

LEGISLATIVE COUNCIL

Thursday 4 December 2003

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

The Clerk of the Parliaments offered the Prayers.

BILLS RETURNED

The following bills were returned from the Legislative Assembly without amendment:

Transportation Administration Amendment (Sydney Ferries) Bill
Wine Grapes Marketing Board (Reconstitution) Bill
Legal Profession Legislation Amendment (Advertising) Bill

AUDITOR-GENERAL'S REPORT

The President tabled, pursuant to the Public Finance and Audit Act 1983, Auditor-General's Report 2003, Volume Six, dated December 2003.

Ordered to be printed.

STANDING COMMITTEE ON PARLIAMENTARY PRIVILEGE AND ETHICS

Report: Person Referred to in the Legislative Council (Dr J. Goodman)

Motion by the Hon. Peter Primrose agreed to:

That the House adopt Report No. 24 of the Standing Committee on Parliamentary Privilege and Ethics, entitled "Report on person referred to in the Legislative Council (Dr J. Goodman)", dated December 2003.

Pursuant to resolution the response of Dr Goodman was incorporated.

Reply to comments by the Hon Michael Costa MLC as Minister for Police in the Legislative Council on 31 October 2002

Context: an unbalanced Parliamentary Statement

I co-convened a research initiative at a university in NSW and on 8 November last year organised a meeting on civil disobedience at NSW Parliament House. The meeting was hosted by Ms Lee Rhiannon, MLC. On 31 October the meeting was condemned by the then Police Minister, Michael Costa. He accused Ms Rhiannon of 'using the resources of this Parliament to teach people how to cause problems for our police and members of the community as they go about their business... a number of them are coming here to create violent disturbances; they are coming here to have a violent confrontation with the police.' Further, he stated the meeting was part of 'a process that could lead to violence'.

By characterizing the meeting in this way the Minister distorted the facts, maligning the organisers of the event and those likely to attend it, as well as the MLC hosting it. The Minister's statement was published the following day in a front-page article in the Daily Telegraph, which directly mentioned the research initiative that organised the forum.

I now wish to claim the right of reply through the NSW Legislative Council's 'Citizen's Right of Reply' process. Specifically, I believe I have the right to clarify the role of the meeting that I organised, and the concept of civil disobedience on which it was based.

The Forum I organised at NSW Parliament House in November 2002—'Civil Disobedience Today'—re-asserted the traditions of civil disobedience. It did so at a time when this tradition is under threat, labelled as violent, even terrorist. The Federal Government has recently introduced anti-terrorist legislation, admitting it would jail political activists for organising protests. Security services, including ASIO, routinely monitor demonstrations and State Governments now regularly use the police service as a force against peaceful disobedience, in Victoria leading to a public inquiry and review of police practice.

The Forum

The Forum at NSW Parliament, 'Civil Disobedience Today' aimed to inform public debate amongst the media and policy-makers, as well as amongst protest groups. For this reason the Forum was deliberately held at NSW Parliament, the obvious place for a debate about political participation.

The Forum brought together academics from UTS, UNSW and University of Sydney, and debated key traditions of civil disobedience. These academics joined with advocates from anti-racist, labour, environmental and student organisations, debating the role of civil disobedience in social and political change in Australia. The papers from the Forum were made available to all participants from the organisers.

The Forum was timely and significant, and did not deserve to be condemned by the Police Minister. Personally I felt maligned for being accused of organising a Forum for 'violent confrontation with the police'. Nothing could be further from the truth.

GENERAL PURPOSE STANDING COMMITTEE NO. 5

Reporting Date

Motion by Ms Sylvia Hale, on behalf of Mr Ian Cohen, agreed to:

That the reporting date for the reference to General Purpose Standing Committee No. 5 relating to the budget estimates and related papers be extended to Thursday 26 February 2004.

GENERAL PURPOSE STANDING COMMITTEE NO. 4

Reporting Date

Motion by the Hon. Jennifer Gardiner agreed to:

That the reporting date for the reference to General Purpose Standing Committee No. 4 relating to the budget estimates and related papers be extended to Thursday 26 February 2004.

TABLING OF PAPERS

The Hon. John Hatzistergos tabled the following papers:

- (1) Annual Reports (Departments) Act 1985—Report of NSW Agriculture—Administration of Agricultural Statutory Authorities for the year ended 30 June 2003.
- (2) Annual Report (Statutory Bodies) Act 1984—Report of the Institute of Psychiatry for the year ended 30 June 2003.
- (3) Crimes (Administration of Sentences) Act 1999—Report of the Inspector-General of Corrective Services for the year ended 30 June 2003.
- (4) Industrial Relations (Ethical Clothing Trades) Act 2001—Report entitled "New South Wales Ethical Clothing Trades Council: Twelve Month Report 2003".

Ordered to be printed.

PETITIONS

Local Government Amendment Bill 2003

Petitions opposing the Local Government Amendment Bill 2003, received from **the Hon. Duncan Gay** and **Ms Sylvia Hale**.

CountryLink Rail Services

Petitions opposing the abolition of CountryLink rail services and their replacement with buses in rural and regional New South Wales, received from **the Hon. Rick Colless** and **the Hon. Jennifer Gardiner**.

Local Government Amalgamation

Petitions opposing the merger of parts of the Yass Shire local government area into the proposed Capital City Regional Council and the proposed Southern Tableland Council, received from **the Hon. Duncan Gay**.

Gaming Machine Tax

Petition praying that the House reconsider the decision to increase poker machine tax, received from **the Hon. Rick Colless**.

BUSINESS OF THE HOUSE**Postponement of Business**

Government Business Orders of the Day Nos 1 to 6 postponed on motion by the Hon. Tony Kelly.

BUSINESS OF THE HOUSE**Suspension of Standing and Sessional Orders****Motion by the Hon. Michael Gallacher agreed to:**

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 76 outside the Order of Precedence, relating to an order for papers concerning allegations made in relation to Camden and Campbelltown hospitals, be called on forthwith.

Order of Business**Motion by the Hon. Michael Gallacher agreed to:**

That Private Members' Business item No. 76 outside the Order of Precedence be called on forthwith.

CAMDEN AND CAMPBELLTOWN HOSPITALS CLINICAL MALPRACTICE ALLEGATIONS

The Hon. MICHAEL GALLACHER (Leader of the Opposition), on behalf of the Hon. Patricia Forsythe [11.16. a.m.]: I move:

That under Standing Order 52 there be laid on the table of the House by 5.00 p.m. Friday 5 December 2003 all documents relating to the preliminary investigation by the Audit Branch of the NSW Health Department into allegations made in relation to Camden and Campbelltown hospitals.

I have moved this motion because it is vital that this Parliament and the people of New South Wales have unfettered access to information about NSW Health's preliminary investigations into Camden and Campbelltown hospitals. This call for papers demonstrates the need for public accountability and transparency in New South Wales, particularly with regard to health issues. The Opposition calls for all documents relating to the preliminary investigation by the audit branch of the New South Wales Department of Health into allegations made in relation to Camden and Campbelltown hospitals. It is a straightforward request, but we believe it is extremely important if public confidence in health issues is to be restored.

Given the allegations of the whistleblower nurses from Camden and Campbelltown hospitals, it is imperative that all members of this House be given the opportunity to review all the material presented to the Government. The Opposition has been unable to obtain clear answers to fairly straightforward questions on this issue addressed to the former Minister for Health, Mr Knowles, the current Minister for Health, Mr Iemma, and the entire Government. Clearly, NSW Health has failed to support whistleblower nurses. We all witnessed the look of frustration and fear on the faces of the nurses who had the courage to step forward, only a few weeks ago in the other place, to make their concerns known in the public arena.

It is extremely important that this House, the House of review, shows all nurses and public servants that they have the complete support of the Legislative Council, and that if they come forward they will be protected and their stories will be given a good airing—they will not be simply swept under the carpet, as we believe the Government has attempted to do yet again. It is important that the Government produce these documents, to allow the scrutiny of the House and the public, to ensure that what has been said about these nurses—and, indeed, about others in the past—is simply not true. It is imperative that we have the opportunity to review the documents, and that the people of New South Wales learn all the facts surrounding deaths, malpractice and corruption at Camden and Campbelltown hospitals.

The Hon. PATRICIA FORSYTHE [11.19 a.m.]: I move:

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

by 5.00 p.m. Friday 12 Dec 2003 all documents in the possession, custody or control of the NSW Department of Health relating to:

- (a) the interim report of the director of audit of the NSW Department of Health concerning Camden and Campbelltown hospitals and referred to on page 6 of the transcripts of evidence of General Purpose Standing Committee No. 2 of Tuesday 25 November 2003;
- (b) the closure of the maternity ward at Camden Hospital;
- (c) the death of Sarita Yakub at Nepean Hospital.

Given the allegations of the whistleblower nurses from Camden and Campbelltown hospitals, it is imperative that all members of this House can review all of the material that has been presented to the Government. We have been unable to get clear answers from the former Minister for Health, Mr Knowles, the current Minister for Health, Mr Iemma, or the entire Government on this issue. The crux of the issue is that NSW Health has failed to support whistleblower nurses.

The Health Care Complaints Commission inquiry is flawed. We must be able to review these documents so that the people of New South Wales can learn all the facts surrounding the deaths, malpractice and corruption at Campbelltown hospital. We also require that all documents relating to the maternity ward at Camden hospital and to Sarita Yakub be laid upon the table, and that all the facts are provided to the House. The lives of people in the health system have been placed at risk. It is important that we learn what involvement the former Minister for Health, Mr Knowles, and his ministerial colleagues have had in covering up allegations of malpractice and corruption. It is an opportunity for this House to review all the facts and materials relating to management decisions by the Minister for Health, the former Minister for Health and NSW Health. I urge all members of the House to support this motion.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.22 a.m.]: I support this motion but I think it raises as many questions as it will answer. The Minister asked the health department to look into this matter following a meeting he had with the whistleblower nurses on about Remembrance Day last year. Presumably, amongst the material called for will be a number of patients files relating to conduct and treatment by nurses and medical staff, which will then be obliquely related to the administrative staff who were on duty or responsible for the hospital at the times those decisions were made. There will be an amount of confidential material, and the confidentiality aspect has to be considered.

Last night a report on parliamentary privilege was tabled. I have not yet had a chance to read that report. The material referred to in the motion is exactly the sort of material that will be covered by parliamentary privilege. It may affect the situation with regard to patients, nurses, medical staff and administrative staff in the same way as information on a computer when the Independent Commission Against Corruption [ICAC] is searching for elusive travel documents, or whatever it is looking for. We try not to lose our travel documents. But, in a sense, there is a lot of chaff among the wheat, and there is a lot of confidential material among other material. The same issues of confidentiality apply in this case, and while I am all for investigations and open process, I think we have to be aware of those aspects.

Many issues are involved in the management of information from investigations into conduct at Camden and Campbelltown hospitals. As honourable members will be aware, the Health Care Complaints Commission is expected to report to the health department on either the 7th or 8th of this month, and Robyn Kruk said she will pass that report on as soon as she can. General Purpose Standing Committee No. 2 will examine it and if it is not sufficiently comprehensive in scope or if it is in any other way unsatisfactory an inquiry will be conducted. I have supported the investigation because I believe that there is considerable substance to the allegations by whistleblower nurses.

I understand that the ICAC is now active, although I have not had formal confirmation of that. It was not previously active despite the allegations of document destruction, which I believe is corrupt conduct that should be punished. It is not clear in this motion whether the Barraclough report is covered by the scope of this motion. Professor Barraclough is the Chairman of the Institute for Clinical Excellence. It would be interesting if the mover of this motion in reply would answer that question. The report is extremely important and will contain some confidential material which, of course, is very important in regard to the careers of the people involved.

In a sense, this discovery process is another step towards getting to the bottom of the problems affecting Campbelltown and Camden hospitals and the health department, which are increasingly under public scrutiny. If hospitals had outside boards—rather than quiescent advisory boards that are not directly involved, but are under the sway and influence of chief executive officers—it would give the hospital system some real public feedback. Hospitals have to become accountable to their local citizens. To worry about competence and the use of various indices, such as length of stay and readmission rates, to some extent avoids the issue of quality control, which has to be tackled in a non-adversarial framework.

An article I had published a couple of weeks ago in the *Canberra Times* on medical indemnity states that we have to have a no-fault system so that patients are treated properly. If there is a medical misadventure the person is rehabilitated to the maximum extent possible, but the payments do not attempt to restore the situation because those payments are so high they make the indemnity costs very high. A person who falls off a ladder and becomes a quadriplegic gets nothing; A person who goes into hospital and has an adverse event gets a large amount of money. In a sense that means there is a huge inequity in life's risks that may be encountered compared to doctors trying to pay sufficient money in their premiums to make an attempt at restitution.

This is an extremely skewed payment and reward system, particularly given that it is not the best way to prevent accidents. It leads to adversarial models years later which, even if wrongdoing is found, do not feed back in a timely manner to the processes and deficiencies that may have caused the problem. I believe in a no-fault system. The inquiry into Campbelltown hospital should be held within a no-fault system. The handling of the information must be open so that people in the know professionally can see the problems, get on with a solution, and put in place realistic retraining or changes in procedure that will improve hospital standards.

There should not be perpetual witch-hunts in adversarial frameworks seeking punishment, or even spectacular news headlines; we should proceed sensibly. The adversarial frameworks, of course, lead to distortions in cases of alleged document destruction. They have been very successful since the British and American tobacco case in the High Court. We need openness to improve our processes. We must remember in this document discovery process that confidentiality for individuals has to be maintained and that at the end of the day we have to move towards a less adversarial framework.

While I see a number of different forces investigating an unsatisfactory situation at a point in time in some hospitals, we need to look at the matter as dispassionately and non-adversarially as possible and in a structural sense, and acknowledge the difficulties in resources. As expectation gets high, sometimes resources are misspent because an adversarial framework leads to unnecessary investigations. "I saw it on a scan", rather than, "I made a clinical judgement on it", puts a doctor who might be threatened by a mistake in a more defensible position. So a large amount of money is misspent on pathology and radiology testing. As I said, we must then try to improve the hospital system. At a political level, my view is that the Government should support from a single funding source the health system for everyone so that people are treated on the basis of their sickness, not on how wealthy they are. That means the Federal Government taking the \$2.4 billion from private health insurance and putting it back into the public hospital system so that shortage of money, staffing difficulties and so on do not create a climate in which it is difficult to find staff and mistakes are made. We need to look at this as broadly and as systemically as possible.

Obviously, the raw material for the search is documents. Within the adversarial framework in which we work at present, both politically and legally, we must be careful that individuals are not simply destroyed for the sake of it and that at the end of the day people involved who have perhaps under the circumstances not done so well are re-educated in a systematic and humane way because they have lives to lead and contributions still to make. I do not think any members of this House have not made a mistake in some of the jobs they have done. I support this motion, but we must consider the broader context of it and the way we investigate this hospital. Clearly, cover-ups are not acceptable. But, by the same token, witch-hunts and scapegoats will not make us wiser. When these documents come I ask honourable members to look at them carefully and sensibly, so that we can proceed and get a result from this unfortunate situation.

Reverend the Hon. Dr GORDON MOYES [11.32 a.m.]: General Purpose Standing Committee No. 2 has been looking into this matter at some length, and has resolved certain issues. We support the call for the extra documents but, as the Hon. Dr Arthur Chesterfield-Evans said, there is a conflict of some privilege matters concerning medical confidentiality and medical records. The standing orders of this House enable such a conflict of privilege to be worked through. I propose to move an amendment to resolve the conflict of privilege between the rights of this House to have documents and the rights of medical doctors and patients to hold confidential their medical records. Because of the conflict of privilege, it is important that we have this amendment. It will not prevent us from getting the other documents requested by the Opposition so that we might fully understand the problems concerning Camden and Campbelltown hospitals and the local area health service. It is important for us to support the whistleblowers. The committee and I want to ensure that those who have legitimate complaints are properly heard. At the same time we are concerned, as the Hon. Dr Arthur Chesterfield-Evans said, that there is a clash of privilege and we need to safeguard matters of patient confidentiality. Therefore, I move:

That the question be amended by the addition of the following paragraph at the end:

2. That any documents that contain matters of medical confidentiality be treated as privileged under Standing Order 52 (5).

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [11.35 a.m.]: General Purpose Standing Committee No. 2 will be meeting on 15 December to examine exactly these matters. It would appear that the upper House is seeking to pre-empt that process, but I am advised by the Minister that the Government intends to co-operate fully with these inquiries. The Government is at a loss as to why, at this stage of the legislative year, the House would want to complicate matters with yet another inquiry when one is already taking place. However, the Government is of the view that as it is open and transparent on these matters it will not be opposing the motion.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [11.36 a.m.], in reply: I thank honourable members for their contributions to the debate. I thank the Government for its assistance in this endeavour to ensure that these issues are dealt with openly and transparently. It is fairly important that decisions made by the Parliament and department be subject to further investigation. Obviously, we are looking at fairly straightforward matters. We are looking at decisions made with regard to the Minister for Health and his office, and the Director-General of Health relating to the closure of the maternity ward at Camden hospital from March 2002 until June 2003. That is not a lengthy period. We also want documents relating to the Department of Health and Wentworth Area Health Service in the possession of the former Minister for Health, Craig Knowles, his office and the Director-General of New South Wales Health relating to the death of Sarita Yakub at Nepean Hospital on 3 August 2002. These requests are not onerous; they are reasonable. I recognise the concerns raised by the crossbench to ensure that patients' names are protected, but there is an opportunity for the Government to go down the path of privilege, as the Hon. Greg Pearce reminds us. He is well and truly versed on the protection that is available. I think this matter could be handled clearly and neatly, so we can move on.

Amendment of the Hon. Patricia Forsythe agreed to.

Amendment of Reverend the Hon. Dr Gordon Moyes agreed to.

Motion as amended agreed to.

CIVIL LIABILITY AMENDMENT BILL

Second Reading

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [11.39 a.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The main purpose of the Civil Liability Amendment Bill is to amend the Civil Liability Act 2002 to address issues arising from two recent court cases that caused considerable community concern. The bill also makes some minor amendments to the existing proportionate liability provisions in the interests of national consistency. The first case that the bill seeks to address is known as the Presland case. Kevin Presland, a mentally ill patient, killed his brother's fiancée after he was discharged from James Fletcher Hospital. Mr Presland was found not guilty of the woman's murder by reason of insanity. He sued the hospital for negligently discharging him, and was awarded \$225,000 damages for the pain and suffering he experienced as a result of killing the woman plus \$85,000 for lost earnings during his three years of detention as a forensic patient.

The community rightly was outraged about the court decision because it allowed Kevin Presland to benefit, even though he had caused the death of his brother's fiancée. NSW Health is currently appealing that decision. But it raises important issues that deserve to be put beyond doubt in legislation. Existing provisions of the Civil Liability Act concerning the liability of public authorities may have prevented the court from making this decision. However, the case was not determined according to that Act because the proceedings were commenced before the reforms applied. The Government has, however, decided to take further steps to ensure that there will not be a repeat of the kind of decision made in the Presland case. In addition, we are making changes to the Civil Liability Act to clarify the treatment of other situations where mentally ill people may benefit from actions that would otherwise be considered a crime.

Currently the Civil Liability Act prevents a criminal from recovering damages for injuries where the criminal sustained the injury while committing a serious offence. It is not clear that a mentally ill person who is injured while acting unlawfully but who cannot be convicted of a crime because of his or her mental illness would be precluded from recovering damages under the existing provisions. For example, a burglar who is injured while breaking and entering is prevented from suing the home owner. However, if the burglar cannot be convicted of breaking and entering because of mental illness he or she could still sue the home owner for injuries sustained while unlawfully on the home owner's premises.

Proposed section 54A restricts the damages that can be awarded to people who are injured while committing what would otherwise be a serious offence but who cannot be found criminally responsible because they are mentally ill. The bill prevents such people from recovering damages for non-economic loss, such as pain and suffering, and for loss of earnings. They will still be able to recover damages for medical and future care needs. People acting in self-defence need to be confident that they will be protected by the existing law against having to pay damages to their attackers, regardless of the mental condition of the attacker. Currently the Civil Liability Act protects a person who injures another while acting in self-defence. The amendment to section 52 clarifies that this protection applies to a person who injures a mentally ill person while acting in self-defence.

The Presland case has highlighted also the difficulties faced by people who have statutory decision-making powers—such as doctors or psychiatrists. On the one hand, the law gives them a broad discretion to exercise their decision-making powers. However, despite those people having a broad discretion, negligence laws can constrain the exercise of those powers. This was highlighted in the Presland case, where a doctor was found to be negligent for the way he exercised the discretion given to him under the Mental Health Act to detain a mentally ill patient. In exercising that discretion a doctor has to balance a whole range of factors, including the safety of the community on the one hand and the right of the patient to be free on the other. These are very difficult decisions and doctors—as well as other decision-makers—must be able to use their statutory discretion without the fear of litigation hanging over them.

We are all aware of the extraordinary pressures doctors are facing at this time. The last thing we want the courts to be doing is adding to those pressures. In the mental health context, the Presland case has created the risk that doctors will behave too conservatively, detaining patients unnecessarily, out of fear that they can be sued by the patient for anything he or she does if not detained. Other decision-makers may be similarly constrained when trying to decide how to exercise their powers in the public interest. Therefore, the bill inserts a new section 43A that applies to the exercise of, or failure to exercise, a "special statutory power". This will apply to powers that persons generally could only exercise with specific statutory authority, such as the power of a medical officer to detain a person under the Mental Health Act.

In a case involving a special statutory power, a public authority will be liable only if its decision is so unreasonable that no public authority having such a power could consider it to be reasonable. It will not affect the exercise of "operational" functions of agencies, for example, where they are given general functions to provide particular services. The bill makes it clear that this principle covers public authorities as well as individuals, such as psychiatrists in hospitals, who have public official functions. These amendments will apply to proceedings that have already commenced in order to ensure that the precedent set by the Presland case will not be followed. The Government recognises that affecting cases that are already before the courts should be done in only the most exceptional circumstances. The bill will not affect the appeal in the Presland case. It will, however, apply to existing cases. This is not being done lightly. As the strength of the community's reaction demonstrates, these are exceptional circumstances, and there are at least two cases comparable to that of Presland currently on foot. The bill will apply to them.

The second case that the bill seeks to address is the High Court case of *Cattanach v Melchior*. This related to a Queensland case of wrongful birth. In that case the High Court decided for the first time that, where a healthy child is born following a failed sterilisation the child's parents can recover damages for the costs of raising the child. Prior to this decision Australian courts had refused to award damages for the birth of a healthy child. There is a strong moral objection to such damages because they classify the birth and existence of a child as an "injury" to the child's parents. This moral objection was voiced by the community, which expressed serious concerns about the High Court decision. A further concern is that such damages almost inevitably will be awarded against doctors, adding to the crisis in medical indemnity insurance. In effect, the negligent doctor—or his or her insurer—is made financially responsible for raising the child. Although the damages sought in the High Court in this case were quite low, at \$105,000, the court recognised that they could be much higher in other cases. They could, for example, include the cost of expensive education, overseas holidays and the like.

Damages for the costs of raising a child would not be means tested. On the contrary, the more expensive the lifestyle of the family the higher the damages are likely to be. The Government has responded to the community's concern over this decision. The bill will not allow the birth of a child to be treated as an injury to its parents. Therefore, the bill excludes the right to recover any damages for the costs of rearing and maintaining a healthy child. It is important to clarify that this will not preclude the recovery of additional costs associated with raising a child born with a disability. These damages were available before the High Court decision, and the Government does not seek to displace them. The bill also excludes damages for any loss of earnings suffered by the parents while rearing or maintaining the child, for example, if a parent gives up work or refuses promotion to look after the child.

When a pregnancy is the result of somebody's negligence the mother will still be able to recover damages for the pregnancy and the birth, but not for the costs of raising the child. In addition to addressing these two recent cases, the bill makes some minor amendments to the proportionate liability provisions in the Civil Liability Act which are designed to ensure that people are held responsible for the consequences of their actions but not for the consequences of other people's actions. When two or more people cause another person to suffer economic loss or property damage the court can look at the role each person plays in causing that loss and apportion the damages between each of them. Last year the Government introduced proportionate liability. Since then the Commonwealth and other States and Territories have decided to adopt the New South Wales model with some minor variations.

In the interests of national consistency the bill makes some small changes to the proportionate liability provisions to adopt the changes discussed with other jurisdictions. In particular, the new provisions will place a duty on the defendant to help identify other potential defendants who may have contributed to the loss. This will ensure that plaintiffs are not disadvantaged by defendants who fail to identify other potential wrongdoers early in the proceedings. Finally, the bill clarifies that the exclusions from liability in the Civil Liability Act extend to exclude vicarious liability as well as principal liability. The bill continues the Government's commitment to ensuring that the tort system operates in a fair and balanced manner. I commend the bill to the House.

The Hon. GREG PEARCE [11.39 a.m.]: The Opposition will not oppose the Civil Liability Amendment Bill. However, we are concerned to ensure, given the bill will have a retrospective element, that

that retrospectivity is just and effects the intention of Parliament and the demand of the community to deal with the Presland situation. Accordingly, during the Committee stage I will move the same amendments that were moved in the other place by the shadow Attorney General, the honourable member for Epping. In 1996 Kevin Presland was acquitted of the murder of Kelley-Ann Laws because he was found to not have the necessary criminal intent to satisfy the offence of murder. The killing was committed following Presland's release from a psychiatric institution. The judge held that Presland was entitled to damages due to the negligence of the Hunter area health authority in releasing Presland from its care.

The Civil Liability Amendment Bill will restrict damages that can be awarded to people who are injured while committing what would otherwise be a serious criminal offence but who cannot be found criminally responsible because they are mentally ill. The bill will prevent such people from recovering damages for non-economic loss, such as pain and suffering and for loss of earnings. They will still be able to recover damages for future medical and care needs. So far as the Opposition is concerned, this is the most important part of the bill—the amendment to the Civil Liability Act that precludes a person from recovering damages for non-economic loss and other economic loss if the loss has resulted from conduct of the person that would have constituted a serious offence if the person had not been suffering from a mental illness at the time of the conduct.

However, one of the great concerns the Opposition has about this matter is that four months after the award of damages the Government claimed that the bill was unnecessary. The provisions of this bill make it plain that these provisions are required to close a loophole that was identified as a result of the Presland matter. As I said earlier, in that case Mr Presland received substantial damages. He received \$225,000 for pain and suffering, plus a further \$85,000 in loss of earnings. Four weeks after that the Government, the Premier and the Attorney General were saying that there was nothing wrong with the law as it stood and that the matter would be sorted out on appeal. The Government has now admitted that it needs to amend the law to deal with this matter. However, so far as the Opposition is concerned, and based on advice, the bill does not deal with the case that was the genesis of the problem.

I refer in particular to the news release of the Attorney General dated 20 August, in which he said that the Government had already introduced new civil liability laws to ensure courts do not award damages to anyone engaged in criminal activity. The Attorney was quoted as saying that had the Presland case commenced after the introduction of the Government's Civil Liability Act, Presland would not have succeeded. The Opposition is concerned that that is simply wrong and the Government, in introducing this bill, now recognises that the Attorney General was wrong and the Premier was wrong. The bill also protects persons who injure a mentally ill person while acting in self-defence from having to pay damages to their attacker. Further, the Mental Health Act will also be amended to provide that any police officer or health care professional who in good faith exercises a function that is conferred or imposed on that person under the Act is not personally liable for any injury or damage caused by the exercise of that function. This new section will apply to cases that have already commenced but will not affect the appeal in the Presland case.

The bill also addresses the Queensland case of wrongful birth. In *Cattanach v Melchoir* the High Court decided for the first time that where a healthy child is born following a failed sterilisation the child's parents can recover damages for the costs of raising the child. The Civil Liability Amendment Bill will not allow the birth of a healthy child to be treated as an injury to its parents, meaning that parents cannot recover any damages for the costs of rearing and maintaining a healthy child. However, this will not preclude the recovery of additional costs associated with raising a child with a disability. The bill also makes some minor amendments to the proportionate provisions of the Civil Liability Act to adopt changes discussed with other jurisdictions. These are basically new provisions that will place a duty on a defendant to help to identify other potential defendants who contributed to the loss.

Exclusion from liability under the Civil Liability Act will also be extended to exclude vicarious liability as well as principal liability. Retrospectivity is always of concern. In considering the private member's bill introduced by the honourable member for Epping in the other place to deal with the Presland problem, which is now at least partly dealt with by this bill, the Legislation Review Committee made some comments about retrospectivity. I refer to its paragraphs 13 to 15. It noted that retrospectivity is not something that would normally be favoured by Parliament—and I have made my views on retrospectivity known on a number of occasions in other debates. In this case there appears to be an exceptional argument for retrospectivity. The Government has made it plain that in its view there is to be retrospectivity.

The issue the Opposition is still concerned about—it will be a matter of further discussion in Committee when I will move the Opposition amendments—is if you are going to have retrospectivity and you

have exceptional circumstances such as this you ought to ensure that those exceptional circumstances are dealt with. In conclusion, the Opposition will not oppose the bill. We will seek to amend it, consistent with what we believe are community expectations in this regard. We are greatly concerned that this matter was delayed, that it was rammed through the lower House and that it is now being dealt with at the close of business to minimise any potential embarrassment for the Premier, the Attorney General and the Government for their wrong advice when the judgment was first known and their late attempt to fix it.

Reverend the Hon. FRED NILE [11.47 a.m.]: The Christian Democratic Party supports the Civil Liability Amendment Bill. We are pleased that the Government has introduced this bill to rectify two serious matters which occurred in the courts in regard to civil liability and which revealed serious or major gaps in the law. In one case a man who killed a woman after he was discharged from a psychiatric ward and was found not guilty of murder by reason of insanity then sued the hospital for discharging him. He was awarded substantial damages for pain and suffering and loss of earnings during his detention as a forensic patient. That totalled more than \$300,000.

This bill will limit the damages that persons can recover when they are injured while committing what would have been a serious offence had they not been mentally ill. A mentally ill person will no longer be able to claim for non-economic loss or loss of earnings. I believe that is a positive move. The fact that that case occurred highlights what we have discussed in regard to other bills—in workers compensation and so on. It is an example of extreme litigation, an attitude of litigation in this State that is becoming similar to the United States, where lawyers work out that they can make a case and probably encourage individuals to launch challenges for damages and so on. I am interested in how much the lawyers received from that case.

Another case that hit the headlines and shocked many people involved the High Court deciding for the first time that the birth of a healthy child following a failed sterilisation enabled the child's parents to recover damages for the cost of raising the child from birth until 16 or 18 years—hundreds of thousands or even millions of dollars. In this amazing decision the High Court ruled that the birth of a child is an injury or a burden that should be compensated. I have not been able to identify that having been done anywhere else in the world. A new baby is a blessing, never a burden. Clever lawyers have seen this as a case that they can win. I would also be interested to know how much the lawyers gained from that case.

Would the parents of a baby born as a result of the failure of a condom be able to be compensated? This raises many issues. I do not believe that people should be able to sue anyone because they have had a baby. The amendment would prevent parents from recovering damages for rearing and maintaining a healthy child. This has nothing to do with disabled children or handicapped children; it is dealing with the birth of a healthy child. Without going into the details, I understand that there is still confusion about the sterilisation in the case I mentioned. Had I been one of the judges I would not have found against the doctor as there was confusion about what the woman involved had thought had happened in the sterilisation process. I will leave that aside. We support the bill.

Ms SYLVIA HALE [11.52 a.m.]: The Greens oppose the Civil Liability Amendment Bill and the amendments the Opposition intends to move. We see the bill as yet another knee-jerk reaction by the Government to pressure from the tabloids. It is a dangerous bill, a bill that undermines the rights of the mentally disabled in our community. The bill is a reaction to a particularly tragic case. But instead of drawing the obvious lessons about the failures of the mental health system to support people suffering from health crises the Government has decided to further erode the rights of people with mental illness. Underpinning the horrific facts in this case is the tragedy for tens of thousands of people with mental illness who never cause harm to others that the health system is failing them. There is an inexcusable lack of support services, transition programs and community services for people suffering from mental health difficulties.

Having said that in general, I turn now to the specific aspects of the bill—initially to the proposal to extend public authority indemnity to individual psychiatrists. At the moment mental health professionals are faced with unacceptable choices. The decision they have to make is whether to detain patients in hospitals, where they are deprived of their liberty but may receive the assistance they need, or to release them into the community, where support services are inadequate and they are at risk of falling through the cracks. This is the real source of the so-called extraordinary pressures upon doctors referred to by the Minister in his speech. Until the pressure placed upon psychiatrists as to whether to detain patients or to release them is removed by the upgrading of our mental health system to one where people outside hospitals can get the level of support they need, changes to adjust the liability of individual doctors will be nothing more than band-aids.

I turn now to removing the civil liability for non-criminal acts. The Government's rhetoric—I think that it is rhetoric shared by the Opposition—is about people benefiting from their crimes. In fact judgments for civil damages are not a benefit. A loss has to be demonstrated and that loss then has to be compensated. By definition, these people are not benefiting from their crimes because there is no benefit and there has been no crime, only a civil loss. In effect, the bill makes some actions criminal by a process of strict liability. It does not matter if people have an intention or not, if they commit the serious crimes referred to in the bill they will be treated as criminals. Yet this strict liability applies only to people with mental illness, to some of the most vulnerable people in our community. If a person is found not criminally liable for an action for another reason—say because it was committed while he or she was were asleep or under some sort of duress—that person retains his or her rights. In some circumstances people retain their rights to civil damages. However, a person who is mentally ill at the time loses his or her rights.

This is extraordinarily discriminatory legislation. As I said, it is aimed directly and specifically at the most vulnerable group in the community, a group that needs appropriate psychiatric, medical and health services, and a group that is being consistently denied them. Then there is the aspect of "clarifying" self-defence against people who are mentally ill. The Government has provided absolutely no justification for this provision. There never has been a case of self-defence to assault in which mental illness has been a feature. It is hard to imagine where there ever would be. The presence of this provision in the bill simply adds to the impression, the stigma, that people with mental illness are a danger to society and a special threat that has to be singled out for urgent Government action. Indeed, we are making people with mental illness second-class citizens in every respect—not only socially and in the provision of health services but also in the eyes of the law.

The provisions of the bill amount to an outrageous case of creating second-class citizens of people with mental illness. Not only is this repugnant on every level; it is also short-sighted. One in four people in our society will suffer from a mental illness at some point in their lives. Mental illness must have touched many of us here, and our families. It is one of the last taboos. Very few members here will stand up to defend this provision with heart-warming stories about their mother with Alzheimer's or their depressed son. Instead, they will vilify and denigrate people with mental illness as if they are the last bogeyman sent out to scare the voters. A briefing note issued by the Council of Social Services of New South Wales dated 3 December expresses grave concerns about the bill and the suggested amendments. It states:

It is a longstanding principle within criminal law that mental illness is an adequate defence. That is, experiencing a mental illness to the extent that the individual does not know the nature and quality of their acts, at the time an offence is committed, removes criminal culpability.

The proposed amendments remove this clear distinction between criminal culpability and disability that has stood as a cornerstone of criminal law for many years. People with a mental illness are not culpable under criminal law and therefore should not be denied a remedy under civil law simply because they are mentally ill.

It continues:

NCOSS believes that the court system should be able to retain its discretion in determining whether or not to award damages to a class of people who are recognised as having a disability. It is an accepted principle that *"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law."*

This legislation is specifically designed to interfere with current cases.

Pursuant to sessional orders business interrupted.

QUESTIONS WITHOUT NOTICE

DEPARTMENT OF CORRECTIVE SERVICES SURVEILLANCE OPERATIONS

The Hon. ROBYN PARKER: I direct my question to the Minister for Justice. Why was the covert surveillance group in the Department of Corrective Services suddenly closed down and all its members given about a week to find other positions within the department? Did the closure have anything to do with allegations of improper use of public resources by its members?

The Hon. JOHN HATZISTERGOS: I will take the question on notice and provide an answer in due course.

RURAL FIRE SERVICE BUSH FIRE FIGHTING TECHNIQUES

The Hon. PETER PRIMROSE: I address my question to the Minister for Emergency Services. What is the latest information on the bush fire fighting techniques used by the Rural Fire Service [RFS]?

The Hon. TONY KELLY: We have a 69,000-strong Rural Fire Service [RFS] in New South Wales staffed by volunteers and ably supported by other emergency services. The Government is supporting them with an injection of record funding of \$126 million this year. Last weekend the Premier was in Coffs Harbour to announce that the Government will be funding another weapon in fighting bushfires. He announced that the RFS would train and equip 40 new remote area firefighting teams [RAFTs] to fight fires in rugged and isolated terrain across the State. It will cost \$150,000 to train 40 new RFS RAFTs, which will then be available to operate across New South Wales as needed. The RFS will spend more than \$60,000 to equip RAFTs across New South Wales. RAFTs are small, specialised squads with four to six firefighters who are flown, primarily by helicopter, to difficult to access fires. It is a dangerous and demanding role, but it is highly effective in containing fires.

As I have said, the safety of our firefighters is paramount, so these units will be activated only when conditions allow. They specialise in dry firefighting techniques; that is, without water, because that is rarely, if ever, available. Due to the dangers of this type of firefighting, no RAFT will be sent into a fire until a comprehensive risk assessment has been undertaken. This huge boost in the number of RFS RAFTs will help to protect families living near bushland across New South Wales. The teams are due to commence operations early next year with 200 RFS volunteers undergoing extensive training. The RFS has 19 teams comprising 95 individual firefighters. The New South Wales National Parks and Wildlife Service [NPWS] has 400 trained personnel involved in 80 different teams. The RAFTs have been extremely successful. A couple of weeks ago NPWS RAFTs suppressed a fire in the remote and rugged Kiddies Creek area in the Guy Fawkes National Park west of Coffs Harbour.

During the Christmas fires of 2002-02 the NPWS RAFTs contained 116 fires—82 per cent of which were on remote NPWS land—to under five hectares. The Premier also announced that aviation resources costing \$6.6 million are now on line to protect lives and property across New South Wales. The RAFT program also requires aircraft and this year the Government will be spending millions of dollars to ensure that our volunteer firefighters are well supported. That will include an air crane, two Bell 214Bs, two BK117s, an Air-tractor 802—John Deere, I presume—a turbine Thrush and other on-call aircraft. A national aviation strategy will be in place this fire season. The Federal Government will supply \$2 million in aviation support to New South Wales. That is in addition to the \$6.2 million the New South Wales Government is spending. Although we have had some rain at the start of this year's fire season, families should prepare their homes and properties for the hotter weather. Homeowners living near bush should set aside some time to clear gutters of leaves and reduce fire fuels, take a trip to the tip, ember-proof their house and sheds by installing screens or shutters and enclose underfloor areas if possible, prepare firebreaks, ensure that appropriate clothing is on hand and ensure that garden hoses reach all corners of their house.

LINDSAY BROS TRANSPORT RELOCATION

The Hon. MELINDA PAVEY: I direct my question to the Assistant Treasurer and Minister for Commerce. Is the Minister aware that the Lindsay Bros Transport company established in Coffs Harbour 50 years ago has relocated its headquarters to Brisbane, costing the local community 40 jobs? Is he also aware that the company will save the \$160,000 in relocation costs in the first six months as a result of lower business taxes in Queensland? What is this Government doing to reverse the trend that is seeing business being enticed to Queensland because it is cheaper to operate there?

The Hon. JOHN DELLA BOSCA: No, I was not aware of the Lindsay Bros Transport move to Brisbane. I thank the honourable member for informing me about it. I will do my best to contact the company and explain the error of its decision. The honourable member has overlooked a couple of issues. The trends she is talking about have nothing to do with the Carr Government. They are the result of the great conspiracy against New South Wales called federation. Federation allows the Queensland Government to benefit from cross-funding arrangements that give it a much stronger revenue position. That has nothing to do with its endeavours at revenue raising, but its much more generous share of the commonwealth taxpayers dollars.

The Hon. Catherine Cusack: What about workers compensation?

The Hon. JOHN DELLA BOSCA: The Hon. Melinda Pavey did not ask me about that, but I will deal with workers compensation. The New South Wales workers compensation benefits structure is undoubtedly much better; it offers much better value for the premium dollar. It buys a much more secure future for injured workers, and that should be noted. However, that is not the most important factor. I cannot explain it, nor can any of the commentators with whom I have discussed it, but for a variety of reasons the Queensland workers compensation system was not afflicted in the 1980s and 1990s by the resort to the common law as occurred in the New South Wales system. For a long time, and increasingly, matters that could have been resolved using statutory mechanisms have been dealt with by resort to common law in New South Wales. Queensland has not experienced that litigation-based workers compensation common law culture.

[Interruption]

I can understand that the Hon. Catherine Cusack and the Hon. Melinda Pavey are passionate about this, because they were not here during the debate about the reform of the workers compensation system.

The Hon. Melinda Pavey: We were here.

The Hon. JOHN DELLA BOSCA: No, you were not. But most of your colleagues were here, and your party had the opportunity to support a series of reforms to improve the workers compensation system, to improve its financial stability—

The Hon. Greg Pearce: If you had come up with a series of reforms to improve it, it would have been supported.

The Hon. JOHN DELLA BOSCA: I did, and you did not support them.

The Hon. Greg Pearce: You didn't. You just rammed through anti-worker legislation.

The Hon. JOHN DELLA BOSCA: I acknowledge that bit of nonsense from the Hon. Greg Pearce. The Hon. Melinda Pavey and the Hon. Catherine Cusack just told us that the benefit structure was too generous. The problem is that those members do not know whether they are Arthur or Martha on workers compensation. They do not know whether they support business or workers.

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

The Hon. JOHN DELLA BOSCA: The Hon. Greg Pearce prattles on about the fact that this is anti-worker legislation. A few minutes ago the Hon. Melinda Pavey and the Hon. Catherine Cusack interjected that it was terrible legislation because the benefit structure was far too generous. They cannot have it both ways. They do not know whether they are Arthur or Martha on workers compensation; they do not know what they are doing. When Opposition members had the chance to support the reform of the system, they did not. *[Time expired.]*

CHRISTMAS CELEBRATIONS

Reverend the Hon. FRED NILE: I ask the Special Minister of State, representing the Premier, a question without notice. Is the Government aware of the confusion in some areas of our society concerning the celebration of Christmas—which is one of the important aspects of our Australian culture—especially in kindergartens, schools, government departments, police stations, councils, and so on? Will the Government issue clear instructions through all its ministries and departments, especially schools, that there are no restrictions on the celebration of Christmas and the singing of traditional Christian Christmas carols on Government, State or council property?

The Hon. JOHN DELLA BOSCA: I do not believe there is a need to take the course of action suggested by Reverend the Hon. Fred Nile. I do not believe it would be necessary for the Government to issue a directive informing people that there are no prohibitions on the celebration of Christmas.

Reverend the Hon. Fred Nile: Some people think there are.

The Hon. JOHN DELLA BOSCA: I was about to get to the matter that I believe the honourable member is alluding to. We are a multicultural society, and we are proud of that. A large percentage of the people

within that multicultural society are Christian, either by religion or cultural background, and therefore it seems legitimate that people are able to celebrate Christmas by whatever means they choose, whether it be by way of symbols, songs, or whatever.

