Standing Order 81 is to stop such imputations against members. I ask you to draw the attention of the Minister to that standing order, so that the House can be conducted in a way in which we can have a debate that contributes to the matter before us, rather than having people insulted.

The PRESIDENT: Order! I remind the Minister of Standing Order 81, which states clearly that imputations against other members of the Chamber are deemed disorderly.

Motion agreed to.

Bill read a third time.

TABLING OF PAPERS

The Hon. Michael Egan tabled the following paper:

Annual Reports (Statutory Bodies) Act 1984—Annual Report of the Wine Grapes Marketing Board for the year ended 31 December 2002.

Ordered to be printed.

SPECIAL ADJOURNMENT

Motion by the Hon. Michael Egan agreed to:

That this House at its rising today do adjourn until Tuesday 1 July 2003 at 2.30 p.m.

ADJOURNMENT

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister Assisting the Minister for Natural Resources (Lands)) [10.33 p.m.]: I move:

That this House do now adjourn.

ENVIRONMENT PROTECTION

The Hon. MALCOLM JONES [10.33 p.m.]: The aftermath of the January 2003 fires has brought home in the most tragic manner that the future of two of Australia's most endangered creatures, the corroboree frog and the mountain pygmy possum, hang in the balance after their populations were ravaged by the blaze. Indeed, some wildlife workers fear that the corroboree frog has been made extinct by the fires. If we look around our national parks today what we see in the great majority of cases are mostly marsupial ghost towns that preserve only a tiny fraction of the fauna that was there in abundance two centuries ago. A classic example is the Royal National Park south of Sydney. It is the nation's oldest national park, yet over the past few decades it has lost its kangaroos, koalas, platypus and greater gliders. Clearly, it is a fallacy that proclaiming more reserves will do very much to preserve Australian wildlife.

Even in the strict wilderness the plight of wildlife is just as dire. The hard truth is that the philosophy on which these movements were based was flawed, and there was no magical cure when European interference with the land was done away with. In fact, in many instances, things got worse. It was a red-letter day when the explorer Sir Thomas Mitchell saw a kangaroo, and in the 1840s the naturalist John Gould felt that both red kangaroo and koala were so rare that they were doomed to extinction. When aboriginal fire and hunting ceased the environment began to change. Over the past 200 years south-eastern Australia has seen even more devastating and frequent bushfires, which is just one reflection of that change. Other changes include the population explosion among the larger kangaroos and koalas. None of those could be described as in any way endangered today.

But hundreds of other species, from planets to carp to cane toads, have all altered the places in which they proliferate. To think that we can walk away from managing the new environment that this history has

created is a form of madness. The battle to close down the kangaroo industry has been protracted and bitter. Whenever a new opportunity is seized by the industry, whether nationally or internationally, its opponents spring up and do their best to close it off. This is really a great pity because from an environmental perspective the kangaroo meat industry is by far the best managed meat-producing industry. It is regulated by the Federal Government, which sets a quota annually that is strictly controlled. The on-the-round evidence of its success is also abundant, for no-one could argue that the target species are in any way threatened today. Environmentalists should actively support the industry. In fact, many of them do. The most bitter opponents of the kangaroo industry are drawn from the animal welfare and animal liberation lobbies. However, even from an animal welfare perspective opposition to the controlled killing of kangaroos seems ill-founded.

The first a kangaroo knows of its interaction with the industry is a spotlight and a bullet to the brain, which usually results in a clean kill. Animals shot elsewhere in the body are not marketable for meat. What is suffered by domestic stock—castration, dehorning, road transportation and death at an abattoir—seems barbaric in comparison. Yet it is the kangaroo industry that finds itself the target of the animal welfare lobby rather than farm and abattoir managers, a fact that perhaps can be explained only by the cuteness of the wild and defenceless marsupials. The pathos of the situation is that the campaigners are not only not servicing their own best interests but threatening, however unwittingly, to damage the environment at the same time. The kangaroo industry is one of the most sustainable and human animal-based industries in rural Australia. Why shut it down?

People could be forgiven for thinking that this is another Malcolm Jones rhetorical anti-greenie speech. I say "forgiven", because my speech has largely been a reiteration of what Tim Flannery, the principal research scientist at the Australian Museum, said in his essay "Beautiful Lies—Population and Environment in Australia". Tim Flannery wants to cleanse the map of wrong myths. As Peter Craven, the author of the preface to the essay, said, it irritates Tim Flannery that there are campaigns to save the wrong—dumb—variety of whale, just as it irritates him that so much do-goodism and romantic sentimentality has been invested in notions of wilderness that present green consciousness as a kind of end in itself. Criticism of the Government and the National Parks and Wildlife Service is frequently justified, as evidenced in that essay. Those who are surprised that my views are in accord with the views of Tim Flannery, whom I would describe as a super-greenie, should perhaps listen more closely in future.

NEW SOUTH WALES-ASIA BUSINESS ADVISORY COUNCIL

The Hon. HENRY TSANG [Parliamentary Secretary] [10.37 p.m.]: The New South Wales-Asia Business Advisory Council was established in May 2000 to advise the Government on trade and investment issues with New South Wales and East Asia. Council members include a number of high-profile businesspeople with strong links to the New South Wales multicultural business community. I extend my thanks to the following council members for their outstanding contributions over the past three years: James Kuo of the Taiwanese Chamber of Commerce in Australia; Tony Mitani, who was responsible for building the Sydney Harbour Tunnel; Sandra Lau and Charles Ng of the *Australian Chinese* newspaper; Florence Cheung of the *Australian* newspaper; Marilyn Walker of the Australian-China Chamber of Commerce and Industry; and Lee Lin Chin of SBS.

The New South Wales multicultural business community has been one of the keys to improving our export performance in East Asia. From 1997-98 to 2001-02, exports from this State to China have grown at an annual rate of more than 12 per cent. Over the same period New South Wales exports to Japan have grown at a healthy 2.5 per cent a year from an already very large base. Exports to Japan are now worth almost $5 billion annually to the New South Wales economy. This generates income for small and medium businesses in this State, and jobs for young people in Sydney and regional areas.

In recognition of the importance of the Indian subcontinent, in July 2002 the Government expanded the council's charter to include India. Two-way trade between New South Wales and India is worth $725 million, with a significant $125 million balance in favour of New South Wales. The State's exports to India have grown at an average rate of 8.3 per cent over the last four years, and total bilateral trade has grown at a rate of 7 per cent over the same period. This was acknowledged by the council being renamed the New South Wales-Asia Business Advisory Council. It was also acknowledged through the appointment to the council of a prominent Australian of Indian origin, Mr Neville Roach, AO, who is the chairman of Fujitsu Australia.

Mr Roach launched himself into the new role by co-leading a trade mission to India in December last year. The mission resulted in 81 new customers or end-users being identified, two companies sending trial

shipments, one company setting up a joint venture in India, one company appointing a distributor in New Delhi, and another company considering appointing a distributor. The Government is committed to the council continuing its work. In addition, as part of its election promise the Government will work more closely to build ties with bilateral business chambers. There are some 80 to 90 of these chambers in New South Wales, and they play an important role in promoting two-way trade and investment.

As part of Small Business Month in September, the Department of State and Regional Development will host two forums with these bilateral chambers to look at ways of working with governments and of further internationalising the New South Wales economy. As chairman, I will work with members of the council to further develop the Government's relationship with our multicultural business community and further enhance our trade and investment relationship in the region. I thank the Treasurer, and Minister for State Development, the Hon. Michael Egan, for taking carriage of this council. I congratulate him on his historic eighth surplus budget in New South Wales. I am confident that he will deliver at least three more surplus budgets, making him the greatest Treasurer in Australia.

WINE INDUSTRY

The Hon. GREG PEARCE [10.41 p.m.]: Tonight I express my support for one of the fastest growing industries in rural and regional New South Wales: our local wine industry. This industry is important for two reasons: its value adding and its exports. A few weeks ago I was fortunate enough to visit the Orange region, which boasts a wonderful and developing wine industry. Since I have been a member of Parliament I have been fortunate to visit that area on a number of occasions—the first occasion being just a few months after I was elected in 2000. In January, when the House was not sitting, I travelled to Dubbo, Orange, Nowra, Maitland, the Illawarra, and various other centres.

While I was in Orange I visited some of the excellent boutique and larger wineries that have developed, particularly Burke and Hills, one of the new wineries. That region is becoming so important that Burke and Hills contracted a French winemaker, Chris Derrez, and opened a new winery at Annangrove Park that is operated by Justin and Pip Jarrett, who are good friends of mine who have their own winery, Jarrett's winery, in Orange. These regional wineries are an important part of the export development of this nation. I congratulate the Government on supporting New South Wales regional winegrowers and producers.

On 29 May the Minister for Regional Development, Minister for the Illawarra, and Minister for Small Business, in a speech on the wine industry, outlined some of the important elements of that industry. On this occasion I congratulate the Government on the support it has given to the development of this important regional, tourist, employment, and export industry in New South Wales. I am somewhat concerned, however, because I do not think the Government is doing quite enough to support the industry. Honourable member would be aware that in the next few years Wine Australia is to be held in Sydney.