It seems obvious that if we celebrate Christmas there may be a religious background to that celebration. Even if people are not subscribers to the faith, they have to accept that it is part of what we do. It is a little like celebrating Ramadan without the Koran or acceptance of the Muslim religion, or celebrating one of the Buddhist feasts without acknowledgment of the Buddhist religion. It is part of the package. I do not agree with Reverend the Hon. Fred Nile's request for a Stalin-style Christmas directive. It seems commonsense that Christmas is a cultural celebration that is associated with a religious festival. It should be inherently obvious to any sensible person, even accepting the most ordinary interpretation of multicultural values, that it would be legitimate for people to acknowledge the religious origins of Christmas when they celebrate it.

That brings me to what I think Reverend the Hon. Fred Nile refers to in his question. Today the Lord Mayor was reported as having taken a decision—one that is regrettable and foolish, because I think she is normally a fairly sensible person—to ban religious celebrations during Christmas celebrations. It seems to be almost a 1984 view of the world that one can foster a religious festival and then ban the acknowledgment of the religious basis of that festival. It is a silly decision. Perhaps the Lord Mayor is anxious to attract the votes of the politically correct.

As I said, I am very proud of the multicultural, multidenominational and multireligious nature of our society. I think it is excellent that we have public recognition of all the religions that represent the sentiments of the people of New South Wales. I believe that there should be no prohibition on the acknowledgment by public or private institutions of the religious base of Christmas celebrations. As I said, I am not aware of the Government's position in relation to specific directives, but I am quite sure that a sensible person would support the view that if we support multiculturalism we have to acknowledge the basis for religious celebrations, whether they be Muslim, Buddhist, Christian or otherwise.

INSPECTOR-GENERAL OF CORRECTIVE SERVICES ANNUAL REPORT

The Hon. HENRY TSANG: My question is addressed to the Minister for Justice. What does the annual report of the Inspector-General of Corrective Services say about the performance of the Department of Corrective Services in the last financial year?

The Hon. JOHN HATZISTERGOS: Earlier today I arranged to have tabled the last of the annual reports of the Inspector-General of Corrective Services. I note that the Opposition did not want the office of the Inspector-General of Corrective Services to exist. In 1996 Kerry Chikarovski said, "The creation of the position is a nonsense." Having opposed its existence, we then heard a litany of rants from members opposite about the value of the inspector-general. Contrary to the position that his former leader once took, the Hon. John Ryan said:

There is a role for an independent watchdog to conduct inspectorial visits on the Department of Corrective Services and to report fearlessly and objectively on the outcome of those visits.

Ms Lee Rhiannon—who is always an authority on these issues—said, "The department would have preferred the inspector-general to be a lapdog rather than a watchdog." So there was widespread enthusiasm on behalf of some members opposite for the existence of the office of the inspector-general because it was seen as being a fearless watchdog of the Department of Corrective Services.

I want to inform the House about the inspector-general's findings in relation to the department. It was known that the office was being wound up on 1 October. The inspector-general found that there had been a decrease in the number of deaths in custody, suicides, escapes, inmate-upon-inmate assaults, officer-upon-inmate assaults, incidents of actual self-harm, use of force by officers, fights, and complaints to the inspector-general. The inspector-general said that these were major achievements by the department and they should be commended, especially at a time when the New South Wales inmate population was continuing to rise. At page 4 of his report the inspector-general said, "These outcomes are particularly impressive." This is the fearless watchdog—the one that Ms Lee Rhiannon says we wanted to abolish because it was a watchdog, not a lapdog. With regard to deaths in custody, in his report—

The Hon. Greg Pearce: Maybe he played a role in getting these improvements. So you're speaking in support of having an independent watchdog?

The Hon. JOHN HATZISTERGOS: I regard any deaths in custody as a particularly tragic matter. In his report the inspector-general said:

[a] significant decline in the number of deaths due to suicide ... a reduction of 66%. It is clear from this statistic that the Department's procedures in respect to the identification and monitoring of those inmates at risk of self harm are working well.

With regard to escapes the inspector-general said:

One of the most impressive achievements of the Department during the year was in the area of escapes and absconds from correctional centres and court complex facilities.

This was something acknowledged by the Hon. John Ryan in a previous contribution in this House. A total of 18 escapes and 12 absconds were recorded in the last financial year. This compares with 136 escapes in 1994-95, the last full year of the Coalition Government. All the escapes and absconds in the last financial year were from minimum security facilities—in contrast to the period under the Coalition Government when there were also escapes from medium and maximum security facilities.

The Hon. John Ryan: Did you table the draft report on probation and parole?

The Hon. JOHN HATZISTERGOS: Actually, I will.

The Hon. John Ryan: Today?

The Hon. JOHN HATZISTERGOS: In due course. I have tabled the Metropolitan Remand and Reception Centre [MRRC report]. Have you read it?

The Hon. John Ryan: No, I have not had time; it was only made available yesterday.

The Hon. JOHN HATZISTERGOS: The honourable member should read it. I go to the trouble of providing the Hon. John Ryan with this information as a matter of courtesy, being the nice person that I am, so I would be unimpressed if he did not take the trouble to read it.

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

The Hon. JOHN HATZISTERGOS: The issue of mobile phones continues to concern me. It is a matter that was appropriately raised at the estimates committee hearings, along with the other important things that no doubt trouble corrective services, such as vending machines in visiting facilities, cars, toilets and things of that nature. The inspector-general said, noting the number of mobile telephones which have been detected in correctional facilities— [*Time expired.*]

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

The Hon. JOHN HATZISTERGOS: Yes, it is important that I provide this information on the record. The inspector-general said in relation to these fines:

(This is) no doubt attributable to more effective searches by staff and better use of technology.

Of course there is more that we can do about mobile phones. We can take up the offer, which all of the States have made to the Federal Government, to put jamming facilities in correctional centres.

[*Interruption*]

The Hon. John Ryan ought to reflect on the fact that the shadow Minister, Mr Humpherson, went overseas on a trip of six weeks—which the Leader of the Opposition thought should have been three weeks shorter—and he noted that exactly the same issue was arising in the Californian system. Californian prisons have the capacity to jam reception, but the Federal Government will not allow it here. We have the same issue. The reason it is not occurring is that the carriers have been able to successfully lobby the Federal Government not to put in jamming facilities.

The Prime Minister recently wrote to the Premier saying that he will not consider it. I do not know if it has anything to do with all the product promotion that he does for Vodafone on his tracksuits. But people will no

doubt draw their own conclusions on these important issues. I hope that he reconsiders this issue, particularly as we are dealing with the question of terrorists and potential terrorists coming into custody. Overall, the department has a lot to be proud of with this final report. But what is also important to note is the question of complaints.

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

The Hon. JOHN HATZISTERGOS: In relation to the issue of complaints the inspector-general said:

This is due to the fact that the department has actually put in place a complaints assistance line and the improved performance of the official visitors system in being able to handle complaints at the correctional centre level.

[Time expired.]

WHISTLEBLOWER PROTECTION

The Hon. DAVID OLDFIELD: My question was to be directed to the Treasurer, the Hon. Michael Egan, in his position as Leader of the House, but perhaps in his absence the Special Minister of State could answer the question. Is the Minister concerned that the plight of nurses Nola Fraser, Vanessa Bragg and Sheree Martin from Camden and Campbelltown hospitals serves to highlight the inadequacy of current whistleblower protection? Will the Government consider the establishment of an effective, dedicated regulatory body to which whistleblower's can report in confidence? Will the Government acknowledge that, as things stand, professional people such as former police officer Tim Priest can expect only an early end to their careers because they drew attention to serious matters? What price would the Government be willing to pay whistleblowers as compensation for their lost careers? Does the Government value the actions of whistleblowers?

The Hon. JOHN DELLA BOSCA: As the Hon. David Oldfield said, the question was originally directed to the Treasurer in his capacity representing the Premier. It is probably appropriate for me to say that I will ascertain the Premier's response to that question and provide an answer to the honourable member in due course.

MEETING EVER CHANGING NEEDS ORGANISATION

The Hon. CHARLIE LYNN: My question is directed to the Minister for Community Services. Why are employees of an organisation called Meeting Ever Changing Needs, which owns a Bradbury group home, handing out cigarettes to their residents, all of whom are aged 10 to 18 years? Has the Minister investigated whether such actions would be a clear breach of laws protecting children from having access to cigarettes? What action will the Minister take against this organisation, given that it receives State Government funding?

The Hon. CARMEL TEBBUTT: The Hon. Charlie Lynn has asked a number of questions in the past about this particular service. I need to make it very clear, as I have done on previous occasions, that the Department of Community Services provides funds, either through programmatic avenues or through individual client agreements, to a range of both non-government and private for-profit organisations to provide support and services to young people. Meeting Ever Changing Needs is not a service that is funded by the Department of Community Services in a programmatic sense, but the department has entered into a header agreement with the service. That means that payments are made to the service only when children are placed in its care.

The header agreement sets out the standards and types of services an agency will provide and the cost of those services. It is the role of the department to develop an individual client agreement in conjunction with the service for each child or young person who enters the care of a service such as Meeting Ever Changing Needs. This agreement sets out the plan for each child and young person and the actions to be taken by a service to implement the plan. The agreement includes plans for education and development, and the department monitors the implementation of the plan for each child or young person. The Hon. Charlie Lynn has raised some specific issues about how the service is operating. I think some of those issues have been raised before and I have provided information to the honourable member, but I will follow-up further the issues that he has raised today and provide some more detail if that is possible.

SHEARING INDUSTRY OCCUPATIONAL HEALTH AND SAFETY

The Hon. CHRISTINE ROBERTSON: My question without notice is addressed to the Minister for Commerce. Will the Minister update the House on the ShearSafety program?

The Hon. JOHN DELLA BOSCA: Members are no doubt aware of the Government's popular and highly successful ShearSafety program. It is an \$800,000 program to improve health and safety for shearers, roustabouts and other workers involved in the shearing industry, through three major initiatives. The three components of the ShearSafety program are a shearing handpiece rebate, a shed improvement initiative and an information and assistance campaign. However legendary the life of the gun shearer may be in the Australian heritage, the Government recognises that the shearing shed as a workplace has a substantial number of safety hazards.

The Hon. Duncan Gay: Have you ever pulled a wool guy into gear?

The Hon. JOHN DELLA BOSCA: Only under very close supervision. That is why I am pleased to inform the House of the first practical demonstration of a Government scheme to improve safety in the State's shearing sheds. Today WorkCover is holding an open day at Caloola, near Bathurst, to showcase a range of affordable shearing shed improvements funded under the ShearSafety program. This first ShearSafety shed open day, at the 747-hectare property of Terry and Jim Moran, is the latest success to be achieved in the WorkCover ShearSafety program.

Honourable members may have already heard of the Morans. They received a \$20,000 grant under the dollar-for-dollar ShearSafety scheme and they used the funding on a major upgrade of their property. A total of \$234,250 in grants has been paid to the 13 woolgrowers to assist in the construction or renovations of shearing sheds at Caloola, Deepwater, Delegate-Forbes, Gilgandra- Harden, Holbrook, Middle Arm, Narrabri, Uralla, Wagga Wagga and Walcha. This component of the ShearSafety program is designed to showcase the improvements to occupational health and safety that can be made with a little more thoughtful design.

Sheds, both old and new, have benefited from this program and I hope it will prompt woolgrowers around New South Wales to incorporate safety design in their next upgrade. Good design can minimise lifting, prevent back strain, trips, falls and machinery accidents. We all know that rural industries can be dangerous. Accidents can cause personal tragedy and financial hardship. I commend WorkCover's ShearSafety program as it is lifting awareness of workplace safety in the shearing industry; it is upgrading thousands of handpieces to the safer worm-drive; and it is providing model shearing workplaces from Delegate to Deepwater. Today's open day is being held in partnership with Farmsafe NSW, the Australian Workers Union, New South Wales Farmers and the Shearing Contractors Association of Australia. I congratulate all those involved.

CANNABIS MEDICAL USE

Ms LEE RHIANNON: I direct my question to the Special Minister for State. When does the Minister envisage that a trial of cannabis for medicinal use will get under way? How long will the trial last? Where will the trial take place and how many people will be involved? If there are no plans in place for a trial, does this mean that the Government has gone cold on the idea and is merely stringing people along? Does it mean the Government is giving false hope to those who are seriously ill and who wish to use cannabis as a medicinal treatment?

The Hon. JOHN DELLA BOSCA: I am not in a position to make an announcement in relation to the matter to which the member referred. For that reason, I will take the question on notice and ascertain from the Premier an appropriate answer and provide it to the member in due course.

MINISTER FOR JUSTICE USE OF PARLIAMENTARY RESOURCES

The Hon. GREG PEARCE: My question is addressed to the Minister for Justice. Did the Minister use any resources of the Parliament or his ministerial office in the preparation or submission of his recent unsuccessful application to the Bar Association for appointment as Senior Counsel? Did the Minister use his ministerial stationery in relation to the unsuccessful application? Did any of his staff have contact with the Bar Association or any other person in relation to the unsuccessful application? If so, how did such contact relate to the duties of those staff?

The Hon. JOHN HATZISTERGOS: I did not use any ministerial stationery. To my knowledge, my staff had no contact with any person at the Bar Association.

[Interruption]

I was told that I was ineligible.

DAPTO-KOONAWARRA YOUTH CONNECT PROJECT

The Hon. IAN WEST: My question is directed to the Minister for Community Services. What action is the Government taking to keep vulnerable young people in the Illawarra connected to education and their local community?

The Hon. CARMEL TEBBUTT: There is no doubt that keeping young people connected to education can have a significant effect on their lives. Once again we saw that demonstrated by the preliminary results this week of a study by the Department of Juvenile Justice and the University of Sydney. That study found that more than 90 per cent of the 242 young people surveyed in juvenile detention had been suspended from school at some time, and 82 per cent had not attended school in the six months before entering detention. The conclusion drawn is that the lives of these young people might have been different had we been able to keep them at school and provide them with mentoring and appropriate role models. It is a policy area that the Government is exploring through the Better Futures strategy in six regions, including the Illawarra.

Last week I was pleased to visit the latest Better Futures project, the Dapto-Koonawarra Youth Connect project. Dapto is a diverse community identified by the Government as a growth area in terms of proposed residential, employment and industrial development. It has an ageing population as well as a significant number of young families, young people and people from culturally diverse backgrounds. The project aims to assist vulnerable young people in the Dapto area to grow into well-adjusted adults. The Better Futures strategy recognises that local communities are best placed to understand the needs of children and young people, and to deliver services and programs that meet those needs. That is why the Government is spending \$10.6 million over the next four years on implementing Better Futures.

In Dapto-Koonawarra we are spending \$200,000 a year for the next two years to achieve a number of outcomes, including increased school attendance, reduced risk-taking behaviour and an improved connection between young people and their community. A key element of Dapto-Koonawarra Youth Connect is a mentoring program for young people in the area. Mentoring provides an avenue for community elders and young adults to provide direct assistance to young people, such as helping with their homework, listening to what is happening in their lives or simply providing words of encouragement. There is no doubt that, for so many vulnerable young people, often what can make a real difference in their lives is forming a relationship with an adult, whether it be a youth worker, a neighbour, a teacher or someone who can help them make the right connections to turn their life around.

A co-ordinator will link mentors with young people and their families and find ways of strengthening partnerships between mentors, schools and other key agencies. The youth connect project will also focus on developing partnerships to improve service networks for young people in the Dapto-Koonawarra area, particularly between the Department of Education and Training and local youth services to address the issue of truancy and disconnection from school. Young people dropping out of education can have lasting personal and community costs. It can lead to young people failing to reach their full potential, and increases the chances of young people's involvement in crime and substance abuse. Government agencies, service providers and the community must work together if we are to turn around the lives of young people who are at risk. Dapto-Koonawarra Youth Connect will be instrumental in building this type of collaboration, and it has the potential to produce a lifetime of positive outcomes for young people in the area. I look forward to reporting to the House in due course on progress with various Better Futures initiatives.

RAIL EMPLOYEES DRUG AND ALCOHOL TESTING

The Hon. DAVID CLARKE: My question is directed to the Minister for Transport Services, and Minister for the Hunter. In the past 12 months have any signallers or drivers returned a positive drug and/or alcohol sample, apart from the rail signaller publicly exposed last Sunday?

The Hon. MICHAEL COSTA: Clearly, the shadow Minister for Transport Services is unaware that drug testing has not been in place for 12 months. That makes the question largely inaccurate.

FARMING SECTOR ASSISTANCE

The Hon. TONY BURKE: My question is addressed to the Minister for Agriculture and Fisheries. Will the Minister inform the House about both short-term and long-term measures that the State Government has implemented to boost the farming sector?

The Hon. IAN MACDONALD: As honourable members are aware, two-thirds of our State is still gripped by drought. The New South Wales Government has implemented a number of emergency measures to help farmers through these difficult times. Honourable members will recall that earlier this week I announced two important enhancements to these measures. Namely, we have increased the net asset on special conservation loans from \$1.36 million to \$2.5 million, thereby opening the door for more farmers to invest in on-farm drought management programs. The New South Wales Farmers Association is very happy with this change. Indeed, in a press release issued yesterday the association said:

The State Government's decision to give more farmers the chance to access low-interest loans under the special conservation scheme is a huge win for drought preparedness and for farmers in New South Wales.

That is a good statement; it shows that farmers welcome this change. Secondly, we announced changes in eligibility guidelines that will help ensure that farmers have access to transport subsidies until this drought has fully broken. These enhancements have been hailed by the farming sector. As for the transport subsidies, Martin Sims of the South Coast Rural Lands Protection Board spoke with ABC South East Radio on 3 December and said that the change is great news for far South Coast dairy farmers and beef producers. Another government policy has been heavily praised by the farming sector.

While these emergency measures are important, and the Government will continue its drought support package into the new year, one of our long-term objectives is to focus on applied research and technology that will boost the profitability and sustainability of the New South Wales farming sector. The Government acknowledges the importance of this work by committing more than \$100 million each year through NSW Agriculture on research and development, extension and education programs for farmers. Our overall research effort includes 8 centres of excellence, 11 research stations and 9 co-operative research centres, in which NSW Agriculture is a partner.

Recently I had the privilege of visiting one of these centres, the Tamworth Agricultural Institute, to announce a \$2.2 million funding injection. Firstly, I opened a new \$485,000 plant pathology laboratory at the site. This fantastic new laboratory will help scientists develop alternative pest control methods. It will also speed up the development of new disease-resistant crop varieties, particularly for northern New South Wales. It will also provide plant health diagnostic services, disease surveillance and disease identification workshops for farmers as part of statewide efforts to curb plant diseases while reducing the use of chemicals.

Secondly, I was happy to announce that work will start early next year on a new \$500,000 entomology laboratory and glasshouse. Breakthroughs in this critical field could achieve significant cuts in the use of insecticides, particularly for cotton, cereal, pulse, oilseed and grain crops. Clearly, this is a win for the environment and for farmers. Finally, I also took the opportunity on my visit to Tamworth to announce that the innovative Sustainable Farming Training Centre will open soon. This \$1.25 million centre is jointly funded by the Commonwealth and New South Wales governments, and should be open by July next year. That will be a wonderful facility, of which the people of Tamworth can be justly proud. The building will feature training and tutorial space, a 150-person capacity lecture theatre, and videoconferencing and computing facilities.

I commend the more than 150 scientists, researchers and support staff at Tamworth for their hard work and many achievements. Work carried out at each of these research facilities will go a long way to boosting the profitability and sustainability of the farming sector in New South Wales. The research will play an important role in helping farmers cope with the impact of this and future droughts.

CAULERPA TAXIFOLIA CONTROL

The Hon. DON HARWIN: My question is directed to the Minister for Agriculture and Fisheries. With the summer holiday season imminent, will the Minister advise the House what new plans his department has for the eradication of caulerpa taxifolia in Narrawallee Inlet, Lake Conjola and Burrill Lake, given the unfortunate failure of the salt trials? Will the Minister undertake to urgently reschedule a meeting that he recently cancelled, without apology, with the members for South Coast and Bega so that local concerns can be presented to him?

The Hon. IAN MACDONALD: That is a very good question from the Hon. Don Harwin. Caulerpa taxifolia is a major problem in some of our estuaries. It is, in effect, a problem imported from Queensland. Unfortunately, this weed destroys fisheries and their habitat. We have been spending around \$1 million a year treating this problem, essentially with salt, and we have been dealing with most of the estuaries along the coast. It is an enormous problem and it has been estimated that of the order of \$70 million will be required to eradicate it. We are working on a number of control measures. We will continue to work on those measures and we will, of course, discuss the matter with anyone who wishes to discuss it with us.

PORTS GROWTH PLAN

The Hon. JAN BURNSWOODS: My question without notice is directed to the Minister for Transport Services. Will the Minister please provide the latest advice regarding the Government's ports strategy?

The Hon. MICHAEL COSTA: The Government recently announced the terms of reference for the commission of inquiry into the proposal to expand the container terminals at Port Botany. The Government has received a development application from Sydney Ports Corporation that proposes a new container terminal on the north-east edge of Port Botany on 57 hectares of reclaimed land, an additional wharf to allow for berthing and a dedicated road-rail access and support infrastructure. The capital investment for the proposed expansion is \$580 million. Port Botany is the biggest container port in New South Wales and currently handles more than one million containers each year. The inquiry will consider the justification of the proposal; the terrestrial and marine environment; the hydro-dynamics of Botany Bay; the acoustic environment; the air-water quality, including groundwater; safety, both in terms of shipping navigation and the operations of Kingsford Smith airport; local traffic and road-rail networks; the local infrastructure, including the implications of container movements and the growth within New South Wales; recreational opportunities in and around Botany Bay, in particular Foreshore Beach and reserve; the cumulative impacts of the proposal in the context of the total port environs, taking into account the related strategy for Botany Bay; and the social and economic implications of the development, including implications to the State of not proceeding.

It is expected that the inquiry will be conducted in the first half of next year and the proposal will be exhibited from January. This meets the Government's commitment to have a commission of inquiry. It is now a matter for the community and those who want to participate in the commission of inquiry to ensure they get involved in that process. I take the opportunity, once again, to indicate the Greens, in their usual way, are making mischief at the front of Parliament House again. I note today some claims published—

Mr Ian Cohen: Making mischief?

The Hon. MICHAEL COSTA: Making mischief, yes. I see that the good Green is here but unfortunately the two who are making mischief are not in the Chamber. As usual, the Greens display an enormous ignorance in relation to these matters. There are some wildly inaccurate statements in today's *Illawarra Mercury*. For example, Ms Rhiannon, in a letter to the editor, told the people of the Illawarra to forget about break bulk coming to Port Kembla until 2020. Ms Lee Rhiannon is just plain wrong. She does not have the facts right. The facts are that Sydney Harbour leases for handling break bulk cargo expire in 2007, not 2020 as claimed by the Greens. I hope she corrects the record. The Government's decision not to renew these leases clears the way for substantial growth at Port Kembla. This trade already represents some 250 ships, 50,000 containers and one million tonnes of general cargo or break bulk. The port corporation and stevedores are presently in negotiation for precisely this trade. On 21 October the Government announced the approval of \$14 million for Port Kembla Port Corporation to extend the multipurpose berth from 300 metres to 430 metres. The port is preparing infrastructure for more break bulk and container trade. [*Time expired.*]

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

The Hon. Michael Gallacher: Did she say elucidate or hallucinate?

The Hon. MICHAEL COSTA: I am very pleased to elucidate the answer and in the process I will debunk some of the hallucinations of the Opposition and the Greens on these matters. The Greens have got it wrong once again. They make outrageous claims all over the place to cobble together their small number of supporters.

The Hon. Michael Egan: Some Greens are worse than others.

The Hon. MICHAEL COSTA: I have already acknowledged that I respect the genuine Greens, the people who are interested in hugging trees. I do not have the same passion for trees as Mr Ian Cohen, but I understand he has a passion for trees and we have to accept that. Each of us has a different way of deriving pleasure and diversity. He likes hugging trees, and I can understand that. The problem is that the other two representatives of the Greens have a constant and predictable—

The Hon. John Ryan: Point of order: The Minister was asked to elucidate his previous answer which, I understand, had something to do with the strategy for the ports. I do not believe the Greens were part of the

answer. He has spent 60 seconds or so of the time available to him simply abusing members of the Greens. I ask you to bring him back to his answer.

The PRESIDENT: Order! I remind the Minister that answers must be relevant to the questions asked.

The Hon. MICHAEL COSTA: It is always good to see the left wing of the Liberal Party lining up with the Greens. One would wonder why he does not bother taking up the opportunity to join the Greens. [*Time expired.*]

TUGGERAH LAKE TOXIC WASTE DUMPING

Mr IAN COHEN: I ask the Minister representing the Minister for the Environment whether the Minister can please explain why the Environment Protection Authority has failed to act to prevent Woy Woy council's plans to dump 15,000 cubic metres of dredged toxic silt—

The Hon. Michael Gallacher: There is no Woy Woy council. I think you mean Gosford council.

Mr IAN COHEN: Thank you. Can he explain why the authority has failed to act to prevent Gosford council's plans to dump 15,000 cubic metres of dredged toxic silt from Tumby Creek into Tuggerah Lake when available scientific evidence shows that material from Tumby Creek is—

The Hon. Michael Gallacher: I am sorry, it would have to be Wyong council.

Mr IAN COHEN: Thank you again. The question was prepared in a bit of a rush. I am referring to plans of Wyong council. Why has the authority failed to act when available scientific evidence shows that material from Tumby Creek is highly acidic? I thank the Leader of the Opposition for the Liberal Party's support on this very important environmental issue.

The Hon. MICHAEL EGAN: I am not sure to whom the question was addressed. No doubt it was an important question but it was full of argument.

[*Interruption*]

If honourable members do not believe me, they should read *Hansard* tomorrow. It puts Ministers in a difficult position if a question is full of argument.

The Hon. Michael Gallacher: Is this a point of order or are you answering the question?

The Hon. MICHAEL EGAN: I am answering the question. We come here at question time in an endeavour to provide information to members' questions but when we are provoked by argument we of course have to be ready to debate the information contained in the question. I do not want to breach the standing orders or Presidents' rulings so I will take the question on notice and refer it to the appropriate Minister.

Mr Ian Cohen: You are not ruling it out of order?

The Hon. MICHAEL EGAN: No, I have not raised a point of order. I am simply saying that the question really is out of order because it is full of argument and it makes a mockery of the new rules for question time that everyone should adhere to.

Mr IAN COHEN: I have a supplementary question. I ask the Minister to elucidate how 15,000 cubic metres of dredged toxic silt from Tumby Creek flowing into Tuggerah Lakes can be said to be argument. I thought it was quite clear that I was asking a question on the facts presented.

The Hon. MICHAEL EGAN: But the honourable member was using what he asserts to be the facts to mount an argument, with a very weak attempt to turn it into a question at the end. That is not the purpose of question time. Members cannot use question time to make a debating point. That is out of order. [*Time expired.*]

The PRESIDENT: Order! I remind members of a recent ruling in which I referred to *Erskine May's Parliamentary Practice*, which states that where facts that are alluded to are of sufficient moment, the Chair requires *prima facie* proof of the authenticity of those facts. Accordingly, when members refer in their questions to facts of significant moment, they must have *prima facie* proof to support those facts.

WINE GRAPE HARVESTER BRAKE LIGHTS REGULATION

The Hon. JENNIFER GARDINER: Is the Minister for Agriculture and Fisheries aware of concerns held by Riverina wine grape growers about the lengthy time frame to establish a nationally consistent approach to the regulation of brake lights on wine grape harvesters? Is the Minister further aware that the moratorium on the implementation of brake lights has been extended to October 2004 and will be subject to an annual review until a national approach is determined? Has the Minister approached the Minister for Roads urging him to work closely with the Federal roads Minister to ensure that a national approach to the regulation of brake lights on harvesters is quickly established to ensure that the winegrowing industry is able to operate more efficiently?

The Hon. IAN MACDONALD: That question falls within the portfolio of the Minister for Transport Services and I will refer it to him for an answer. I support the general aims contained in the question.

ALCOHOL ABUSE

The Hon. KAYEE GRIFFIN: Will the Special Minister of State inform the House about initiatives to tackle the problem of alcohol abuse following the New South Wales Alcohol Summit?

The Hon. JOHN DELLA BOSCA: Honourable members will acknowledge that there is great community concern about and interest in programs and initiatives that can prevent excessive alcohol consumption. The New South Wales summit on alcohol abuse galvanised the community—

The Hon. Michael Gallacher: Black spots.

The Hon. Duncan Gay: Blackie spots.

The Hon. JOHN DELLA BOSCA: No, at the press party last night we were all very sober.

The Hon. Michael Gallacher: He is still there though!

The Hon. JOHN DELLA BOSCA: As it is the end of the year the Opposition does not seem to be in the mood to take seriously this answer to this very serious matter.

The Hon. Michael Gallacher: It is intoxicating.

The Hon. Michael Egan: There is a lot of work to be done yet.

The Hon. JOHN DELLA BOSCA: It may well be the last question time of the year. Over 300 public submissions were received before and after the summit, which made 318 recommendations. This month I will release an interim report on progress to date. Given the significant number of recommendations, their breadth and complexity, and the necessity to ensure that we take into account the diversity of views, the Premier has agreed that the Government's final response will be held over until next year. The interim report will provide information on progress following the summit and the implementation of key initiatives to tackle alcohol abuse. The economic cost of alcohol misuse amounts to more than \$4.5 billion per annum—through absenteeism from work, alcohol-related illnesses, accidents, premature death and legal expenses.

Alcohol misuse costs New South Wales taxpayers \$7 million each day and it is one of the leading causes of preventable deaths. The majority of people contributing to these figures are not those severely dependent on alcohol, that is, those classified as alcoholics but rather people in the community who fall into the category of problem drinkers. But most treatment agencies by their nature focus on treating severely dependent drinkers. They offer abstinence-oriented programs, which are often not an attractive or realistic option for what we otherwise might describe as problem drinkers.

Research has found that problem drinkers can learn to control their drinking without having to abstain from alcohol altogether. I commend to the House a program being run by the Western Sydney Area Health Service, the Controlled Drinking by Correspondence Program. This initiative can assist problem drinkers to substantially reduce their drinking. The treatment involves four separate mail outs once a fortnight. The mail outs include tips and ideas as to how to reduce drinking. The information is tailored specifically to the individual. Evidence from trials shows that the controlled drinking program has helped people who engage in a program to reduce their drinking by more than 50 per cent.

Significant reductions have also been made in other alcohol-related problems such as relationship problems and problems at work. These gains were maintained over a long period. People who engage in the program are highly satisfied with it. Based on our pioneering work in Australia, several clinical studies conducted in the United States of America and Canada have achieved similar positive results. The program is funded and supported by the New South Wales Government. It is cost effective, it can assist a large number of people simultaneously, it is free, it is confidential and it requires low time commitments. The participants are not required to attend a treatment clinic. This is an innovative public health initiative to reduce alcohol consumption. I will keep the House informed of initiatives coming out of the summit's recommendations. I congratulate all those involved in this innovative and cost-effective program.

RAIL DRUG EVALUATION UNIT OFFICERS

The Hon. DON HARWIN: My question is to the Minister for Transport Services. What plans are currently being considered to tender out to private companies the provision of drug evaluation unit officers to the rail network?

The Hon. MICHAEL COSTA: I do not have that information. Clearly, it is very much an operational matter. Given that I have three minutes of question time left, let me explain—

The Hon. Michael Gallacher: Point of order: The Minister has just indicated that he does not have an answer to the question. Therefore anything he now says would be irrelevant. The question was very clear. The Minister has stated that he does not have an answer to it. That means that he has no knowledge of the matter. He is therefore debating the question. He is out of order.

The Hon. MICHAEL COSTA: To the point of order: The answer was clearly in response to the question.

The PRESIDENT: Order! The House has to hear the Minister's answer before deciding whether it is relevant. The Minister is in order.

The Hon. MICHAEL COSTA: As I indicated, I do not have the details. Clearly, these matters are operational. We hire chief executive officers and appoint boards to run organisations. The Opposition has suffered over the past 12 months and beyond—certainly during my time in the Parliament—from a misapprehension about the way in which public administration operates in this State. Many questions would be more relevant if honourable members opposite understood the fundamental facts. Our organisations are administered in a very systematic way through a proper chain of command. Ministers are at the top of the chain in terms of public policy and general direction. However, operational matters about contracts and internal human resources management clearly fall within the purview of the responsible officers along the chain of command to senior management, to the CEO and then to the board. It is absurd for the Opposition to ask these detailed questions. All Ministers are confronted by this complete waste of time. I am sure that if the Opposition were ever to get into government—a highly unlikely prospect given the way that honourable members opposite perform—it would be confronted—

The Hon. Michael Gallacher: You were going to say, "crush the lefties".

The Hon. MICHAEL COSTA: There are not many lefties left in the Labor Party.

The Hon. MICHAEL EGAN: Unless honourable members have questions about left wing eradication campaigns I suggest they place further questions on notice.

DEPARTMENT OF CORRECTIVE SERVICES SURVEILLANCE OPERATIONS

The Hon. JOHN HATZISTERGOS: The Hon. Robyn Parker asked me a question about a covert surveillance group in the Department of Corrective Services. The department does not have such a group. However, it does have an internal investigations surveillance unit. I do not know whether that is the group to which the honourable member was referring. That group's operations have been suspended temporarily to allow it to be relocated. It will recommence operations in the new year. I am also advised by the commissioner that this is not connected in any way to allegations about the misuse of resources. The decision was the commissioner's.

DEFERRED ANSWERS

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

MANNIX CHILDREN'S CENTRE CLOSURE

On 29 October 2003 the Hon. John Ryan asked the Minister for Community Services, Minister for Ageing, Minister for Disability Services, and Minister for Youth to explain the delay in closing the Mannix Children's Centre. The following response was provided:

The closure of the Mannix Children's Centre is a priority for the Government.

For many years the Centre was operated by the Intellectually and Physically Handicapped Children's Association.

At the end of last year, however, the Association approached the Department of Ageing, Disability and Home Care to take over the running of this Centre to ensure the ongoing safety and welfare of the residents. The transfer occurred in December 2002.

The Government is committed to the closure of the centre and the relocation of residents to accommodation within the community. Six properties have already been purchased to accommodate residents of the Mannix and Whitehall centres. There have, however, been delays in the modifications that are required at some houses and the finalising of development plans and obtaining of development consents for others.

The Department is consulting with parents and families as the planning proceeds.

LAKE CATHIE PRIMARY SCHOOL PROPOSAL

On 29 October 2003 the Hon. John Tingle asked the Minister for Community Services, representing the Minister for Education and Training, the following question without notice concerning the Lake Cathie Primary School Proposal. The following response was provided:

On 29 October 2003 the Minister for Education and Training, the Honourable Andrew Refshauge MP announced a review of the need for a school at Lake Cathie. The review will consider projected enrolment and demographic trends in the Lake Cathie and Bonny Hills area and examine:

- Whether there will be enough school-aged children to support a new school;
- Whether enrolments could be sustained to ensure the ongoing viability of the school; and
- What impact any new school would have on nearby schools.

The review will take place over the coming months and the Department will work with Hastings Council and the local School community.

Questions without notice concluded.

TABLING OF PAPERS

The Hon. Tony Kelly, tabled the following paper:

Local Government Act 1993—Report entitled "Report on Investigation of Rylstone Shire Council".

Ordered to be printed.

[The President left the chair at 1.03 p.m. The House resumed at 2.30 p.m.]

GENERAL PURPOSE STANDING COMMITTEE NO. 3

Report

The Hon. Amanda Fazio, as the Chair, tabled report No. 13, entitled "Budget Estimates 2003-04", dated December 2003, together with transcripts of evidence, tabled documents, answers to questions taken on notice and relevant correspondence.

Report ordered to be printed.

The Hon. AMANDA FAZIO [2.32 p.m.]: I move:

That the House take note of the report.

Debate adjourned on motion by the Hon. Amanda Fazio.

GENERAL PURPOSE STANDING COMMITTEE NO. 1**Report**

Reverend the Hon. Fred Nile, as the Chair, tabled, report No. 23, entitled "Budget Estimates 2003-04", dated December 2003, together with transcripts of evidence, tabled documents, answers to questions taken on notice and relevant correspondence.

Report ordered to be printed.

Reverend the Hon. FRED NILE [2.34 p.m.]: I move:

That the House take note of the report.

On behalf of the Committee I extend thanks to the witnesses who appeared before the recent budget estimates committee hearings. I also thank the government agencies for their co-operation in answering questions on notice in time for the report to be tabled today.

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

GENERAL PURPOSE STANDING COMMITTEE NO. 2**Report**

The Hon. Patricia Forsythe, on behalf of the Chair, tabled report No. 16, entitled "Budget Estimates 2003-04", dated December 2003, together with transcripts of evidence, tabled documents, answers to questions taken on notice and relevant correspondence.

Report ordered to be printed.

The Hon. PATRICIA FORSYTHE [2.35 p.m.]: I move:

That the House take note of the report

Debate adjourned on motion by the Hon. Patricia Forsythe.

THE HONOURABLE PETER BREEN INDEPENDENT COMMISSION AGAINST CORRUPTION INVESTIGATIONS**Privilege**

The Hon. PETER PRIMROSE [2.37 p.m.]: I move:

1. That this House acknowledges the role and function of the Independent Commission Against Corruption (referred to as the ICAC) is to investigate allegations of corrupt conduct of public officials, including Ministers of the Crown and members of Parliament.
2. That the functions of the ICAC in investigating corrupt conduct are subject to section 122 of the Independent Commission Against Corruption Act 1988, which provides:

Nothing in this Act shall be taken to affect the rights and privileges of Parliament in relation to the freedom of speech, and debates and proceedings, in Parliament.
3. That article 9 of the Bill of Rights 1689 is fundamental to the powers, rights and immunities of Parliament, and is recognised as the central parliamentary privilege—that is, the freedom of speech and debate in parliamentary forums, and the limitation of the uses which the courts of law and other extra-parliamentary bodies may make of evidence of parliamentary proceedings.
4. That the justification for the powers and immunities possessed by Houses of Parliament is that they are necessary for the Houses, their members, and officers, to function effectively, and that without them, members would be severely hampered in their ability to carry out their parliamentary duties, and the Houses would be unable to properly scrutinise the actions of the executive.
5. That representative democracy can flourish only when citizens can communicate freely with a member of Parliament and in the knowledge that the actions of members in the conduct of proceedings in Parliament will go unchallenged by outside interference or intimidation.

6. That proceedings in Parliament will inevitably be hindered, impeded or impaired if documents forming part of proceedings in Parliament are vulnerable to compulsory seizure.
7. That this House accepts and adopts the findings in the report of the Standing Committee on Parliamentary Privilege and Ethics, dated December 2003, that in executing a search warrant on the parliamentary office of Mr Breen on Friday 3 October 2003, the ICAC seized at least one document within the scope of proceedings in Parliament.
8. That this House acknowledges that the Standing Committee on Parliamentary Privilege and Ethics has been unable to reach an agreement with the ICAC in relation to the procedures which should be adopted to ensure that the privileges of this House are upheld concerning the documents seized in the execution of the search warrant.
9. That this House affirms that the House is the appropriate forum for resolution of issues of parliamentary privilege concerning documents and things seized by search warrant from the parliamentary office of Mr Breen.
10. That this House therefore resolves:
 - (1) That all documents and things (referred to as material) seized from Mr Breen's parliamentary office on Friday 3 October 2003 be returned by the Independent Commission Against Corruption to the President of the Legislative Council by 5.00 pm on Friday 5 December 2003.
 - (2) That, on return, the material be kept in the possession of the Clerk until the issue of parliamentary privilege is determined.
 - (3) That by 5pm on Friday 19 December 2003, Mr Breen, the Clerk and a representative of the Independent Commission Against Corruption, jointly be present at the examination of the material, including electronic material already returned to the President and in the custody of the Clerk. Mr Breen and the Clerk will identify material which falls within the scope of proceedings in Parliament, that is:

All words spoken and acts done in the course of, or for the purposes of or incidental to, the transacting of the business of a House or of a committee, and, without limiting the generality of the foregoing, includes:

 - (a) the giving of evidence before a House or a committee and evidence so given,
 - (b) the presentation or submission of a document to a House or a committee,
 - (c) the preparation of a document for purposes of or incidental to the transacting of any such business, and
 - (d) the formulation, making or publication of a document, including a report, by or pursuant to an order of a House or a committee and the document so formulated, made or published.
 - (4) That a list of material considered to be within the scope of proceedings in Parliament (referred to as privileged material) be prepared by the Clerk and provided to Mr Breen and the ICAC by 5pm on Friday 19 December 2003.
 - (5) That any material not listed as falling within the scope of proceedings in Parliament be immediately made available to the ICAC by the President.
 - (6) That the ICAC may, within a reasonable time, dispute any material considered to be privileged material in writing to the President of the Legislative Council, together with reasons for the dispute.
 - (7) That any privileged material not identified by the ICAC as being in dispute be returned to Mr Breen by the President.
 - (8) That the President immediately inform Mr Breen of any dispute, at which time Mr Breen may provide written reasons in support of his claim.
 - (9) That the President inform the House at its next sitting of any disputed claim, and table any documents provided by the ICAC or Mr Breen relating to the dispute.
 - (10) That the President will then set down consideration of the disputed privileged material as Business of the House on the Notice Paper for the next sitting day.
 - (11) That any material which the House determines as not within the scope of proceedings in Parliament be immediately made available to the ICAC by the President.
 - (12) That any material which the House determines as within the scope of proceedings in Parliament be immediately returned to Mr Breen by the President.
11. That this resolution be communicated by the President to the Commissioner of the Independent Commission Against Corruption.

As the arguments for this motion are substantially contained within the text, I commend the motion to the House.

Motion agreed to.

CIVIL LIABILITY AMENDMENT BILL**Second Reading****Debate resumed from an earlier hour.**

Ms SYLVIA HALE [2.42 p.m.]: I said earlier that this bill is appalling because it attempts to stigmatise the mentally ill as a dangerous section of the community. It seeks to deprive them of their equal rights under the law. It provides no real resolution of the problems that confront mentally ill people because of the fundamental lack of resources available to them within the hospital environment and, more particularly, outside that environment. There are too few resources, too few community services and too few psychiatric services available to them. That is the essence of the problem we should be dealing with rather than some bogus measure that panders to the worst instincts of the tabloid press. We should be confronting this problem, not offering solutions that merely serve to deprive people of their rights and further stigmatise them.

This legislation has been created specifically to interfere with current cases that have followed on from a high-profile precedent. This is a blatant case of the legislative arm of government interfering with the judicial wing, and it should not be permitted. Legislation should apply only to acts committed after the Act was passed. Applying it retrospectively to cases before the courts would be a complete misuse of parliamentary power, and it would be done for political purposes only. It must be opposed in principle for that reason, if no other.

The Government's argument in regard to wrongful birth hinges on the moral assertion that a healthy baby, no matter the circumstances of its conception, must be a good thing. That may be a potentially sustainable argument in a moral sense but in practical and financial terms there are clear arguments for doctors to be made liable for the consequences of their mistakes. They should not be allowed to be freed from the consequences of their errors. The argument itself is a slippery slope. For example, if all births are inherently good, should women be forced to go through with unwanted pregnancies? Should rape victims be required to bear children conceived by force? If not, then why should not those who effectively cause unwanted pregnancies be made responsible for the financial consequences of their actions?

I suggest that this applies even more when a woman, or a couple, seek sterilisation because their economic circumstances are such that they cannot afford to raise further children; they just do not have the money to do so. In that situation it is quite reasonable to suppose that in seeking sterilisation they are acting in the best interests of whatever children they have or may have in the future. It is a rational choice not to have more children. To deny compensation to the parents of a child born as a result of medical negligence is to commit that child to a life of deprivation. To deny compensation is to deprive a child born in circumstances where the parents cannot raise it appropriately of the right to an adequate life. It is the child, not the parents, who loses out in those circumstances—not only the child who was conceived after sterilisation but also any existing children.