In various areas the Government has assisted wineries on a selective basis to upgrade their bottling and storage facilities and it has also assisted them in marketing and gourmet food promotions in various areas. However, I do not think the Government is doing enough. Having only recently visited the Orange area, I am aware that the wine industry has enormous potential to promote tourism in this State and contribute to local employment and our export industry.

I believe that the Greiner and Fahey governments should be congratulated on their work on regional development. I also recommend to members a very useful briefing paper put out by the Parliamentary Library Research Service on regional development outside Sydney. It outlines the excellent work done by the Greiner and Fahey governments, particularly between 1989 and 1993, in developing all sorts of industries around the State. It gives a very useful and interesting breakdown of industry in the various regions of New South Wales.

I would also ask honourable members to think about how we can be a little bit more proactive in supporting the regions. I understand that the House Committee recently met to select wines for next year. Perhaps we can be a little more adventurous in how we support the regions, and I certainly intend in due course to write to the House Committee to suggest that perhaps we could focus from time to time on the individual regions. I know that members on all sides of the House would support that action, and I recommend it to the House.

ABORIGINAL COMMUNITIES FUNDING

The Hon. DAVID OLDFIELD [10.45 p.m.]: Last weekend's *Sunday Telegraph* made it clear that one of our greatest swimmers, Ian Thorpe, had discovered the plight of outback Aborigines—in particular, that some lived in conditions quite different to those of many other Australians. Last Monday's *Sydney Morning Herald* carried the headline, "Naive Ian shocked by conditions on outback visit". The article essentially went on to explain that Thorpe was embarrassed because he did not know what was happening in other parts of Australia. Ian was surprised by the differences between life in the city and life in far-flung Aboriginal communities, something he described as, "some of the worst living conditions in the world".

Ian Thorpe can be forgiven for not having first-hand knowledge of such matters, but it should be understood that his reaction was typical of an immensely privileged and wealthy person suddenly coming into contact with poverty and primitiveness he had not previously experienced. It is natural to feel sorry for people who have so much less than you have, but, equally, such initial reactions should be tempered by an understanding of the history that led to the current circumstances. Lies to conjure sympathy and guilt are the stock in trade of the Aboriginal industry, and Ian Thorpe would benefit from reading Windshuttle's *The Fabrication of Aboriginal History.*

Part of what is suffered by such communities merely results from their isolation, just as it does for many non-Aboriginal communities geographically placed outside the advantages of major population centres. Ian Thorpe must also understand that Aboriginal communities do not have a monopoly on poverty and desperation. Such conditions are experienced throughout Australia, especially by many non-Aborigines in rural areas. If Ian were to visit Department of Housing areas in Western Sydney to observe the high levels of single, unemployed mothers with multiple children, no doubt he would feel sorry for those kids as well.

I commend Ian Thorpe for his interest in these issues, and I hope he now takes the time to learn the facts, for without doing so he will not be able to properly evaluate how to address the conditions he witnessed. I further commend Ian Thorpe for not simply calling for more government spending on Aborigines. There are few Australians who want to spend any more of their taxes in that area. I note that Ian Thorpe intends using privately raised money—and certainly that is more reasonable than calling upon taxpayers—but it should be noted that more than enough money has already been expended, and continues to be expended, with little or no effect.

Australian Aborigines have access to more welfare than any other Australians. They are the most expensive minority group in the country, and they are eligible for benefits not enjoyed by anyone else. They are indisputable facts that certain people choose to ignore. It is not a question of how much is being spent, it is a question of how much of that money is spent appropriately, and, hence, how much of that money actually aids the people who need it. Ian Thorpe might wish to take a long hard look at the Aboriginal and Torres Strait Islander Commission [ATSIC], and particularly at the backgrounds, salaries, expenses and lifestyles of so-called Aboriginal leaders.

Ian Thorpe should consider Geoff Clarke's overseas family jaunts. Of what benefit are they to the underprivileged children who recently splashed about with one of our most gifted swimmers. Of what value to outback children or their parents was Clarke's two-week New York junket last month? Mr Clarke's lengthy criminal record and that of his fellow ATSIC commissioner, convicted rapist Sugar Ray Robinson, should sound warning bells for any reasonable person. Although convicted rapist Sugar Ray today resigned as the deputy of ATSIC, he remains a commissioner. Neither Clarke nor Ray the rapist should have ever held positions in ATSIC as their serious criminal records should have precluded them from holding office.