People who decline to have a child because of impecunious circumstances should be entitled to damages to compensate for the costs of raising a child. This is not to say they will not value that child, or that the child is not a blessing, but the parents who are obliged to raise the child should certainly be compensated for the costs they have incurred because of the negligence of the medical profession. The Greens oppose this bill on a number of grounds, but particularly for the way it discriminates against the mentally ill. We say this legislation is aimed at appeasing the tabloids and puts a bandaid on the very real problems that confront the mentally ill in our community. It is not responsible, well thought out, considered legislation; it is simply a knee-jerk reaction.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [2.49 p.m.]: I oppose the Civil Liability Amendment Bill. The precedent of the Parliament interfering in the courts is going too far. The rights of individuals must be protected, and it is not our job to interfere in cases. The idea of society being regulated by tort law has its inherent problems. Certainly, in medical liability cases it is clear that the use of tort law to get quality control by fear, if one wants to call it that, is an effective solution to quality control in medicine. Interestingly, today I was notified that the Australian Competition and Consumer Commission has given approval for drug companies to hide what payments they make to doctors. That may seem totally unrelated, but the fact is that drug companies pay doctors' expenses and organise conferences.

Then in negotiations they choose whom they will sponsor to speak at those conferences. I have attended conferences where the speaker who was sponsored was the leading researcher of the drug company and had done research extravagantly favourable to that company. That effectively set the tone for the entire meeting

as the keynote speaker said that his company's drug was marvellous, and the whole weekend, which was supposedly an academic weekend, turned into a drug marketing exercise. If one is talking about quality control in medicine and secrecy, this case, although it has nothing directly to do with the legislation, shows that the need for quality control in medical education and feedback in a non-adversarial frame is important. Also, the idea that other factors distort medical quality control does not enter into it.

This bill seeks to address the outcome of two recent court cases, the Presland case and the Melchior case. Both cases are different; they are only united by the fact that they are being dealt with under the Civil Liability Act, they involve medical negligence and they have both sparked popular outrage. Both matters have been misreported with relevant facts omitted to suit the arguments being advanced. I will attempt to give the full and pertinent facts of both cases. The Presland case involved the killing of Kelley-Ann Laws in a suburb of Newcastle called Jesmond. Kevin William Presland, a 38-year-old electrician, was charged with her murder. Kelley-Ann Laws was the fiancée of Presland's brother. The death took place on 4 July 1995, hours after Presland was discharged from James Fletcher psychiatric hospital. Presland had been assessed by Dr Jacob Nazarian and was released into the care of his brother. Hours later Presland killed his brother's fiancée. Presland was charged with murder but was found not guilty on the grounds of mental illness. Following the trial he spent 18 months in the Long Bay prison hospital.

Subsequently, Presland successfully sued the Hunter Area Health Service for negligence and was awarded \$225,000 damages for pain and suffering and \$85,000 for loss of earnings. The basis of the claim was that the Hunter Area Health Service, through Dr Nazarian, was negligent in not detaining Presland under the provisions of the Mental Health Act. Presland went to John Hunter Hospital covered in blood due to a fight he had just had with a work mate, Blake, at Blake's home. Presland believed that Blake was inciting one of his pet rats to attack him. A fight ensued in which Blake hit Presland with a cricket bat. Police, who suspected Presland was suffering from mental illness, then took him from John Hunter Hospital to James Fletcher psychiatric hospital to be assessed. The case went before Justice Michael Adams in the Supreme Court, who said of Dr Nazarian:

It is clear that Dr Nazarian's attitude was that unless there were frank psychotic symptoms or suicidal intentions expressed at the time of the interview, he would not detain a patient.

Nazarian also said:

I cannot go and jump on everyone and put everyone on the wards because yesterday he was suicidal.

He went on to add that that included murderers. The point is that the doctor assessed Presland on how he presented at that time. It was a question of protecting the person from himself or others, and in a sense that is judged against the denial of liberty, which is taken seriously in society. From the practical point of view of a stressed doctor assessing patients in a short time, if there is a shortage of mental health beds the bar gets raised higher as to who gets admitted. Doctors who know that they will have to discharge a patient whose psychiatric state they may well be aware of are under a lot of pressure to give more weight to the denial of liberty and less weight to the argument that a person is at least a danger to themselves or others.

The mental health inquiry that I was responsible for setting up showed that there was a big shortage of mental health beds in New South Wales compared to the situation in other States and comparable jurisdictions. Worse than that, the home support services—which made the number of beds less critical and meant that fewer mental health beds were necessary because people would not get to such an extreme position—were in an even worse state than the number of beds alone suggested. So the State has some responsibility for this situation. There is a shortage of mental health beds which, consequently, puts doctors under pressure. If the proof of the pudding is in the eating, it would seem from the outcome that the doctor made an error of judgement. At the time the patient was presumably thinking mainly about the state of his body, having been hit by a cricket bat. That may have concentrated his mind on the immediate and resulted in a more down-to-earth, oriented, at times black, place. He then had to undergo many mental examinations, which would have been administered by Dr Nazarian, who made an error of judgement.

The question is whether doctors should be personally liable for such matters to the extent of huge damages being awarded. If so, the premiums paid by doctors simply cannot meet that degree of liability, because they are effectively running a huge welfare system from a very small payment base. Many doctors are leaving their profession because of medical negligence, and it is why I have said in this House on several occasions—and I do not want to flog the point now—that we need a system where some risk is accepted in medical cases. We also need a more open system so that mistakes are identified quickly and corrections put in

place. In that way we succeed at a preventive level, rather than ask, "What about the \$1 million case where you make a quadriplegic better off than he would have been if he were not a quadriplegic by the application of huge amounts of money after a very inefficient and expensive process?"

This bill will not affect the Presland award of damages because it is not retrospective. I note that the Liberal Party intends to move an amendment to make the legislation retrospective. That is a bad idea. Honourable members may recall the Kable bill, which attempted to keep Kable in gaol without regard to the decision of the courts. Indeed, the Parliament tried to usurp the court's decision by passing special legislation to keep one extremely dangerous individual in gaol. That individual is not in gaol and apparently is not doing anybody any harm. In fact, I could tell the House what that individual is doing at the moment, which might surprise some honourable members. I will not support the Opposition's amendment. I note also that the Government is appealing the damages awarded in the Supreme Court. It would be an abuse of process for the Government, on the one hand, to appeal and, on the other hand, to pass legislation to make the appeal redundant.

A Brisbane woman, Kerry Melchior, went to Dr Stephen Cattanaach, an obstetrician and gynaecologist, to have a tubal ligation. She told the doctor that she had her right fallopian tube removed during an appendectomy when she was 15 years old. In 1991 the doctor operated only on the left tube. In 1997 she gave birth to a healthy son. She then successfully sued the Queensland health department in a Brisbane court for medical negligence and was awarded \$103,672 for pain and suffering and \$105,000 for the cost of raising the son until he reached 18 years. The award of \$105,000 was appealed in the High Court by the Queensland health department and was dismissed. I have a more than casual interest in medical matters. The doctor took the woman's word that she did not have a right fallopian tube—presumably, it was taken out with her appendix. If it was a nasty appendectomy a considerably more aggressive approach may have been needed to check the position of the right fallopian tube—if there was one—and to isolate and sever it to stop any ova going down it. There may even have been a lot of scarring.

The doctor had the choice of either taking the woman's word that she did not have a right fallopian tube or doing a more extensive procedure, which could not have been hidden from the patient because of extra scarring and a more painful operation. Most patients complain about doctors not listening to them. The doctor could have done an extensive dissection on the right-hand side and subjected her to more pain and, possibly, prolonged her stay in hospital. If she were correct in her assertion that she did not have a right fallopian tube an operation on that side would have been unnecessary. At any rate, the court ruled that the doctor was negligent, which I dispute, although I am not cognisant of all the facts. Is it unreasonable for her to be awarded damages for raising the child? I ask for a more extensive change to medical liability. If in this case there was negligence it was of a minor nature—that is, the doctor made a judgment about the information the patient gave him about her right tube, assuming he was not just careless in not ligating the tube on the right-hand side.

My principle would be along the lines of Gilbert and Sullivan's "let the punishment fit the crime". For a minor error of judgment the punishment should fit the crime. The amount of error in medicine very rarely corresponds to the consequences. One may make a tiny error with huge consequences or a gross error with minimal consequences. That is why a more sensible means to deal with medical liability needs to be developed. This bill is a poor way to deal with liability and that is why these matters should be left to the courts. If there is to be a more comprehensive approach taken to medical liability, so be it. It is almost analogous to the workers compensation and personal injury claims that we dealt with yesterday. It was said that we do not want lawyers advertising what the law is because the number of cases could be reduced by simply not telling people about the law. Although this is an unsatisfactory situation we are simply singling out ways to fix it with a band-aid. I do not believe that this sort of legislation should be used to fix these problems. Therefore, I oppose the bill.

The Hon. Dr PETER WONG [3.04 p.m.]: I congratulate the Government on introducing the Civil Liability Amendment Bill. I also congratulate the Minister for Justice on giving the crossbenches a very good briefing note. In essence, there are two factual cases. In one case, a man killed a woman after he was discharged from a psychiatric ward. He was subsequently found not guilty of murder by reason of insanity and sued the hospital for negligently discharging him. He was awarded substantial damages for pain and suffering and lost earnings during his detention as a forensic patient. It is not the role of doctors to keep patients in hospital for as long as possible. It is impossible to predict how a patient will behave after he or she has been discharged from hospital. A patient's mental state during hospitalisation could be totally different after discharge.

The second case is one where the High Court decided for the first time that where a healthy child is born following a failed sterilisation the child's parents can recover damages for the costs of raising that child. Again, medically speaking, there is a well-recognised failure rate of tubal ligation. I cannot see why the birth of

a child is an injury or a burden to a parent. In particular, nowadays parents often take a wrong turn and have an abortion—with which I do not agree. It is ridiculous for people to try to claim compensation from a doctor. I totally support the bill.

The Hon. JON JENKINS [3.06 p.m.]: I understand the problem that the Civil Liability Amendment Bill is trying to address. These difficult problems delve into the very inexact medical and psychiatric sciences. The test really should be of a reasonable expert in that field, not one of the theoretical perfect practitioner. There is an element of risk in everything we do and I believe that compensation should be reserved for those cases of gross preventable negligence or some sort of accepted strict liability. I must admit that I would have more sympathy for denial if the compensation had gone to the victim in this case rather than the perpetrator of the crime, regardless of whether he was mentally incapable at the time. I would have some sympathy if that were the case. In fact, I asked whether the amendment could be amended to indicate that desire, but I am told that it cannot be.

Accordingly, I support the bill. It is a good thing that the Government is continuing to review civil liability legislation. I encourage it to continue with this process, rolling back many of the restrictive practices that have been imposed on the good citizens of this State as a result of outrageous litigation. I support the freeing up of activities that allow people to participate in manifold recreational activities, including access to our national parks and State forests, which have been prevented by the civil liability legislation.

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [3.08 p.m.], in reply: The Civil Liability Amendment Bill continues the Government's tradition of responding rapidly and effectively to community concerns about the courts' expansion of the law of torts. The bill directly addresses issues arising from two recent cases that have caused considerable community concerns. In the first case a man killed a woman after he was discharged from a psychiatric ward and was found not guilty of murder by reason of insanity, and sued the hospital for negligently discharging him. He was awarded substantial damages for pain and suffering and lost earnings during his detention as a forensic patient. The amendments concerning public authorities and mentally ill persons prevent a similar decision being made again. This bill will specifically protect people who are the victims of unlawful acts. Such victims need to be sure that they will not be required to pay damages to the attackers, regardless of the mental state of those attackers.

In the second case, the High Court decided for the first time that where a healthy child is born following a failed sterilisation the child's parents can recover damages for the costs of raising that child. There is a strong moral objection to such damages because they classify the birth and existence of a child as an injury to the child's parents. This moral objection was voiced by the community, which expressed serious concerns about the decision of the High Court. The amendments will prevent the recovery of damages for the rearing of a healthy child. In addition to addressing these two recent cases, the bill makes some minor amendments to the proportionate liability provisions of the Civil Liability Act in the interests of national consistency. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 4 agreed to.

Schedules 1 and 2 agreed to.

The Hon. GREG PEARCE [3.12 p.m.], by leave: I move Opposition amendments Nos 1 and 2 in globo:

No. 1 Page 11, schedule 3 [6], proposed clause 15 (3), line 26. Omit "However,". Insert instead "Except as provided by subclauses (4)-(6),".

No. 2 Page 11, schedule 3 [6], proposed clause 15. Insert after line 32:

(4) Section 54A (as inserted by the amending Act), in its application to proceedings commenced before 13 November 2003, applies only for the purposes of:

(a) any decision of a court in the proceedings that is made after the commencement of this clause, and

- (b) any decision of a court on an appeal in connection with those proceedings that is made after the commencement of this clause (even if the appeal was instituted before the commencement of this clause).
- (5) When section 54A applies under this clause for the purposes of the decision of a court, the decision is to be made as if section 54A had always applied to the civil liability with which the decision is concerned.
- (6) Subclauses (4) and (5) have effect only in so far as the legislative power of the Parliament of New South Wales permits.

The Opposition has moved these amendments for consistency and to ensure that the bill, when it becomes law, reflects the community's concerns in this area. Before I comment on the amendments, I reject the most outrageous comments of Greens member Ms Sylvia Hale in relation to this bill. Ms Sylvia Hale has not been a member of this place for very long, but one would hope that a woman with her experience could temper her comments and listen to the arguments and views of the community. Her outrageous comments were quite defamatory of Government members and Opposition members. No-one here disputes issues of resources and the need to assist the mentally ill. However, for her to have made such outrageous comments—she alleged that this sort of legislation discriminates against the mentally ill—is offensive to all of us. She should review the way she goes about some of these things. This bill is designed to close a loophole that was identified in the case of Presland, which allowed a convicted felon to profit from his offence. It is not discriminating against the mentally ill. This fellow had committed murder and this bill will bring into line the situation where the murderer has been able to—

The Hon. Dr Arthur Chesterfield-Evans: Killer.

The Hon. GREG PEARCE: The honourable member is right, the killer has been found not guilty for a particular reason. The Opposition has moved these amendments to ensure that—

The CHAIRMAN: Order! The Hon. Sylvia Hale is reminded that interjections are disorderly at all times. This debate has been conducted politely, without interjections, and that is the way it should continue.

The Hon. GREG PEARCE: The Opposition believes that these amendments are important because the bill is retrospective. I draw the attention of the Committee to the speech of the Minister for Health in the other place. He clearly indicated that the bill is retrospective and that at least two cases comparable to Presland are currently on foot, to which the bill will apply. This bill was specifically introduced after the Government mistakenly claimed that the prior civil liability legislation would ensure that these sorts of claims could not be made. The bill was introduced to correct the problem and we want to ensure, if it is going to be retrospective, that it extends to Presland. The law has to be changed so that anyone in the same position will be affected in the same way. I commend the amendments to the Committee.

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [3.16 p.m.]: The Government does not support Opposition amendments Nos 1 and 2. The provisions relating to unlawful acts by mentally ill plaintiffs will apply to proceedings commenced before the bill was passed, but not to proceedings that have already been determined by a court and are awaiting appeal. Therefore, the amendments will not apply to the appeal in the Presland case. The Government considers that the Presland decision was flawed and, even on the legal principles argued in that case, believes it is appropriate to let the Presland appeal run its course to allow the decision to be rigorously tested by the appeal judges. Regardless of the outcome of that appeal, the community can be confident that it will have no precedent value, as amendments proposed in the bill will ensure that there cannot be a repeat of the decision made in the Presland case. The bill will apply to two other cases similar to Presland's that are currently before the courts and have not been determined. If the State loses the Presland appeal, the Attorney General will consider strategies to require Mr Presland to repay the money awarded to him.

In relation to the more general issue relating to the mentally ill, it is important to remember that the bill the Government is advocating be passed is designed to protect victims of unlawful conduct. It will ensure people who act in self-defence or who are otherwise victims of unlawful conduct will not find themselves paying substantial damages to those who attack them or who invade their homes. The Civil Liability Act already ensures that persons injured while acting in self-defence will not be liable to pay damages to his or her attacker. The Act also prevents criminals who are injured in the course of committing a serious offence from recovering damages for their injuries. These rules are based on the principle that persons cannot be allowed to benefit from illegal conduct or from inflicting injury on others. Therefore, these protections should apply regardless of the mental state of a person engaging in the unlawful conduct. It would be unfair to make a victim of an unlawful

act pay damages to his or her attacker for pain and suffering or lost earnings because the attacker was mentally ill or could not be convicted of the attack.

The bill recognises that mentally ill people who commit criminal acts are not criminally culpable and therefore treats them slightly differently from criminals. While criminals are not entitled to any damages for injuries sustained in the course of committing an offence, section 54A allows mentally ill people injured in the same circumstances to recover damages for their medical and future care needs.

Question—That the amendments be agreed to—put.

The Committee divided.

Ayes, 10

Mr Clarke
Mrs Forsythe
Mr Gallacher
Mr Gay

Mr Lynn
Mrs Pavey
Mr Pearce
Mr Ryan

Tellers,
Mr Colless
Mr Harwin

Noes, 23

Dr Burgmann
Mr Burke
Ms Burnswoods
Dr Chesterfield-Evans
Mr Cohen
Mr Costa
Mr Della Bosca
Mr Egan

Ms Griffin
Ms Hale
Mr Hatzistergos
Mr Jenkins
Mr Kelly
Mr Macdonald
Reverend Dr Moyes
Reverend Nile

Mr Oldfield
Ms Rhiannon
Ms Robertson
Mr Tsang
Dr Wong
Tellers,
Mr Primrose
Mr West

Pairs

Ms Cusack
Miss Gardiner
Ms Parker

Mr Catanzariti
Mr Obeid
Ms Tebbutt

Question resolved in the negative.

Amendments negatived.

Schedule 3 agreed to.

Schedule 4 agreed to.

Title agreed to.

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

COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND THE POLICE INTEGRITY COMMISSION

Reports

The Hon. Jan Burnswoods, on behalf of the Chair, tabled the following reports:

Report No. 2/53, entitled "Eleventh General Meeting with the NSW Ombudsman", dated December 2003.

Report No. 3/53, entitled "Seventh General Meeting with the Police Integrity Commission", dated December 2003.

Ordered to be printed.

ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (QUALITY OF CONSTRUCTION) BILL**In Committee****Clauses 1 to 5 agreed to.**

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [3.30 p.m.], by leave: I move Government amendments Nos 1, 2, 3, 5, 13, 16, 22, and 24 in globo:

- No. 1 Page 3, schedule 1 [2], lines 15 and 18. Omit "head" wherever occurring. Insert instead "principal".
- No. 2 Page 4, schedule 1 [7], line 33 and page 5, schedule 1 [7], lines 1 and 2. Omit "head" wherever occurring. Insert instead "principal".
- No. 3 Page 6, schedule 1 [10], lines 21, 26 and 27. Omit "head" wherever occurring. Insert instead "principal".
- No. 5 Page 8, schedule 1 [19], line 24. Omit "head". Insert instead "principal".
- No. 13 Page 22, schedule 2.1 [4], line 3. Omit "head". Insert instead "principal".
- No. 16 Page 26, schedule 2.1 [23], line 31. Omit "head". Insert instead "principal".
- No. 22 Page 32, schedule 2.1 [36], line 9. Omit "head". Insert instead "principal".
- No. 24 Page 33, schedule 2.1 [44], lines 14, 30 and 31. Omit "head" wherever occurring. Insert instead "principal".

These amendments deal with the term "head contractor". The Government is seeking to delete the use of the term for the purpose of consistency and to replace it with the term "principal contractor", which is more reflective of terminology used generally in the industry. Of course, that change will not alter the definition of the term.

The Hon. PATRICIA FORSYTHE [3.31 p.m.]: The Opposition does not oppose these amendments. One of the Opposition's concerns is the lack of apparent consultation with industry groups in the drafting of the legislation. The fact that the legislation is now being amended to pick up terminology widely used in the industry confirms the Opposition's concerns.

Reverend the Hon. Dr GORDON MOYES [3.31 p.m.]: The Christian Democratic Party has been through the amendments and will support them.

Amendments agreed to.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [3.32 p.m.]: I move Government amendment No. 4:

- No. 4 Page 8, schedule 1 [19], lines 19-23. Omit all words on those lines. Insert instead:
 - (a) that a construction certificate or complying development certificate has been issued for such of the building work or subdivision work as requires development consent and over which the principal certifying authority has control, before the work commences on the site, and

The principal certifying authority will need to be satisfied that either a construction certificate or a complying development certificate has been issued before work can commence. This will ensure that development carried out under a construction certificate or complying development certificate is subject to the same set of rules.

Amendment agreed to.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [3.32 p.m.]: I move Government amendment No. 6:

- No. 6 Page 8, schedule 1 [19], line 26. Omit "as". Insert instead "if".

This amendment deals with the role of the principal certifying authority providing information about the principal contractor's details and insurance to the council. In some circumstances if their work is, for example, under a certain value, the holder of the contract or licence is not required to obtain insurance under the provisions of the Home Building Act 1999.

Amendment agreed to.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [3.33 p.m.]: I move Government amendment No. 7:

No. 7 Page 9, schedule 1 [19], lines 9-13. Omit all words on those lines.

The provision requiring the compliance authority to have obtained compliance certificates that it intends to rely on before issuing an occupation or subdivision certificate has been removed because the authority is entitled to use its discretion in deciding whether to rely on compliance certificates unless they are a condition of development consent imposed by a consent authority requiring a compliance certificate for certain matters.

Amendment agreed to.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [3.33 p.m.]: I move Government amendment No. 8:

No. 8 Page 9, schedule 1 [20], line 25. Insert "**principal**" before "**certifying**".

This amendment deals with the requirement to replace principal certifying authorities. It is required because of a minor drafting error.

Amendment agreed to.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [3.34 p.m.]: I move Government amendment No. 9:

No. 9 Page 18, schedule 1 [44], line 32. Insert "after that commencement" after "appointed".

This clause is a savings and transitional provision relating to the appointment of principal certifying authorities. The amendment makes it clear that if a principal certifying authority has been appointed before the new provisions relating to the role commence, those provisions will not apply. It is already the intent of the provision, and the amendment simply makes it clearer.

Amendment agreed to.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [3.35 p.m.], by leave: I move Government amendments Nos 10, 11 and 12 in globo:

No. 10 Page 18, schedule 1 [44], line 33. Insert "**principal**" before "**certifying**".

No. 11 Page 18, schedule 1 [44], line 35. Omit "certifying authority or".

No. 12 Page 18, schedule 1 [44]. Insert after line 37:

Restriction on issue of occupation certificates

Section 109H (1B), as inserted by the 2003 amending Act, does not apply to any building work that commenced before that amendment.

These amendments relate to the savings and transitional provisions and the replacement of certifying authorities. Amendment No. 12 deals with the transitional provisions relating to the restrictions on occupation certificates.

Amendments agreed to.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [3.37 p.m.], by leave: I move Government amendments Nos 14 and 17 in globo:

No. 14 Page 22, schedule 2.1 [4]. Insert after line 18:

Note. Principal certifying authorities and principal contractors must also ensure that signs required by this clause are erected and maintained (see clause 227A which currently imposes a maximum penalty of \$1,100).

No. 17 Page 27, schedule 2.1 [23]. Insert after line 12:

Note. Principal certifying authorities and principal contractors must also ensure that signs required by this clause are erected and maintained (see clause 227A which currently imposes a maximum penalty of \$1,100).

These amendments relate to the erection of signs on development sites.

Amendments agreed to.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [3.38 p.m.], by leave: I move Government amendments Nos 15 and 18 in globo:

No. 15 Page 22, schedule 2.1 [4], lines 30-38. Omit all words on those lines. Insert instead:

- (a) in the case of work for which a principal contractor is required to be appointed:
 - (i) the name and licence number of the principal contractor, and
 - (ii) the name of the insurer by which the work is insured under Part 6 of that Act,
- (b) in the case of work to be done by an owner-builder:
 - (i) the name of the owner-builder, and
 - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

No. 18 Page 27, schedule 2.1 [23], lines 24-32. Omit all words on those lines. Insert instead:

- (a) in the case of work for which a principal contractor is required to be appointed:
 - (i) the name and licence number of the principal contractor, and
 - (ii) the name of the insurer by which the work is insured under Part 6 of that Act,
- (b) in the case of work to be done by an owner-builder:
 - (i) the name of the owner-builder, and
 - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

These amendments deal with the notification requirements in the Home Building Act.

Amendments agreed to.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [3.39 p.m.], by leave: I move Government amendments Nos 19, 20, 21 and 23 in globo:

No. 19 Page 29, schedule 2.1 [32], line 20. Omit all words on that line. Insert instead:

Insert ", the construction certificate or complying development certificate for which was issued before the commencement of schedule 2.1 [32] to the *Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003*" after "class 10 building" in clause 156 (1).

No. 20 Page 30, schedule 2.1 [35], lines 9-14. Omit all words on those lines. Insert instead:

Note. These inspections are the *critical stage inspections*.

- (2) Except as provided by subclause (3), the critical stage inspections may be carried out by the principal certifying authority or, if the principal certifying authority agrees, by another certifying authority.
- (3) The last critical stage inspection required to be carried out for the class of building concerned must be carried out by the principal certifying authority.

No. 21 Page 31, schedule 2.1 [35], lines 15-24. Omit all words on those lines. Insert instead:

- (1) A principal certifying authority and each other certifying authority must make a record of each critical stage inspection carried out by the principal certifying authority or other certifying authority.
- (2) Any certifying authority who is required to make such a record but is not the principal certifying authority for the work concerned must forthwith provide a copy of the record to the principal certifying authority for the work.

Note. Copies of these records must be kept for at least 15 years (see clause 205).

No. 23 Page 33, schedule 2.1 [42]. Insert after line 4:

- (h) if the accredited certifier is a principal certifying authority, any copy of a record of a critical stage inspection provided to the principal certifying authority by another certifying authority.

Amendment No. 19 deals with the issuing of occupation certificates for class 1A and class 10 buildings. Amendment No. 20 deals with the requirement for a new regime of mandatory critical-stage inspections, which is a key part of the operation of the bill. Amendments Nos 21 and 23 clarify the responsibilities for keeping records of inspection.

Amendments agreed to.

Schedule 1 as amended agreed to.

Schedule 2 as amended agreed to.

Title agreed to.

Bill reported from Committee with amendments and report adopted.

Third Reading

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [3.41 p.m.]: I move:

That this bill be now read a third time.

The Hon. PATRICIA FORSYTHE [3.41 p.m.]: Before the bill is read a third time I wish to raise one outstanding matter. Despite the passing of the bill and the various amendments to it, the Opposition has not yet received a clear explanation from the Government about the 150 or so home owners across at least four local government areas who, over a period of about two years, have had their homes certified by an unlicensed certifier. Throughout the debate on this bill we have not heard what the future holds for these people. I ask that the Government give some indication about protection for these home owners.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [3.42 p.m.], in reply: The Government is aware of the situation to which the Hon. Patricia Forsythe refers. The Minister has the matter under advisement and intends to publicly announce the Government's position in the very near future.

Motion agreed to.

Bill read a third time.

CLYDE WASTE TRANSFER TERMINAL (SPECIAL PROVISIONS) BILL

Second Reading

Debate resumed from 19 November.

The Hon. PATRICIA FORSYTHE [3.44 p.m.]: The object of the Clyde Waste Transfer Terminal (Special Provisions) Bill is to enable the carrying out of development on certain land at the Clyde rail

marshalling yards for the purposes of a waste transfer terminal. The development is necessary because the development consent for the Woodlawn landfill facility requires that waste sourced from the Sydney region must be transported by rail to an intermodal terminal near the landfill facility. This requirement was imposed to mitigate the environmental impacts of the transport of waste to Woodlawn by road.

If we are to adequately deal with the issues of waste in Sydney and the many issues that have given rise to this legislation, the House should not pass the bill today. The House has three options: pass the bill; defer the bill in accordance with an amendment I will move shortly to allow for consideration of it; or defeat the bill. Defeating the bill will mean that Collex will have to either appeal the decision of the Land and Environment Court or perhaps seek to lodge a new development application. The Opposition's proposal is that the House should not pass the bill today but should refer the issues to the Standing Committee on State Development for inquiry. We are anticipating a short and sharp inquiry, but one that will go to many of the key issues that must be addressed as we analyse this legislation.

Most members would understand the significance of this bill. It is designed to overturn a decision of the Land and Environment Court—not an unusual objective given the Government's history in this place. However, it is not an action that should be undertaken lightly. As the Leader of the Opposition said on the day the Government announced its intention to introduce this special legislation, the bill is a blunt instrument. It is indeed a very blunt instrument. The Opposition rejects completely the crass politics of the Premier, who suggested that the Opposition's proposal puts at risk the future of miners from the Woodlawn area who are awaiting settlement of their compensation claims.

The Coalition has always supported the Woodlawn bioreactor proposal. We have supported it over the six years of its existence. At every turn we have done what we can to support the proposal. The remediation of the site is a positive environmental initiative, and it will obviously be significant for the settlement of the miners' claims. It is crass politics for the Premier to hold out these people as the bargaining chip for the way the House should vote on this legislation today. We want to see these miners looked after, we want the communities in the area to benefit from the Woodlawn bioreactor, and we know that in terms of regional development this proposal area is important for that area.

However, we have to deal with what we have before us today, which is a bill to overturn a decision of the Land and Environment Court. We are not dealing with the situation at Woodlawn, which was itself the subject of a comprehensive commission of inquiry. We are dealing with the Clyde waste transfer terminal. If the bill is passed, 137 conditions will be attached to it. I do not wish to be churlish about this. I have analysed the 137 conditions that will be imposed on Collex with regard to the Clyde waste transfer station, and I am convinced that if the bill is passed the operation of this waste transfer station would be the equal of best practice in Australia.

Notwithstanding the 137 conditions the matter failed in the Land and Environment Court both on legal grounds and on merit because the use of the site was deemed to be outside the Auburn local environment plan [LEP]. Rather than berate the Opposition for not accepting the legislation, the Premier should seek answers from the Department of Planning as to how the court was able to overturn the application on some fairly fundamental legal principles in regard to whether a waste transfer station was permissible under the LEP, and whether the proposal concerning Parramatta Road was possible under its objectives.

The Department of Planning should have given better advice about these fundamental planning issues in the first instance. It should have worked with Auburn Council and Collex rather than see the matter lost in the Land and Environment Court on legal principles. These are the issues that we now have to deal with if we accept this legislation. We believe there are many more fundamental issues. The Government says we must act now to pass this legislation because Sydney's landfill capacity is almost at crisis point, and if we go beyond 2006 the crisis will become acute.

Everything the Opposition has learned about this case suggests that Collex does not have to operate its own waste transfer station for the Woodlawn bioreactor proposal to work. That is the crux of the whole issue. Collex has been forced into a situation in which, in order to operate Woodlawn, it has had to establish its own waste transfer station. That was not its preferred position, and it is certainly not the optimum situation for the people of Sydney. This whole process could have commenced much earlier had Waste Service NSW been more amenable to working with Collex to find a solution. But it is perfectly clear that it put a number of obstacles in the way of finding an appropriate solution for Collex. At the end of the day, given that it had a development approval for the Woodlawn bioreactor, the only way forward for Collex was to seek to use the Clyde terminal to create its own waste transfer station. I do not hold that against Collex at all.

It could have been granted access to other waste transfer stations in Sydney. Access to even two waste transfer stations, with access also to rail facilities—or, indeed, to use Clyde as a railhead only—would have ensured a commercial supply. Waste could have been compacted on site at other waste transfer stations. So where is the fundamental problem? After analysing the facts, it would seem that the fundamental problem lies with Waste Service NSW, a service that has not received glowing references for a number of years, particularly from the Auditor-General. In its previous guise Waste Service NSW was criticised by the Auditor-General in 1999, 2000 and 2001. It is enlightening to read what the Auditor-General's most recent report, Volume Six of 2003, says about the Waste Recycling and Processing Corporation. On page 244, dealing with compliance issues, the report states:

The Corporation failed to comply with a number of requirements for State Owned Corporations.

It sets out three points, the third of which is most telling:

The issues identified include:

- it did not submit 2002-03 draft Statement of Corporate Intent (SCI) to the shareholders within one month of the start of the year.
- it did not deliver the 2002-03 completed SCI to the shareholders within three months of the start of the year.
- it did not include a statement about how the Corporation had exhibited a sense of social responsibility when it tabled its 2001-02 audited financial statements and audit opinion.

The Corporation complied with the requirements of the SES guidelines.

In 2003 criticisms are still being made about the organisation, and in particular how it takes up its social responsibility. I wish now to indicate the direction the Opposition will take. I intend to move an amendment, which will in no way preclude debate on the topic, but the House will have an opportunity to vote on it before it votes on the motion. I move:

1. That the question be amended by omitting the words "now read a second time" and inserting instead "referred to the Standing Committee on State Development for inquiry and report".
2. That, notwithstanding the generality of paragraph 1, the Committee examine in particular the following matters:
 - (a) the conduct and outcome of negotiations for Collex Pty Ltd to achieve fair and commercially acceptable access to existing waste transfer stations in metropolitan Sydney for the purpose of transporting waste to the proposed Woodlawn Bioreactor facility, including why the CEO of Waste Service NSW wrote to Collex Pty Ltd on 26 August 2003 to "formally withdraw all previous offers made for transfer station access",
 - (b) the risk to the viability of the Woodlawn Bioreactor project due to the failure of the NSW Government to provide Collex Pty Ltd with access to Waste Service NSW waste transfer stations,
 - (c) the negotiations undertaken and agreements reached by Waste Service NSW for any other commercial operators to access waste transfer stations during the period Collex Pty Ltd has been involved in negotiations related to access to such facilities in connection with the Woodlawn Bioreactor project,
 - (d) the roles and actions of the Waste Service NSW, current and former Ministers, ministerial staff, and consultants in respect of negotiations concerning the Woodlawn Bioreactor facility and access to Waste Service NSW waste transfer stations,
 - (e) the roles and actions of the Waste Service NSW, current and former Ministers, ministerial staff, and consultants in respect of negotiations concerning the following matters:
 - (i) the decision not to proceed with the proposal to use Porters Creek Reserve as a waste transfer station,
 - (ii) the approval of a new, and proposed new, stage developments at the Eastern Creek landfill,
 - (iii) attempts to vary the conditions of the mediated agreement between Waste Service NSW and Sutherland Shire Council for the future operation of the Lucas Heights landfill,
 - (f) any other matters arising from or incidental to these terms of reference.
3. That the Committee report by 26 February 2004.

The amendment is lengthy. However, it shows that many important issues need to be examined and answered if we are to properly consider the bill before us today. If we are to overturn the decision of the Land and Environment Court, which is not a decision the House should take lightly, we should understand what happened prior to the court case. For example, in the terms of reference I referred to a letter dated 26 August from the chief executive officer of Waste Service NSW to the managing director of Collex. The letter stated:

As the situation has changed significantly since Waste Service NSW last provided Collex a quotation for this service, I take this opportunity to formally withdraw all previous offers made for transfer station access.

That gives rise to many issues. What happened before that? Why did Waste Service NSW withdraw the offers? How did Collex find itself in this position? The Opposition is not criticising Collex, but we want to understand the whole situation. Indeed, in a letter dated 5 June to Waste Service NSW, Collex makes a plea to Mr Tony Cade about its desire to work with Waste Service NSW for the better management of Sydney's waste if and when the Clyde project is finally approved. The letter stated:

It seems to us that it would be foolish for both parties to ignore the possibility of Collex using existing Waste Service transfer capability (particularly Ryde). The importance of this has of course been noted in the past by the Minister for the Environment.

If this was noted in the past, what led to the withdrawal of the offers to Collex on 26 August? What is this all about? It is not at all clear to the Opposition, and I am sure it is not clear to the House. The editorial in today's *Sydney Morning Herald* is significant, and I am sure honourable members will have noted it. I draw the attention of honourable members to the final paragraph of the editorial, which explains why our proposal is the better way forward. The editorial stated:

Mr Carr tried to hurry legislation through the Parliament to overcome a court ruling he did not like. He sought to exploit the hardship of the miners. The issue would have been resolved if, instead, he had encouraged renewed negotiations between Collex and Waste Service NSW, with a view to having Collex use one or more of the existing waste transfer stations. Garbage could be compacted close to where it is collected, transferred to Woodlawn and used as landfill. It is not a difficult problem.

That is our contention, and it is the basis of our motion. For completeness, and so the House understands this, the Clerks of the Legislative Council, in their wisdom—often they tidy up what we say, perhaps to the point of cleansing it beyond that which members might find desirable—have provided a form of neat and tidy words for the House to pass. However, I do not want the House to miss the points I am making, some of which are telling. The amendment refers neatly to "current and former Ministers, ministerial staff, and consultants". Let me be quite clear in relation to that.

My motion as drafted also requested the dates, purpose, documentation and outcomes of any meetings with any government representatives or Ministers involving consultants Ms Belinda Neal and Mr Shane Easson in respect of Collex Pty Ltd applications and negotiations on the Woodlawn, Clyde or associated proposals. I have lost some of the names on the way through, but I am sure that if we move down the path of a short, sharp inquiry they would have emerged anyway. I do not want it to be lost on the House that there is unfinished business. There are allegations flying around the State about undue influence by people who are known to be close to the Government.

It is terrible to use clichés when we are dealing with waste issues, but there is a bit of a smell about this whole proposal. We think it is appropriate that the Standing Committee on State Development examine the matter because at the end of the day this is about important regional issues—issues that will be important for the Woodlawn miners, the whole Goulburn region and Sydney's future in terms of waste management. The Auburn community has been let down considerably. Local residents took up the case, including a case in the Land and Environment Court. I suspect that the Government did not bother to look at the Auburn local environment area, and one could conclude that it has taken the Auburn community for granted. There are five existing waste facilities in the area.

I would have thought that some time ago the Government should have said to the Auburn community, "Let us look at relocating some of the existing facilities, for example the liquid waste facility." Maybe there could have been better dialogue between the people of Auburn and the Government. Perhaps the Government could have shown that it understood that the Auburn community is bearing the brunt of being the repository of much waste in the Sydney region, and the trucks and noise that go with that, and that it understood the interrelationship between waste industries generally and the community. The introduction of this bill to override the Land and Environment Court decision shows that the Government has taken the Auburn community for granted. It takes courage to do what the community has done, represented by two individuals.

The Hon. JAN BURNSWOODS [4.07 p.m.]: I shall speak briefly on the amendment moved by the Hon. Patricia Forsythe. I did not intend to address the entire amendment, which is worded strangely. I am shocked by paragraph 2 (e) (a) of the proposed terms of reference, which states:

... the decision not to proceed with the proposal to use Porters Creek Reserve as a waste transfer station.

The Hon. Michael Egan: Use what?

The Hon. JAN BURNSWOODS: The Opposition is launching an attack about the decision not to proceed with the proposal to use Porters Creek Reserve as a waste transfer station.

The Hon. Michael Egan: They have kept that quiet.

The Hon. JAN BURNSWOODS: They have kept that very quiet. Porters Creek is in north Ryde, on the edge of Lane Cove National Park and the Lane Cove River. For some years John Watkins, the honourable member for Ryde, has fought to stop Ryde Council and others in the area from developing an enormous waste transfer station at Porters Creek to take all the waste from every North Shore council, sort it and send it elsewhere by road. Calculations have been made of thousands of truck movements a day. For the Liberal Party to put on the table a proposal to develop—

Mr Ian Cohen: You're going to dump it at Auburn on half the land.

The Hon. JAN BURNSWOODS: The comments from the Greens are very interesting because they apparently have no concern about a proposal to put it on a site right on the edge of the Lane Cove National Park, alongside the Lane Cove River, where 30 years ago—

The Hon. Rick Colless: Point of order: The Hon. Jan Burnswoods said that this amendment allows for the Porters Creek Reserve to be used as a waste transfer station, but that is not what the amendment says.

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): Order! That is a debating point and not a point of order. However, if the member is taking a point on relevance, I will accept it.

The Hon. Rick Colless: I ask you to bring the member back to relevance. The point the honourable member made was completely irrelevant.

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): Order! I remind members that their contributions to debate should be relevant. I advise members that interjections are disorderly at all times. I will not be particularly tolerant of members interjecting during this debate. There are many people in the gallery who have come to listen to the debate, and if they cannot hear the debate because of the disorderly behaviour of members I will be compelled to call to order those members who interject.

The Hon. JAN BURNSWOODS: I do not intend to detain the House for a great deal of time because I do not pretend to have knowledge of many issues in relation to Woodlawn and Clyde, but I do know a great deal about the situation in North Ryde. Since the old Ryde tip was closed just over 30 years ago there have been huge problems with leachate pouring through the subsoil at the edge of the Lane Cove National Park and finding its way into the Lane Cove River. I was surprised by the comments from the Greens. I am shocked that the Liberal Party in this House, while pretending to object to a proposal somewhere else in Sydney, has returned to the totally discredited proposal to put back on the table a proposition to use Porters Creek Reserve in North Ryde as a site for a waste transfer terminal.

That is absolutely appalling, and is typical of the Liberal Party. It is floundering around trying to think of something to say about this legislation so it has revived the proposal of the North Ryde site. That proposal is not only dangerous to the national park and the river but it would create pollution and inconvenience to all residents in the area. The site has poor access right on the edge of the bush and the river and if the proposal were implemented there would be endless truck movements in and out of the area. I deplore the actions of the Liberal Party in putting this proposition back on the table.

Ms SYLVIA HALE [4.15 p.m.]: Without doubt this bill represents the most discreditable piece of legislation I have encountered since being elected to Parliament in March this year. It is alarming for the Government to think it acceptable to circumvent and undermine the planning system because it disagrees with a judicial decision. To ram through legislation to wilfully dismiss the wishes of the local community, ignore the environment and nullify the rule of law is reprehensible. It is the type of government behaviour one might expect in small African or Latin American dictatorships—but generally not in what is supposed to be an open and transparent democracy. And there is the nub of the matter, because democracy Carr Labor Government-style is far from open and transparent.

The story of this bill takes us on a sorry journey that has seen the State's waste reduction targets abandoned and the largest ever contract between a private company and the New South Wales Government,

binding for 30 years, signed in almost total secrecy. The end result will be a mega tip at Woodlawn, situated on the edge of Sydney's water catchment, that will undermine more than two decades of waste avoidance and minimisation initiatives. Add to this the horrendous environmental and social impacts in suburban Sydney, throw in a few political donations, and we have a very sorry tale of secretive, deceitful, dishonest government.

It is ironic that a Government so tough on law and order is so keen to dismiss the umpire's decision. The rule of law is the ultimate arbiter in contests of competing interests. If either side is unhappy with the umpire they are free to lodge an appeal. This fundamental characteristic of our legal system underpins our society. But Bob Carr's Government is above the law. The Government and its mates at Collex do not like the outcome in the courts, so we are being asked to pass a bill to move the goal posts. The Greens also note the irony of a Labor Government eager to ride roughshod over the residents of Granville, Auburn and Clyde in order to deposit the garbage of the affluent North Shore onto this largely working class community.

This is truly a case of Labor dumping on its heartland. It is reminiscent of Labor's past attempt to build an incinerator in Alexandria in order to dump waste from the eastern suburbs onto another working class area, and also—for the benefit of the Hon. Jan Burnswoods—of when Marrickville Council endeavoured for many years to close the Tempe tip, but was prohibited from doing so by the Labor Government of the time. Now, as a result, the people of Marrickville, who had to endure the odour and the vermin from Tempe tip, have to pick up the costs of its remediation. In the case of the Alexandria proposal, after huge community opposition it eventually became economically and politically untenable.

Let me say at the outset that this bill has absolutely nothing to do with the entitlements of 175 workers who lost their jobs when Denehurst, the company that operated the Woodlawn mine, went bankrupt in 1998. The Greens wholeheartedly support the workers getting their full entitlements. They should have received them years ago. Instead, the Government has cynically held out the promise of these entitlements to cloud the issues in the Woodlawn proposal. Employees lost \$6.5 million in entitlements because the Government failed to have in place the necessary legislative protections at the time the mining company collapsed. The same Government failed to hold the mining company accountable for the appalling environmental mess it left behind at Woodlawn.

It is Labor that failed to legislate to protect the workers in the first place, and it was Labor who could have stepped in at any time and paid the entitlements. What is appalling is that these workers have been in a state of limbo, effectively blackmailed by the Government and Collex for more than four years. An article in the August 2002 industrial relations newsletter "Workforce" illustrates the extent to which both Collex and the Government have played politics with these workers. It stated:

The 160 Woodlawn Mine workers sacked when the mine went bust in 1998 could receive a further 25% of their entitlements within five weeks if the approval for a new waste transfer station at Clyde is not opposed, according to Collex Waste Management. Director, Richard Berry, told WFNSW. Workers had this year received the first 25% of \$6.5 million in outstanding entitlements, and the next 25% would be paid after the 28-day objection period has passed without opposition. Berry said Collex, a secured creditor for the Woodlawn Mine, had stood aside so workers could be paid their first 25%. He said NSW Minister for Planning, Dr Andrew Refshauge, approved the waste station on Aug 28 but an appeal could come from any group that lodged original objections, including environmental groups or the local council. He said the other 50% would be paid "when the waste starts going into the hole", or six months after consent in April 2003.

This kind of rhetoric attempts to ignore that the workers' entitlements have nothing to do with any later use of the site. It should not matter what happens in negotiations between Collex and the Government. Entitlements are entitlements, and they do not change depending on the future prospects of the former employer or its assets. These people were not shareholders who ventured their money on the success of a business. They should not have to wait, as if they were shareholders, for the company to turn a profit before they get any payments. Let us remember that they were employees who did a fair day's work and now are being deprived of their fair day's pay. That is the meaning of an entitlement, no matter how much the Government and Collex want the workers to forget it. As recently as two weeks ago the Premier gave the workers another kick. Bob Carr knows that the viability of Woodlawn as a mega tip does not hinge on the transfer station at Clyde.

There are other alternatives to transferring the waste at existing regional hubs for the journey to Woodlawn. Yet despite this, the Premier has been peddling the line in the media that the workers' entitlements are under threat. It was his Government that linked the entitlements to the mega tip in the first place. This was one dishonest and deceitful step, and now he is attempting to take another by saying that the workers rely on the success of the waste transfer station. The workers' entitlements and the waste transfer station are entirely separate issues. The fact is that Collex will make millions more in profits if it can force Sydney's garbage truck network to deliver waste to a single one-stop transfer station, rather than rely on the existing network of transfer

hubs. Despite opposition from local residents and the environmental impacts of up to 200 garbage trucks per day travelling across Sydney from the North Shore to Clyde, this is how Collex wants it. The Premier is doing all he can to ensure the company gets what it wants. In every aspect, the demands of the company represent the real driving force behind this bill.

Collex is a subsidiary of Veolia, which changed its name from Vivendi Corporation in April this year. Vivendi is a French multinational corporation with a global revenue of around \$50 billion per annum. The scope and scale of Vivendi's operations make the eyes water. The corporation stretches across 100 countries and a plethora of business areas including water engineering, waste processing, entertainment, telecommunications, film and television. Vivendi owns well-known brands such as Universal Studios, US Cable, Sega Gameworks, MCA records and Cegetel, France's largest phone company. This is not a family-run, dump truck operation. Around the world Vivendi is notorious for its corporate practices. In Paris and New York it is under investigation for overvaluing its assets. In its home country of France it has been found guilty of numerous counts of fraudulent behaviour and government bribery. In France Vivendi controls 50 per cent of the privatised French water market.

In 1985 the Mayor of Paris was found guilty of signing a contract that involved fraudulent accounting that enabled Vivendi to hide massive profits. Separate inquiries have uncovered a "pact of corruption" as it is called in France, involving Vivendi financing the political campaigns of Jacques Chirac's RPR party in exchange for public contracts worth millions. One inquiry found collusion with public servants that involved direct illegal commissions to the RPR. Between 1989 and 1995 these contracts were worth \$3.3 billion and funnelled \$86 million through to the RPR. In 1991 the mayor of Ostwald, in Strasbourg, resigned after accusations of receiving illegal pay-offs from Vivendi. He did not deny the allegations, but instead claimed they were a normal part of doing business.

Five years later Vivendi's then deputy director general, Jean-Dominique Deschamps, was sentenced to 18 months in prison after being found guilty of paying illegal commissions to political parties. The following year, the former mayor of Angoulême was sentenced to two years' prison for accepting bribes from Vivendi. The illegality and political corruption does not stop in France. In Italy the Milan city council president was sent to gaol for accepting bribes from a Vivendi subsidiary. The evidence is clear. Vivendi has no qualms about doing whatever it takes in seeking to control governments and political parties. The Vivendi global empire includes control of up to 10 per cent of the world's privatised water concessions. Through its subsidiaries Vivendi—now Veolia—owns major contracts in China, South Korea, India, the Middle East, eastern and western Europe, Africa, Latin America, Canada and the United States of America.

Here in Australia Vivendi took over the private consortium controlling Adelaide's water and sewerage system in 1997. For months the city was engulfed by a foul smell of sewage. Initially it was blamed on the weather, but investigations eventually found that equipment failures and inadequate monitoring were the cause of the problem. Vivendi had cut corners at Adelaide's four wastewater treatment plants to the extent that raw sewage was allowed to be flushed into settling ponds. The University of Queensland academic Ken Harley, who uncovered the problem, reported:

It was dollars driving everything. The big emphasis was on minimizing costs. The incident is an illustration of what can happen when things like monitoring and maintenance are cut to the bone.

This was Australia's initiation to the Veolia way of doing business. Now we have the Clyde waste transfer station. The New South Wales Government has signed one of the largest ever commercial contracts with this same company—under the name of Collex, but a subsidiary completely controlled by Veolia—to process Sydney's waste. We are left to hope it does a better job with the smell of rotting garbage in Granville, Clyde and Auburn than it did with Adelaide's sewage. The Government has gone to extreme lengths to keep the details of the contract with Collex secret. The Government has claimed that information that should be made public to the people of New South Wales is commercial in confidence. In the House on 18 November I asked the Treasurer the extent of exposure of New South Wales taxpayers if the waste transfer station does not proceed. He refused, as ever, to answer the question. Despite repeated calls from the community and approximately 1,600 submissions opposing the Clyde development the Government has consistently refused to reveal the extent of potential contractual liabilities.

Taxpayers and the people of New South Wales have a right to know why the State's waste reduction target has been abandoned and why a contract based on volume has been signed with a multinational company. The company is to be paid per tonne of waste transported. Under this contract the more rubbish the more profits. My colleague Mr Ian Cohen will address the consequences of this bill from an environmental perspective, and I

commend his comments to everyone in the House. This is not a minor matter; this is nothing less than the beginning of a new era of waste generation with a financial incentive built in. As my colleague Ms Lee Rhiannon revealed in this House not long ago, Collex has made substantial political donations to the party currently governing this State. In 1998-99 Collex donated \$33,450 to the Labor Party in New South Wales, in 2000-01 its generosity reached \$52,200 and in 2001-02 it donated \$3,300. That is a total of \$88,950 in four years. And these are only the donations we know about.

The Hon. Dr Arthur Chesterfield-Evans: What about the other subsidiary companies?

Ms SYLVIA HALE: That is a very interesting question that could occupy the time of whichever committee examines this proposal. The final thread in this web of self-interest consists of two Veolia subsidiaries, Wyuna Water and General Water, which have the contract to monitor and filter drinking water for millions of Sydney and Illawarra residents. The drinking water catchments for these cities fall within the area that would be affected should contamination leach from the mega tip at Woodlawn into the water table. This means that two different arms of the same foreign corporation will operate the mega tip, monitor the dump for leachate going into the water table and treat and monitor Sydney's drinking water. As if we have not have enough problems to date with Sydney's—

The Hon. Dr Arthur Chesterfield-Evans: That has possibilities.

Ms SYLVIA HALE: The prospects for this inquiry are very interesting. The tentacles of this somewhat corruption prone organisation are also interesting. This corporation is renowned for corruption and for cutting corners on maintenance and monitoring, including in Australia. What on earth is the Government up to?

The Hon. Dr Peter Wong: Money.

Ms SYLVIA HALE: I think there is a lot to be said for that assessment. A very murky picture is beginning to emerge. Let me lay it out clearly. This multinational corporation has a demonstrated international history of corrupting the political process through donations, government kickbacks and pay-offs to silence opposition. The State Government has backflipped on its waste reduction target and signed a 30-year, multibillion-dollar secret contract after accepting donations of nearly \$89,000. And there is a network of cross-ownership and secret dealings that will place the environment and health of literally millions of Australians in the hands of this company, despite its record of mismanagement and corruption. I think it stinks from beginning to end, and it will continue to stink.

I turn now to what really disturbs me. In the past few days a further disturbing development has begun to emerge. I have been told by local community activists, many of whom are well-known after years of fighting this development, that they are being physically intimidated. Approximately eight weeks ago Manuel Ferrada had his house broken into. Nothing was stolen but papers on his desk were rifled through. Twice in the past few weeks he has observed a large four-wheel-drive parked outside his house with a person inside appearing to take notes. Yesterday his car was tampered with. I do not regard what I am about to say as a matter of levity. Someone played with the electrics so that the rear lights and indicators no longer operate, and his tyres were spiked. A number of community activists specifically asked to be named so that they will be guaranteed some protection against further attacks, but some are fearful that their naming may induce more attacks so they have requested that they not be named.

Another active member of the Auburn Community Alliance, who has asked not to be named, has also had his tyres spiked in the past few days. Ed Mason, another community activist who has been fighting Collex and the State Government for years, has had people prowling around his home late at night. Yesterday a woman in a brand new Audi sideswiped him when driving at approximately 70 kilometres per hour as he opened the door to get out of his vehicle parked outside the Lakes Shopping Centre at North Parramatta. He was almost killed. Mr Mason has filed reports with the police. If these issues are linked it is a very disturbing matter indeed. Mr Mason is so fearful for his safety that he is contemplating moving his mother, wife and small son to a secret safe house. If we are seeing the systematic intimidation of community activists in the Auburn area it is an extremely serious development.

The Hon. Michael Egan: Who are you suggesting is doing this intimidation?

Ms SYLVIA HALE: I leave it up to your imagination. You may suggest people.

The Hon. Michael Egan: I think it is a case of your imagination going a bit wild.

Ms SYLVIA HALE: I would hate to be sideswiped in a car, a brand new Audi going at 70 kilometres an hour.

The Hon. Michael Egan: You are making imputations against—

Ms SYLVIA HALE: I am not making any imputations or innuendoes. I leave it to members to draw their own conclusions. I am not drawing any for them. Today the Government is trying to ram through legislation designed to circumvent the rule of law. Justice Neal Bignold referred in his final determination in the Collex case to the "unsuitability of the development [Clyde] site to accommodate a waste transfer station because of its adverse environmental, economic and social impacts and its adverse precedential planning effect". That is why he found against the project. Justice Bignold found in favour of Auburn Council and the local residents on not one or two points of law but on each and every single point before the court. On all four points of law and on all six points of merit the judge found against Collex and the Government. What was the Carr Government's response? To ignore the courts and the community, and ram through this bill. Its arrogance is astonishing.

The Greens condemn the Government's behaviour. We are also deeply disturbed that the Opposition has refused to take a determined stand against this arrogant and self-serving attack on our legal system. Irrespective of the Opposition's position on the waste transfer station, no government is or should be above the law. It is the role of Opposition parties to hold the Government to account. On this occasion the Opposition, unless it steadfastly opposes this bill outright, will have failed. The Greens oppose the bill. We oppose the construction of a mega waste transfer station at Woodlawn. We oppose the Government's attempt to overrule the courts in Parliament. The Greens will continue to stand by the residents of Auburn in defiance of this project. We will continue to condemn this Government's subservience to the interests of multinational corporations and its disregard for the environment, health and amenity of its own constituents. We call upon the Opposition to join us in rejecting this bill and exposing the secret deals that are driving the Government's desperation on this issue.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [4.40 p.m.]: The Australian Democrats oppose the Clyde Waste Transfer Terminal (Special Provisions) Bill. We believe it seeks to usurp the recent Land and Environment Court decision in *Drake and Others, Auburn Council v Minister for Planning and Another, Collex Pty Ltd* [2003] NSWLEC 270. I have great admiration for the residents of Auburn, particularly John Drake and Allan Brzoson, for taking on the Land and Environment Court, for pursuing their quest and working to achieve redress from the law, which is the purpose of the law. If we are to have courts it is extremely important that the decisions of those courts be respected. They must be respected by the people at the bottom end of the scale and the top end of the scale—that is, the Government. It is not appropriate for people to fight for justice through the courts, where the evidence is weighed carefully over a long period and according to rules that this Parliament sets, only to have the court's decision thrown aside. Court decisions should not be taken lightly and the separation of powers is extremely important. We must have due process.

The Boilermakers principle of law is that the person who makes the law and the person who administers the law should be separate. This bill is a total violation of that concept. Joh Bjelke-Petersen was much criticised for his lack of knowledge of the principle of the separation of powers, but that is exactly what this bill is all about. The Government set the rules and I presume that it believes the environmental principles and planning on which the court based its decision are well thought out and sound. The judgment has been well written and the court has taken the issues into account very competently. It has appropriately applied what the Government presumably believes is good law, and that should be the end of the matter. The Government should not be even suggesting legislation like this.

The case referred to concerns the proposed Collex waste transfer terminal at the Clyde rail marshalling yards. Questions were raised about whether the development was permissible under the local environmental plan, the zoning characterisation of the development for the purposes of the local environmental plan [LEP], whether the proposal was consistent with zone objectives, whether the development was part of staged development and the severity of adverse environmental impacts of the proposal, especially odours drifting to nearby residences. The Collex terminal is a crucial component of the State Government's waste management strategy. Up to 500,000 tonnes of waste a year would be accepted at the transfer terminal and disposed of by transportation to the Woodlawn bioreactor. Collex has a \$1 billion contract with the State Government to transport putrescible, or decomposable, domestic waste to Woodlawn near Goulburn in an abandoned open-cut mine. I will take up the definition of that waste later.

A commission of inquiry conducted in 2000 recommended that the waste be transferred to the site by rail. The transfer station, where waste would be compacted into freight containers and placed into trains for moving to the landfill site, is the Clyde rail yard near Duck River. The proposed Collex transfer station was to replace seven of Sydney's domestic waste stations. Full containers would be stored at the FreightCorp intermodal only until the next train arrived or for periods of up to 18 hours. Initially, one train each day would arrive at the transfer terminal between 10.30 p.m. and leave the site at about 3.00 a.m. The train would carry up to 50 waste containers from the terminal to the Crisps Creek intermodal facility near Woodlawn. The court transcript states that the Clyde intermodal facility has been owned and operated by FreightCorp since 1 July 1996 and was previously owned and utilised by the State Rail Authority as a goods yard and for other rail-related purposes.

For at least the past 15 years the intermodal facility has been used for the transfer of containerised freight between road and rail. Vehicle movements are estimated to have been as high as 350 container trucks a day. FreightCorp advised Collex that, in anticipation of the container transport contract, the Clyde intermodal facility has not been operated to its potential capacity. After factoring in the Collex proposal, container movements would not exceed previous operational movements. FreightCorp intends to carry out works at the Clyde intermodal facility to improve overall container management for Collex and other customers requiring the removal of tracks and the construction of a hardstand area. Accordingly, these changes would require the transfer of some train handling activities from the Clyde intermodal facility to the Enfield marshalling yards. After allowing for train movements for the Collex proposal, an overall reduction in train movements is expected in the Clyde rail yard.

The Land and Environment Court held that the proposal was a prohibited development and that even if it were development for a permissible purpose—that is, a freight transport terminal—development would be precluded by the operation of sections 9 (5), 22 and 64 of the LEP. The court also argued that although the environmental impact statement and the supplementary environmental impact statement are legally sufficient, they contained a material omission—that is, there was no environmental impact assessment of FreightCorp activities relating to the development—and were inadequate in their analysis of alternative sites.

The court held that due to the requirements of the Environmental Planning and Assessment Act, section 79C, development consent should be refused because of the inadequacy of the assessment of environmental impacts by virtue of there being no assessment of the cumulative environmental impact of the activities to be undertaken by FreightCorp; the inadequacy of the investigation and analysis of alternative sites; the likely adverse environmental impacts of the proposal in terms of odour, dust and noise emissions; the impracticability of all of those adverse impacts being effectively mitigated by the suggested regime of conditions of consent; the likely adverse social and economic impacts on the local community of the proposal; the adverse planning precedent created for the planned and orderly development of industrial enterprise 4C zone and of the Clyde rail marshalling yards by the proposed development because of its inherently environmentally inimical nature and the propensity for it to attract similar environmentally offensive developments in a clustering and escalating effect; and the unsuitability of the development site to accommodate a waste transfer station because of its adverse environmental, economic and social impacts and its adverse precedent planning effect, notwithstanding its obvious convenience as an existing intermodal transport facility.

Collex has been negotiating with Waste Services New South Wales about getting access to the waste transfer station. However, it has been unsuccessful for some reason or another. Collex has made the point that it does not make any extra money from the trucks coming to Clyde because it contracted with the companies delivering the waste that it would pay a transport subsidy if the distance being covered was further than they had previously travelled. Collex will not make more money because waste has to be brought the extra distance. It says this is slightly in favour of the people delivering the waste because Collex did not want them to oppose the development of this site.

The commission of inquiry gave Woodlawn the go-ahead on certain conditions and amid much controversy the Government then sold the site to Collex. But a government corporation made it difficult for Collex to gain access to its waste transfer stations, which are essential for the shipment of the waste to Woodlawn. This Parliament is now asked to pass special legislation to overturn a Land and Environment Court decision not to allow development of the site.

I do not pretend to know the details of the dispute between Collex and the Waste Services. In effect, the Government is addressing the problem by saying, "Let's create another waste transfer station, and then we will not have to tackle this issue of co-operation between Waste Services NSW and Collex over access to sites."

Collex is quite happy to have the waste compacted at those other sites and the containers containing the compacted waste transferred to the railhead at Clyde.

Emperor Carr is not happy about the Land and Environment Court's decision, so he says to the legal system and the residents of Clyde, Auburn and Granville that they have no say in the matter, that he will go ahead with the waste transfer station. The media stunt the Premier pulled yesterday with former mine workers from Woodlawn totally misses the point. If it is decided that the Woodlawn landfill should go ahead—and I do not take a position on that—the source of the waste will be irrelevant. The waste can come from other waste transfer stations; it does not need to come from the Clyde waste transfer station. In effect, the Premier is seeking to use the fact that the former mine workers are waiting for their entitlements to push this Clyde transfer station, when the fact is that the transfer station is not essential to the miners getting their entitlements. In any event, it is a poor show that the miners have been kept waiting as political pawns for all this time.

The people of Auburn and Granville are suffering from a clear case of the "safe seat" syndrome. The Australian Labor Party assumes that the people will vote for it whatever it does with regard to waste transfer stations. Late yesterday the Opposition produced documents from Waste Services NSW claiming that Collex had been denied access to transfer stations over the past five years. Yesterday I met with Collex representatives to discuss the matter and hear their views about the reasons that the development has come to this extraordinary juncture.

I have some sympathy for Collex being in the frustrating position of dealing with government bureaucracy. I do not believe that creating more landfill is the answer to managing Sydney's waste problem. A far more comprehensive solution to Sydney's waste problem is needed, including far better waste management than simply relying totally on kerbside recycling. It is the old principle "Push it down to the consumer; make them do all the work." I cannot support a bill that seeks to overturn the decision of a court to suit the convenience of a government. Negotiations should be facilitated between the existing waste transfer stations and Collex.

I oppose the bill, and I will move an amendment to that moved by the Opposition. I do not understand why the Opposition wants to refer the issue to a Government-controlled committee for inquiry. The Standing Committee on State Development is controlled by the Government, and the majority of its members will not want the inquiry. The Government-controlled committee will be sent a brief that it simply does not want. Given the Government's track record in rolling over due process, as evidenced by the introduction of this bill, it would be nonsensical to refer to a Government-controlled committee an issue that it does not want.

My amendment will seek to refer the issue to General Purpose Standing Committee No. 4 for inquiry. The membership of General Purpose Standing Committee No. 4 comprises a majority of Opposition and crossbench members. Obviously, I asked the Opposition whether it would accept my amendment. To my surprise, it said it would not accept the amendment. I do not know why the Opposition has referred the issue to a committee that would want nothing to do with the inquiry. The Opposition would not be able to control what the committee did. I think that is very strange indeed.

The Hon. Patricia Forsythe: It's not about controlling it; it is about getting a fair judgment.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: It is about getting a fair judgment. It is extremely bad tactics for the Opposition to simply refer the issue to a committee that is controlled by the Government when it is concerned about what the Government is doing. I rely on the fact that a committee that effectively has the crossbench as the balance of power will adopt a fairer and more honest approach.

The Hon. Christine Robertson: And really representative!

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: And really representative of the people of New South Wales, as the Hon. Christine Robertson said. I acknowledge the interjection from the Government side. In this House—unlike the rubberstamp in the lower House—the number of seats is proportional to the number of votes; this House more fairly represents the people of New South Wales than does the lower House.

Landfill sites have been criticised for the amount of methane they produce, and the overall greenhouse effect is not as wonderful as everyone suggests. Landfill sites are part of a poor waste strategy by this Government. A real waste strategy would be a whole-of-life cycle of waste, which is used in Germany. The retailer is responsible for the packaging and has to accept it back. This provides a huge incentive to retailers to

reduce packaging or use renewable packaging. Requiring the consumer to repackage the waste simply pushes the problem off to the consumer. Those who do not repackage the waste simply put it in the bin. Obviously, the more tonnage of waste that is produced, the more money that is made by the waste contractors, who are paid per tonne of waste.

I am amazed that even in my household, the members of which are conscientious recyclers, newspapers and bottles generate as much waste as domestic waste—and the domestic waste is reduced because we place compostable on the garden. There is a huge amount of waste, but much less would be produced if we adopted a sensible recycling policy that minimised the amount of waste produced at the point of the retailer.

As I said earlier, the term "putrescible waste" has been used synonymously with "domestic waste". They are not the same. Putrescible waste rots, whereas domestic waste contains many bacteria that survive for a long time and do not decay for perhaps hundreds of years. Domestic waste simply adds to landfill, and it would be extremely amenable to alternative solutions. Payment by tonnage does nothing to lessen the waste stream. Waste, in terms of the amount of tonnage produced, has been poorly managed in New South Wales. We need a whole-of-life cycle of waste. This bill is another example of optimum practice not being followed and a quick solution being found to allow waste to be dumped in yet another waste dump, with potential for danger to Sydney's water supply through the water table. For those reasons I do not support the bill. As foreshadowed, I move the following amendment to the Opposition's amendment:

That the amendment of the Hon. Patricia Forsythe be amended as follows:

Paragraph 1: Omit the words "the Standing Committee on State Development", and insert instead "General Purpose Standing Committee No. 4"

I am concerned that the Opposition will not accept my amendment. I have formally put to the Opposition that it should accept it. I will not cause the Committee to divide on it, because if the Opposition will not support the amendment I do not expect the Government to support it. However, I will be extremely disappointed if the Opposition does not accept the amendment, which I believe is entirely reasonable.

Mr IAN COHEN [4.59 p.m.]: On behalf of the Greens I speak to this so-called legislation. One could hardly call it legislation, given the manner in which it has been presented to the House and the dishonesty of the Government in usurping the priority of the Land and Environment Court. This action by the Government at this late stage of its governmental history is akin to the activities of the Queensland Government of Joe Bjelke-Petersen.

Certainly this action by the government smacks of that type of arrogance. We are supposed to have a separation of powers in this State. The Land and Environment Court has clearly expressed a view, but the Government and its cohorts in the industry are saying, "It is not appropriate. It does not suit us, so we will introduce legislation to override that." It was no mean feat undertaken by Mr Alan Brzoson and Mr John Drake, who, as community activists, successfully undertook action in the court. I wish to read to members the following extracts from the judgment of the Land and Environment Court:

- (i) the inadequacy of the assessment of the environmental impacts by virtue of (i) there being no assessment of the cumulative environmental impact of the activities to be undertaken by FreightCorp; and (ii) the inadequacy of the investigation and analysis of alternative sites;
- (ii) the likely adverse environmental impacts of the proposal in terms of odour and dust and noise emissions;
- (iii) the impracticability of all of those adverse impacts being effectively mitigated by the suggested regime of conditions of consent;
- (iv) the likely adverse social and economic impacts on the local community of the proposal;
- (v) the adverse planning precedent created for the planned and orderly development of Industrial Enterprise 4C Zone and of the Clyde Rail Marshalling Yards, by the proposed development, because of its inherently environmentally inimical nature and the propensity for it to attract similar environmentally offensive developments in a clustering and escalating effect; and
- (vi) the unsuitability of the development site to accommodate a waste transfer station because of its adverse environmental, economic and social impacts and its adverse precedential planning effect, notwithstanding its obvious convenience as an existing intermodal transport facility.

The foregoing reasons are supported by the expert opinions of Mr John Court, (environmental expert) and Mr Challis (acoustical expert) and my assessment of all of the evidence. They are also supported by many of the conclusions expressed in the Department's Assessment Report.

Whereas these experts and the Department proffered opinions that a very strict regime of conditions of consent might satisfactorily mitigate adverse environmental impacts, I do not consider the prospect of such a regime involving some 138 conditions ... to be a satisfactory solution for what I regard to be an unsuitable location for the proposed development which is an inherently unsuitable development for its environment.

The Government will have us throw out those comments and substitute itself and Collex in the form of a massive public relations machine to commence a strategic misinformation campaign in order to introduce special legislation to approve the Clyde waste transfer station. The bill will override all the planning, pollution and land contamination laws that were used by the community in this case to stop development. It is an absolutely appalling situation.

I worked quite closely with people down at the Port Kembla when they took on the Government with regard to the copper smelter. They were in the process of winning in the Land and Environment Court when, in similar fashion the Government introduced legislation to have the copper smelter go ahead in the low-income, industrial working-class area of Port Kembla, which is the Australian Labor Party's heartland. The people of Auburn and Clyde are loyal Australian Labor Party voters; historically they vote for this Government time and again. It is an appalling situation. What more can be said?

Quite clearly—and this has been referred to by other members—there are advantages to looking at the alternatives that were originally promoted. I understand the original agreement between Collex and the Government clearly said that the Clyde marshalling yards area was not the preferred location. Under the original agreement the Waste Management Authority public transfer station was to be used, and there seemed to be considerable advantage in doing that. In the public interest the advantages included: keeping the total number of putrescible waste transfer stations to a minimum, therefore reducing the impact on the community as a whole; effective utilisation of the significant amount of public investment over many years into Waste Service and its infrastructure, and generation of additional revenue for Waste Service; compliance with New South Wales Government policy on the use of essential infrastructure; and allowing the northern Sydney regional waste transfer stations to remain open to the general public. If the Collex application were to be approved, it would not be viable to keep the stations open only for the general public.

Further advantages included allowing recycling and green-waste to continue—all the waste is transported to the Woodlawn landfill; it is not recycled. There would be increasing competition in the waste industry. New landfill or alternative technology providers would have ready access to the waste market. Entry barriers will be removed as the new companies can use existing infrastructure. Given that waste would be transported to landfill, with no allowance for green-waste and recycling alternative methods of dealing with waste would become unviable. There would be a reduction in overall truck movements and the total amount of kilometres travelled. Waste trucks are heavy, they are difficult to drive and they have a high centre of gravity and restricted capacity. It is not practical or safe for fully laden garbage trucks to be driven across Sydney.

It is quite clear that Collex have access to Waste Service's transfer stations. Waste Service does not discriminate against any waste company; all waste companies have access. Waste companies have their semitrailers driven to the waste station. A forklift removes their empty containers and replaces them with full ones. Under its contract between the Government and Collex the trucks would be driven to the nearest railhead. One asks what is a railhead? A railhead is any rail that has a hardstand—a thick slab of concrete—beside it. A hardstand can be laid anywhere with minimal fuss. A 44-tonne forklift takes off the full container and puts it on a rail carriage waiting at the rail siding.

The Government can instruct Waste Service, which is a government-owned organisation. The Government can select another contractor—Collex is a Government contractor—if Collex does not or will not perform in accordance with its contract with the Government. This is a normal contractual arrangement. The Land and Environment Court found in favour of Alan Brzson and John Drake on 10 points: four points of law and six points of merit. It was a comprehensive victory; no luck or mere technicality had anything to do with the win.

The Land and Environment Court found the Clyde site unsuitable and environmentally unsustainable. The Government department, PlanningNSW, argued that Clyde was not essential to get waste to Woodlawn. The Government stated that other sites were preferable on environmental grounds. The Government preferred the use of existing waste transfer stations—rather than building a new one—and the nearest existing railheads, or new ones that would be built. This bill establishes a precedent in that no previous bill has overturned a decision of the Land and Environment Court. The precedents the Government has cited to justify the introduction of this special legislation are not relevant in this discussion as this is the first time a government has attempted to overturn a Land and Environment Court decision through special legislation.

It is really quite sad. If this bill is passed today, our democratic process—and the average citizen's faith in that process—will be critically damaged. In this case we are talking about low socioeconomic, ethnic, non-English speaking communities. What is the use of going to court? There is no separation of powers, and any citizen going to court would be disempowered. It is a sad situation. This community already has major problems with pollution, as was profiled during Green Games Watch. Bob Symington and Jeff Angel, two very competent conservationists and environmentalists, were the authors of that profile.

I make the following points about the Olympic catchment. There are 38 premises in Auburn licensed for air and water pollution discharges. Local groups are particularly concerned about four sources of air pollution: the oil refinery, the liquid waste plant at Lidcombe, the brewery at Lidcombe and the clinical waste incinerator at Silverwater. Air toxics monitoring by the Environment Protection Authority [EPA] shows that Lidcombe has the highest mean concentrations of chloromethane and dichloromethane in Sydney. The air toxics pilot study shows that the Olympic catchment has at least two sources of dioxin emissions: the Lidcombe liquid waste plant and the clinical waste incinerator at Silverwater.

The EPA has indicated that action on air toxins may be needed at oil refineries, electroplating works, foundries, dry cleaners and service stations. The Olympic area has one oil refinery, two foundries, four listed electroplating works, about seven dry cleaners and approximately forty service stations. There are at least possibly 19 contaminated sites in Auburn and an additional 11 in Strathfield. Stormwater is the major source of nutrient pollution in Homebush Bay. There are 346 premises in Auburn licensed to store hazardous chemicals. This compares to some 88 in Strathfield. About 85 hazardous chemical spills and incidents take place in Auburn each year.

So the Auburn area is absolutely inundated with the pressures of high levels of pollution. Many migrant families and people from non-English speaking backgrounds are struggling to have a quality life for themselves and their children in that area—an area that has been loyal to the Australian Labor Party for generations. It is an abomination that the Government is ignoring the decision of the Land and Environment Court, which clearly identified the impact of this waste plant on the urban environment and the local community. It is a sad day for this Parliament.

The Hon. Dr PETER WONG [5.12 p.m.]: I make it clear from the outset that the bill has been presented in a way that is deliberately confusing and misleading. The object of the bill is to enable the development of a waste transfer terminal at Clyde, which in turn fulfils preconditions for the delivery of waste from Sydney to Woodlawn by rail. Three years ago when Collex won the contract to source and deliver putrescible waste from Sydney for the proposed Woodlawn landfill the Minister imposed 161 conditions on the development consent based on many social, environmental and economic factors. Consent also followed prolonged research into the potential impacts in all these areas.

At no time in the discussion of arrangements pertaining to the operation of Woodlawn was the construction of new transfer facilities in Sydney a priority attached to the operation of Woodlawn landfill, more specifically one at Clyde rail marshalling yards. The Government is under immense pressure to explain why Woodlawn is not yet operational despite its commencement date being three years overdue. Interestingly, one argument presented by the Government to crossbenchers is that the Government knows that the proposal has been delayed but now it has become urgent and, therefore, the bill must be passed now.

A great many explanations have been offered for the delay, including problems accessing existing transfer facilities owned by Waste Service NSW, and access to intermodal facilities in order to upload containerised waste onto the rail network. I have yet to see any convincing evidence of either argument as I have always been given to understand that matters of access are an issue of commercial negotiation, rather than an issue of physical capacity, especially when this argument was not presented to the community or to the Government.

I am also appalled that the Government continues with its shabby gesture of concern for the Woodlawn miners and is attempting to blackmail its way to success. In the same way, the company and the Government are, in some way, blackmailing the crossbenchers, saying that if we do not support the legislation the money will not be paid. Therefore, it would be our moral duty to pass the legislation. What an argument! That the Woodlawn miners deserve their payout is not disputed. I commend these workers for the tremendous patience they have shown thus far. However, let me remind honourable members again that the facility at Clyde was never part of the agreement made with Collex, and the company has backed down from its promise to settle part or all of the payout if it wins the contract for Woodlawn.

In other words, Collex has already breached the contract. It is interesting that the Government has great sympathy for Collex but very little or no empathy for the hundreds of thousands of residents, some of whom only yesterday, outside Parliament House, protested the Clyde proposal. They do deserve some answers about the adverse impacts such a facility will impose on their business, their livelihoods and their homes. Interestingly, the Government again has conveniently forgotten that many of these people from non-English speaking backgrounds happen to be Labor voters. Many residents are understandably anxious that they will not know the full extent of the adverse impacts until a facility is constructed and operating, that is, when it is too late—a bit like the M5 tunnel!

The residents of Auburn comprise one such group, who because of their non-English backgrounds, have also struggled with language barriers when trying to grasp the full implication of the facility being proposed in their backyards. Many of the affected groups lack the legal expertise and funds to ensure that their rights are protected through all available channels. Interestingly, I doubt that the Government would try such a tactic in the northern suburbs. How refreshing and surprising then that two private citizens, John Drake and Allan Brzoson, took on this apparent David and Goliath battle and won their appeal against the proposed facility in the Land and Environment Court on an impressive 10 points of law and merit.

As with most developments of this nature, there are also ever-present health impacts to consider. The concerns of residents and business people who will be working and living in the vicinity of the proposed waste transfer terminal, or in close proximity to its service routes, are both credible and legitimate. The Clyde facility would expect in excess of 100 trucks a day, 24 hours a day, with the majority of deliveries occurring via Parramatta Road, which is already very congested. Access to the site is limited but could potentially peak at about 200 trucks per day as business opportunities expand. Whichever way it is looked at, any credible health problems will only be aggravated with time. Asthma and respiratory complaints are higher in Western Sydney, and very high in Auburn.

The judgment of the Land and Environment Court refers to a number of other issues, including insufficient investigation into alternative sites; likely adverse environmental impacts and impracticality of being able to alleviate these through suggested regimes; lack of assessment in cumulative environmental effects brought on by certain activities being proposed for the site; and the likely adverse social and economic impacts on the local community. Judge Bignold also noted that this facility sets a precedent for attracting similar operations to the site. As the findings of the Land and Environment Court are readily accessible I will refrain from elaborating on their detail.

This legislation embarks on establishing another kind of precedent altogether, as many honourable members have said. It is an attempt to circumvent the findings of the Land and Environment Court. While New South Wales has no code for the separation of powers between Parliament, Executive Government and the judiciary, we honour the convention. But this bill flies in the face of the convention. The Government cites a number of cases to the contrary, maintaining that other cases have been dealt with in a similar manner. That is not entirely true, as was shown in the Port Kembla Copper Smelter case in 1997. In that case the Government introduced special legislation, but this pre-empted the case reaching the Land and Environment Court, some say in anticipation of the appeal being won there.

I believe that the Government is treading on dangerous ground. Not only has it discounted community concerns but it has mocked the judicial system, which made a finding that is not necessarily in its favour. People in Western Sydney join the ranks of disfranchised people across the State who have been let down by this Government in one way or another, and they look to a strong Opposition to do battle with them. I am appalled by the Government's behaviour. I do not believe the Opposition has done enough. I imagine if the Labor Party were in Opposition it would call for all kinds of inquiries, it would report possible corruption to the ICAC, and it would demonstrate and support the people of Auburn, or any suburb for that matter. Unless this Opposition is happy to remain in opposition forever, I urge it to act in every way to expose this scandal.

Reverend the Hon. FRED NILE [5.23 p.m.]: This bill is controversial because it deals with a decision of the Land and Environment Court to reject the operation of the Clyde waste transfer terminal. The object of the bill is to enable development on land at the Clyde rail marshalling yards for the purpose of a waste transfer terminal. The development is necessary because the development consent for the Woodlawn landfill facility requires that waste sourced from the Sydney region must be transported by rail to an intermodal terminal near the landfill facility. This requirement was imposed to mitigate the environmental impacts of the transport of waste to Woodlawn by road.

I have received a number of objections to the bill. Earlier this week people who are interested in this matter were in the public gallery and a protest was held outside. Also, I have received correspondence about the issue. A campaign of misinformation has stirred up residents who have the wrong idea about what will happen at the Auburn site. Reverend Graham Guy, Minister of the Auburn Multi-cultural Christian Fellowship, whom I know to be a sensible man, stated:

I understand there are concerns in the area of—planning—environment. The people of Auburn are distressed that Collex wants to dump rubbish in the open at "Clyde" adjoining Auburn to be loaded onto rail. In the meantime, Auburn and other downwind suburbs will be subjected to unbearable stench.

That is false; rubbish is not dumped in the open at Auburn. Some television reports showed photographs of piles of rubbish, perhaps from another landfill centre. I know that there are open landfill areas in other parts of the State, but the reports gave the impression that this was already occurring at Auburn. No wonder residents are upset. They think there will be a huge garbage tip in the centre of a residential area, with dreadful odours and vermin in the vicinity. Michelle Smith, a sincere supporter of the Christian Democratic Party, said, when speaking about her ill husband:

He doesn't need to spend those hours listening to a noisy waste facility or smelling the stench of rotting garbage or watching the rats run around the backyard.

The waste transfer terminal will not allow that to happen. Like many members of Parliament I knew nothing about this issue until I studied it in order to debate this legislation. Initially I did not realise that a huge building will be erected for the Clyde waste transfer terminal. Trucks will drive into the building, the door will shut and rubbish will be compacted into containers.

Mr Ian Cohen: You don't think the Land and Environment Court knew exactly what the facilities were?

Reverend the Hon. FRED NILE: Judge Bignold, in the Land and Environment Court, was wrong. He made a decision on technicalities under the environmental legislation, and—as the Opposition and I have often said—quite often the wording of legislation is open to legal argument in a court and that argument is accepted by a judge. But the interpretation may not be what the Parliament intended.

Ms Lee Rhiannon: It is not wrong about all the trucks coming in?

Reverend the Hon. FRED NILE: I am pleased Ms Lee Rhiannon raised that point. Each day 350 trucks go into the FreightCorp depot, and they have been going through the same area for 15 years. Under this proposal there will only be 150 trucks. So almost half the number of trucks will be going into the area. The residents may be terrified by information given to them, perhaps by the Greens and others who have fairly strong views about the company. It does not seem to be an environmental issue as much as an anti-Collex issue. The Hon. Sylvia Hale proved that in her speech by spending a great deal of time discussing France and other countries, and the parent company. She objects to the company. Perhaps she would accept this proposal if another company were involved.

Television programs have given the impression of a lot of houses in a residential area with a vacant block behind them where the Government will establish a garbage tip. In fact, the waste transfer terminal will be located in a massive area which was part of the Clyde rail marshalling yards. The area is not, and was never intended to be, a residential area; it has been zoned for industrial operations. Another objection that has been raised a number of times relates to odour from the waste terminal. I have been advised that 21 of the 137 conditions of the redevelopment consent deal with odour issues. Rubbish will be delivered to a negative-pressure building to be erected on site at the Clyde transfer terminal. Air will not be able to escape because of the pressure within the building.

It will be fitted with a system that will create a fine mist, an almost fog-like condition, within the building. The mist will keep fine dust particles from rising. There will be a carbon filter system in the ceiling through which any escaping air must flow, and that will prevent odour leaving the building. Once the waste is containerised it cannot be exposed to the atmosphere. The residents in surrounding houses fear they will be exposed to odour, but that is not technically possible. It should be noted that discussing this legislation is not an academic exercise. The city of Sydney and surrounding suburbs are facing what I believe is an emergency. What do we do with the waste?

Eastern Creek will reach capacity in 2½ years; Belrose has reached capacity but will continue to receive waste for another 2 years, and the Jacks Gully centre will reach capacity in 2 to 5 years. Menai can

operate for another 20 years at 500,000 tonnes per annum capacity and is restricted to receiving waste from the southern suburbs. Sutherland council wants to keep using that disposal centre so it has now blocked anyone else from using it. In Gerroa, where I live, there was a garbage tip, but that has now closed. There is only one small garbage tip available on the other side of Kiama, many kilometres away.

This highlights that it is a serious problem, an emergency. What do we do with the waste? The Government has developed this project to solve that problem. Perhaps it should have been done years ago, but at least it is now at the point of solving the problem. I understand also that Auburn Council will receive a royalty per tonne of waste transferred through the Auburn region. In addition, 20 jobs will be created at the Clyde waste transfer terminal and 20 jobs at the Woodlawn waste centre at Goulburn, as well as construction workers involved in the buildings. There will also be ongoing contracts to local businesses for the supply of fuel, maintenance and so on.

I have read the judgment of Justice Neal Bignold, whom I know personally. He is a very sincere and good judge. He has been in that position for many years and has a great amount of experience in that area. I believe he is bound by the interpretation of the law. Those opposing the project could cite various sections of the environmental legislation and ask whether the development meets that standard. He has to make his decision based on the legal interpretation of those words. The Government has indicated that it has received legal advice that if the decision was appealed it would be overthrown but it could take up to two years to work its way through the court system. I will not take up the time of the House going through the judgment, but I wanted to highlight a number of matters.

A number of other matters have been raised concerning the project, some to confuse the issue. As I said a moment ago, this is an emergency. Sydney is currently producing more than two million tonnes of waste per annum. The bulk of that waste is currently dumped in landfill at Lucas Heights in southern Sydney and at Eastern Creek in Western Sydney. There have been rumours that Sydney's total waste production is going to be shipped into Clyde waste transfer terminal. The terminal is designed to take a maximum of 500,000 tonnes per annum—20 per cent of Sydney's total waste production. So the Government still has to find ways to deal with the other 80 per cent, but it will not be going to Clyde.