Good on Ian Thorpe for being concerned, but I ask him to understand that lots of Australians are needy, not just those attempting to live somewhere between the Stone Age and the twenty-first century. One of the best things that Ian Thorpe could do for Australians of Aboriginal descent would be to lobby for the abolition of that most corrupt of organisations, ATSIC, so that Aboriginal-related services can be managed and delivered by those with interests other than their own.

MS MARGARET ATKIN AND MR NEVILLE MILSTON McKELL DINNER AWARDS

ROYAL COMMISSION INTO THE BUILDING INDUSTRY

The Hon. JAN BURNSWOODS [10.50 p.m.]: Two members of the Australian Labor Party whom I know, Margaret Atkin and Neville Milston, recently received awards at the ALP McKell dinner, which was held

on 12 June. The McKell dinner is now a regular function for rank-and-file party members and this year it was attended by some 600 people. I have known Margaret for many years in a variety of capacities, and I cannot think of anyone more deserving of an award. Although these awards are given for activities associated with the Labor Party, those with the ideals and commitment necessary to join and play a role in a major political party are often also the backbone of their local communities and numerous community organisations. That is certainly the case with Margaret.

Margaret has been active for 30 years or more in a variety of different sections of the women's movement. For instance, she is always seen at Women's Electoral Lobby functions and at any marches or demonstrations to do with peace and war. Margaret has played both organisational and supporting roles in many different areas over the years. She also has a proud record of working with people with an intellectual disability. She began this work in her workplace but since she retired a few years ago has maintained her connections with people with an intellectual disability. She found the time to take people to the Easter show at Homebush, for instance.

Neville Milston is a resident of Castlecrag, which is perhaps not the easiest area in which to work for the Labor Party. He was also extremely deserving of his award. Neville's history of community service goes back a long way—in fact, even before he was a prisoner of war in Changi and worked on the Burma railway during the Second World War. Neville was involved in the fight to stop Terry Metherell closing Castlecrag infants school and in various other campaigns and activities in his local area. As I said, those who receive awards for their involvement in political parties often also have amazingly diverse and proud records of community activity. I pay tribute to both Margaret and Neville, and indeed to all those who received awards that night.

On several occasions I have spoken in the House about the Construction, Forestry, Mining and Energy Union [CFMEU] and the way in which the Construction Division has been the subject of attack, a witch-hunt, through the Federal Government—in particular, by the Minister for Employment and Workplace Relations, Tony Abbott—and the Cole Royal Commission into the Building and Construction Industry. I have not been in a position to speak specifically about the royal commission because the report was released only in late March, around the time of the State election. The House was not sitting.

As the CFMEU pointed out, it is clear Tony Abbott did not release the report prior to the State election because it would have been an embarrassment to the Federal Government. We all know that the co-operative model of industrial relations in New South Wales has worked very well. An obvious and relevant example was the Sydney Olympics where every complex program was completed on time and on budget. After 12 months of investigation and $60 million of taxpayers' money, the royal commission came up with 25 examples of relatively minor inappropriate conduct by building unions in New South Wales. The whole thing was a farce, as it was always going to be. [*Time expired.*]

AUSTRALIAN DEFENCE INDUSTRIES PATROL BOAT TENDER

The Hon. PATRICIA FORSYTHE [10.55 p.m.]: Today during question time the Minister for the Hunter criticised the Federal Government for its decision to eliminate the Newcastle ADI site from the tender process for the $450 million replacement patrol boat contract. The Minister implied that the Federal Coalition Government did not support the Hunter region. Nothing could be further from the truth. The ADI tender was eliminated on a value-for-money assessment. It was just not competitive. The question is: Why was it not competitive? I submit to the House that it was not competitive because the Carr Government took insufficient action to support the bid by ADI.

The best that I can ascertain about the role of the Carr Government is a letter written by the then Minister for the Hunter, the Hon Richard Face, in about November 2001 to the Federal Minister for Defence, the Hon. Robert Hill, enclosing a copy of a Legislative Assembly *Hansard* extract of 7 November 2001 in which that House gave support to the ADI tender bid. That is all! Two tenderers are now competing for the contract. Today the Minister for the Hunter said that one of those tenderers is from Western Australia. I do not have details of the remaining tenders, but it is apparent that two tenders on a strict cost price assessment are more competitive. The Minister for the Hunter must provide an answer on whether the New South Wales Government did all that was reasonable to support the Hunter bid.