I have mentioned already that 150 to 200 trucks will enter the Clyde terminal each day, and they will use the main arterial roads. They are banned from using residential roads; it is against the law. Collex cannot send trucks on residential roads. These large vehicles are restricted to roads such as Parramatta Road, the M4, Silverwater Road, James Ruse Drive and Olympic Drive. Many of these trucks already collect waste in the near vicinity of Clyde or travel past Clyde to the Eastern Creek landfill site. It has been said that Collex should solve the problem by using existing transfer facilities. I understand it has tried to do that for the past five years but has not been able to come to any commercially viable agreement. Obviously there is competition between Waste Service NSW and Collex, its main competitor, and Waste Service NSW is not going to do anything to assist Collex. I understand the charges are so high that it is not commercially possible for Collex to use those other centres.

I have been a member of this place for 22 years, and have been involved in a number of debates about whether Parliament should overturn a court decision. The Government and Parliament have a responsibility to assess what is best for the people of this State, what is best in the public interest. That is not the question Justice Bignold was examining; he was dealing with legal technicalities. He does not have the power to ignore those legal matters and rule on the issue for the public good. In this case Parliament has to make a decision, and it will be open to criticism. We are overturning a decision of the court, but I do not see it in the same context as cases of criminal activity. Environmental legislation is very complex and quite often it is interpreted in a different way to that intended by Parliament and the Government in drafting the legislation.

The Total Environment Centre and many similar organisations have become expert at assessing legislation and seeing how it can be used for their cause. That is part of democracy: people are allowed to do that. But it seems that over the years it has been allowed to go beyond what was intended by the Parliament. The Clyde Waste Transfer Terminal (Special Provisions) Bill has attached the Clyde Waste Terminal—Conditions of Development Consent, containing about 138 conditions. On top of all the things I have read out already there are many conditions dealing with things such as odour. The odour management plan must address all these matters. The document goes into great detail. There is also a detailed vermin and pest control plan. In addition, a requirement for annual environmental management reports is built in. Crossbench members often ask for such provisions. If this bill is passed that will not mean that the matter is finished; at that point a whole mechanism comes into play to supervise the project and to see that Collex fulfils the conditions. The document states:

Annual Environmental Management Report

... Between twelve and fourteen months after the issue date of an environmental protection licence for the development, and annually thereafter for the duration of the development, the Applicant shall submit an Annual Environmental Management Report to the Director-General, the EPA and the Community Consultative Committee.

There is provision for a consultative committee of residents who will be involved in monitoring the project. There is also provision for independent environmental audits. The document states:

Every year following the date of this consent, or at periods otherwise agreed to by the Director-General, and until such time as agreed to by the Director-General, the Applicant shall arrange for an independent audit of the environmental performance of the development.

The requirements that then must be met by the company are very detailed. They deal with the type of building, the engineering requirements to prevent any odours leaving the building and so on. Because of the emergency situation the Parliament should pass the bill. The Opposition did pass it in the other place. I assume that it was passed unanimously in the other place.

The Hon. Patricia Forsythe: No, it has not been to the other place. It was introduced in this place.

Reverend the Hon. FRED NILE: I understand that in the other place the Opposition said that it would pass it when it reached the Legislative Assembly. The Opposition has swung backwards and forwards—being in favour of the bill, being opposed to the bill, being in favour of the bill and so on. Now it has reached the point of wanting to refer the bill to a committee—a complicated process. We cannot support that referral. We support the bill as it is.

Ms LEE RHIANNON [5.44 p.m.]: As my colleagues Sylvia Hale and Ian Cohen have made clear, we strongly oppose the bill. The other day I had the opportunity, along with some other members of this Parliament, to meet many people from the western suburbs of Sydney protesting against the proposed Clyde waste transfer station. They came into Macquarie Street, a place that for many of them is very alien. Many of them do not speak English. They stood outside the Parliament for a long time and then came into the gallery. This caused difficulties for the security staff because there was confusion about so many people leaving a protest and coming into Parliament House. Those people came here with a very clear message: they live, they work, they raise their children, they take their children to school and they relax in the suburbs around Auburn and they do not want the area disrupted with the Clyde waste transfer station.

They know that the project will be detrimental to their health. Despite what Reverend Nile said, there will be heaps of rotting, smelly garbage. Perhaps it will be in a container but we all know that garbage becomes smelly and unpleasant. When the honourable member last moved house he would not have moved beside the Clyde waste transfer station, he moved to somewhere much more beautiful, Gerroa. Most members of this House would not choose to live beside this waste transfer station, which will receive 500,000 tonnes of smelly, rotting garbage each year from northern Sydney. We are continuing the very ugly patterns of Sydney. To a large extent we are a fractured city. This proposal is deepening the divide. The wealthier suburbs are dumping on the poorer suburbs. In the long run all of Sydney's garbage, 1.6 million tonnes a year, will be dumped in Auburn.

Garbage trucks will continually be trundling along the roads. I again argue that members would not choose to live there. Members should ask themselves how they would feel about living near a dump such as this. Where has been the community and public consultation on this project? Labor needs to consider at what price is it going to push ahead, if it does push ahead with the Clyde waste transfer station. What will be the cost to the community? What will be the cost to the Woodlawn environment? What about the lost opportunities for waste reduction and what about Labor's standing? We now have further evidence that Labor is not a party of working people.

This bill is further evidence of the Government's abuse of the people of Western Sydney. For decades they have been taken for granted. The Premier's xenophobic attitudes have played out badly for people in Western Sydney. Now they are being dumped on. Eventually all of Sydney's garbage will be targeted for one place. The people of Western Sydney have been taken for granted for decades. They have had a lack of services—no public buses in particular. My colleague Ian Cohen spoke about the heavy pollution load in so many areas of Western Sydney. The Premier has used his law and order agenda to inflame xenophobic attitudes by speaking about ethnic crime so often. Now we are looking to dumping Sydney's garbage on Western Sydney. It is just going too far.

Unfortunately, this is Labor of the twenty-first century. Communities are suffering because the higher echelons in Labor are abusing the people that they rely on so heavily. I am not talking about all Labor people, but the upper echelons of Labor really have their hands into some grubby deals. The grubby hands of Minister Knowles are very closely associated with this project. It is his bill and he has ushered it through various processes. It is interesting that Minister Knowles was associated with similar legislation in this House under similar circumstances. I refer to the plans to expand the copper smelter at Port Kembla. An application was made to the Land and Environment Court in 1998 about the project but the Government moved to stop the court making a decision in that case.

Minister Knowles offered dishonest and narrow arguments in his second reading speech, and he is doing the same in respect of the Clyde waste transfer station. In 1998 he said that the appeal was not based on the merit of the proposal but a technical issue about whether enough people were notified of the development application. He said that the appeal was occurring despite the fact that the application had been through an exhaustive participation process since 1994. The Minister was wrong about how that 1998 Land and Environment Court application case was reported. It is completely false that the application taken out by Mrs Hamilton was a technical issue about whether enough people were notified of the application. It was much wider than that and the Minister knew that, just as he knows that this case is much more complex. He could have averted the situation in which we now find ourselves.

Mrs Hamilton challenged the validity of the environmental impact statement [EIS] prepared for the smelter development application on the ground that it completely omitted any consideration of the impact of the development on land and water contamination. Mrs Hamilton alleged that the smelter site was contaminated with heavy metals and other toxic compounds. The development involved the excavation of the site, but the EIS contained not one word about site contamination. She also alleged that there was a denial of due process given the failure to notify more than 7,000 local residents. She was correct, but Minister Knowles highlighted one point to justify overturning the case by passing legislation in this Parliament. Minister Knowles grossly distorted another case in very similar circumstances in 1998. Ordinary people were fighting a good and important fight, but when they were close to winning the Government stepped in wearing jackboots and with a heavy hand. A media release issued by Mrs Hamilton, who commenced the proceedings, stated:

I now firmly believe the Carr Government has betrayed me. His Government is a Clayton's Labor Government. I say to him that this case will not die. I will fight the good fight...

The fact that only 12 residents were informed about the proposal when at least 7,000 should have been notified is not a mere technicality. It is secrecy and stealth. Today, five years later, ordinary people have gone to the Land and Environment Court, put up an outstanding fight and won against tremendous odds. What has happened in response is undemocratic. The court found in favour of Allan Brzozon and John Drake on 10 points: four points of law and six points of merit. It was a comprehensive victory. There was no luck; it was in no way a mere technicality. The court found the Clyde site unsuitable and environmentally unsustainable. PlanningNSW stated that Clyde was not essential for the transfer of waste to Woodlawn and the Government stated that other sites were preferable on environmental grounds and also that it would prefer to use existing waste transfer stations, rather than build a new one, and then use the nearest existing railheads or build new railheads.

This bill establishes a precedent because no other bill has overturned a Land and Environment Court decision. Does Sydney really need Clyde or can we cope with rubbish no matter what? No, we cannot. Collex could start shipping rubbish to Woodlawn tomorrow using any one or all seven existing waste transfer facilities in Sydney. It does not want to do that because it would have to pay to use those facilities. The benefit for Collex of Clyde going ahead is that it will not have to pay for the development—the taxpayers will foot the bill. I urge honourable members to carefully consider the essence of this situation. We do not know the full story, but we do know there has been co-operation between the Government and Collex. A deal has been worked out, Clyde has been delivered on a platter and it will not cost Collex anything.

There is another option, and the Greens are on record as saying that we do not believe it should be the final option—we need to pursue waste reduction. With the seven existing waste transfer facilities in Sydney, we have a means to get the rubbish to Woodlawn without disrupting the lives of the Auburn residents. That is the important point. We have the means to solve this issue and it is simple. We have seven existing waste transfer facilities in Sydney, but Collex will have to pay to use them. It is a multinational company and it can afford to pay. The people of Western Sydney cannot afford to pay for the disruption this project will cause in their lives. It is interesting to consider the connections between Collex and the New South Wales Government. The smell we are picking up is not only from the garbage; it is also from an unsavoury relationship.

A waste collection company is set to benefit from the New South Wales Government's moves to overturn this court decision. It has paid at least two prominent Labor Party figures for consulting work and donated close to \$89,000 to the New South Wales Labor Party. We do not know whether there is any connection between that and the Government's behaviour. However, surely all honourable members agree that it is not appropriate, ethical or the way business should be done in this State. The company confirmed it had contracted Ms Belinda Neal, a former Australian Labor Party senator and the wife of Labor powerbroker and Special Minister of State, Mr John Della Bosca. It also used the services of a former electoral adviser to former Premier Barrie Unsworth, Shane Easson, who is the twin brother of former New South Wales Labor Council secretary Michael Easson.

Collex has said that Ms Neal and Mr Easson provided their services to the company while they were working for a consultancy, Michael Easson Management, which describes itself as providing specialist strategic services to Australian and multinational organisations. I understand that Ms Neal has not provided any assistance to Collex for several years and has not had any involvement with the Clyde transfer terminal proposal. However, I repeat that there are too many unknowns about the relationships between these people, the Government and Collex. The Premier's role in this issue is also worth noting. Today's *Sydney Morning Herald* editorial states:

And in part, the complication is the fault of the Premier, Bob Carr ...

The issue would have been resolved if, instead, he had encouraged renewed negotiations between Collex and Waste Service NSW, with a view to having Collex use one or more of the existing waste transfer stations. Garbage could be compacted close to where it is collected, transferred to Woodlawn and used as landfill. It is a not a difficult problem.

That gives weight to the point that there are existing transfer stations, they are ready to be used and they could solve this problem easily.

Reverend the Hon. Fred Nile: They cannot be used.

Ms LEE RHIANNON: They can be used.

Mr Ian Cohen: They are Government stations.

Ms LEE RHIANNON: Yes, and they are there to be used. We have the solution, the only difference is that Collex will get away without paying anything by going to Clyde. Today's *Sydney Morning Herald* editorial is considered and puts a point of view that strengthens the argument that I am presenting. The problem will not go away; we need to have waste minimisation. The Greens acknowledge that the State has an urgent waste problem and that there is a solution here. Waste transfer stations must be spread fairly and equally across Sydney. If people such as Reverend the Hon. Fred Nile do not consider the option of other waste transfer stations, what they are saying is that the people of Western Sydney—

Reverend the Hon. Fred Nile: That was my first option.

Ms LEE RHIANNON: Then I hope we can co-operate on this. If members go with the Clyde option, they will be saying that the people of Western Sydney are second-class citizens and they are the ones who will have to wear the garbage. They will be saying, "You can produce all the garbage you like, but you just have to cop it because it will be dumped out there."

Reverend the Hon. Fred Nile: It won't be dumped at Auburn; it will be processed at Auburn.

Ms LEE RHIANNON: You can use the word "processed", but it will still be smelly. I am sure Reverend the Hon. Fred Nile and the Treasurer would not swap their pleasant suburbs for a suburb that is beside a waste transfer station.

The Hon. Michael Egan: I live at Surry Hills near the emission stack.

Ms LEE RHIANNON: Yes. I challenge members that they would not live near a waste transfer station. State governments must make a concerted effort to cut the amount of rubbish generated by implementing major waste minimisation strategies. This requires a level of political will that will not be found in the major political parties, unfortunately. The waste woes of Sydney will only be resolved by legislative commitment to recycling, waste reduction and waste avoidance targets. We believe that it is short sighted and

cynical of the Government to legislate to circumvent a legal ruling disallowing a landfill transfer terminal when it refuses to legislate to reduce waste. The long-term solution is not to use existing waste transfer facilities to transport ongoing high levels of generated waste to the Woodlawn super dump. We acknowledge that it can be a short-term solution, but we argue that the need for the miners at Woodlawn to receive their entitlements should never have been linked with an outcome at Clyde. That was a cynical decision by the Government, because the entitlements of the Woodlawn miners should have been granted to them immediately rather than being linked to the outcome at Clyde. I support the comments of my colleagues Ms Sylvia Hale and Mr Ian Cohen in opposing the bill.

The Hon. JON JENKINS [6.03 p.m.]: I acknowledge the comments of members who have participated in this debate. These are times when one needs to have the wisdom of Solomon to make the right decision. I indicate at the outset that I will support the Clyde Waste Transfer Terminal (Special Provisions) Bill, but I want to place on record the following sentiments. I express dismay at the Government's lack of planning, which will have a serious impact on the people of Auburn. Labor has been in government for a long period, and it has had plenty of time to plan for this eventuality. The Government has delayed addressing the issue for so long that there is no option but to eventually cause a large part of Sydney's waste to go through the Clyde depot. The Government's answer to legitimate environmental concerns that were upheld by the court was to change the law and reverse the court's decision. Will this now become the normal operating procedure of the Government? I sincerely hope not. If so, the Government will not get my support in future.

Why could not the Government have banged together the commercial heads of the New South Wales Waste Service and Collex to get them to share the facilities? This could have been done if the Government had so desired. But, of course, it is too late now. Excuses about private corporations simply do not cut it. The facilities at Clyde have to be built now for use in the near future, as the existing facilities will soon expire. I hope I have not been misled on these facts. It does not matter whether waste is compacted at regional facilities and trucked to Clyde, or whether it is trucked to Clyde and compacted there. The net effect of the transfer is the same. It is really the railheads that matter. None of the regional facilities is near a railhead, and therefore the waste requires trucking to the existing facility and then to the nearest railhead. I encourage the people of Auburn who will be adversely affected by the proposal to continue to lobby for a more shared arrangement of compacting and railhead facilities. They will receive my support.

I would like to have seen some Government incentive to encourage effective recycling on the part of consumers and discourage wasteful packaging on the part of producers. I encourage people to lobby on these issues. They also will receive my enthusiastic support. Should there to be a general inquiry into waste management and recycling, I would be an enthusiastic supporter. The one saving grace is that there are 137 provisions relating to the management of the Clyde waste transfer station and the local environment. I encourage residents to keep rigorous records of all breaches of the 137 regulations. I do not support referring the issue to a committee whose membership has a government majority. The Land and Environment Court hearings were very thorough in their examination, and the court's decision was well argued and well supported in law. Unless someone can provide information that was not produced at that hearing, I see no reason to hold up the process. My sympathies go to the people of the Auburn area who will be adversely affected by the bill's provisions.

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [6.07 p.m.], in reply: I thank honourable members for their contributions to the debate, particularly those who indicated their support for the bill. I wish to respond to the claim by some honourable members that the principle of the separation of powers is the constitutional principle that applies in New South Wales and, indeed, in Australia.

The Hon. Dr Arthur Chesterfield-Evans: It doesn't apply in New South Wales, does it?

The Hon. MICHAEL EGAN: No, it does not. The constitutional principle that is relevant to a Westminster system is the principle of responsible governance, not the separation of powers. Those who maintain that the separation of powers is the principle applying in Australia have been watching too much American television. It is a principle that applies to the American system of government, not a Westminster system of government. I reiterate: the key constitutional principle of our system of government is responsible governance, which means that the Executive is responsible to the Parliament, which in turn is responsible to the people. I do not know how members could argue that there is a separation of powers when, under the Westminster system, the Executive members of the Government, the Cabinet Ministers, are part of the Legislature and they depend for their continuation in office on support for legislation. The United States of America has a separate Executive, a separate Legislature and a separate judiciary. Certainly, we have a separate judiciary—

The Hon. Dr Arthur Chesterfield-Evans: That's the nub of it.

The Hon. MICHAEL EGAN: That is right. We also have an independent judiciary. That comes not from the principle of the separation of powers, an American principle, but from the act of settlement. From memory, in 1702 a British statute established the independence of the judiciary. If my recollection of history is correct, it also established the Protestant ascendancy to the throne. I am not very happy about that!

Reverend the Hon. Fred Nile: We are happy to amend that.

The Hon. MICHAEL EGAN: You are happy to amend that! A tyke as the King or Queen of England!

The Hon. Jan Burnswoods: What about an atheist?

The Hon. MICHAEL EGAN: Neither an atheist nor a left-winger! Even for me, an Irish Catholic Labor republican, to contemplate having a Catholic monarch of England is a bit much. I would have to think about that one.

Reverend the Hon. Fred Nile: The right arm of the King was always a Catholic.

The Hon. MICHAEL EGAN: That is right. The Catholic Duke of Norfolk is responsible for all the royal ceremonies, including the coronation of the King. For as long as most people can remember, the Dukes of Norfolk have been Catholics or, as some people call them, Roman Catholics. That is beside the point. The point I want to make is that the separation of powers is an American or French doctrine, notwithstanding what some ill-educated lawyers, academics, journalists and members of Parliament might have people believe otherwise. Don't ever get fooled about the separation of powers; we have a principle of responsible governance.

[Interruption]

The Hon. Dr Arthur Chesterfield-Evans wouldn't have a clue! He makes my blood boil on occasions. He is clueless about most things, but he speaks with such authority on everything. When I do not know something I do not talk about it. The Hon. Jon Jenkins made some important observations. I say to him that in public life, in Government and in Parliament there are seldom easy decisions to be made. One has to ascertain what one believes to be the public benefit, what is for the public good. A decision has to be made based on that. I accept that he has done so on this occasion. There will never be an action taken where there is not some argument against it. Nothing one does is without a countervailing argument, but an overall assessment has to be made.

It is not true to say that the Government has been slow to act. The Government has been aware for some time of the pressure that will be placed on landfill in Sydney. That is why the Woodlawn proposal was dealt with and approved some time ago. That is why the Clyde proposal was dealt with by the Minister and approved some time ago. It has been held up in the Land and Environment Court for 14 months. Mr Justice Bignold has made a decision that overturns the Minister's approval. Sometimes judges get it right and sometimes judges get it wrong, but whether they are right or wrong it is the responsibility of the Parliament, and indeed the Government—

The Hon. Duncan Gay: To make the law.

The Hon. MICHAEL EGAN: To make the law, that is right. And to ascertain whether the consequences of a court decision are for the benefit or to the disadvantage of the community that we serve. We need somewhere to put our rubbish—it would pile up in our backyards if it were not collected and taken somewhere. The Government has the responsibility to find a way to do that. If the court puts an obstacle in the way a sensible government and a sensible Parliament will do something about it, as we are proposing to do on this occasion. Surely every member of Parliament understands and upholds the supremacy of the Parliament, not some appointed judge. We have been elected by the people of New South Wales and we have to exercise our responsibility. When it is necessary to change the law we have to change it, otherwise we will be in a terrible pickle time and again.

We have had a number of pieces of special legislation, and the Government makes no apology for that. In each situation it has been necessary for the Government to introduce legislation for the approval of the Parliament, it has subsequently been approved by the Parliament and has become the law of the land to enable

some important developments to take place. For example, could the Walsh Bay development have taken place without this Parliament? They said it was a disgraceful development. What did they want to do with those old wharves? Did they want them just to rot into the sea or did they want them to house some craft exhibitions? These wharves can survive only with sensible adaptive reuse, otherwise they will be lost. They can be saved only if we can find a commercial purpose for them that pays their way. We make no apology for Walsh Bay. When Walsh Bay is finally completed—it is not far from being completed—it will be like all those other controversial projects that, throughout my lifetime, have been opposed by the Greens and their ilk. Of course, the Greens are newcomers to public life in this country, but there have been people like them for ever and a day.

I remember the controversy in relation to Darling Harbour. I remember the controversy in relation to the Hotel Intercontinental. Remember when that was considered an act of environmental vandalism by the Wran Government? Look at it today: it is one of the best redevelopments in any city I have been in. We did not know that those magnificent colonnades in the vestibule of the hotel existed until the property was redeveloped—they had been boarded up with masonite during the Second World War. Of course, the people who came before the Greens thought it was an appalling project. I remember the opposition to the Opera House. I also remember the opposition to the Park Hyatt hotel. I remember the controversy about the Conservatorium of Music. I remember the opposition to the Olympics. Any worthwhile project or endeavour will always find its critics, and it will particularly find its critics in those politicians who capture only a small number of votes to get into Parliament. The noisy minority are the ones who always object because they know they do not have to appeal to a majority of the people. They know that they are not responsible for meeting the needs of the majority of people in the community. They will always oppose everything.

The Government will not support the amendment to defer the bill, as moved by the Hon. Patricia Forsythe. We believe that it is simply a delaying tactic on the part of the Opposition, which has been all over the place on this issue. When the Government announced the bill the Leader of the Opposition in another place, John Brogden, said that the Opposition was all for it. However, with a little bit of a blowtorch to the belly he buckled, notwithstanding the damage he knows it will do, not only to our chances of disposing of Sydney's waste but to the Burrinjuck electorate. Katrina Hodgkinson is the member for Burrinjuck, which covers the Goulburn area. She is quoted in the *Goulburn Post* of 17 November as saying:

It is of concern that the Land and Environment Court rejected the Clyde transfer station, putting at risk what is generally recognised as an environmentally responsible project.

That is her view. In the same newspaper she is quoted as saying:

The New South Wales Coalition has announced that it would be happy to look at any approach that the Government takes to achieve a solution to the problem caused by the Land and Environment Court decision.

So on 17 November she thought the Coalition would support the Government's legislation, because the Leader of the Opposition said it did. But a little bit of a blow torch and he gives in! What sort of leader is he? He is certainly not a leader that the people of New South Wales could ever trust. We need to get on with this. The Opposition is simply being opportunistic. I remind honourable members that the Clyde waste transfer terminal as proposed by the bill will be subject to some 137 stringent conditions dealing with noise, air, traffic, water quality and land contamination. Those conditions were settled after a comprehensive and exhaustive environmental assessment, which was verified by an independent expert.

The passage of this bill, to allow the Clyde waste transfer terminal to go ahead, will mean that the Woodlawn project can commence as soon as possible. By allowing the Woodlawn project to proceed now, the bill will remove short- and medium-term uncertainties about the management of Sydney's waste. Delaying the Woodlawn project also means delaying the payment of the miners' entitlements that have been outstanding since 1998. If this legislation does not proceed now, it will mean another Christmas of doubt and uncertainty for the 158 families of the Woodlawn miners. Of course, they do not know when those entitlements will be paid. And, not knowing when the money owed to them will be paid, they cannot make plans. For those reasons the Government opposes the amendment moved by the Hon. Patricia Forsythe. I commend the bill to the House.

Amendment of amendment negated.

Question—That the amendment be agreed to—put.

The House divided.

Ayes, 15

Mr Breen	Ms Hale	Dr Wong
Dr Chesterfield-Evans	Mr Lynn	<i>Tellers,</i>
Mr Clarke	Mrs Pavey	Mr Colless
Mr Cohen	Mr Pearce	Mr Harwin
Mrs Forsythe	Ms Rhiannon	
Mr Gallacher	Mr Ryan	

Noes, 17

Mr Burke	Mr Hatzistergos	Mr Oldfield
Ms Burnswoods	Mr Jenkins	Ms Robertson
Mr Costa	Mr Kelly	Mr Tsang
Mr Egan	Mr Macdonald	<i>Tellers,</i>
Ms Fazio	Reverend Dr Moyes	Mr Primrose
Ms Griffin	Reverend Nile	Mr West

Pairs

Ms Cusack	Mr Catanzariti
Miss Gardiner	Mr Della Bosca
Mr Gay	Mr Obeid
Ms Parker	Ms Tebbutt

Question resolved in the negative.

Amendment negatived.

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

Division called for.

Standing Order 114 (4) applied, by leave.

The PRESIDENT: Order! I have been advised that it may not be necessary to conduct a division. Standing Order 112 (6) provides:

At any time before the tellers are appointed a call for a division may be withdrawn by leave of the House. The division will not be proceeded with, and the decision of the Chair will stand.

Is leave granted?

Leave not granted.

The House divided.

Ayes, 17

Mr Burke	Mr Hatzistergos	Mr Oldfield
Ms Burnswoods	Mr Jenkins	Ms Robertson
Mr Costa	Mr Kelly	Mr Tsang
Mr Egan	Mr Macdonald	<i>Tellers,</i>
Ms Fazio	Reverend Dr Moyes	Mr Primrose
Ms Griffin	Reverend Nile	Mr West

Noes, 15

Mr Breen	Ms Hale	Dr Wong
Dr Chesterfield-Evans	Mr Lynn	
Mr Clarke	Mrs Pavey	<i>Tellers,</i>
Mr Cohen	Mr Pearce	Mr Colless
Mrs Forsythe	Ms Rhiannon	Mr Harwin
Mr Gallacher	Mr Ryan	

Pairs

Mr Catanzariti	Ms Cusack
Mr Della Bosca	Ms Gardiner
Mr Obeid	Mr Gay
Ms Tebbutt	Ms Parker

Question resolved in the affirmative.

Motion agreed to.

Bill read a second time and passed through remaining stages.

[The President left the chair at 6.36 p.m. The House resumed at 8.00 p.m.]

ASSENT TO BILL

Assent to the following bill reported:

Occupational Health and Safety Amendment (Prosecutions) Bill

**THE HONOURABLE PETER BREEN INDEPENDENT COMMISSION AGAINST CORRUPTION
INVESTIGATION****Privilege**

Motion by the Hon. Peter Primrose agreed to:

That the resolution of the House adopted this day relating to a matter of privilege concerning seizure of documents of Mr Breen by the Independent Commission Against Corruption be amended by omitting paragraph 10 (12) and inserting instead:

- (12) That any material which the House determines as within the scope of proceedings in Parliament remain in the custody of the Clerk, until the House otherwise decides, with a copy to be made available to Mr Breen.

**ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (QUALITY OF
CONSTRUCTION) BILL****TRANSPORT ADMINISTRATION AMENDMENT (RAIL AGENCIES) BILL**

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

BILL RETURNED

The following bill was returned from the Legislative Assembly without amendment:

Totalizator Legislation Amendment Bill

LEGISLATIVE COUNCIL AND PARLIAMENTARY JOINT SERVICES ANNUAL REPORTS

Motion by the Hon. Michael Egan agreed to:

1. That if the House is not sitting the Clerk may table the Annual Report of the Legislative Council and the Parliamentary Joint Services Annual Report with the President.
2. On tabling with the President the reports are:
 - (a) on presentation, and for all purposes, deemed to have been laid before the House,
 - (b) authorised to be published and printed by authority of the House, and
 - (c) to be recorded in the minutes of the proceedings of the House.

TABLING OF PAPERS

The Hon. Michael Egan tabled the following papers:

- (1) Annual Reports (Departments) Act 1985—Report of Attorney General's Department for the year ended 30 June 2003.
- (2) Annual Reports (Statutory Bodies) Act 1984—Report of Legal Aid Commission for the year ended 30 June 2003.

Ordered to be printed

WORKERS COMPENSATION LEGISLATION AMENDMENT (TRAINEES) BILL

Second Reading

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [8.08 p.m.]: I move:

That this bill be now read a second time.

This bill gives effect to a measure I announced in my Budget Speech earlier this year. That is why I am dealing with the bill instead of my esteemed Assistant Treasurer.

Reverend the Hon. Fred Nile: And so you should.

The Hon. MICHAEL EGAN: Yes. From 1 January next year, employers taking on trainees will be required to pay their workers compensation premiums, just as employers of apprentices already do. The New South Wales Government has paid the workers compensation premiums of trainees since 1989. After remaining static for years, the number of trainees in New South Wales rose dramatically from 1997, nearly quadrupling to 56,000 since then. The cost of premiums met by the Government has risen from \$4 million in 1997-98 to a projected \$47 million in the current financial year. Actuarial advice indicates that the cost of the scheme will continue to rise to more than \$70 million a year.

Not only is the scheme becoming unaffordable, it is fundamentally flawed because it removes from employers an important financial incentive to maintain workplace safety. Employers who do not pay workers compensation premiums are quarantined from the financial consequences of injuries to their staff. The evidence shows that large numbers of employers do not care if their staff are injured, provided they do not have to pay.

A recent report by PricewaterhouseCoopers found that the rate of workplace injuries among trainees has risen by 65 per cent since 1997-98. That is not a 65 per cent increase in the absolute number of injuries; it is a 65 per cent increase in the number of injuries for every 1,000 trainees. What is worse, the rate of serious injuries to trainees has more than doubled in four years. At the same time, the rate of injuries among the general work force fell by more than 10 per cent.

WorkCover analysis of one large company's claims shows that the injury rate for trainees was more than double that for other staff. As long as employers are protected from the financial consequences of inaction on safety, these problems will continue, and quite possibly worsen. The incentive is also open to abuse, with some employers enrolling existing employees—and in some cases long-term employees—as new trainees. One company claimed its entire existing staff as trainees. Some of them had been on the company's payroll for up to 20 years.

Some people have argued that if employers have to pay trainees' workers compensation premiums they will offer fewer traineeships. This argument falls down when it is appreciated that incentives remain for employers to take on genuine trainees. For example, employers get access to training wage rates, exemptions from payroll tax, Federal subsidies of up to \$3,300 for each trainee and State and Federal Government support for training provided by registered training organisations.

The State Government will continue to provide travel and accommodation subsidies to trainees and apprentices who are required to travel more than 120 kilometres to attend training. Last year this cost \$2.6 million. Trainees and apprentices will also continue to receive public transport concessions. Employers taking on new trainees will be required to pay their workers compensation premiums from 1 January 2004. This will put trainees and apprentices—for whom employers already pay workers compensation—on exactly the same footing.

As a transitional measure the Government will continue to pay the premiums of existing trainees until 31 December 2004. I might point out that Victoria is the only other State providing a concession—and it is very limited—and Victoria also applies payroll tax to trainees. I commend the bill to the House.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [8.11 p.m.]: I cannot believe what I see, let alone hear. The Workers Compensation Legislation Amendment (Trainees) Bill has extremely important ramifications for the future employment of trainees and apprenticeships in New South Wales. Our completely uncaring Treasurer has left the Chamber after delivering his second reading speech. His Labor colleagues—who purport to represent the workers of this State and the young people who look forward to getting jobs in trades, for example—must be asking themselves, "Are we actually about to vote in favour of this bill after what we have just heard?" Even more interesting is that the Minister for Commerce—who is supposedly at the vanguard of future reforms of workers compensation, the so-called champion of that reform—utters not a word. He did not deliver the second reading speech on this bill. He did not say a thing about the bill. He probably will make a few comments now that I have challenged him to do that. Then again, he may not.

The Minister cannot seriously look honourable members in the eye and say that he believes what the Treasurer has just said. The Treasurer spoke about unscrupulous and uncaring employers, indeed employers who engage in criminal conduct, and they put at risk the lives and wellbeing of their employees. That is what we have just heard from the Treasurer. But he said that this bill would put a stop to those unscrupulous, uncaring and criminal actions. The Special Minister of State has been silent on this legislation, doing the best impersonation of Harpo Marx that I have seen in a long time—not to mention Groucho, the Minister for Transport Services. For years we have been told that the tough approach of this Government in fining employers who do the wrong thing, cracking down on them and dragging them before the courts, is a measure of the willingness of the Government to take the stick to unscrupulous employers. Tonight we are told that this bill is the measure needed to stop employers from putting young people at risk. Of course the bill will do just that—because this legislation will mean young people will not get a job. If an employer has to make a call, he will look to the lowest level in his organisation to make the decision.

The Hon. John Della Bosca: You have got to do better for employers.

The Hon. MICHAEL GALLACHER: Ah, the Special Minister finds his voice when his mate is back. His laryngitis has gone now that his little chum has returned, giving him enough ticker to want to have a go. Minister, bring it on in your speech! What the Treasurer said—

The Hon. Michael Egan: Was good.

The Hon. MICHAEL GALLACHER: You might say it was good, but your nose got bigger and bigger as we watched you deliver your speech—because I don't believe you believed what you were saying.

The Hon. Michael Egan: I am very sensitive about my snoz!

The Hon. MICHAEL GALLACHER: You resemble my comments, right! What the Treasurer has done is put yet another large obstacle in the way of many young people getting a traineeship in this State. We now have something like 40,000 traineeships. If the Treasurer left this place and took the time to walk around the streets and speak to those who employ young people, they would tell him about the many barriers to bringing young people on board. Employer after employer is telling us about their concern to give young people an opportunity. But the Treasurer puts in their way a massive barrier. Worse, the Minister in this Chamber who purports to represent the best interests of workers compensation has simply kowtowed to the Treasurer, who acts on a whim to keep his budget in surplus—at the expense of employers and employees.

The Special Minister will have to speak in this debate now because he will have no credibility if he allows the Treasurer to run amok. The Special Minister will have to get to his feet and paddle with all his might to try to get out of the mess that the Treasurer has put him in. New South Wales employers, who make every effort to bring young people into their business, will now have to overcome another massive hurdle that the Treasurer puts in front of them. I would like to hear from the Country Labor representative in this Chamber. The Hon. Christine Robertson will have a difficult task explaining to people in country New South Wales how this bill will ever assist young persons who hope to be trainees.

When it comes to workers compensation, this is without doubt one of the worst bills that I have seen in the years that I have been here debating workers compensation. It is foolish legislation. It may well rake in a few

bucks for a lazy Treasurer desperate to gather into his coffers as much money as he can. If it is not the clubs, it is employers in general. The biggest victims of this legislation will be the young people of 16, 17 and 18 years of age who look forward to getting a traineeship in the building trade or in the many other fields of industry. Their best means of getting that opportunity is the employer who says, "I will give you a start." Until now, the workers compensation charges for traineeships have been borne by government, but now the New South Wales Labor Government turns its back on those employers. As a consequence, employers will have to look at the bottom line.

I apologise for being so passionate in my criticisms of this legislation. I just cannot believe that the Government introduced this bill. The Treasurer announced this proposal in his Budget Speech. But I thought and hoped that commonsense would prevail and this would be one of those proposals that would slip under the radar and disappear. I just cannot believe that the last Christmas present that employers will get in 2003 from the Government will be the responsibility of telling their trainees, "Don't turn up after 1 January next year." The Opposition is pleased and proud to oppose this bill.

Reverend the Hon. Dr GORDON MOYES [8.18 p.m.]: I support the Government's Workers Compensation Legislation Amendment (Trainees) Bill. This bill requires employers, other than self-insurers, to take out certain policies of insurance to cover their liability for workers employed by them. I am very pleased to know that the number of trainees in New South Wales has increased so dramatically over the past five years—nearly quadrupling in that time, to 56,000. I note from the speech delivered by the Treasurer that one company claimed that its entire existing staff were trainees, even though some of them had been on the company payroll for twenty years. As I know a little bit about engaging trainees, I know that to be an illegal practice. It should not be countenanced by the Government or by anyone else.

Until my successor at Wesley Mission is appointed, I am responsible for employing 165 trainees out of a staff of 3,500. I do not believe there should be a disproportionate number of trainees to full-time paid staff. The documents I have signed indicate that no trainee shall take the job of any existing full-time staff member. I encourage the training of unskilled people, who might otherwise not have a job, to improve their capacity for future training. It is a new kind of apprenticeship. I appreciate that not all young people are able to undertake the full length of training and this type of traineeship provides some training. In addition, the trainees for whom I am responsible must also undertake compulsory training in occupational health and safety. They must also undertake a compulsory course in basic computer skills so that when they complete their traineeship they can type out their own curriculum vitae.

The Hon. Michael Egan: Would I be able to undertake that course?

Reverend the Hon. Dr GORDON MOYES: There would be areas within the Wesley Mission where even you would lack the skills. We would be delighted to have you, but we would not allow any full-time staff member to be displaced to take you on. The Federal Government should be encouraged to also embrace this measure. The traineeship initiatives of the Federal Government have been excellent and I congratulate the Federal Government on funding many traineeships. On a number of occasions in this House I have raised questions with the Minister for Industrial Relations on industrial safety. Likewise, Wesley Mission instructs every trainee in occupational health and safety matters. It is the responsibility of every employer to ensure that young trainees are trained in occupational health and safety. Employers should also contribute to their insurance and WorkCover premiums. We do not agree with rorts. Workers compensation premiums should be paid and trainees should be fully covered. We commend the Government for introducing the bill.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [8.23 p.m.]: This bill is a great disappointment. When the bill was foreshadowed in the 2003 budget concern was expressed about the repercussions of such a move on the employment of trainees. Youth employment has, and remains, one of the continuing failings of both State and Federal governments. In 1984 or 1985 I undertook a public service fellowship on workplace absence management. The motivational factor to workplace absence was the extent to which people had control of their own destiny. Education was important to providing flexibility and giving people confidence to be assertive in their workplaces.

I researched the matter and found that universities were not responsive to those who wished to undertake training. People were required to be fully enrolled, to undertake part of a three-year course and to attend a day course because of limited night courses. TAFE colleges and the Workers Educational Association provided better facilities. At that time the philosophy centred on privatisation. Indeed, the Water Board paid for many courses that were not targeted and were merely feelgood, expensive rip-offs. It is important that workers

continue to receive training. With the corporatisation of Sydney Water 150 people attended one of the best apprentice training colleges in the State, the college at Potts Hill near the reservoir at Birrong. As a cost-saving measure that college was closed and the Government made no further contribution towards training young people. For a quick buck it sold or leased the land, despite the need for further training. Indeed, a training levy was introduced but, unfortunately, there were rorts in the system with managers undertaking expensive weekend courses at fashionable venues under the guise of corporate bonding.

The Hon. John Della Bosca: Did you go?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Yes, I went to a couple. I was being trained at the time.

The Hon. Michael Egan: What were you being trained at?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I made a significant contribution through the non-smokers movement. I set up a smoke-free, workplace, employer education program—it was a shame I did not get to the Treasurer at that time—which cost a mere \$13,000 out of the New South Wales levy. We produced a kit and a movie for Franklins. Indeed, our efforts encouraged Franklins to be smoke-free. The program I created was good value indeed. The Water Board also was smoke-free with the best occupational health and safety fitness program of any statutory authority in this country, and perhaps the world. I put together that cost-effective program, but that is another story.

The Hon. John Della Bosca: Why did the Water Board pay for the Franklins movie?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: It didn't. I did that little effort in my spare time. In 1987 only 4,000 people were trainees; now there are 56,000. The Government should be proud of that achievement. Instead, it highlighted the fact that in 1997-98 the cost of workers compensation premiums was \$4 million whereas the projection for 2003-04 is \$47 million. One could argue that the scheme has been successful and that the amount is not considerable for that number of trainees. It is false economy not to provide incentives for young people to find work or undertake training. It is the same as preventative medicine: \$1 spent in training may save \$6 to combat crime or drug abuse.

One argument in support of discontinuing the scheme has been that the system is open to abuse. The Parliamentary Secretary in the other place said that some company employees had been listed as trainees for 13 years. Those people may be training to further their careers, although many were probably abusing the system. However, a few rorts do not justify dismantling the whole system. The smart option is to stop the rorts. If there are rorts in the building industry and phoenix companies through the misclassification of people when premiums are discussed, there are probably a large number of rorts with workers compensation premiums. The Government should ascertain whether it is merely an indicator of the broader problem of avoidance of workers compensation premiums. Instead it is shooting the messenger and not dealing with the major problems. Many unions would agree with that statement.

The Government should be better informed on traineeships and the people paying workers compensation premiums. Perhaps consideration should be given to limiting the training concession for three years to a single person if the Government believes the system is being seriously rorted. That is only one way to control the situation. The Government should know where the money is going and supervising the scheme is only a small percentage of the overall cost. The way the Government introduced the bill is to be condemned. It was introduced in the other place on 19 November without even being listed on the business paper. Notice of the introduction of the bill was given at six o'clock, the debate came on at 10.52 p.m. and the bill was passed at 11.10 p.m. It is outrageous that a bill that will have such a profound effect on employment opportunities for young people in this State was dealt with on notice and in 20 minutes. In the additional briefing note to the bill that was circulated on 2 December the Treasurer advanced the argument:

As employers do not pay workers compensation premiums for trainees they have less incentives to maintain workplace safety. A bad safety record for trainees cost them nothing.

Once again, that is no reason to get rid of the concession. That is not to say that the Treasurer has any record to speak of on occupational health and safety. The Treasurer interrupted me when I said that the Fox Studio does not have proper occupational health and safety controls. The studio does not come under the control of either the council or WorkCover because it has an exemption. It comes under the control of the Treasury, where it has no right to be. To this day people continue to complain of fumes from the site. The response is that nothing can be

done because when the development was approved no-one was sure what chemicals would be used in the workshops. Who would pass a development application without knowing what was to be used in a workshop adjacent to a residential area? Clearly, the site should have had an industrial rating and an industrial level of supervision.

To get a quick buck the Treasurer passed the workshop more or less without normal occupational health and safety controls. When I pointed this out, a ridiculing piece about how sun cream causes cancer hit the papers. The Treasurer was upset by the article and he got some coverage in the *Sun-Herald* because, as it turns out, Alex Mitchell does not like sun cream. The sad fact is that the Treasurer has no idea about occupational health and safety. He cannot see past the dollar. He does not value occupational health and safety, and that is the problem. He does not understand remedial health measures, and that could be associated with his tobacco use. I do not want to bring personal prejudices into this debate, but they are often relevant.

Workers compensation premiums as such are not an incentive to maintain workplace safety. A broader and better understanding of how to maintain workplace safety is needed. This is not a reason to get rid of the concession. It is not even a financial issue. It is an enforcement issue for WorkCover. If, as the Treasurer quoted in his briefing note, WorkCover has the figures indicating a company's high rate of injuries, then WorkCover should attend that workplace to investigate, prosecute breaches of workplace safety, and advise the company what to do about it.

The incidence of trainee workplace injuries should not be used as an excuse to bleat about not paying trainees workers compensation premiums. I am not aware of any consultation with the TAFE section of the Teachers Federation, which is one of the groups involved in this sort of training, or employer groups. The Teachers Federation has told my office that it was opposed to the bill, as one would expect. My office spoke to Garry Brack, who is opposed to the legislation because it is a big disincentive to employing trainees. If young employees are not cost-effective in the short term, obviously anything that offsets the on-costs is to be welcomed. That is a major factor in the employment of young people. The bill is short-sighted economics. There has been no consultation about it and it will harm the employment prospects of young Australians. The Australian Democrats oppose it.

Ms LEE RHIANNON [8.33 p.m.]: The Greens are concerned in a general sense that inadequate government support is being given to the recruitment and training of apprentices and trainees. There are skills shortages in some areas, and they can be addressed only by the training of new workers. In addition, apprenticeships and traineeships are an important pathway to full-time work for many young people. The bill affects trainees only and will remove the existing exemptions that allow employers to avoid taking out workers compensation insurance for certain trainees. The Government claims that this is necessary to address employer abuses and because training workplace injuries have been rising, as employers have little incentive to improve safety. We are prepared to accept that these are legitimate issues that need to be addressed. However, the Greens are concerned that this current incentive to take on trainees is being removed without any new incentives being offered. We can accept that the status quo needs to be reformed, but surely there is a way to achieve both objectives.

The Government claims that employers will still have plenty of incentive to take on trainees: training wage rates, New South Wales payroll tax exemption, Federal subsidies and so on. But the point is that all these incentives already exist. This bill removes an incentive but does not replace it. It will be interesting to watch what impact the bill has on trainee numbers. If employers and unions approach the Greens to say that the situation has deteriorated I will certainly come back to this House and ask the Government to remedy its failure. Although the Workers Compensation Legislation Amendment (Trainees) Bill is specifically about trainees, whenever I see the words "workers compensation legislation" I am reminded of the fateful legislation that was the massive sell-out by this Labor Government. It is something that will need to be amended in years to come. It is not possible to think of workers compensation legislation without reflecting on that time.

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [8.35 p.m.], in reply: I thank members for their contributions to the debate.

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

The House divided.

Ayes, 23

Mr Breen	Ms Griffin	Mr Oldfield
Mr Burke	Ms Hale	Ms Rhiannon
Ms Burnswoods	Mr Hatzistergos	Ms Robertson
Mr Cohen	Mr Jenkins	Mr Tsang
Mr Costa	Mr Kelly	Dr Wong
Mr Della Bosca	Mr Macdonald	<i>Tellers,</i>
Mr Egan	Reverend Dr Moyes	Mr Primrose
Ms Fazio	Reverend Nile	Mr West

Noes, 11

Dr Chesterfield-Evans	Miss Gardiner	Mr Ryan
Mr Clarke	Mr Gay	<i>Tellers,</i>
Mrs Forsythe	Mr Lynn	Mr Colless
Mr Gallacher	Mrs Pavey	Mr Harwin

Pairs

Mr Catanzariti	Ms Cusack
Mr Obeid	Ms Parker
Ms Tebbutt	Mr Pearce

Question resolved in the affirmative.

Motion agreed to.

Bill read a second time and passed through remaining stages.

NATURAL RESOURCES COMMISSION BILL**NATIVE VEGETATION BILL****CATCHMENT MANAGEMENT AUTHORITIES BILL****Second Reading**

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [8.43 p.m.]: I move:

That these bills be now read a second time.

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

Leave granted.

OVERVIEW

On 15 October the Government announced that natural resource management in New South Wales was to undergo a series of historic changes following the recommendations of the Native Vegetation Reform Implementation Group Chaired by Ian Sinclair.

Today I am proud to introduce three bills that cement these historic reforms in place. These bills, taken as a whole, launch a new era in natural resource management in this State.

Many community groups and individuals, some of them traditional adversaries, have worked together to develop the basis for the proposals in these bills. I thank them for their efforts, and today I am rewarding their hard work by introducing three bills that embody their proposals and deliver genuine improvements to natural resource management in New South Wales.

I record here, my thanks to:

Rob Anderson
Jeff Angel
Peter Cosier

Col Gellatly
Glen Klatovsky
Jonathon McKeon
John Pierce
Jennifer Westacott
Roger Wilkins
Mike Young

And, in particular, the Right Honourable Ian Sinclair, for his wisdom and stewardship in these matters. All of these people have worked with commitment and common sense. They have produced a good result. We can deliver what they have asked for.

These bills:

- create an independent Natural Resources Commission to make recommendations on natural resource management standards and targets, audit the performance of the Catchment Management Authorities, report on the achievement of targets and carry out inquiries;
- create 13 locally-driven Catchment Management Authorities (CMAs) to deliver natural resource management programs at the catchment level; and
- introduce the changes to native vegetation management that are at the heart of the Sinclair Plan to end broadscale land clearing and give greater certainty to farmers and industry in their various and numerous activities.

The Natural Resources Commission Bill provides the foundations for a move away from the conflict that historically goes with the natural resource debate, to a professional, outcomes-based approach to natural resource management.

Under this new approach, for the first time, we will have clear targets for the condition of our natural resources. This means we can track our progress and know when we have achieved our goals.

To begin this new approach, the Bill establishes the Commission as a statutory, independent body, along the lines of the Independent Pricing and Regulatory Tribunal, and provides that the NRC may conduct inquiries and provide advice on specific issues as directed by the Government.

The NRC will help the Government to establish targets and standards for natural resource management based on the best available scientific, economic and social information, and to monitor progress towards those targets.

The Premier will oversee the NRC but delegate its day to day operations to the Minister for Natural Resources.

The CMA Bill establishes 13 new regional authorities to replace 72 existing natural resource management committees. This will allow local communities a more direct say in key decisions on how their natural resources are managed.

By removing a lot of process and bureaucracy, we can a better focus on results and performance.

These new authorities will be key landscape managers in their local areas, doing day to day administration and delivery of natural resource management programs.

The CMAs will develop comprehensive catchment action plans that consolidate and build on the existing native vegetation plans and catchment blueprints and incorporate other issues over time. They will also provide me with an annual implementation program that lists the activities that will be undertaken each year and how much they will cost.

The Bill provides that CMAs will be governed by a skills-based Board and a General Manager. They are expected to employ 10 to 15 staff.

The role of CMAs is to set targets for their region and ensure the funds available to them are delivered to projects that achieve those targets.

The intention of these new arrangements for catchment management is to:
ensure smoother and faster delivery of natural resources funding to regional communities, particularly those funds from the National Action Plan for Salinity and Water Quality and the Natural Heritage Trust;
provide CMAs with block funding of the plans they have prepared so they can get on with delivering those funds to the community; and streamline the current complex committee structure.

The Native Vegetation Bill replaces the *Native Vegetation Conservation Act 1997*. It:
has objects that reflect the Government's commitment to end broadscale clearing and maintain productive landscapes;
delivers the Sinclair Report's standard definitions for native vegetation, regrowth and protected regrowth that will end broadscale clearing;
provides the practicality and flexibility for continuation of routine agricultural management activities; and
establishes a new consent process for native vegetation management based on property vegetation plans.

The Bill provides for agreed definitions for terms that have been a constant source of contention for years, such as:

- Remnant native vegetation;
- Regrowth;

- Protected regrowth; and
- Broadscale clearing.

The Bill provides for a new system to support landholders to voluntarily develop individual or group Property Vegetation Plans or PVPs. The primary benefits of the new system include:

- giving to farmers the opportunity and flexibility to take the initiative to develop a plan for the whole property;
- the opportunity to link plans at the property level to the catchment action plans developed by regional communities.
- new development consent rules that end broadscale clearing but allow flexibility for farmers to continue routine agricultural management practices.

Together these three bills create a new system based on statewide targets, regional plans to achieve those targets and new rules for the management of native vegetation.

This system will move us away from the 'argy bargy style conflict' that has historically accompanied the natural resource debate, to a professional, outcomes-based approach to natural resource management.

This new system seeks to clarify and separate the complementary, but separate, roles of Government, its agencies, Catchment Management Authorities, the independent Natural Resources Commission and the non-government stakeholders who will be represented through a new Natural Resource Advisory Council.

The new model is driven by the recognition that there must be a clear *separation* of responsibilities and roles. In the past, these lines of separation were blurred. In their simplest form, under the new structure:

- Government remains the key source of policy and direction;
- the NRC independently advises on standards and targets and reports on progress towards targets;
- the Advisory Council clearly articulates the positions of key stakeholders to the Government; and
- CMAs deliver programs and outcomes on the ground either in their own right or potentially in partnership with other local organisation such as local councils and land care groups.

By identifying and separating these linked and complementary roles we have created accountability. We will now know what we are trying to achieve, whose job it is to achieve it and if we are on track to get there.

I now turn to each of the bills.

NATURAL RESOURCES COMMISSION BILL

This Bill, concerns the establishment of the Natural Resources Commission.

One thing is clear about natural resource management, there will always be argument and debate. Debate about the size of problems, the cause of problems and solutions to problems. This debate is healthy but we must also take action, otherwise the problems will simply continue to grow and fester.

That is why the vital thing about the new Commission, is its independence. The importance of this cannot be overstated: the Commission's capacity as an independent body to make recommendations to Government, based on an impartial assessment of all the issues, is absolutely integral to the success of our new model of integrated natural resource management.

It is imperative that the Commission is recognised and acknowledged for its independence, and that it can be relied upon by all the stakeholders in the natural resources debate to consider the facts, and weigh them fairly. The NRC will be able to seek all the advice it requires, it will be able to call on data and information from inside and outside Government, it will be able to integrate this information and then deliver its recommendations to the Government.

Another means for ensuring the independence of the Commission is the requirement that its reports will be made public. They will be in the public domain, and it will be incumbent on Government to respond to them.

A core responsibility of the Commission is to recommend to the Government natural resource targets and standards based on the best available scientific, economic and social information. The Catchment Management Authorities will translate these statewide targets into regional targets, and the CMAs and other organisations will design and implement programs to achieve those regional targets. The Commission will then audit those programs, report on their effectiveness and report on progress towards the statewide targets adopted by the Government.

In addition to recommending standards and targets the Bill provides that the NRC may conduct inquiries and provide advice on specific issues as directed by the Government.

Prior to this Bill, the Government was advised and assisted on natural resource management issues by a number of committees made up of government and non-government stakeholders. These committees were:

- Resource and Conservation Assessment Council
- Coastal Council

- Healthy Rivers Commission
- State Catchment Management Coordinating Committee
- Native Vegetation Advisory Council
- Water Advisory Council
- State Wetlands Advisory Council
- State Weir Review Committee
- Advisory Council on Fisheries Conservation
- Fisheries Resource Conservation and Assessment Council

For the most part, these committees focused on a particular aspect of natural resource management, and advised the Government on those aspects. Some committees had particular statutory functions under acts and other instruments.

Where necessary and appropriate, these functions will be subsumed by the Natural Resources Commission. Otherwise, their functions are taken over by the Natural Resources Advisory Council, which I will discuss shortly.

I would like to take this opportunity to thank the members and chairs of these bodies and the staff that assisted them. All these bodies have assisted the Government for many years and the Natural Resources Commission will now be able to build on their work.

In addition, the following bodies will be transferred to the NRC:

- New South Wales Scientific Committee
- Fisheries Scientific Committee
- Biological Diversity Advisory Council

They will retain their existing legislative responsibilities pending a review of the Threatened Species Conservation Act 1995.

The Coastal Council, made up of government and non-government representatives and chaired by Professor Bruce Thom, is good example of the work done by these organisations. It has been ably advising the Government on coastal management issues for a number of years. The Natural Resources Commission will not in any way diminish our focus on the coast, rather we recognise the fundamental links between coastal issues and the myriad of other natural resource issues.

By taking a more integrated approach to natural resource management we will be able to respond far more effectively to coastal protection and the issues addressed by the other advisory bodies.

We recognise that there are particular problems associated with particular issues. In the case of coastal development, problems which arise from the rapidly increasing urbanisation of our coastal regions. These problems will continue to receive our attention.

What the Commission can add to coastal management, and the other natural resource issues, is its distinctive powers, resources and independence. In every instance I see the Commission adding focus to each of these issues not reducing it.

That is the whole purpose of integrated natural resource management—not to diminish the importance of individual elements, but to realise and act on their importance in their interrelated and integrated contexts.

The non-government advisory functions of these committees will now be delivered through a new high level stakeholder group known as the Natural Resources Advisory Council.

The Minister is establishing the Natural Resources Advisory Council to replace many of the disparate advisory bodies which have previously advised Government on a wide range of natural resource issues. Bringing these under one high level Advisory Council represents another element in our consistent efforts to integrate natural resource management, to focus Government on the central issues affecting natural resource management and to be a powerful single source of stakeholder advice to Government.

The specific functions of the Advisory Council will be to:

- provide a high level forum for stakeholders to advise the Government on natural resource management issues; and
- to broker agreements between the representative stakeholder groups on contentious natural resource management issues.

The Advisory Council is to consist of a maximum of twenty representatives of natural resource stakeholders and an independent Chairperson.

The Members will include representatives of:

- NSW Farmers Association
- NSW Irrigators Council

- the scientific community
- the Total Environment Centre
- the Nature Conservation Council
- the Aboriginal community
- catchment management authorities
- the Local Government Association and the Shires Association
- the Labour Council of New South Wales
- fisheries resource management expertise
- NSW Minerals Council
- Forest Products Association
- the Landcare community
- the Rural Lands Protection Boards and

any other stakeholders appointed by the Minister.

The CEOs of the Natural Resources agencies will be ex-officio members of the Advisory Council.

The Natural Resource Advisory Council is a big step forward in stakeholder relations with Government. There will be a single stakeholder advisory council with the responsibility of delivering to Government the views of stakeholders within the realm of natural resource management.

It is an onerous responsibility, but it is critical to deliver the integration and co-ordination that is vital to good natural resource management.

The new Department of Infrastructure, Planning and Natural Resources, along with the newly created Department of Environment and Conservation, will continue to provide integrated policy and technical expertise in natural resources management. They will work closely with other land management and natural resource management agencies to be a primary source of data and information as well as initiating and implementing the policies of Government in natural resource management.

If I can turn to the Bill itself, it establishes the Commission as a statutory, independent body, along the lines of the Independent Pricing and Regulatory Tribunal.

The Bill provides that the NRC will report to and receive directions from 'the Minister'. It is intended that 'the Minister' with responsibility for administration of the Act will be the Premier.

The Bill provides that the Premier may delegate any of his functions under the Bill to another Minister. This will allow the Premier to oversee the NRC but allow him to delegate its day to day operations to the Minister for Natural Resources.

The Bill also outlines a range of administrative matters relating to the appointment of Commissioners, and the organisations to be replaced by the NRC.

The Bill is divided into three parts, which I shall outline to the House.

The first part is the preliminary section which, among other things, provides for the application of the Bill to matters related to the management of natural resources including water, native vegetation, salinity, soil, biodiversity and coastal protection and other matters concerning natural resources prescribed by the regulations, such as forestry.

It is important to point out that these issues are to be considered in both rural *and* urban contexts. In particular, it is impossible for coastal protection to be achieved without consideration of the urban pressures along our coastal shores. However, it is not intended that the responsibilities of the Commission will extend to the more local details of urban development, such as the height or arrangement of buildings or deal with sustainability issues like waste management or energy efficient building design.

Part 2 of the Bill deals with the establishment of the Natural Resources Commission. The Commission will be made up of a full-time or part-time Commissioner who may be assisted by Assistant Commissioners, full time or part time, or on a temporary basis as required.

For example, if the Government instructs the Commission to undertake an inquiry into a particular matter, the Commissioner may appoint an Assistant Commissioner to either assist, or deputise for, him or her in that inquiry. Schedule 1 of the Bill details provisions relating to the Commissioner and Assistant Commissioners.

Part 3 of the Bill deals with the functions of the Natural Resources Commission. The general function of the Commission is to provide the Government with independent advice on natural resource management. Its specific functions are to make recommendations to the Government on statewide standards and targets. Standards and targets for individual catchments will be

developed by the catchment management authorities themselves, taking into account specific regional conditions as well as the Statewide standards and targets adopted by the Government.

In developing its recommendations, the Commission will need to take into account the best available scientific, social and economic information. The standards and targets will need to be fair and practicable as there is no point setting unachievable goals.

In recommending standards and targets the Commission will consider factors such as regional variation, the impact on communities directly affected, indigenous knowledge, the impact on future generations and consistency with other government decisions relevant to natural resource management.

Standards developed by the Commission will be used to underpin absolute requirements across the state, such as the prohibition of clearing native vegetation on steep slopes.

Targets, such as reducing surface water salinity levels by a certain amount by a certain time, will be used to direct investment in natural resource management to projects that contribute to the adopted targets.

The second core responsibility of the Commission is to recommend to Government the approval of catchment action plans, developed by the CMAs.

The catchment action plans will set regional targets and standards and the NRC will advise me as to whether these regional targets and standards are consistent with the Statewide standards and targets adopted by the Government.

Where the Commission is concerned about particular aspects of a draft catchment action plan, the Catchment Management Authorities Bill provides for the Minister to request that further explanation or analysis be undertaken by an Authority before their draft plan is approved.

The Commission will also be asked to undertake audits of catchment action plans.

These audits will occur on a regular basis and will show how our reforms are working on the ground and in the community, where it counts. They will show whether the catchment action plans need adjustment or refinement, where they are successful and how they might be improved.

In addition to these core tasks the Commission may also take on a range of other tasks as directed. It may undertake inquiries or help resolve particularly complex natural resource issues. To assist it in these tasks, the Commission may involve stakeholders. It may also hold public hearings if it considers them necessary to obtain the right information and spread of community views.

The Bill provides that the Commission will report to Government on all of its findings through the preparation of an annual report. Most importantly the annual report will record our progress towards achieving the Statewide standards and targets we adopt. The annual reports will also contain the findings of audits and inquiries undertaken by the Commission during the reporting period. The Commission will also provide an assessment of the success of catchment action plans in complying with statewide standards, and achieving the statewide targets, adopted by the Government.

Essential to the effective functioning of the Commission is that it have at its disposal the best resources and information available. Part 3 therefore provides for the Commission to engage Government agencies and consultants to provide assistance.

In addition, the Commission is empowered to seek information or data that agencies may hold and it is expected that agencies will comply with such requests. Of course, if any dispute about the provision of such information arises then the Commission may refer it to the Premier for resolution.

Part 4 of the bill deals with miscellaneous matters including the amendments of other acts and instruments as set out in the schedules. Part 4 also provides for a review of the proposed Act as soon as possible after the period five years from the assent date of the Act.

I shall now turn to the Schedules in this Bill. Schedule 1 deals with provisions relating to the Commissioner and Assistant Commissioners and details their appointments, whether they be appointed on a full-time or part-time basis and the terms of their office. In general, the terms of appointment are for a period not exceeding five years, but Commissioners and Assistant Commissioners are eligible for re-appointment. However, the schedule provides sufficient flexibility to allow Assistant Commissioners with specific expertise to be appointed on a short-term basis to undertake inquiries relevant to their specific expertise.

This schedule also deals with remuneration of the Commissioners and Assistant Commissioners and contains provisions for vacancies and the filling of vacancies.

Schedule 2 deals with the consequential amendment of Acts and instruments necessary for the NRC to perform the functions of the many bodies it is replacing.

The *Coastal Protection Act 1979* is amended to omit the Coastal Council, with provision in the NRC Bill for incorporation of the various functions and responsibilities of the Coastal Council.

The *Forestry and National Park Estate Act 1998* is amended to give the NRC responsibility for undertaking a forest assessment, prior to a Forest Agreement being made.

The *Public Finance and Audit Regulation 2000* is amended to omit the Coastal Council as an authority under that Act. State Environmental Planning Policy No 71—Coastal Protection, is amended to give the NRC a consultation role with regard to draft master plans.

The Statutory and Other Offices Remuneration Act 1975 is amended to insert the NRC.
The *Water Management Act 2000* is also amended to omit the Water Advisory Council from that Act.

Schedule 3 deals with the savings and transitional provisions relating to regulations and the replacement of existing advisory bodies. In particular it provides for the NRC to subsume the following bodies:

- Resource and Conservation Assessment Council,
- Healthy Rivers Commission,
- Coastal Council,
- Native Vegetation Advisory Council,
- Water Advisory Council,
- State Catchment Management Coordinating Committee,
- State Wetlands Advisory Committee,
- State Weir Review Committee,
- Fisheries Resource Conservation and Assessment Council; and
- Advisory Council on Fisheries Conservation.

I can affirm that the Government wishes to press ahead with its important new reforms.

As previously announced, the Minister has appointed Dr Tom Parry as Interim Commissioner of the Natural Resources Commission to assist with the early establishment of the Commission and to proceed with its first urgent tasks to set the standards and targets for four priority regions in New South Wales—namely, North Coast, Gwydir/Border, Central West and Murray-Murrumbidgee. It will be a challenging role and the Government is grateful to him for taking it on.

Catchment Management Authorities Bill

I now turn to the Catchment Management Authorities Bill.

Part 1 of the Bill sets out the objects of the Act and Part 2 establishes the 13 new catchment management authorities. These 13 new bodies will replace 72 existing regional committees.

The CMAs established by the Bill are:

- Border Rivers-Gwydir
- Central West
- Hawkesbury-Nepean
- Hunter-Central Rivers
- Lachlan
- Lower Murray-Darling
- Murrumbidgee
- Murray
- Namoi
- Northern Rivers
- Southern Rivers
- Sydney Metropolitan
- Western

The Bill provides that these CMAs will be formally constituted as statutory authorities with a responsible and accountable board. Appointments to the boards will be based on certain skills and knowledge. The skills will required on the Board include:

- primary production, for example expertise in landcare or sustainable farming;
- environmental, social and economic analysis, for example understanding the likely impacts of plans on the local community or local biodiversity;

- facilitation and negotiation skills;
- business management;
- understanding of state and local government; and
- community leadership.

Let me be clear on the Board's membership. These are the skills the Government wants the Board to have collectively. This is not a list where each member is ticked off against a single category. These Boards will be people of standing in the catchment. When either a farmer or an environmentalist reads their names in the local paper announcing the CMA, I hope they will think to themselves "I may not agree with everything they person says, but I respect their knowledge and expertise."

In the process of selecting Board members it will be important to ensure that collectively each Board has the capacity to access the knowledge and understand the concerns of all sectors of the community.

The Minister also intends, as far as is possible, to appoint people that live in the area of operations of the authority.

The CMA boards will report directly to the Minister for Natural Resources.

The CMAs will have a Chair, a General Manager, and the power to employ staff. It is expected that the CMAs will initially have a team of about 10 to 15 staff.

Part 3 of the Bill sets out the functions of the CMAs. The role of the CMAs is to work with local communities to deliver real natural resource improvements. To do this they need a clear expression of where they are going—a catchment action plan—and how they are going to get there—an annual implementation program.

The catchment action plan will consolidate and build on the existing native vegetation plans, catchment blueprints and other existing natural resource plans as well as provide the long term direction for investment in natural resources. The annual implementation program will set out how the funds will be spent on the ground.

Of course, the catchment action plan will be developed in consultation with the regions communities.

In addition to preparing catchment action plans and implementation programs, the other functions of CMAs will include:

- consultation with local government and catchment communities;
- recommending and managing incentive programs to implement catchment action plans and achieve environmental improvements;
- issuing consents under the Native Vegetation Management Bill; and
- providing education and training on natural resource management, especially native vegetation management.

Part 3 also requires CMAs to prepare annual reports. These reports are an important part of our new system. They will tell us what the CMAs have achieved each year and allow us to judge whether they have made progress towards their regional targets, complied with statewide standards and overall whether we are making progress towards our state targets.

Part 3 of the Bill describes the role of catchment action plans and the process for preparing and approving them.

It is intended that catchment action plans fulfil the crucial role set out for them in the Native Vegetation Reform Implementation Group Report. They will contain:

- regional standards and measurable and achievable short-term and long-term regional targets;
- priorities for investment in practical on-ground action to achieve these regional targets;
- identify areas of protected regrowth;
- practical guidance for preparing property vegetation plans so they are consistent with regional standards and targets; and
- monitoring and reporting arrangements.

The Bill provides that CMAs must consult widely in the process of preparing draft catchment action plans including with any bodies that are to carry out an activity under the plan. The Minister will expect CMAs to demonstrate that they have used best practice consultation techniques, and in particular to demonstrate that they have engaged communities and other relevant stakeholders in their planning process.

Final approval of draft plans will rest with the Minister but prior to approval the Minister must seek the advice of the NRC. This is the key to our new system. It is this step that will ensure a good marriage between the local skills and knowledge of the CMAs and the statewide independent overview of the NRC. The NRC will tell the Minister whether each draft Catchment Action Plan is adequately addressing the relevant statewide targets and standards.

The Bill provides that the Minister may not approve a draft catchment action plan unless the Minister is satisfied that the plan complies with relevant statewide standards and promotes the achievement of the relevant statewide targets.

Once they are approved the effectiveness of the catchment action plans will be reviewed regularly. The NRC will review the plans to see if the CMAs are implementing their actions, achieving their regional targets, contributing to statewide targets and complying with statewide standards.

We have included this in the Bill because we want to know if we are getting value for money. If these plans are making our State better, we want to know so we can support and encourage the CMAs that are working well. If a plan is not working we want to identify the problems early and fix them.

Part 5 of the Bill requires CMAs to prepare annual implementation programs that set out their proposed activities for the coming year and how much they will cost. This program needs to be approved by the Minister before it is undertaken by the CMA.

Part 6 of the Bill deals with the financial arrangements of the CMAs. It enables them to enter into contracts, distribute funds and charge fees for services. In addition, the existing powers of catchment management trusts are transferred.

These financial arrangements for catchment management will result in:
smoother and faster delivery of funds to communities from the National Action Plan for Salinity and Water Quality and the Natural Heritage Trust;
block funding of the plans prepared by CMAs rather than project-by-project assessment of funding applications;
transfer of the consent functions for native vegetation clearing to CMAs; and
CMAs entering into contracts with landholders wishing to conserve high conservation value native vegetation.

Part 7 contains necessary amendments to other acts including the repeal of the *Catchment Management Act 1989*, the *Catchment Management Regulation 1999* and the *Hunter Catchment Management Trust Regulation 1997*.

Native Vegetation Bill

I now turn to the Native Vegetation Bill.

The purpose of this Bill is to fulfil the Government's commitment to end broadscale clearing by reforming native vegetation management in NSW.

The Native Vegetation Bill is about managing vegetation in a new way. We recognise that native vegetation is an important part of agricultural and forestry systems and it needs to be managed. We want to work with farmers and foresters to manage this resource sustainably and this Bill gives us the tools to do that.

Through this Bill the Government is implementing our response to the Native Vegetation Reform Implementation Group's recommendations. The Bill will:

- include objects that reflect the Government's commitment to end broadscale clearing and maintain productive landscapes;
- deliver the Sinclair Report's standard definitions for native vegetation, regrowth and protected regrowth that will end broadscale clearing;
- provide the practicality and flexibility for continuation of routine agricultural management activities; and
- establish a new consent process for native vegetation management based on property vegetation plans.

Part 1 of the Bill establishes objects of the Bill that reflect the Government's intent to end the broadscale clearing of native vegetation and to maintain productive landscapes. The objects are:

- to provide for, encourage and promote the management and conservation of native vegetation on a regional basis in the social, economic and environmental interests of the State, and
- to prevent the clearing of remnant native vegetation and protected regrowth unless it leads to better environmental outcomes, and
- to protect native vegetation of high conservation value having regard to its contribution to such matters as water quality, biodiversity, or the prevention of salinity or land degradation, and
- to improve the condition of existing native vegetation, particularly where it has high conservation value, and
- to encourage the revegetation of land, and the rehabilitation of land, with appropriate native vegetation.

Part 2 of the Bill establishes definitions for the key concepts on which our new system of native vegetation management is based.

Remnant native vegetation is defined as all native vegetation except regrowth.

The definition of **regrowth** is a very important concept in this Bill, so I want to spend some time talking about it. The principle embodied in the Sinclair report is that farmers should be free to carry on their existing activities and, where regrowth arises, clearing it should not require consent. Regrowth is defined as native vegetation that has grown after 1 January 1983 in the case of the Western Division and 1 January 1990 in the case of other land. However, a PVP may also provide for an earlier date for regrowth where it can be demonstrated by the landowner. This is not an open door to simply allow any area of remnant vegetation to be declared regrowth and so be cleared. It is intended to cover those very rare situations where regrowth has arisen as part of a planned and legitimate cropping or grazing rotation that commenced before the standard cut-off date for defining regrowth. I would expect that a high standard of evidence would be required to establish that such a long term rotation had been planned at the time it was initiated. This will be further defined in the regulations.

These rules will cover the vast majority of applications, but there will be cases where one size does not fit all. For example, in the case of the Central Division the Government will regulate to allow thinning of native vegetation that has grown between 1983 to 1990 and the landholder provides evidence of such regrowth and the Catchment Management Authority:

- (a) undertakes a site inspection to ascertain the evidence of the regrowth;
- (b) will accept the application if the evidence relating to regrowth age is substantiated; and
- (c) the Catchment Management Authority has the ability to place conditions on the approved Property Vegetation Plan to ensure it is consistent with the catchment plan. This process will involve the Catchment Management Authority and the landholder considering the economic and social impacts and may agree on reasonable conditions with the landholder to implement the environmental outcomes (including the public good conservation outcomes) sought by the catchment plan.

Protected regrowth is defined as regrowth identified as worthy of protection in a property vegetation plan, environmental planning instrument or natural resource management plan such as a catchment action plan.

Broadscale clearing is clearing of remnant native vegetation or protected regrowth other than for routine agricultural management practices. I would like to emphasise that this term does not refer to the size or area of a clearing activity, merely the nature of the vegetation cleared, that is remnant native vegetation or protected regrowth.

Routine agricultural management activities are also defined in this Part. Practices included in the definition are:

- sustainable grazing of groundcover that is not likely to result in long-term decline in the structure or composition of native vegetation;
- the construction, operation and maintenance of rural infrastructure such as dams, stockyards and fences;
- the harvesting or other clearing of native vegetation planted for commercial purposes;
- lopping of native vegetation for stock fodder (including uprooting mulga in times of declared drought);
- traditional Aboriginal cultural activities;
- maintenance of public utilities (such as those associated with the transmission of electricity, the supply of water, the supply of gas and electronic communication); and
- any other activity prescribed by the regulations.

There has been some concern that the reference in this list to sustainable grazing of groundcover is narrower than the rotational use of groundcover referred to in the Sinclair report. This is because other provisions of the Bill cover the rotational use of groundcover for practices other than grazing. If it is regrowth younger than the specified date, then it does not require consent at all. If it is older than the specified dates, then a landholder could establish, through a PVP accredited by a CMA, that it was part of a legitimate rotation. I have already mentioned that this process be carefully managed to avoid any misuse of this system.

Part 3 of the Bill contains the new development consent process for native vegetation management.

Under the new system approval to clear remnant vegetation and protected regrowth will not be granted unless the Minister is convinced that the clearing concerned will improve or maintain environmental outcomes.

For example in the Western Division of the state some native shrubs, such as Narrowleaf Hopbush, grow so thickly that they overwhelm other native species. At times landholders wish to control these species to encourage native groundcover and this provision of the Bill would allow a PVP that included such a control program and clearing to be undertaken.

This Part also creates flexibility for farmers and other land managers by allowing clearing for routine agricultural management activities or activities authorised under other legislation such as the Rural Fires Act to be undertaken without consent. By making very clear the classes of clearing that do not require consent, the Minister believes that this is a vast improvement on the uncertain situation under the Native Vegetation Conservation Act 1997.

The Bill indicates that groundcover that comprises less than 50% of indigenous species of vegetation can be cleared without permit. This is intended to allow farmers the freedom to use areas of their farm that are mainly non-native groundcover—primarily improved pastures—unfettered. There will be regulations made to further clarify how this percentage is to be calculated, as this is a matter of detail that is inappropriate within the legislation.

The consent procedures created under Part 3 of the Bill will not apply to urban areas, as stringent consent procedures administered by local councils already apply to those areas. As you are aware the Minister is no fan of red tape and he does not intend to oversee any duplication of consent processes. Part 3 of the Bill will apply to rural residential areas. This means rural residential development involving clearing of remnant vegetation or protected regrowth will require consent under this Bill.

In line with my commitment to cut red tape the new consent system creates specific and targeted matters to be considered when issuing a consent. Some of the matters currently listed in section 79C of the *Environmental Planning and Assessment Act 1979* may not be relevant to clearing. The intention of Part 3 of the Bill is to ensure that only those matters relevant to native vegetation clearing and its potential effects are considered during the consent process.

Consistent with the previous Act there is no provision for 3rd parties to challenge the merits of a decision to grant a consent. However, 3rd parties may challenge the legality of a consent decision on procedural grounds, that is if there is a concern that the proper procedures have not been followed.

The Bill does not repeal the *Threatened Species Conservation Act 1995*. The eight part test to assess whether there are likely to be impacts on threatened species will still be undertaken as part of the new consent process. My colleague, the Minister for the Environment is initiating a review of the Threatened Species Conservation Act to examine whether any changes are necessary in light of the extensive changes to natural resource management arrangements embodied in these bills and the Sinclair Report.

Part 4 of the Bill deals with property vegetation plans. It details the contents of PVPs and processes for submission and approval of PVPs.

The Bill provides for the three categories of PVP outlined in the Sinclair Report. PVPs can be used to:

- accredit existing native vegetation management practices as in accordance with current laws;
- provide access to incentives for on-farm conservation of native vegetation; or
- give approval for landholders seeking to change their land management in a way that involves clearing remnant vegetation or protected regrowth, if the proposed change will maintain or improve environmental outcomes.

A PVP can have effect for any period specified in the plan. However the maximum period for the provisions that allow clearing is 15 years.

There has been some concern expressed that the private native forestry will no longer be exempt, as it was under the Native Vegetation Conservation Act 1997. A sustainable forestry operation should, by definition, maintain or improve the long-term condition of the forest through sound silvicultural practices.

Under this Bill, private native forestry will require a property vegetation plan. In most cases this will be undertaken through an "existing use PVP". A "land use change PVP" may be required for significant operations.

This is in line with the recommendations of the Private Native Forestry Reference Group that advised the previous Minister. The Group recommended that both a forest management and harvest management plan be developed for private native forestry operations. Consultancies to develop more detailed guidelines for private native forestry were also undertaken, based on the recommendation of the Reference Group. It is anticipated that these will be used as the basis for a specific regulation to clarify the provisions for private native forestry that maintains or improves environmental outcomes. PVPs that were consistent with these guidelines would be processed very quickly and would lead to security for the landholder in the form of a 15-year PVP.

Part 4 of the Bill includes provisions that require approved PVPs to be registered on the title of the relevant land. This means successors to the title will be parties to the provisions of a PVP applying to their land.

Part 5 of the Bill covers enforcement provisions such as appointment of authorised officers, powers of entry, stop work and remedial work orders, powers to obtain information and penalty provisions.

These provisions tighten up our enforcement procedures.

Part 6 of the Bill contains provisions to cover issues such as the making of regulations, servicing of notices and delegation of functions.

It is through the provisions related to delegations that catchment management authorities will be empowered to undertake the certification of property vegetation plans and other activities as identified by the Minister.

It is through the provisions for making regulations that we will continue to refine and develop the system as we learn from experience. For example, regulations may be made to further define routine agricultural management practices.

Regulations such as these can be disallowed in the Parliament. This means there is a high level of accountability to ensure any regulations adopted are fair and in the public interest.

In addition to this Bill the Government will also implement the Native Vegetation Reform Implementation Group's recommendation to strengthen the compliance framework.

The vast majority of farmers are doing the right thing by managing native vegetation on their properties legally and sensibly. They understand the environmental problems caused by land clearing, such as salinity and erosion, and that they can make their land more productive through sustainable management of native vegetation.

However, there are still those few who will continue to clear illegally. These are the cowboys who get their D9s out, put the chains on and flatten trees indiscriminately. Fortunately, they are a minority.

This is unfair to the rest of the farming community. They give farmers who do the right thing a bad name, and this Government will not tolerate their behaviour. On this we have the support of the NSW Farmers' Association.

The Government has made a commitment to the NSW community to police breaches of the law strongly and swiftly. We intend to fulfil that commitment through an enhanced compliance effort. The new approach is based on:

- a risk management approach to prioritising investigation of alleged breaches;

- encouraging voluntary compliance through education and incentive programs;
- providing adequate resources to ensure effective compliance and enforcement; and
- systematic monitoring of changes in native vegetation cover rather than ad-hoc investigations.

NSW covers a big area and finding out where illegal broadscale clearing is taking place is not easy. The current situation relies on reports from the community or departmental officers detecting cases of illegal clearing. This is neither an effective nor efficient means of ensuring compliance with the law.

However, as a result of satellite mapping technology we can now better detect illegal clearing across NSW.

The use of satellite technology is strategic and cost effective compared to other monitoring options and can be integrated with other Government programs that generate information on native vegetation, salinity, soils and water assessment.

The Minister will be monitoring the implementation of this new legislation very closely, not just in terms of its enforcement. I will want to be sure that it is delivering the objectives that the Government and catchment management authorities have set out. It must be workable and effective for landholders on whose land the native vegetation occurs. It must be effective for the community who get the benefit of good native vegetation management, or who would be disadvantaged by salinity and poor water quality if native vegetation was poorly managed. If the Minister finds that it is not achieving the objectives set out, the Minister will be using the flexibility provided by the Act's regulation-making powers to make sure that it is effective. This issue is too important to all concerned to allow it to drift off course.

CONCLUSION

Both farming and environmental interests have played a key role in developing all three of the bills I have introduced today. The Government is committed to continue working with all stakeholders to ensure each of the bills and the new approach they embody is successfully implemented.

I am delighted at what has been accomplished to resolve these complex issues and get these bills before the House today. I am soberly aware that a lot remains to be achieved, but to get to this point, is a great step forward and a great tribute to the goodwill of the stakeholders involved. With that behind us the Minister is confident that we can go on to fulfil the great promise of these bills and deliver what the community wants:

- real environmental improvements that are recognisable and measurable, and above all acknowledged by the communities that did the work to make them happen; and
- greater involvement of the people of regional New South Wales in the management of their landscapes.

I commend all three bills to the House.

The Hon. RICK COLLESS [8.44 p.m.]: I lead for the Opposition on the Natural Resources Commission Bill and the cognate bills, the Native Vegetation Bill and the Catchment Management Authorities Bill. Before I discuss the legislation in detail, I first place on record that the Government has handled this second reading debate in an absolutely disgraceful way. It is disgraceful that the Minister Assisting the Minister for Natural Resources (Forests) chose to incorporate into the record the speech delivered by Minister Knowles in the other place. That speech was shown to be flawed, and it was obvious that Minister Knowles had not read it before he delivered it, and he certainly had not read the Natural Resources Commission Bill. I was expecting something a little more from Minister Costa in this House. I was expecting that he would have made a substantive speech, to put on the record the changes that are about to happen to the bill. But he simply incorporated the speech delivered by Minister Knowles in the other place.

We have heard from the Premier and Minister Knowles about the Government's commitment to creating a new approach to end broadscale land clearing and to protect the financial viability of farming families. The cornerstone of the plan is a partnership with farmers, based on simpler rules and payments for conserving and restoring native vegetation. They are the Premier's own words. The native vegetation reform implementation group, chaired by the Rt Hon. Ian Sinclair, AC, published its report in October 2003, after much consultation with various involved groups. The report is known as the Sinclair report, and will be referred to as such in future. The disappointing aspect of all of this is that the new South Wales Farmers Association believed the bills reflected the spirit of the Sinclair report. Association members were on the road during the week prior to the introduction of the bills in another place promoting the bills as reflecting the contents of the Sinclair report.

Imagine their dismay, disappointment and embarrassment at the end of the week when they had an opportunity to read the bills that Minister Knowles presented to the other place at 10.47 p.m. on Wednesday 12 November and said that the Native Vegetation Bill delivers the Sinclair report's standard definitions for native vegetation, regrowth and protected regrowth. In my reading of the bill those definitions differ substantially from the Sinclair report, and I will discuss that matter in detail later. The Premier's commitment to payments for conserving and restoring native vegetation has been deliberately left out of the Native Vegetation

Bill. There is no provision in the bill for any property rights payments, or for any compensation for farmers who have their right to farm on their freehold land removed. That is despite the pending report of the Productivity Commission, of which I obtained a draft copy today, and which is due to be presented in its final form before Parliament resumes next year. The report deals with property rights and compensation to farmers for removal of those property rights. The recommendations in their draft report make interesting reading. The report states:

Scope of inquiry

3. The Commission is to report on:
 - (a) the impacts on farming practices, productivity, sustainability, property values and returns, landholders' investment patterns and the attitude of finance providers, and on other economic activities such as infrastructure development and mineral exploration, and flow on effects to regional communities, arising from the regulation of native vegetation clearance and/or biodiversity conservation, including:
 - (i) both positive and negative impacts;
 - (ii) the level of understanding of the relevant legislative and regulatory regimes among stakeholders;
 - (iii) the likely duration of such impacts and the factors influencing their duration, and
 - (iv) the extent to which existing government measures are mitigating any negative impacts;

The report's recommendations refer to preparing regulation impact statements for implementing native vegetation and biodiversity policy. One should have been prepared in relation to this bill. The report states that all policy should be subject to ongoing monitoring and regular reviews. It refers to ongoing efforts to improve the quality of data and science. That has not been a feature of the Government's approach to the native vegetation debate. The report states that current regulatory approaches should be amended to minimise duplication and inconsistency by amalgamating and simplifying regulations and permit requirements.

The Hon. Tony Kelly: I thought you were a greenie.

The Hon. RICK COLLESS: The Minister should know better. The report also states that greater use should be made of the extensive knowledge of land-holders and local communities. Some across-the-board rules, particularly those currently applying to native vegetation regrowth, should be relaxed. They are the recommendations of the Productivity Commission. Another important recommendation was that land-holders should bear the cost of actions that largely benefit them individually or as a group. Land-holders do not have a problem paying for things that they get a benefit from. Finally, the report recommends that conservation demanded by the wider community should be bought from land-holders where intervention is deemed necessary and cost-effective. Mechanisms may include voluntary agreements, options or even compensating regulations targeted to the particular problem. That certainly is not a component of this bill.

We have to wonder why the Premier suddenly decided on the morning of Friday 14 November to guillotine debate in another place on these three bills and 10 others at 9.00 p.m. on Tuesday 18 November. The other place began sitting at 2.15 p.m. After deducting question time and the dinner break, each of the 13 bills was allocated about 20 minutes—including these bills—barely enough time for the shadow Minister to reply to the Minister, with no time for the Minister to reply to the second reading debate and no time for members to put the concerns of their electorates on the record. Is this the Carr-Knowles model of parliamentary democracy? Is this process giving oxygen to debate to get full and responsible political feedback on important legislation? Are the positions of the various stakeholders—in particular the landowners and managers of agricultural land and forests, and their political advisory body, the New South Wales Farmers Association—being properly reflected? I think not.

The Hon. Amanda Fazio: You were bagging New South Wales Farmers about a month ago. You are a hypocrite!

The Hon. RICK COLLESS: Was I? The Hon. Amanda Fazio should listen to the debate as it progresses. The Government should be censured for the disgraceful way in which it has attempted to force this legislation through the Parliament. It is an insult to the so-called intelligence of the Premier. It is an insult to the intelligence of the Minister, but, more importantly, it is a serious insult to the intelligence of the people of New South Wales to force the legislation through the Parliament without full and proper debate. The Leader of the House in another place attempted to blame the Opposition in this House for any problems. The Legislative Council sessional order required that full debate on bills be completed in another place by 12 noon on

20 November 2003 or that they be held over until the first sitting day of 2004. The spirit of the sessional order is to encourage the Government to present legislation early in the session to allow full debate to occur, so that bills are not crammed into the end of the session, as is happening tonight. The Government often uses such tactics at the end of sessions.