It would seem that governments in other States have done more to support the bids of the two remaining tenders. Rather than criticise the Federal Government, the Minister should seek answers from the

Minister for State Development about the extent of support given to the Newcastle bid. Merely writing a letter saying that the two shipyards in the Hunter—namely, ADI and Forgacs—are competitive is hardly enough to ensure that either was capable of winning. The Defence Advisory Panel advised the Federal Government on the decision in relation to the tender process. The process by the Government's advisers was a professional assessment reached after months of detailed assessment of the bids by each of the three short-listed parties. It was a very competitive process and I am sorry the Newcastle bid failed. However, if the Defence Advisory Panel had made a decision on other than value for money, it would have been exposed to criticism.

I also comment on the impact of the New South Wales and Australian Capital Territory bushfires. As the House is well aware, the beginning of this year was marked by some of the worst fires that have ever raged in New South Wales and the Australian Capital Territory. Although some fires many have been started by lightning strikes at a time of extreme weather conditions, they were clearly made worse by the failure of New South Wales Government policy—policy that failed to give hazard reduction a priority and policy that saw inadequate resources made available for the management of our national parks.

This week two publications came across my desk that highlight the devastation of the fires, for both our natural and man-made environment. Some of their comments should be placed on the record. The first publication *Watershed*, published by the Cooperative Research Centre for Freshwater Ecology at the University of Canberra, includes an insightful article entitled "The Effects of Bushfire on Stream Ecology". In the article it notes that although few effects of bushfire act directly on stream ecology at the time of a fire, a number of detrimental effects occur following rain after the event. Cooperative Research Centre monitoring of the Cotter River shows that because of the intense heat and loss of plant roots, soil has been destabilised and, as one might expect, has been washed into the river. The article stated:

> Sediment clogs up the crevices and niches in the gravel and cobbles of a natural riverbed, destroying this habitat for a range of small creatures.

The article highlighted effects such as fish death. In relation to the Cotter River, the Perisher Creek, the Thredbo River and other streams, it noted that because fires burnt right to the edge of these streams they are now open to sunlight through much of the day and, as a consequence, water temperatures are likely to rise in those areas. Extra light and higher temperatures are likely to alter the algal food resources in the water. The centre concluded:

> Therefore changes in the algae may lead to different populations of macroinvertebrates. As these organisms are food for larger creatures such as fish, turtles and birds, the whole food chain may be affected.

The article concluded that streams may take between 5 and 20 years to return to pre-fire conditions. The other article that I highlight is in the quarterly bulletin of the Research School of the Pacific and Asian Studies at the Australian National University. The article "Ashes from the Past" outlines the impact of the loss by the research school of the storage facilities of the Department of Archaeology and Natural History in the devastating fires in Canberra on 18 January. According to the article, the archives stored decades of collections of archaeologists, including the bulk of the Tasmanian collections of one of Australia's leading archaeologists, the late Professor Rhys Jones. Archaeological collections are by their nature irreplaceable. The loss was described as "a long-term cultural loss". The fires were the result of a failure of government policy. In trying to accommodate an excessive and extreme green agenda, the Carr Government failed to provide good environmental leadership. The weather patterns on January, when seen against the long drought, were predictable yet no adequate preventative measures were taken through hazard reduction of fuel within our national parks.

GAN GAN ARMY CAMP SITE SALE AND AUSTRALIAN DEFENCE INDUSTRIES SITE REDEVELOPMENT

Ms SYLVIA HALE [11.00 p.m.]: I commend the remarks of the Hon. Robyn Parker in relation to the Gan Gan army camp site at Port Stephens. Once again the State Government has failed to protect the National Estate. It has failed to intervene to prevent the sale of the army site, despite the fact that it is surrounded by national park, to a private developer. It is inevitable that one draws comparisons with the Australian Defence Industries Pty Ltd [ADI] site at St Marys. In that case the Federal Government was prepared to sell prime public land of major environmental significance, and the State Government actively colluded with the Federal Government to ensure that the land was not preserved for the people. It fell out of public land.

It is deplorable that both Federal and State governments should be so indifferent to and prepared to ignore the wishes of the community and ride roughshod over the very intense desire to preserve these important

public sites. The Gan Gan is surrounded by Tomaree National Park. It is deplorable in the extreme that the State Government did not even put in a bid to purchase the land. It is equally deplorable for the State Government to propose the redevelopment of the ADI site. Those sites are of incomparable value to the people of New South Wales. The ADI site contains a remnant 6 per cent of the Cumberland Plains woodland. That extraordinarily significant site represented a major opportunity for the people of Western Sydney to have an important national park in their surrounds—[*Time expired.*]

Motion agreed to.

The House adjourned at 11.03 p.m. until Tuesday 1 July 2003 at 2.30 p.m.