The Leader of the House in the other place said that Opposition members supported a motion in the upper House that trampled the rights of the Legislative Assembly to engage in proper debate. What utter rubbish! It is the Government that has trampled debate by deliberately not presenting the legislation until the last minute before the cut-off date. Now it has had the hide to present amendments to us tonight about 15 minutes before the debate commenced. The Government has known since May that the deadline was looming. The delay in presenting the legislation can be for one of two reasons. First, it did it deliberately to trample debate, to stifle debate, to railroad the legislation through Parliament without allowing proper debate. The second possible reason is that the Government is so hopelessly incompetent that it forgot about this requirement. The incompetence lies fairly and squarely with the Leader of the House in the other place. Is he stupid or is he dishonest? Perhaps it is a combination of both. Whichever is the case, it is an indictment of the Government that it has allowed it to occur. The Minister and the Leader of the House should have planned their legislative strategy a little better.

Before turning to each of the bills in detail I point out to the House that the Coalition supports the concept of integrated resource management. Our policy before the last election was to have a high level of integration in natural resource management. The former shadow Minister for land and water worked extensively on developing a comprehensive suite of integrated natural resource management policies that projected forward. They would have resolved much of the conflict that the Government is now involved in. The Water Management Bill 2000 was one of the first bills I debated in this place. The shadow Minister worked extensively with the Minister over a long period before the bill was presented to the House. Many of the initial problems were worked out through proper consultation. That has not happened in this case. There has been no consultation with the Opposition. Not a word has been said to the Opposition about this legislation.

We did not see the amendments until 8.15 tonight. I note that the time and date on the Catchment Management Authorities Bill amendments from the Government are 8.44 p.m. on 3 December. The amendments have been available for 24 hours. We saw them at 8.15 tonight, despite the fact that I asked the Government about 3 o'clock this afternoon when we could see them. The Government promised that it would get them to us as soon as it could. Yet they arrived at 8.15 p.m. That is not good enough. That is not what proper legislative procedure is about. It is not a recipe for creating good legislation. Unfortunately, the bills that have been presented to the House do not achieve the stated aim of the Minister, and it will only be by extensive amendment that they will achieve anything like the aims of the Sinclair report.

I turn now to the Natural Resources Commission Bill. The bill creates an independent Natural Resources Commission [NRC] to make recommendations on natural resource management standards and targets, to order the performance of catchment management authorities, to report on the achievement of targets and to carry out inquiries. I have a few concerns about the functions as outlined in the bill in that they have been oversimplified when compared with the first recommendation in the Sinclair report, that is, that the NRC make recommendations on statewide environmental standards based on transparent, scientific, economic and social analyses that set desirable environmental outcomes for the State. Clause 12 of the bill gives the commission the power to recommend statewide standards and targets for natural resource management issues. Clause 13 allows for regard to be given to the social and economic implications of exercising these functions, but not the analysis as recommended in the Sinclair report.

It also provides for auditing the implementation, an important function that has not been done to date. While it is not appropriate to include in the bill the protocols for monitoring and auditing natural resources across the State, there is an opportunity to discuss the general principles that this auditing should follow. It is probably worth looking at the natural resource monitoring that occurs in the United States of America. Parameters such as soil, organic matter, soil nutrient balance, groundcover, biodiversity, land use and other parameters should be monitored across a grid pattern in the State every couple of years.

Such a monitoring program would provide baseline data giving us a clear indication of whether resource management policies were working in the practical sense. Auditing should not be monitoring compliance with a view to imposing some sort of penalty, for example, the pie-in-the-sky model that the bill allows for; it should be looking towards changes in the condition of our natural resources. The commission will be established along the lines of the Independent Pricing and Regulatory Tribunal. The NRC will recommend to

the Government the approval of catchment action plans developed by catchment management authorities [CMAs]. The bill applies to the management of natural resources, including water, native vegetation, salinity, soil, biodiversity, coastal protection and many other matters, for example, forestry.

Prior to this bill the Government was advised and assisted on natural resource management issues by a number of committees comprising government and non-government stakeholders, including the Resource and Conservation Assessment Council, the Coastal Council, the Healthy Rivers Commission, the State Catchment Management Co-ordinating Committee, the Native Vegetation Advisory Council, the Water Advisory Council, the State Wetlands Advisory Council, the State Weir Review Committee, the Advisory Council on Fisheries Conservation, and the Fisheries Resource Conservation and Assessment Council. Where necessary and appropriate, those functions will be subsumed by the NRC otherwise they will be taken over by the Natural Resources Advisory Council, on which I will expand later.

The New South Wales Scientific Committee, the Fisheries Scientific Committee and the Biological Diversity Advisory Council will be transferred to the NRC. They will retain their existing legislative responsibilities, pending a review of the Threatened Species Conservation Act 1995. The Forestry and National Park Estate Act 1998 is amended to give the NRC responsibility for undertaking a forest assessment prior to the forest agreement being made. The Public Finance and Audit Regulation 2000 is amended to omit the Coastal Council as an authority under that Act. State environmental planning policy 71, coastal protection, is amended to give the NRC a consultation role with regard to draft master plans.

The Water Management Act 2000 is also amended to omit the Water Advisory Council from that Act. The Government is establishing a high-level stakeholder group known as the Natural Resources Advisory Council to replace the many advisory bodies that have previously advised the Government on natural resource issues and also to broker agreements between representative stakeholder groups on contentious natural resource management issues. I refer to part 3, clause 12 (b) of the Natural Resources Commission Bill. It is important that the NRC, when considering catchment management plans, takes into consideration the individual characteristics of each area and ensures that statewide standards do not compete with these areas to their detriment.

There are a few concerns with some other parts of the bill. I refer to part 3, clause 15 (2) which states that the commission can set up an advisory committee and then take advice from it, which seems a roundabout way of doing things. A further concern is the reporting hierarchy, with the NRC reporting directly to the Premier and the Minister having the day-to-day operational responsibility of bills. That raises the question of the Premier's personal green agenda overriding his responsibility to be doing the right thing by the people of rural and regional New South Wales, thus overriding the Minister's authority to manage the department as he sees fit. Turning to the Catchment Management Authorities Bill 2003, this bill creates 13 local catchment management authorities, or CMAs, to deliver natural resource management programs at the catchment level, replacing some 72 existing natural resource management committees.

It repeals the Catchment Management Act 1989 which, interestingly, allowed for, from memory, 19 catchment management committees at that time. That bill was introduced by the Coalition in 1989. It is very much a case of back to the future by this Government. CMAs will develop catchment action plans that consolidate and build on the existing native vegetation plans and catchment blueprints, and final approval of draft plans will rest with the Minister. CMAs will be governed by a skills-based board and a general manager with a staff of 10 to 15, and be formally constituted as statutory authorities. CMAs will set the targets for their region and ensure that the funds available to them are delivered to projects that achieve those targets. The intention of these new arrangements for catchment management is to ensure the smoother delivery of natural resources funding to regional communities, particularly funds from the national action plan for salinity and water quality and the Natural Heritage Trust.

The NRC will review the plans to see whether CMAs are implementing their actions, achieving their original targets, contributing to statewide targets and complying with statewide standards. Other functions of CMAs will include consultation with local government and catchment communities, recommending and managing incentive programs to implement catchment action plans, achieving environmental improvements and issuing consents under the Native Vegetation Bill. CMAs established by the bill are: Border Rivers, Gwydir, Central West, Hawkesbury-Nepean, Hunter, Central Rivers, Lachlan, lower Murray-Darling, Murrumbidgee, Murray, Namoi, Northern Rivers, Southern Rivers, Sydney metropolitan, and western.

The Coalition has many concerns with some areas of this bill, and in particular the following. The bill provides no guarantee that CMAs will assess property vegetation plans. Consent rests with the Minister and he

has the ability to delegate that to another government official. The Minister has discretion over appointments to CMA boards, leaving open the possibility of stacked boards delivering the outcomes dictated by their political masters. That has certainly happened in the past, particularly in relation to other boards that this Government has put in place, such as area health service boards. The composition and size of the CMAs is at the Minister's discretion. The CMAs are huge and take in areas with vastly different topographies and communities of interest, such as the Murrumbidgee CMA, which stretches from Balranald in the west to Cooma in the east. The Northern Rivers CMA is also a large and diverse area.

As the Northern Tablelands is such a unique area there has been a request for a separate Northern Tablelands catchment management authority in its own right. I would like to refer to an email that I received from Mr Brian Tomalin who is involved with vegetation management on the Northern Tablelands. He said:

We are still trying to get the eastern fall of the Northern Tablelands out of the Northern Rivers CMA. There are indications that Knowles may be prepared to consider including the Northern Tablelands, Nundle and Tenterfield Native Vegetation Regions in western CMAs...

Will the Minister give an undertaking to include the Northern Tablelands and the Tenterfield Native Vegetation Regions that they be included in the Gwydir/Border Rivers CMA and the Nundle Native Vegetation Region included in the Namoi CMA?

That is what Brian Tomalin has been negotiating. We would like to see the Minister put something on the record along those lines. The Minister may alter local catchment action plans as he sees fit. There is no requirement for such ministerial alterations to have the approval of CMAs. CMAs have been given the power to compulsorily acquire land. They have also been given the power to levy landowners to fund shortfalls. This is also an area of concern, in particular, for local government which I will expand on shortly. Some questions arise with respect to the implementation of these bills. I would like to put those concerns on the record. Are members of staff from the Department of Land and Water Conservation being transferred to the CMAs? Is the general manager's position, along with the chairperson, being advertised?

Where will the general managers be located? What is to happen to the current plans and will they be open to review? Will local environment plans have to be taken into consideration under the new legislation? Paragraph (a) of clause 36 (6) provides that compensation will not be applicable if a written claim is not submitted within six months. In many instances, on large, remote properties, environmental damage may not be noticed within six months, due to the sheer distances involved. This time period needs to be stretched to at least 12 months. We have had contact with the Local Government and Shires Associations. They have expressed concern about being left out of the processes of the bill. I would like to read from their letter to me. They say:

The Associations welcome improvements to the management of natural resources in NSW and a move towards a more strategic approach. Local government has been extensively involved in the previous natural resource committees and structures and has also been working hard at delivering better natural resource management ... outcomes in their local area. However, the CMA Bill currently being considered by Parliament raises a number of concerns for local government and we write to seek your support for amendments to it.

Local government is committed to ensuring that reforms to Catchment Management In NSW are a success. As such, we highlight the deficiencies with the current draft legislation which includes the lack of recognition of local government as a sphere of government and a major investor in NRM.

The Local Government and Shires Associations have suggested that we should look at ensuring that local government expertise be identified as a separate criterion rather than be included as part of State and local administration. They would like to seek clarification on the type of developments where the CMA will be the consent authority. They would like to develop a memorandum of understanding to provide for proper interaction between the CMA and local government, and they would also like to establish a catchment forum to provide strategic investment advice to assist investment decision making by the CMA.

The associations have also expressed concern that local government will be required to collect levies based on land valuations, stretching the responsibility of local government and becoming yet another unfunded mandate on local government. They are further concerned about the expectation to collect these levies while having no formal role in the CMA and the reinvestment of these funds back into the community. The associations are also concerned about the establishment of the Natural Resources Advisory Council and the lack of detail in the Catchment Management Authorities Bill and the Natural Resources Commission Bill on the establishment of a council and its functions. It is the view of the associations that the legislation should refer specifically to the establishment of the advisory council, its terms of reference and its membership. I understand the shadow Minister for Local Government has approached the Minister with a view to clarifying these issues, and on behalf of the Local Government and Shires Associations I ask the Minister to advise the House of these deliberations.

I turn now to the Native Vegetation Bill. This is certainly the biggest part of these three cognate bills and the one that has the most serious impact on the people of rural and regional New South Wales. The problems and inconsistencies with the bill are obvious from the moment one first reads the objects in part 1 of the bill. Object (a) reads well but unfortunately there is no commitment to this object by the Government. It notes that native vegetation should be managed in the social, economic and environmental interests of the State, but there is no further mention of the social and economic interests in the remaining objects. It is obvious from this that object (a) has been included as a motherhood statement so the Government can say, "Of course we have considered the social and economic aspects. It is in the objects." It is nothing more than tokenism. It is disappointing that the Minister who has the carriage of the bill in this place has left the Chamber. He is the Minister responsible for forests, and there will be a lot of discussion on forest issues shortly, yet he has decided to leave the Chamber.

Mr IAN COHEN: He does not have the faintest idea about them.

The Hon. RICK COLLESS: He does not have the faintest idea about the issues, the honourable member is absolutely right, and he does not care. The Sinclair report got it right. On page 7 The Sinclair report states:

The real debate about land clearing is not about trees, but about better management of native vegetation so that farms can protect our rivers which produce fresh water and manage our land so they can continue to produce the food we eat and the clothes we wear.

That is the crux of the issue. Why is it not an object of the bill? This statement encompasses the social and economic aspects, the quality of life aspects, the practical aspects of being able to produce food, fibre and building material while maintaining our environment in a healthy condition, and improving the productive capacity of the land to continue to produce those products for generations to come. To do this we must all share a vision of what the environment will look like by the year 2203, to pull a date out of a hat. If the bill is passed in its current form and remains in existence for the next 200 years, what will the landscape look like in the year 2203? This is how proper policy development should work: put policies in place that will have a positive long-term effect on the people and on the productive capacity of their resources, and that will have a positive long-term impact on the environment, which provides those resources to them. That is the true meaning of thinking about social, economic and environmental interests rather than striving for short-term political gain, which is the focus of the bill.

The objects of the bill focus on protecting remnants and regrowth, improving the condition of native vegetation and encouraging revegetation with native vegetation. The State could end up more densely vegetated than it was when Captain Cook first arrived, but that will have no regard at all for the people of Australia and the productive capacity of the land. It may not necessarily mean that the landscape is in better shape environmentally. The infatuation some people have with the environmental benefits of native vegetation never ceases to amaze me. Many species of exotic vegetation are far more useful for land rehabilitation works than the native species. For example, lucerne has a much greater capacity to lower water tables in salinity-susceptible areas than native grasses. One only has to research the literature in New South Wales and in South Australia to confirm that—particularly in South Australia, where a lot of work has been done.

Radiata pine plantations will also reduce the groundwater levels much more effectively than native eucalypt forests. There are plenty of documented instances that I am sure Department of Infrastructure, Planning and Natural Resources [DIPNR] staff are familiar with. In the Batlow district the removal of eucalypt forests and planting with radiata pine forests has dried the stream and groundwater supplies to such an extent that water supplied to irrigated horticulture fruit crops has been compromised. In the south-east of South Australia many radiata pine plantations were over a karst system and as the pine trees grew the limestone caves dried up. The Ash Wednesday fires in 1983 destroyed much of the pine forests, and the caves system quickly began to function again once the pine trees were removed.

In a crop and pasture situation, groundcover and the rooting depth of the plants are the key issues affecting land health. Research done by DIPNR staff—in their former lives as Soil Conservation Service research officers, when they were helping farmers rather than hindering them as they do now—has shown that soil erosion is almost completely eliminated when groundcover reaches 70 per cent. Within native grass pastures groundcover can be depleted through grazing, but it can be enhanced through appropriate fertiliser application, appropriate grazing management techniques and the introduction of exotic leguminous species such as subterranean clover, white clover, woolly pot vetch and serradella. These species do not displace native grasses; they enhance productivity and the seeding capacity of native grasses when used in conjunction with proper fertiliser and grazing management programs.

It is under these conditions—using proper fertiliser programs and appropriate grazing management techniques—that ground cover is more likely to exceed the 70 per cent minimum, with lower percentage ground cover being more common in native grass pastures that have not been fertilised, irrespective of grazing management. Once ground cover exceeds the 70 per cent minimum, soil erosion in grazing areas is eliminated almost completely by the application of fertiliser and the introduction of exotic leguminous species.

Unfortunately, to my knowledge DIPNR has not conducted proper research on root depth other than some work that was done in the Buronga district of New South Wales, which showed that planting lucerne adjacent to saline areas lowered the water table by a number of metres in the salt scald. Similar research was also conducted in South Australia over a long period. So it is a furphy to focus on native vegetation in order to control salinity. One must focus on ground cover and the rooting depth for effective salinity management and soil erosion control, and these two factors are key indicators in determining whether an area of land is degraded. Accordingly, the most appropriate tool in rehabilitating land may not be simply planting native vegetation, but may include the application of fertiliser, the introduction of exotic species and changing grazing management techniques together with strategic planting of native species. Keep in mind that in most areas we are talking about freehold agricultural land, not national parks.

This bill applies to the management of vegetation on agricultural land, the vast majority of which is freehold land in the eastern and central divisions, and western lands lease in the Western Division. Part 2 of the bill attempts to define the concept upon which the bill is predicated. It is in this part that the architects of the bill have led the Minister up the garden path. In fact, the Minister in his second reading speech attempted to rewrite the *Pocket Oxford Australian Dictionary*. The definition of "native vegetation" is consistent with that in the Sinclair report, with the exception of one very important point: the definition of ground cover. The Sinclair report defines "ground cover" as:

... any type of herbaceous vegetation, but is only to be regarded as native vegetation ... if it occurs in an area where not less than 50% ... comprises indigenous species. In determining that percentage, not less than 10% of the area concerned must be covered with herbaceous vegetation.

That sounds a little complicated, but when we work it out we find it is very simple. In other words, for a grass paddock to be regarded as native vegetation 50 per cent of the species must be native species and there must be at least 10 per cent ground cover. It is significant that the New South Wales Farmers Association wanted to increase the percentage of native species to 60 per cent in order to remove any doubt and avoid any waste in the assessment process. The bill in its current form removes that very important percentage, so that the definition reads "any type of herbaceous vegetation." Does that include non-indigenous vegetation? When does grassland become non-native? What are the threshold levels? The 50 per cent limit has been included in part 3 of the bill and the percentage is to be determined by the regulations. I would have thought it was a black-and-white issue: There is either 50 per cent indigenous species or there is not. The Minister's suggestion in his speech that this is a matter of detail that it is not appropriate to include in the legislation is a clear indication that he has not given his bureaucrats any understanding of what is needed in this bill.

The bill's definition of "clearing" is consistent with the definition in the Sinclair report, with the exception of the deletion of the recommendation excluding clearing for routine agricultural management activities. I will discuss that point in further detail shortly. The bill includes a further section that was not recommended in the Sinclair report, which reads:

... any other act that is intended or reasonably likely to kill native vegetation.

This is a potential minefield for farmers who are attempting to bring their livestock through a drought when many native species will perish and grazing pressure may increase the likelihood of plant death. Another potential scenario is that farmers will move stock to high ground during a flood and overstock that high ground for the duration of the flood. Land in western New South Wales can remain flooded and wet for many weeks and any high ground on a property will have stock on it for a long time. That could lead to serious land degradation issues and the death of native vegetation. Will graziers who are constantly battling the elements in an attempt to keep valuable breeding stock alive through fire, flood and drought be caught by that clause? The Minister noted in his second reading speech that the term "broadscale clearing" did:

not refer to the size or area of a clearing activity, merely the nature of the vegetation cleared, remnant vegetation or protected regrowth.

This is where I believe the Minister has attempted to rewrite the *Pocket Oxford Australian Dictionary*. The dictionary defines "broad" as "large in extent from one side to the other, extensive", which clearly refers to size or area. It defines "scale" as "relative dimensions or degree". Therefore, it is obvious that broadscale clearing means the clearing of a large or extensive area. However, the Minister is taking it to mean the clearing of individual trees if they are old remaining trees—or, as the definition in the bill reads, "the clearing of any remnant native vegetation or protected regrowth". The definition of broadscale clearing that was developed by the New South Wales Farmers Association is far more appropriate. It reads:

... clearing of remnant native vegetation and protected regrowth to change landuse that is on a scale large enough to cause an adverse environmental impact at a regional level as determined by the CMA.

That is a far more pragmatic approach to this issue. However, the bill does not even use the Sinclair report's recommendation, which states:

Broadscale clearing of native vegetation is the clearing of remnant native vegetation and protected regrowth that fails to maintain or improve environmental outcomes but excludes clearing for routine agricultural activities ...

Broadscale clearing should be taken to mean clearing that is done in the development of previously undeveloped areas. There is a very good case for having much clearer categories of clearing in this bill, and I would like to see in it a much more pragmatic approach to the definitions. For example, "development clearing" could mean "significantly changing the land use by removing the majority of the existing regionally indigenous native vegetation and replacing it with other types of vegetation." Perhaps "vegetation management" could mean "the removal of any native vegetation to improve the productivity of previously cleared land". "Conservation vegetation management" should be taken to mean "the management of regionally indigenous native vegetation to improve biodiversity, aesthetic, soil, water, scientific, recreational and cultural values" "Infrastructure clearing" should be taken to mean "the removal of indigenous native vegetation necessary for the establishment and maintenance of agricultural, emergency services and public infrastructure". Of course, managing native vegetation for the purposes of routine agricultural activities should be unrestricted.

The definitions of "remnant native vegetation" and "regrowth" are equally confusing, with "remnant" described as "any native vegetation other than regrowth" and "regrowth" defined as "any native vegetation that has regrown since 1983 in the Western Division and 1990 in the rest of New South Wales". That does not make sense. Perhaps some other date will be applicable if a farmer can produce a rotation plan that was prepared before then. The Minister should be advised that there were very few property vegetation plans or similar schemes prior to 1990. Long-term rotations that focused on managing native vegetation would have been almost non-existent. They occurred in practice, but there was no record of them on a formal planning basis. Some approvals would exist under the protected lands legislation, which was a land protection instrument not a vegetation protection instrument administered by the Soil Conservation Service. However, these approvals did not continue under State environmental planning policy 46 or the Native Vegetation Conservation Act.

The Minister stated in his speech in the other place that this is not an open door simply to allow an area of remnant vegetation to be declared regrowth and therefore available to be cleared. Nothing could be further from the truth. It is my view and the view of many others following this debate that all native vegetation that grew prior to 1990 cannot be justified as remnant because there is no scientific basis for that proposition. The word "remnant" means remaining part. Vegetation that has regrown between 1980 and 1990 is not remnant vegetation. This is nothing more than emotional grandstanding of the highest order.

The first section of the Sinclair report states that fundamental to the success of a new method for landscape management is simplifying the overwhelmingly complex structures that exist to empower the farming community to take control of the problem, to back it with first-class science and to provide adequate public funds to deliver on-the-ground solutions on the farm. Of course, there is no science in stipulating 1990 or 1983 for the Western Division. Clause 9 of the Native Vegetation Bill is definitely not first-class science. The final words of the clause are designed to prevent a remnant area converting to regrowth following a bushfire, flood or drought. In effect, it should allow the vegetation to be returned to the same classification it enjoyed prior to the event.

It is worth noting that most regrowth events occur after a bushfire, flood or drought. Trees do not grow all the time—they grow after events. Following a wet period many trees and native grasses will germinate and grow. These regrowth events occur because growth has been stimulated by a bushfire, flood or drought. It would be logical to define remnant native vegetation as vegetation in an area that has never been subject to clearing and to define regrowth as new growth of a species indigenous to the area following modification of the

environment. In other words, the native species that regrow after an area has been cleared constitute regrowth. The definition of "protected regrowth" appears to be designed to capture all of the habitat and endangered population classifications that fall under the Threatened Species Conservation Act.

Because there is a predetermined schedule to ensure that all areas of the State eventually fall within one of these categories, it is only a matter of time before all regrowth will be classified as protected regrowth. I have no doubt that that is the agenda of certain people behind this bill. These classifications have not always reflected the situations on the ground and threatened species need not be present for an area to be declared. Protected regrowth will also be caught up in this situation because the Minister has the power to declare an area to be protected regrowth and the regulations also allow for such a declaration. That hardly constitutes empowering the farming community to take control, as the Premier suggested in his press release.

Clause 11 of the Native Vegetation Bill is a major concern to the Coalition because it attempts to define routine agricultural management activities. The fundamental concern is that the activities listed in the bill will become legal and any other activities will become illegal. The bill mentions sustainable grazing but does not mention pasture improvement by broadcast application of fertiliser and seed, direct drilling of fertiliser and seed or cultivation and sowing improved pasture species. Can the Minister confirm whether these activities are routine agricultural management activities? The bill does not mention any form of cropping by drilling crops directly into native species or full cultivation.

Can the Minister confirm whether those activities are routine agricultural management activities? Dams are listed as rural infrastructure and construction, and operation and maintenance are listed as routine agricultural management activities, but contour banks for erosion control are not. Can the Minister confirm whether the construction of contour banks for erosion control is a routine agricultural management activity? Clearing of fence lines to 10 metres each side and 20 metres in the Western Division is yet another case of a total lack of science. It is obvious that the logical distance to clear each side of a fence line is the height of the trees adjacent to the fence to prevent trees falling across the fence during a storm or bushfire.

This issue should also be consistent with the Rural Fires Act. The clearing should be wide enough for two fire tenders to pass at speed and in the low visibility conditions one would expect in an emergency situation. I acknowledge that clearing under the Rural Fires Act is exempt under part 3, but it would still be sensible to have the provisions of this bill consistent with the Rural Fires Act. Airstrips in the Western Division can have a clear buffer to meet aviation industry requirements, but in the rest of the State that is not considered to be a routine agricultural management activity. Can the Minister confirm that clearing airstrips to meet aviation industry standards in the Central and Eastern Divisions of the State is a routine agricultural management activity?

The Government probably does not realise that there are many airstrips in rural and regional New South Wales. Many property owners have their own airstrip to allow easy access for crop dusters. Thousands of farmers with airstrips will not be covered by this provision. Providing that windmills must have a cleared buffer of three metres is yet again impractical nonsense. A 20-metre windmill might be three metres away from a 20-metre tree. In a strong breeze, the branches of the tree could foul the mechanism of the windmill. Of course, in the worst scenario, the tree could fall across the windmill and destroy it. The distance should be the height of the tree to prevent damage to the infrastructure in the event of the tree falling.

The same argument applies to stockyards. A three-metre buffer would mean a farmer would not only be continually clearing his stockyards of fallen timber but he would also be unable to manage his stock in the yards. The distance should be the height of the surrounding timber or an area determined by the local catchment management authority. Private native forestry has been removed from the legislation. That cannot be an oversight on the part of the architects of the bill. It is a deliberate omission and one that has caused a great deal of concern throughout the State. The Sinclair report stated that private native forestry should be reinstated in clause 11. Sustainable on-farm forestry should be taken to mean the removal of millable logs from stands of existing native vegetation for on-farm use and for sale at a harvest rate that does not exceed the rate of forest growth.

The exemptions in State environmental planning policy [SEPP] 46 and the current Act allow for the removal of seven trees a hectare for on-farm use and a maximum clearing of two hectares a year. Although that is restrictive, at least it provides the land manager with the facility to cut timber for fencing and yard building. This bill removes that facility and goes to the extreme by defining the removal of a single tree as broadscale clearing. Acceptance of the sustainable farm forestry clause would correct that anomaly.

Clause 11 (2) then makes the extraordinary provision that the regulations may extend, limit or vary these activities. What is the point of subclause (1) if the regulations can change it? I ask how a regulation can in fact vary the enabling legislation for that regulation. It seems to be a very convoluted process. The preferred option for the whole of clause 11 is to have the routine agricultural management activities determined by the catchment management authority [CMA]. They are the people with expert local knowledge, and to have some city-based Minister determining what is an agricultural management activity is totally inappropriate and fraught with danger for the farmer, as I have just outlined.

Part 3 of the bill deals with the development consent process for clearing applications. The major concern is that all native vegetation management, except for vegetation that grew since 1990 or 1983 in the Western Division, requires either CMA or Department of Infrastructure, Planning and Natural Resources [DIPNR] approval. The issue of vegetation that germinated prior to those dates having been suddenly thrust into the classification of remnant vegetation, without any scientific basis, is again relevant to this section of the bill, as I said earlier. This part of the bill also very briefly outlines the penalty that will be imposed should any person commit an offence—an offence which may be as innocent as cutting a tree down for a strainer post, a routine agricultural management activity that farmers will have to do more often as trees fall over their fence lines, windmills and stockyards because of the ridiculous definitions in this bill.

Development consent for broadscale clearing cannot be granted unless the Minister is satisfied that environmental outcomes will be improved or maintained. As broadscale clearing now includes the removal of single trees, will farmers who want to cut down a tree to repair a fence have to seek ministerial approval? How can the environmental consequences of the removal of one tree be determined? It is nonsense. The regulations will apparently make provisions for describing that issue, but, given the provisions of this bill, how can we trust the Minister and his bureaucrats to make the regulations any more workable than the provisions of the bill? If the Minister was serious about the intent of this bill he would have also made his Crown authorities subject to the provisions of the bill, but he has made the Crown exempt from requiring any such clearing consent. All local government authorities within the metropolitan areas of New South Wales are similarly exempt from the provisions of this bill.

Division 2 of part 3 deals with the types of clearing that are permitted by authority of a development consent or property vegetation plan. It must be remembered that the definition of routine agricultural management practices is substantially different from the definition of routine agricultural activities under the Threatened Species Conservation Act. The definitions are similar, yet there are small but significant differences, which makes interpretation of the legislation very confusing for farmers. The statement that clearing native vegetation for routine agricultural management practices to the minimum extent necessary has the potential to be disastrous for the grazing industry, as it paves the way for regulations to be imposed on stocking rates and grazing management intensity.

While it is my view that there are many advances to be made in all facets of agriculture, including grazing management, it is absolutely imperative that any advances are made by education and incentive of the rural industry rather than by using the big-stick approach, which is what this bill represents. It is also apparent that approval for clearing for infrastructure will be built into the development consent at the local government level. While this may not be a problem for structures requiring local government approval, such as houses, sheds and farm buildings, it is a problem for infrastructure that does not require local government approval, as is the case with many farm infrastructure improvements.

Part 4 deals with property vegetation plans that are compulsory documents requiring consent before they can be implemented. Any broadscale clearing, including the removal of one tree that had germinated prior to 1990 or 1983 in the Western Division for the repair of a fence where a tree had fallen across it because of the ridiculously narrow buffer zones permitted under this bill, will need to be assessed to ensure that the removal of the tree will improve or maintain environmental outcomes. Property vegetation plans will require property inspections by DIPNR or CMA staff. Since this Government commenced its regulatory focused program of vegetation controls, unfortunately these staff have come to be despised by the farming communities of New South Wales. They are despised because of this Government's legacy of eight years of mistrust and hatred, which has created a barrier to accepting any new system involving changed rules for vegetation management. The farming and timber communities of New South Wales simply do not trust this Minister and this Government.

The bill provides for plans having a maximum period of 15 years with a review after 10 years. This effectively reduces the security for land-holders when negotiating finance and banking facilities, in addition to

the inherent management insecurity associated with such a short time stipulation. Further uncertainty is built into the bill by a provision which allows the Minister to terminate the plan, as allowed by the regulations. There is no mention of guidelines for termination. This is concerning to the rural community, as termination must be an option only if there has been a breach of the plan.

Part 5 deals with this Government's favourite subjects—compliance, enforcement and penalties. Powers of entry are granted to authorised officers, who may be any member of staff of a government agency, to enter any land, without any permission, to check if the land manager is contravening the Act. At the very least, the land manager should be advised of the entry of the officer. The preferred position of the people of rural and regional New South Wales is that permission should be granted only by the land manager. We simply cannot have unknown people tramping all over our properties without our knowledge, doing as they please, in an attempt to make a prosecution stick. If the land manager accompanies the officer while he is performing these functions, the officer has the right to tell the land manager to go away if he does not feel comfortable with that person being there.

If the land manager appoints a person to accompany the officer—and that person may be the consultant who actually prepared the plan—and if the officer is convinced that the landowner is guilty of an offence and that person will put the landowner's case, the officer can claim that the person is not capable of providing assistance and can tell him to be on his way. That is hardly natural justice. Such authorised officers should be able to enter land only for the purpose of determining whether a person is contravening or has contravened the Act, not simply for the purposes of carrying out a function with no evidence or intent to determine non-compliance. That is exactly what was agreed to in the Sinclair report. The powers to obtain information under this bill are suspect as there is no requirement for the authorised officer to produce any formal identification. A similar provision was in the Soil Conservation Act and is in the current Native Vegetation Conservation Act. If this is an oversight, it is yet another oversight in this bill. If it is deliberate, then it is much more sinister for the people of rural New South Wales who are attempting to manage rural agricultural properties.

There are extensive provisions in the bill prescribing penalties under stop-work orders and directions to implement remedial works, but the Sinclair report refers specifically to improved compliance and enforcement capacity focusing on areas of non-compliance. The final issue I wish to address in relation to the Native Vegetation Bill is a very contentious issue and one that is outside normal common law practice. Under this bill, the onus of proof that an offence has not occurred rests with the person charged with the offence. It is a tenet of natural justice in this land that a person is innocent until proven guilty, yet this bill provides for a person to be considered guilty until he or she can prove his or her innocence. This is absolutely unacceptable in Australia. Any government that attempts to change this tenet must be challenged by all in the community to set the record straight. The Legislation Review Committee has raised a number of matters of concern. I remind honourable members that the functions of the Legislative Review Committee are:

... to report to both Houses of Parliament as to whether any such Bill, by express words or otherwise:

- (i) trespasses unduly on personal rights and liberties, or
- (ii) makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, or
- (iii) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions, or
- (iv) inappropriately delegates legislative powers, or
- (v) insufficiently subjects the exercise of legislative power to parliamentary scrutiny.

When the Legislation Review Committee examined the Catchment Management Authorities Bill, the Native Vegetation Bill and the Natural Resources Commission Bill, their provisions scored four out of five or 80 per cent—which is a pretty high score—in trespassing unduly on personal rights and liberties of people, making rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, inappropriately delegating legislative powers, and insufficiently subjecting the exercise of legislative power to parliamentary scrutiny. The Legislation Review Committee made some 20 recommendations with respect to the three bills, and I will refer to a few of them to demonstrate their importance. One recommendation reads:

The Committee notes that the right against self-incrimination (or "right to silence") is a fundamental right ...

A further recommendation reads:

The Committee refers to Parliament the question whether compelling a person to make self-incriminating statements that ... may inform criminal investigations or be admitted in civil proceedings, unduly trespasses on personal rights.

The bills well and truly fail that test. I will not refer to further recommendations; I am sure honourable members can read the report for themselves. I now turn briefly to my duty electorates of Northern Tablelands and Murray-Darling, and I will provide the House with an insight into the impact of the legislation on farmers in those electorates. It is an indictment on the honourable member for Northern Tablelands in another place that he failed to properly represent the concerns of the people in his electorate by deliberately not speaking to this bill in the other place. It is not the first time that he has not spoken on natural resource management issues. He also failed to contribute to the second reading debate on the Threatened Species Amendment Bill 2002, when the people of Northern Tablelands expected him to do so.

I will use a case study to demonstrate the impact of the bill on landowners in the Northern Tablelands. The example I will use relates to a property at Armidale, comprising 688 hectares of freehold land (Minister's consent), 627 hectares of which was purchased in August 1995, prior to the introduction of SEPP 46, for \$155,000, or \$231 per hectare. The remaining 61 hectares was purchased in 1997 for \$50,000, or \$820 per hectare. The average price overall was \$310 per hectare. The land was purchased *profecta*, meaning that the purchase included the timber rights on the land. That is a very important point. In other words, when the land-holder bought that property he bought the timber rights as well.

Approximately 30 per cent of the property, or 200 hectares, is red basaltic soil, which is highly sought after in New England as agricultural soil, and the remainder is traprock country of reasonable to good quality. The country is all undulating to steep with the red basaltic soil on a high undulating plateau rising to over 1,400 metres above sea level. There are small areas of land over 18 degrees which remain under natural native vegetation and will not be further developed. At purchase, approximately 50 hectares only was clear of tree cover, 400 hectares had been treated with Tordon in 1988 and was not subsequently cleaned up and pasture improved. The country is now overgrown with blackberries, bracken fern, regrowth eucalypts and some wattles, which are all overgrowing the fallen timber previously treated with Tordon. The area is infested with rabbits and foxes, and it is almost impossible to control these pests with the land in its current condition.

The Tordon treatment was completed under the protected lands provisions of the Soil Conservation Act 1938. The landowners at the time received advice on the clearing program from the Soil Conservation Service, and they complied with the Act at that time and the advice offered by the Soil Conservation Service personnel. The remaining 238 hectares, or 34.5 per cent of the total property, is natural native vegetation, mainly comprised of rocky outcrops, drainage lines and land over 18 degrees. This vegetation is generally in good condition. It is free of blackberries and feral animals, and it supports a wide diversity of plant and animal life.

The land-holders undertook a program of sustainable logging, as currently permitted by the Native Vegetation Conservation Act, on 55 hectares during 1997 and 1998, until they were warned by the Department of Land and Water Conservation [DLWC] not to continue this work as they would be in breach of the Act. The landowners advised me of many derogatory comments passed by DLWC inspectors at the time, such as, "If you want your place to look like an Elders catalogue, forget it," and, "You people have to realise that you do not really own this land". This is freehold agricultural land; it is not part of a national park! What about landowners' rights?

Comments such as these obviously create a great deal of anger in the minds of the rural community, and raise the issue of the removal of sovereign rights of landowners of freehold land. As I said earlier, DLWC staff are now despised by many people in rural communities. I inspected the work completed in 1998, and in my opinion it is an excellent example of achieving the correct balance between conservation and production goals. The area is far from clearfelled, with many clumps of trees and pastured areas producing an adequate quantity of good quality feed for livestock while maintaining habitat for native flora and fauna. Many different species of animals and birds were observed in this area.

During 2000 Transgrid constructed a major powerline known as Eastlink from Armidale to Goondiwindi, and the powerline traversed this property. The land was valued at this time for the purpose of paying compensation to the land-holders for the establishment of the powerline. The State Valuation Office placed a value of \$550,000, or \$800 per hectare, on the property in its current state. However, it is questionable as to whether this value could have been achieved in 2001 given the restrictions on vegetation management. A neighbouring property in a similar condition was for sale, and that property has not yet been sold.

The value of adjoining land that is cleared to a condition similar to that which the land-holders hope to achieve was selling for approximately \$2,000 to \$2,500 per hectare in 2001. This represented a loss in future capital value to the owners of this property of up to \$1.2 million. The property is currently carrying 1,800 16 to

18 micron sheep and 65 cows and calves, which is equivalent to 2,400 to 2,500 dry sheep equivalents [DSEs], year round. The land-holders estimate that the traprock country is capable of carrying 5 to 6 DSEs per hectare, and that the red basalt soil is capable of carrying 12 to 14 DSEs per hectare year round, inclusive of all the timbered and naturally vegetated areas on the property. This equates to a total potential carrying capacity of between 4,800 DSEs and 5,700 DSEs.

These figures are consistent with carrying capacities achieved throughout the New England region on freehold agricultural land that has been developed and improved for agriculture. While this property was in the very early stages of development in 1996, the same figures were used for each year to provide the comparison. The average return per DSE in 1996 was \$12, as wool prices were very low. At that rate, 2,500 DSEs yielding \$12 per DSE provides an income on the property of \$30,000; 5,700 DSEs yielding \$12 per DSE provide an income on the property of \$68,400. The loss of income on that property in 1996 from the implementation of the Native Vegetation Conservation Act was \$38,400.

In 2000, when wool prices improved, the loss increased to \$135,000. Currently, as wool prices have stabilised at a much higher level, the income on the property from the 2,500 DSEs is \$150,000. If the land-holder was able to carry 5,700 DSEs he would now be making \$342,000 a year. The restriction on vegetation management is costing the land-holder \$192,000 every year.

Considering the accepted multiplier effect of money coming into a community is that it will "go around" in that community about five times before it goes out of the community, this represents an annual loss of economic activity to the Armidale district of \$1 million as a result of the implementation of vegetation restrictions—on just one property! Multiply that figure by the number of properties whose owners can tell a similar story, and it can be seen that the cost to the people of the Northern Tablelands is millions of dollars a year. Many other people from the Northern Tablelands have contacted me, such as Bronwyn Petrie, Keith Cleland, Brian Tomalin and Robert Barwell, to talk about their individual concerns.

The people of Murray-Darling are equally upset about this bill. They are probably even more upset now, given their local member's cavalier approach to this bill when he confidently supported the Australian Labor Party Minister. Besides his normal diatribe of name-calling directed to members of The Nationals and anybody else who happens to hold a view slightly different from his, the member for Murray-Darling referred to Joe and Gabby Hayes as landholders in the Bogan Shire in the Fiveways Landcare Group. Unfortunately, the member apparently does not really know these people, because they are Joe and Gabby Holmes.

Much of the land within the Fiveways Landcare Group area was cleared many years ago—sometime in the 1950s and 1960s. Since that time, some of this area has regrown, but the bumble box, also known as poplar box, has regrown in a multi-stemmed mallee form, rather than in its more normal single stem form. This shallow-rooted multi-stem form has destroyed the natural groundcover of native grasses and shrubs and has caused some of the worst cases of soil erosion I have seen in western New South Wales. As honourable members know, I spent 25 years as an officer of the Soil Conservation Service, so this is a matter that I do know something about. These were some of the worst cases of soil erosion I have seen on any land—cropping, grassland or vegetated land—anywhere in New South Wales. That is despite the complete canopy of native vegetation. This is a good example of how native vegetation regrowth—uncontrolled and unmanaged—is causing land degradation.

The second specific concern in Murray-Darling is the red gum forest industries of the riverland along the Murray River. There is a huge industry around the red gum forests worth many millions of dollars annually, and it produces some of the finest furniture and veneer timbers in the world—value adding at its very best.

Mr Ian Cohen: Timber sleepers.

The Hon. RICK COLLESS: Not just timber sleepers. The honourable member should go down there and have a look at some of the high-quality furniture that is being made, not just timber sleepers.

Mr Ian Cohen: There are a lot of timber sleepers.

The Hon. RICK COLLESS: There are a lot of timber sleepers. Not all timber is suitable for furniture, and not all timber is suitable for sleepers. So they use the timber for a suitable purpose. Now they have developed a process to veneer red gum, and they are selling it overseas for hundreds of thousands of dollars per cubic metre—value adding at its very best. In behind the red gum timber industry is the firewood industry. This

industry plays a very important role in the process. It cleans up the litter left on the forest floor following the sustainable logging process. We are not talking about clear felling here. As Mr Ian Cohen appreciates, I hope, here we are talking about long-rotation: planned sustainable forestry management that is worth hundreds of millions of dollars a year to that region.

Foresters down there talk about logging the area every 20 to 30 years. But they are not cutting down trees that are 20 to 30 years old. This area has been logged four times in a 30-year rotation—that is, it has been logged four times in the past 120 years—so they are actually cutting down trees that are 80 to 120 years old. This logging is sustainable. Walk into the forest and you cannot tell it was recently logged. It is full of trees. If the firewood industry is shut down—and it will be under this bill—all this forest litter will remain on the floor until the next major flood, when the vast majority of it will be washed away and deposited against bridges and other infrastructure. The potential for damage to infrastructure from floating timber is enormous. The cost will be twofold: first, the loss of the more than \$100 million firewood industry itself, as well as the multiplier effect in the community that I spoke about earlier and, second, the cost of damage to infrastructure after every flood.

In conclusion, the Minister's flowery speeches, as he has wandered about the bush, about getting it right indicates that the Government will be moving amendments. As I said earlier, at 8.15 tonight we finally saw some of the amendments, though I have not yet had the chance to read them. The Coalition wanted to see the amendments, but not at the death knell, not at 8.15 tonight. We would have liked to see them a week or a fortnight ago so that we had sufficient time to go back to our communities and our constituents and examine the amendments in detail and get some feedback on them. Our main concern is to ensure that the bill will improve matters for constituents in rural and regional New South Wales. That has not happened. We did not see these amendments until 8.15 tonight. How can Opposition members be expected to properly scrutinise them and consult with our constituents?

The Hon. Duncan Gay: But there are more to come.

The Hon. RICK COLLESS: That is right: there are more to come that we have not yet seen. From day one we warned that the devil would be in the detail of this natural resources legislation. Sadly, that has proven to be the case. Labor promised that the Sinclair group recommendations would be translated into this legislation. Labor has broken that promise.

The Hon. Henry Tsang: It is a good translation.

The Hon. RICK COLLESS: It broke its promise. The Sinclair report is a compromise document that was negotiated between the Government, the Greens and New South Wales Farmers. Labor is now asking the farmers to compromise on that compromise! Labor wants to welsh on a deal it signed off on. We will not be part of that. Craig Knowles and Labor have been exposed for having played games with the livelihoods of thousands of hardworking families across this State—families like the case study family in the Northern Tablelands. Labor has tried to put this botched legislation through the Parliament with indecent haste; it has failed to consult with farmers and other stakeholders about their so-called changes. This reform is too important for tawdry Labor backroom deals at the last minute amidst Christmas parties and all night drafting sessions.

The Nationals will not support legislation that chokes the farming capacity of New South Wales by severely curtailing farmers' day-to-day activities, puts a brake on regional development and costs thousands of jobs. Through its legislation, Labor has given alleged rapists and murderers more rights before the law than farmers by reversing the onus of proof and abolishing their right to silence. Labor has allowed any person to start legal action against a farmer for perceived breaches of the Act, leaving farmers at the mercy of vexatious litigants. It has ignored the issue of compensation to farmers whose productive capacity is impaired by this legislation. Labor has signalled a tougher compliance and enforcement regime through the use of its "spy in the sky" technology. It has centralised power in the hands of the Sydney-centric Minister and Premier, breaking a promise to devolve power. And it has defined "broadscale clearing" as the removal or damage of one tree.

Labor has created massive Catchment Management Authority areas with vastly different topographies and communities of interest to be administered by five people, only two of whom will be land-holders. It has dictated that farmers will have to publicly list on their title deeds confidential information about their property management. It has empowered Catchment Management Authorities to levy land-holders. It has failed to spell out whether threatened species legislation and local environment plans will overrule property vegetation plans, which were meant to be a one-stop approval shop. And Labor has ignored coastal-specific issues.

I need to emphasise that our interest in these matters run deep, and that they are fundamental to landholders' rights, opportunity, and free enterprise. Upon these three principles the prosperity of this State and the origins of The Nationals were built. SEPP 46 was a compromise, and it destroyed farmers' rights. The Native Vegetation Conservation Act was a compromise, and it destroyed farmers' opportunities. We will not accept further compromise, because that will simply destroy farmers' hopes. Only by a few more weeks, rather than too few hours, of negotiations between us can these bills be made positive for rural communities. As they stand, they are positively destructive. This is not good legislation. It will not improve the lot of land managers and primary producers in New South Wales. The Coalition opposes these bills.

Mr IAN COHEN [10.09 p.m.]: On behalf of the Greens I speak to the Natural Resources Commission Bill, the Native Vegetation Bill and the Catchment Management Authorities Bill. These bills are a response to the ongoing practice of land clearing that is happening in many guises across New South Wales. Land clearing, the removal and destruction of native vegetation, is the single greatest threat to the environment in New South Wales. Although obviously the Greens come from a very different perspective to the Hon. Rick Colless on this matter, we have significant concerns about the process that has led to these bills.

Permitted land clearing is occurring in New South Wales at a shocking rate, with over 80,000 hectares cleared each year. That is the equivalent of over 90 suburban blocks cleared every hour. Much of this occurs west of the Great Dividing Range in the agricultural areas of central and western New South Wales, and most of it is for expansion of cropping activity. In the north of the State land clearing rates equal those in Queensland.

The Hon. Rick Colless: I don't believe that.

Mr IAN COHEN: The honourable member says, "I don't believe it," but it is provable. I listened to his very different point of view and I say to him—and I will stand by this—I will prove it if he wants to take time out with my staff to look at the rates of land clearing. I will say it again: In the north of the State land clearing rates equal those in Queensland. What an indictment! Land clearing poses the greatest threat to wildlife, native vegetation and sustainable agriculture in New South Wales. It kills native animals and plants, it causes massive land degradation and dry land salinity, and it releases high levels of greenhouse gas emissions.

Land clearing has a devastating impact on wildlife as it destroys habitat, shelter and food sources. For every hectare of woodland cleared, 10 to 20 birds, 200 reptiles and an unknown number of mammals are killed. This adds up to 5 million to 10 million dead birds, 100 million dead reptiles, and more than 500,000 dead mammals every year across Australia. In New South Wales alone, more than 240 native species and 30 ecological communities—or types of bushland—are known to be at risk of extinction because of land clearing. Over 56 birds, 22 mammals, 12 reptiles, 4 frogs and 140 plants are at risk as a direct result of land clearing.

In the central woodland belt of New South Wales alone, 20 bird species including the barking owl and regent honeyeater, are threatened with extinction. The beautiful but threatened red-tailed black cockatoo is hanging on in the north-west of New South Wales, but if its bushland habitat continues to be cleared it will soon be gone, just like many other woodland bird species that are at risk of extinction. The adorable squirrel glider is also threatened with extinction in New South Wales. Like other arboreal mammals, it uses tree hollows for nesting and it is extremely vulnerable to land clearing.

Land clearing is the major cause of recent dryland salinity, which degrades vast areas of productive agricultural land, poisons rivers and water supplies, damages infrastructure such as roads, and threatens remaining native vegetation. Dryland salinity is devastating large areas of New South Wales. More than 180,000 hectares of productive farmland in New South Wales are already affected by dryland salinity and this area is expected to increase eightfold in the next 50 years. In some towns west of the divide, roads and houses are starting to crumble as the rising salt eats away their foundations. This is a huge problem and it undermines our ability to farm and maintain healthy and viable rural communities in the long term.

The economic and social wellbeing of rural communities is clearly linked to access to a clean environment, clean water, and a range of public community services which are only available in viable communities. The environmental degradation caused by land clearing threatens to endanger many rural communities in New South Wales in this respect. Controlling salinity and rehabilitating salt-affected land is also extremely costly to society in general. The repair bill for salinity nationally, assuming we start to pay for it sometime soon, is already estimated at about \$6 billion a year for at least 10 years, and lost production due to land degradation costs \$1.2 billion every year. So far the promises made to deal with the problem still remain bandaid solutions, and neither the Federal Government nor the State Government has come anywhere close to

committing the funds needed to reverse the ongoing decline in our degrading natural environment, which, as everyone is aware, is our national life support system.

Land clearing is also contributing to our greenhouse gas emissions. Significant amounts of carbon are released from the soil as the roots of vegetation are ripped out. A further release of carbon dioxide occurs with the rotting or burning of bushland following clearing. The Minister for Transport Services, who I know does not accept greenhouse as a concept, might be interested to hear that land clearing contributes 13 per cent of our greenhouse gas emissions nationally. This is similar to the total emissions from the transport sector. The increased carbon dioxide in the atmosphere is now changing global weather patterns. Only recently has it been discovered that the circumpolar vortex has been strengthened due to a combination of the Antarctic ozone hole and the increase in atmospheric carbon dioxide. This is drawing our rain-producing weather systems further south, so significantly less rain is falling on the southern part of the Australian continent.

Combined with rising temperatures, increased frequency of droughts, floods and wild weather events such as intense storm activity, it becomes increasingly clear that there is no such thing as a free lunch when it comes to how we treat the land. Sooner or later we have to pay. The changing climate patterns have serious implications for rural industries and communities in New South Wales. Previous commitments by the Government to end clearing have not borne fruit. The Government promised there would be no net loss of native vegetation by mid-2001, yet in that year there was an 18 per cent increase in approvals to clear bushland compared with 2000.

The Government also made commitments that by 2002 no vegetation community that had been reduced to less than 30 per cent of its original extent would be cleared. Yet we are still witnessing the broadscale daily clearing, with approval from the Government, of threatened bushland types such as Coolibah woodlands in the north of the State. The Coolibah woodlands are vital for catchment health and provide essential habitat for many threatened species such as grey crowned babblers—and I am not referring to the Treasurer.

The Hon. Michael Egan: What was it?

Mr IAN COHEN: The grey crowned babbler, a threatened species in the Coolibah woodlands.

The Hon. Michael Egan: Is it nice?

Mr IAN COHEN: A beautiful bird. A rare bird, one might say. But I am not referring to the Treasurer, although there could be some confusion in the context of this particular wilderness environment. There are also hooded robins, red-tailed black cockatoos and many other species, including native mice, possums, gliders, reptiles, and bats. Yet the Coolibah woodlands are being rapidly cleared to make ring tanks for cotton fields; hundreds of hectares of woodlands are surrounded by low earth walls and then filled with water for use on cotton fields. The trees slowly drown, eventually leaving a desolate forest of dead trees.

Despite the Government's previous commitments to solve this ongoing environmental threat, land clearing continues to push hundreds of native species towards extinction and cause massive land degradation problems in New South Wales. The New South Wales Auditor-General's report entitled "Regulating the Clearing of Native Vegetation", which was released in August 2002, highlighted the poor past performance of this Government to control land clearing and protect bushland. The report looked at the regulation of land clearing by the then Department of Land and Water Conservation [DLWC]. Despite land clearing being the single biggest threat to the environment, this independent report found that the New South Wales Government has not delivered on many of the basics required to manage native vegetation so as to avoid further land degradation, increasing salinity levels, and the extinction of species.

The report found that there is a lack of comprehensive information about the status of native vegetation in New South Wales and changes to it over time. Not only is the baseline information inadequate, but objectives and targets against which we can measure progress in conserving native vegetation are also missing. Of most concern is that the DLWC did not appear to have the information systems, resources, and capacity to regulate the clearing of native vegetation in New South Wales. The Auditor-General's report confirmed the fears of conservationists campaigning on this issue. It was nothing new. We have known that the New South Wales Government has been handing out approvals at an ever-increasing rate without considering the damage being created through land clearing.

The central woodland belt of New South Wales is one of the areas of most concern. Woodlands occur on the more fertile soils; they are generally cleared first and the most comprehensively. There are still some

reasonably intact woodlands left in the landscape in the north-west part of New South Wales but they are being targeted by the bulldozers today. This is despite the fact that many catchments further south, which have already had much of their vegetation cleared, are facing massive land degradation and extinction crises. Only two weeks ago my office received footage of land clearing at Five Ways, near Nyngan, where paddock trees had been pushed over, bulldozed into windrows, and burned.

Land clearing is not only a scourge west of the divide. In the eastern division of the State land clearing is most often driven by land speculation and subdivision. Developers and wannabe's are pushing over trees as fast as they can. The exemption under the current Act that allows a land-holder to clear two hectares per year has seen thousands of land-holders clearing their two hectares, and frequently more, every year. To date no-one has been prosecuted for this activity. Up and down the coast, koala corridors and brush-tailed phascogale and squirrel glider habitat are being pushed out to make way for houses on streets given names like Grey Gum Road and Bushland Drive—the only reminder of what has been lost.

In this way vital links and corridors that connected nature reserves, national parks or State forests have been eroded. Threatened species and biodiversity in general cannot survive in a network of isolated and fragmented parks. Vegetation connectivity must be built into the landscape as a vital component. It is the only way to ensure that our biodiversity is resilient to changing climatic conditions. Otherwise, we might as well concrete the lot, because it will not be too many years before many species now thought of as common join the endangered species list. That is, of course, if the State still maintains such a list in 20 years time! We all know that one way of hiding the decline in our biodiversity is to stop the independent Scientific Committee from doing its work. The recent attacks on the Scientific Committee by the New South Wales Farmers Association have not been appreciated.

By the end of 2002 it was clear that previous efforts to halt land clearing in New South Wales had comprehensively failed. The Native Vegetation Conservation Act was riddled with loopholes and exemptions that rendered it both ineffective and unenforceable. Illegal and exempt clearing has been carrying on apace, as recent material obtained under freedom of information legislation demonstrates. The Department of Land and Water Conservation has also approved the clearing of massive areas. Since 1998 the department, on behalf of the New South Wales Government, has approved the destruction of vegetation over some 4,000 square kilometres of land.

If departmental staff thought a clearing application should be rejected, they had to spend several weeks gathering detailed evidence to put forward a case for refusal, whereas only little time and work were required if they chose to approve clearing. Approval was the status quo—refusals were problematic, time consuming and, therefore, infrequent. Also, the ability to prosecute breaches was made even more difficult by the standard of proof required. Barristers defending land clearers made ludicrous demands; for instance, that the prosecution must prove that the land was not covered by schedule 1 but was covered under the Act. The inability to prosecute has allowed recidivist land clearers to get away with this action, and only a handful of cases have been successfully prosecuted.

The new land-clearing regime will fail if the Government retains DLWC staff and allows the old culture to remain. Regional directors and lazy compliance officers must be moved on and staff who are in tune with the new system must be employed or promoted to prevent these practices continuing. It was a breath of fresh air when the Wentworth group arrived on the scene. Scientists seem to be timid and reluctant to speak out unless they are absolutely sure. However, the suggestion by the parrot and others that the solution for Australia's drought is to turn our rivers inland has been too much for some.

The Hon. Michael Egan: Who is the parrot?

Mr IAN COHEN: Your friend on the radio, Alan Jones.

The Hon. Michael Egan: You should not say that.

Mr IAN COHEN: Alan Jones suggested that rivers should be turned inland. What a wonderful solution to the problem!

The Hon. Michael Costa: That is quite a good idea.

Mr IAN COHEN: I thought you might agree.

The Hon. Michael Egan: It doesn't sound like a good idea to me.

Mr IAN COHEN: It would cost a lot of money and wreck a lot of areas, but that does not worry the Minister for Transport Services.

The Hon. Michael Egan: He is wrong and I am right.

Mr IAN COHEN: The Minister for Transport Services should not comment on matters he knows nothing about.

The Hon. Michael Costa: An ecomyth!

The Hon. Duncan Gay: If he annoys you, don't give him your preferences.

Mr IAN COHEN: We will see. That ecomyth is backed by the Wentworth group of scientists and science across the State, yet the Minister, who comes from a cloistered environment and has been a bullyboy in the union movement for years with no sustainable opposition, thinks he can talk about ecomyths. I am trying to comprehend how the Minister has got so far with so little understanding of issues. Obviously, he has spent little time looking constructively and objectively at issues over which he has purview. That certainly says something about the Government.

Scientists, including CSIRO chief Dr John Williams and freshwater ecologist Professor Peter Cullen—I suppose the Hon. Michael Costa would call him the high priest of some ecomyth—came together in the Wentworth Hotel and resolved to speak out about the real state of our natural environment. More than that, interest was expressed in finding practical solutions. The social and economic difficulties involved with turning around Titanic Australis were also acknowledged. Towards the end of 2002 the New South Wales Government invited the Wentworth group to convene meetings of farmers and environmentalists in an attempt to find a way to halt land clearing. The report was released in February, and in March the Government gave a commitment to implement the report and provide at least \$120 million to this end.

The report proposed a new model of landscape conservation for New South Wales. The focus was on strengthening and simplifying land clearing laws, as well as providing more financial security and funding support for farmers. An unusual level of trust was generated between farmers and environmentalists through the experience of trying to reach solutions. Both sides of the difficult land clearing debate recognised that this urgent problem must be addressed, and they both worked hard to find ways to protect the land, farmers, and the long-term viability of the rural sector. The key element of the Wentworth report that persuaded many environmentalists to get behind the approach was the call for an end to broad-scale land clearing of remnant vegetation and vegetation defined as protected regrowth.

The report also recommended the abolition of all except two minor exemptions. It focused strongly on eliminating loopholes to create sound, legally enforceable laws. Unfortunately, since then the committee convened by Ian Sinclair watered down these suggestions. There are grave concerns, especially among regional conservationists, that the intent of the Wentworth report has not been adequately carried through. The creation of new loopholes and the continuation of exemptions identified as having been used previously to clear significant areas of land are matters of the greatest concern.

This legislation acknowledges, and is an attempt to deal with, the deficiencies of the previous system, but it carries forward some of the big problems, such as the exemptions. For the Greens, the jury will be out until we see the detail of the myriad of regulations proposed and the land-clearing statistics and satellite images that come in over the next couple of years. Only then will we know whether this approach is working. Only then will we know whether the New South Wales Government intends to deliver on its land-clearing promise this time. I turn now to the specifics of the legislation. The Native Vegetation Bill has unfortunately lost "conservation" from its name. We hope the Parliament will support our amendment to insert the word "conservation" as well as "management" of native vegetation. Unless the aim of this exercise is to conserve native vegetation, the people of New South Wales will have been deceived.

Rather than banning broad-scale land clearing, this bill stops it unless it "maintains or improves environmental outcomes". Therefore, instead of a ban, this bill delivers yet another consent process for clearing native vegetation—and in the past the department has always handed out consents like lollies. Furthermore, these environmental outcomes are not defined in the bill, so there is no security whatsoever that the definition

will be sound or the process rigorous. The lack of clarity around this point is a major concern for the Greens. Given that the scientific evidence is that clearing almost invariably harms the environment, and rarely if ever maintains or improves environmental outcomes, this environmental test may become just another avenue to clear, perhaps to be used by consent authorities to approve significant destruction of native vegetation. This concern was accentuated by Minister Knowles in his second reading speech when he suggested that sustainable logging improves forest condition and therefore would have no difficulty passing this test. According to the Minister, logging improves environmental outcomes.

The Hon. Michael Costa: It's true. Go into a State forest.

Mr IAN COHEN: I do regularly. This is clearly an absurd proposition, and I suggest the Minister needs to spend more time in our forests and woodlands. Some types of logging may improve the timber-producing capacity of the forests, but few would argue that logging actually improves their ecological condition. Over 200 years logging has systematically degraded our landscapes, particularly the hinterlands where the bulk of our mature vegetation remains. I also refer the Minister to the long list of scientific papers that have addressed this issue over the past 30 years. The implication by the Minister that logging improves environmental outcomes sets a very low bar for assessing environmental outcomes. If this flawed logic is carried through to the environmental test, it means that there will be minimal protection for remnant vegetation as a result of this legislation. It could be exactly what we fear—another rubber stamp consent process.

Then come a number of exemptions from the legislation. This list runs directly contrary to the recommendations of the Wentworth report, which the Government committed to implement in February 2003. It seems that the Government has succumbed to pressure from the New South Wales Farmers Association and will not specify the maximum clearing buffers around rural infrastructure. The Independent Scientific Committee and the Community Reference Panel, which investigated the use of exemptions under the previous Act, found that they were a major mechanism for subverting the intention of the Act. The fact that similar exemptions appear in this legislation is little cause for optimism. This is especially the case with the new two-hectare curtilage clearing. Given the abuse of the two-hectare per year clearing exemption under the previous Act, this seems set to continue the abuse. Many conservationists and farmers have grappled with these and other questions for the past five years on regional vegetation management committees.

[Interruption]

That shows how little the Minister knows. Some of these people have contacted my office with concerns that the new legislated exemptions will lead to less protection than the ones they had hammered out as compromises in their committees. Another concern is that these exemptions can be carried out anywhere on the property. Many draft regional vegetation management plans had actually excluded exempt activities from vegetation that had been agreed by the committee to be of high conservation value. Rainforests, old-growth forests and wetlands are some examples of high conservation value vegetation that could be severely compromised if it can be attacked under exemption. Surely there are some places that should be left alone. Under the new definitions proposed in this bill is a provision for the identification of the regrowth that is ecologically important, in addition to remnant vegetation that will be protected. Both the Wentworth report and the Sinclair report recognised this, and we hope that it will be protected, but it seems that there is no real protection for this "protected regrowth" in the foreseeable future.

Only when the Natural Resources Commission has defined some statewide standards for protected regrowth and then these have been applied in a regional context by a catchment management authority [CMA], and only when a land-holder either makes application for a property vegetation plan or a development or clearing application, will the option of protecting regrowth possibly be put on the table. This is why the hue and cry raised last week by some farmers and their mates in *The Nationals* in the other place were so extraordinary. The suggestion that farmers would suffer from not being able to clear regrowth is laughable. Despite the screaming need to stop clearing along the edges of our streams or in high-risk acid-sulphate country or in areas prone to salinity, there appears to be no requirement in this legislation to afford immediate or even medium-term protection to those areas. There has been some discussion about the onus of proof provision. Indeed, the Government has succumbed to pressure from the farmers on this issue yet again.

Pollution legislation in this State will have taken a massive step backwards today with the winding back of a common requirement that when a defendant wishes to rely on a permit or exemption they need to prove that such reliance was lawful. Similar provisions occur in a wide variety of legislation. Some examples are the Crown Land Act, the Occupational Health and Safety Act and the Food Production Safety Act. The

office of Parliamentary Counsel says that such clauses are not unusual. A leading environmental barrister in this State has told me that they form part of common law. Only the defendant can know why they took a particular course of action. It is fundamental to their defence that they should tell society why they thought they were allowed to do what they did. This is what this section means.

The watering down of this provision severely compromises the intent of the bill. It will render this bill as unenforceable as the last. In two years time we can expect that the Auditor General will write yet another report declaring that this legislation, too, has failed to stop land clearing. The New South Wales Government is now on its third attempt to stop land clearing; it is on its third promise to the community and the electorate to address this issue. The Government can be certain that it will have a major credibility issue if it fails again. The changes the Government has made to the onus of proof provision signal disaster for this bill, the Government's credibility and the natural environment of this State.

I refer to the Catchment Management Authorities Bill. Again, the Greens appreciate that this concept has come from the Wentworth report. Unfortunately, the thinking about how the CMAs will work in practice does not seem to have progressed very far in the time between the release of that report and now. The Local Government and Shires Association has rightly raised a number of questions about how the CMAs will work with local government. Their questions remain unanswered. For this reason, the Greens will be moving an amendment that requires CMAs to develop a memorandum of understanding with their corresponding local governments. There needs to be a provision in this legislation that recognises that partnership. CMAs are meant to develop catchment action plans to guide investment in priority areas of land rehabilitation. Unfortunately, experience of land restoration is not a skill required by CMA board members. We are incredulous that millions of dollars are to be spent annually by a board that may have no practical experience of large restoration projects.

After a decade of Landcare, this approach is not good enough. While the Landcare movement has played an important role in building awareness and community involvement, there has not been a strategic use of funds. Millions of dollars have been spent for little environmental gain. The danger of the current approach is that this will see more of the same: land-holders getting thousands of dollars for fencing which may have little environmental benefit, or trees being planted without appropriate follow-up care which then fail to survive. One bush regenerator friend has described the futility felt by his green corps team as they weeded and planted in a degraded landscape and watched as the bulldozers and trucks cleared and removed mature, relatively weed-free vegetation from the neighbouring block. It will be decades, even centuries, before their work will be of comparable condition with that removed. What sort of insanity that has us fiddling at the edges while opportunities for genuine conservation of existing remnant vegetation disappear by the day?

The Greens seek that the Government addresses the issue of fencing materials in the regulations. How incongruous would it be if in order to fence areas for conservation management thousands of mature hardwood trees were cut down to provide fence posts? CMAs will be given the task of accrediting property vegetation plans. However, some of these plans, called development PVPs, could have a duration of 15 years and allow significant clearing to occur. But there is no provision in the bill for transparency. Where is the requirement for public exhibition of a development application? In what other part of the planning and development sphere can someone get an approval for 15 years worth of development activity without their neighbours having an opportunity to view the proposal and comment? This bill sets an unhealthy precedent in that respect and the Greens will be moving amendments to attempt to redress this. We will also be seeking to ensure Aboriginal representation on the CMAs and for the establishment of regional Aboriginal natural resource committees to provide a genuine forum for consultation with Aboriginal people about land management issues.

I now turn to the Natural Resources Commission Bill. To the Natural Resources Commission [NRC] falls the task of stepping outside the politics and providing government and the community with independent credible scientific advice. While the NRC is to consider also economic and social factors, it will have to ensure that CMAs have to meet scientifically robust standards. It is an onerous role. Whether the natural environment of New South Wales continues to degrade will really be the responsibility of the NRC. If it fails to provide clear direction and is ambivalent or vacillates about what needs to be done, it will have done all future generations of New South Welsh a great disservice. The form that the NRC is to take, like so much else in this package, still seems to be under discussion. Different people in government are telling us different things.

Will the NRC have responsibility for carrying forward regional forest assessments? Will it complete the work of the Coastal Council, which it replaces, and oversee the comprehensive coastal assessment? One section of our society that has been ignored by this legislation but which will be affected by it is the Aboriginal community. The wealth of knowledge and unique expertise in environmental management of the Aboriginal

people, their capacity as custodians of all lands and waters regardless of tenure, and their role as significant land-holders in New South Wales is recognised by the present membership of a number of State committees. Many of these bodies are to be subsumed into a single Natural Resources Commission and the associated Advisory Council, neither of which have a legislated requirement for Aboriginal involvement, nor to consult with the Aboriginal community. The expertise and knowledge that has been gained through these processes may well be lost.

The proposed model does not appear to acknowledge Aboriginal input and provides no benefits to Aboriginal people in relation to their spiritual, customary and economic use of land and water. The bill fails to recognise the ongoing role and obligations that Aboriginal people have to country. It fails to provide for their rights of access for hunting and gathering, to their living cultural heritage or to the intellectual ownership of their knowledge. It also fails to abide by the protocols of the Services Delivery Partnership Agreement, made between the Premier, the New South Wales Aboriginal Land Council and the Aboriginal and Torres Strait Islander Commission, signed only last October. The proposed protection of some regrowth on account of its importance to life, water, soil and salt must be extended to recognise and protect that vegetation where the carrying out of cultural activities is dependent upon the existence of the vegetation.

The proposed CMAs must be required to develop cultural heritage management plans, with which the catchment management plans and property vegetation plans must be consistent. International best practice dictates that decisions in relation to the use and management of natural resources ought to be accompanied by the prior informed consent of the traditional owners and custodians of the lands and waters. Let us not forget that Aboriginal people have sustainably maintained this country for at least 40,000 years! It is only through specific provision that the interests of Aboriginal people can be guaranteed in the volatile climate of politics. Aboriginal people can only rely on unambiguous, express legislative pronouncement. We will be proposing a number of amendments to these bills to provide this needed certainty.

I now turn to the concerns of another neglected but very significant stakeholder in the management of natural resources: our local governments. In a single year Australian local governments spend \$4.3 billion on environmental protection and natural resource management. This amounts to \$130 per person per year. The \$406 million over four years promised under these bills pales against this. Certainly the distribution of funds between city and country is very different, but the arithmetic comes out at only \$13.50 per person under this new proposal. This bill seems to relegate local government to the status of just another stakeholder, of equal or less weight than the many vested minority interests to be given seats on the Advisory Council.

The bill requires that the CMA is to have regard to environmental planning instruments, but fails to provide an appropriate mechanism for this interaction. It rides roughshod over local government by any future environmental planning instruments such as local environment plans will not be able to stop clearing of significant vegetation if a land-holder has a 15-year property vegetation plan in place. An amendment to require that CMAs enter into a memorandum of understanding with local councils will be proposed to remedy this oversight. The CMAs may be appointed as the consent authority, a role now carried out by local government. There is potential for this power to undermine the democratic planning of local communities that is not adequately specified in the bill.

I will now address another dimension of this debate and refer to an even more complex set of circumstances: the potential impacts of this natural resources reforms process and this suite of cognate bills on the coast of New South Wales. As members both here and in another place have noted, the genesis of these natural resources reforms and the source of the intention for these bills has been the work of the Wentworth group of concerned scientists and the New South Wales implementation committee chaired by the Rt Hon. Ian Sinclair. The work of these groups and the recommendations they made in their reports have been really centred on dealing with broad-scale land clearing and disputes over access to water allocations from our rivers and creeks. It has been appropriate that these issues receive significant consideration by the New South Wales Government.

The geographic focus of this flurry of policy activity has been western New South Wales. There has been no mention in all this time in these written reports of the groups, that the 72 water and vegetation advisory committees proposed to be abolished in the Minister's own press release, dated 15 October, would be expanded to include another 10 bodies including the Resource and Conservation Assessment Council [RACAC], the Healthy Rivers Commission, the Coastal Council of New South Wales, the State Catchment Management Coordinating Committee, the Native Vegetation Advisory Council, the Water Advisory Council, the State Wetland Advisory Committee, the State Weir Review Committee, the Advisory Council on Fisheries Resource and Conservation, and the Fisheries Resource and Conservation Assessment Council.

All these bodies are listed in part 2 of schedule 3 to the Natural Resource Commission Bill and will all be abolished on the commencement of this legislation. The proposal to abolish the New South Wales Coastal Council has come without warning or consultation, and appears at first take to be a major mismatch—the obvious mistake in this reform process—because coastal management is about far more than water and vegetation. In coastal New South Wales these issues of natural resource management, particularly water and vegetation, are prominent and need addressing. Coastal areas have different ecological complexions than inland environments. The coast also has a substantially different set of social and economic interests and pressures affecting natural resource management that need to be considered and integrated into decisions that affect it. Hence, one size or policy solution in natural resources management reform does not necessarily fit all locations or situations. I will return to this point in due course.

The sudden news that the Coastal Council is gone was a shock to many in the community concerned about the conservation of the coast and, according to the New South Wales Nature Conservation Council, it has shaken community confidence in the Government's continued protection of the New South Wales coast from rampant development. More than a few in the wider coastal management community see it as a nasty surprise and a serious loss. Indeed, it is seen as kind of sneaky and underhand by some who perceive the media and policy focus on the long overdue resolution of water and vegetation issues as a smokescreen for a more significant power play that may have profound adverse effects on coastal New South Wales, a policy diversion, if you like, to provide cover for the main game: winding back controls on coastal development while simultaneously abolishing all advisory committees on which the community was represented.

Honourable members opposite may scoff at such a suggestions. "Labor would not sell out the coast," you might say. But where is the substance of any reassurance by the Minister that this will not happen? The Minister has given no reassurance and there is no substantial mechanism for community consultation other than an advisory council on natural resources that the Minister will create administratively, not through legislation, at a time yet to be determined. Did the Minister formally announce the demise of the Coastal Council? Did he issue a public statement or media release? No, he did not. The news leaked out in early November, but it was not confirmed until the Minister introduced the bill and delivered his second reading speech at 10.48 p.m. on Wednesday 12 November—two weeks ago!

The Minister declined to attend the twelfth annual New South Wales Coastal Conference in Port Macquarie in the first week in November and he did not announce the imminent demise of the Coastal Council. His representative at the conference, the honourable member for Newcastle, Mr Bryce Gaudry, did not announce it; nor did the Deputy Director-General of the new super agency, the Department of Infrastructure, Planning and Natural Resources, Andrew Cappie Woods, who advised the conference that discussions were still continuing. The Minister should have announced publicly that the Coastal Council would be abolished. He should have ensured that the Coastal Conference was properly briefed on the Government's intentions and its co-operation sought. It would have been good policy reform process to communicate with and involve those with interests likely to be affected. But the Minister chose not to, or could not, take the community of coastal management professionals into his confidence.

The Minister did not explain the Government's purpose or aims, answer questions or address concerns. He did not offer written assurances or public commitments. He stayed silent and then made a 40-minute speech late one Wednesday night in early November introducing three far-reaching bills as cognate legislation. This has been change management at its worst. The Minister is presenting the smallest possible target, hiding the policy implications for coastal New South Wales behind a gaggle of cranky farmers from the Western Division. As a result of the Minister's approach to this matter, no-one knew then, or knows even now, what these reforms mean for coastal New South Wales or how the new institutions created by these bills will deliver better coastal management outcomes. The Minister has not explained these crucial aspects of the Government's policy reforms in his second reading speech nor in his speech in reply.

Who would have thought that the added consequences of another attempt at fixing water and vegetation policies in western New South Wales would be the roll back of coastal protection? It is ironic that the demise of the Coastal Council comes at a time of substantially increasing population growth—up to 50 per cent growth over the next 20 to 25 years—when land prices are at a premium and development pressure on the New South Wales coast is at a new high? Is it accidental that right when development pressure is growing again and the need for a specialist coastal policy advisory body is again great, the one independent coastal watchdog body is abolished, creating a significant loss in the Government's capacity to address this pressure right when it is needed most? Conspiracy theories aside, the loss of the Coastal Council creates another level of destabilising effects during a time of significant change and upheaval. It is a recipe for losing the plot.

The Greens and many others are worried that the Government focus on the coast will be lost and coastal protection will be stalled behind major changes to water and native vegetation management. Our legitimate fear is that while the commission is setting up and the catchment management authorities are inventing themselves, coastal development will go boom, unchecked, creating another wave of coastal planning mistakes to be visited on future generations. All it will take is a little gap of six months or so to open up in the oversight of coastal management and coastal development approvals for real harm to be done. Dodgy, inappropriate coastal development rushed through a compliant, sympathetic local council for approval can change the face of our coast for the foreseeable future, making it uglier, more crowded and lacking in style, damaging important coastal vegetation and habitat for threatened species, diminishing water quality and scenic values, undermining the very values that first attracted us to the coast.

If these outcomes were not consciously intended, who thought through the likely consequences and ramifications? Has the Minister not answered the raft of questions about the future of coastal management in New South Wales raised by the abolition of the Coastal Council because the Minister has no idea of what the reforms will mean to coastal New South Wales? Does the Minister really have no idea of the ramifications of the reforms on coastal management in New South Wales because he has hardly thought about them? It certainly seems as though the Minister is making up the reforms as he goes along, but he is conveniently forgetting to communicate them to others. Worse than making policy on the run, this is institutional reform on the run with minimal communication strategy and on a hurried timetable.

This is not the stuff that inspires public confidence and builds community support. It is a policy disaster in slow motion. The Minister still has not issued a news release or public statement justifying abolishing the Coastal Council, or addressing legitimate community concerns about what the loss of the New South Wales Coastal Council will mean in the fight against inappropriate coastal development. It is odd, because in his second reading speech the Minister spoke highly of the Coastal Council and in particular of its chairman, Professor Bruce Thom. The Minister is right to speak highly of Professor Thom and the Coastal Council because they have made very positive contributions to protecting the New South Wales coast. This is no advisory council created administratively by the Minister. The Coastal Council is an independent statutory council created under the Coastal Protection Act 1979 as amended. It advises the Minister on coastal policy.

Very importantly, the council provides its independent report to Parliament annually on the implementation of the coastal policy. It is an honest report direct to the New South Wales Parliament on how well State agencies and local government are complying with the coastal policy and delivering ecologically sustainable coastal management. The report has been prepared to be critical of State and local government bodies that have not performed to an adequate standard in protecting and managing their areas of the State's coast. The report pointed with some concern to the trend of hollowing out technical expertise from State government departments and outsourcing requests for expertise to the private sector. This annual independent report to the New South Wales Parliament has been studiously ignored by successive Ministers who have not acknowledged, let alone welcomed, the Coastal Council's report and its critical observations. How will Parliament obtain an independent report on the effectiveness of coastal protection policies when the Coastal Council is gone? Is it really an unintended consequence that no independent and potentially critical voices be heard in this Parliament?

But the Coastal Council did more than write reports to Parliament: it went to the people. Many community groups respected the Coastal Council's willingness to conduct field inspections and hold community access meetings in regional centres, since these meetings provided up-to-date information and allowed direct feedback to the Coastal Council on local coastal management issues, free of departmental filters. People in the community liked the fact that the local council's officers and the staff of State Government agencies could be put on the spot and queried on their actions, or alternatively could seek their advice and intervention. People liked the way that Coastal Council members made themselves accessible and made community consultation a priority. Once the Coastal Council is abolished how will that kind of communication and consultation with the community on coastal management issues be delivered?

The Natural Resources Commission and the Catchment Management Authority should deliver at least this level of accessibility and consultation, or public participation will go backwards. While I acknowledge the council's willingness to meet the community, it would not be inappropriate to overlook the Coastal Council's preparedness, particularly that of its Chair, Professor Bruce Thom, and its Executive Officer, Julie Conlon, to meet with those from the development industry. At these meetings the coastal policy and its requirements were laid down in unmistakable terms to private land developers and the many developers were told "It is not consistent with the coastal policy so it won't get up", before any detailed work or major expense had been

incurred or development application submitted. We do not know how many inappropriate coastal developments were dropped cold when the developers came to realise that their crazy dreams were not going to happen on the New South Wales coast.

Who is going to apply the reality test to coastal developers when the Coastal Council is gone? Who will say, "It's a crazy development proposal, it's against the coastal policy, and it won't get up, so don't waste your time and money."? More than likely the local council will not say such things, and we know why. The Land and Environment Court might say such things but it will not do so until very much later in the development approval process, when lots of money has already been spent trying to make an inappropriate development fit where it will not fit. But the court has been at its best in refusing development consent for inappropriate coastal developments where the Minister has become involved as a party to the proceedings and has appointed the Chair of the Coastal Council to attend court and provide expert evidence to the court on the application, intent and effect of the coastal policy.

On several occasions appeals by disgruntled developers against council or ministerial refusals have been defeated in part through the advocacy of the coastal policy before the court. Who will undertake such expert advocacy now? How will the Land and Environment Court now apply the policy and ensure consistent standards to protect the coast's many assets and values? The Coastal Council, through its expert planning staff, critically reviewed hundreds of proposed amendments to local environment plans and many scores of development applications. It considered many submissions made by community groups or concerned individuals and provided written advice to the Director-General of the Department of Planning, to the department's regional planning co-ordinators and to many local councils. Who will play this watchdog role on coastal developments when the Coastal Council is gone? I think it will be no-one.

Someone must, and that is why the Greens will move at the appropriate time to amend the bill to ensure that the position of a dedicated coastal commissioner is included in the Natural Resources Commission. It was the New South Wales Coastal Council that instigated the idea of an annual conference of the coastal management community and it was the Coastal Council that developed a set of criteria for excellence in coastal management across a range of sectors. It also adjudicated upon and announced the annual Coastal Management Awards. How will these awards now be conferred? Who will convene the Coastal Conference next year? The Minister has not explained how the two major projects being undertaken by the Coastal Council will now be carried out. The Coastal Council was overseeing the \$8 million Comprehensive Coastal Assessment [CCA] through its steering committee, and I am told the CCA has substantially commenced with the letting of hundreds of thousands of dollars worth of assessment projects.

The next phase of the CCA, once Government approval for the CCA roll-out is obtained, is to begin the assessment of coastal New South Wales on a region-by-region basis. As part of this roll out, the CCA must frame several scenarios for the modelling of the conservation, social and economic data, and those scenarios must be properly calibrated against community sensibilities and expectations. But who will oversee these assessments, develop and adopt appropriate scenarios and formulate adroit recommendations if there is no longer a Coastal Council? Judging by the legislation, the inquiry and assessment processes may well be transferred to the new Natural Resources Commission. But when? Before the ink is dry, already there are arguments that, despite the provisions of the bill, the coastal assessment project will remain with the Department of Infrastructure, Planning and Natural Resources. So much for independence from agency bias! And, of course, any further delays in the coastal assessment roll out means that we will be that much further from having an independent strategic level assessment of the coast, using up-to-date information, that could feed into the new catchment management authorities.

So who will drive this coastal assessment now that these reforms have cast a doubt over the project's future? Will a community reference panel be set up specifically to assist with setting scenarios or will the bureaucrats capture the assessment and ensure that nothing too challenging or expensive is recommended from it? The second major project also announced in June 2001 as part of the Government's coastal protection package and also to be carried out by the Coastal Council is the review of the coastal policy, which was released in 1997. The policy is seven years old and is just about worn out.

Almost all the agencies with duties listed in the policy have had their names changed at least once, and any actions that were to be implemented have now been implemented or will never be implemented. Many new coastal management issues have recently emerged but the policy is silent on these and will remain silent without a proper review. The coastal policy lacked teeth and many in the community were hoping that the coastal policy review would provide an opportunity for some genuinely effective policies to be put in place and made to stick.

The future of this review, and indeed the coastal policy itself, has been thrown into doubt by the abolition of the Coastal Council. No doubt many in the development industry or in the shonkiest local councils would be pleased to see the old policy remain ineffectually in place or fall from view entirely. They would not want a new updated and smarter coastal policy with effective teeth; they would prefer no holds barred on coastal development.

So how will the coastal policy review now be carried out? Who will be responsible for the implementation of any revised coastal policy and report on progress when the Coastal Council is gone? All these questions of what happens to the coastal policy now that the Coastal Council is gone are presently moot and will remain unanswered because the Minister has not addressed them. He has not given any details of what these natural resources reforms mean for the future of coastal management in New South Wales. He has completely failed in his duty of spelling out to the community what the implications of these far-reaching reforms might be, and in failing to do that the Minister has created uncertainty and anxiety where there was no need for such uncertainty and anxiety. The questions I have posed here tonight, and which have been articulated by many in the community, stand as testament to a hurried and poorly managed process of reform.

To say that the political management of the introduction of these reforms has been lousy is no understatement, but such a statement must not be misconstrued as meaning that the reforms themselves lack merit. Generally speaking the Greens support the integration of State Government agencies and we believe the Government is on the right track in overcoming the departmental demarcation, duplication and cost shifting that has gone on for years. The State Government agencies needed to get out of their departmental silos and address natural resources at the whole catchment and bio-regional level. Maybe these reforms will actually achieve these outcomes.

These could be good reforms if the following outcomes are achieved. First, if the agencies co-operate and integrate, leaving behind old tribalism and the mental silos; second, if the Natural Resources Commissioners are genuinely committed to public consultation, prepared to get out their offices in Sydney into regional New South Wales and if they adopt an open approach to communications generally; third, if the commissioners are prepared to use their powers to ensure compliance and a consistent standard of coastal management; fourth, if the catchment management authorities actually supervise local government and require best practice in coastal management and do not simply pander to small town sensitivities; and, fifth, if adequate financial and human resources are applied to addressing these complex problems.

The new year starts with the agencies engaged in delivery of programs once more. Inaction on land clearing has undermined the efforts of the growing number of farmers and land-holders who are working hard trying to maintain bushland on their farms. They are among those who recognise that long-term productivity on the land depends on healthily functioning ecosystems. In many parts of the State we are still going backwards. The information provided by the National Land and Water Audit provides a clear and startling picture: 80 per cent of the profit comes from just 1 per cent of the agricultural land. Over much of New South Wales, agriculture operates at a net loss for years at a time. This comes at the cost of ongoing land and water degradation that makes such agriculture progressively marginal and unprofitable. This in turn seems to drive some graziers to clear and stock more marginal areas, attempting to recover past losses. And so the cycle goes on. Until we can break the economic imperative that makes land clearing profitable we will be fighting a losing battle. While this legislation has the potential to move us in that direction, it is fraught with pitfalls.

I have set down the serious concerns that the Greens have with the bills. On several fundamental points they represent a major wind-back from the Wentworth report and the strong promise that the Government made to implement it in February this year. So much of the implementation of these bills is to be left to regulation that the full extent to which the final implementation differs from the Wentworth vision remains to be seen, although these bills have set alarm bells ringing. The Greens will be following every step of the implementation process. We will be watching each and every regulation, each and every development. The balance on this issue has swung a long way back from the natural environment over the last six months since the Wentworth report was presented. If the Government does not make up for this with regulation and implementation, it can expect the community and the Greens to cry foul. And remember: land clearing is an enduring issue for the population of this State. It will not go away or be forgotten. It is fundamental to the health and future wellbeing of every individual in New South Wales, and it will surely come back to haunt the Government if it cannot get it right this time.

The Greens will carefully watch the debate in Committee. We are not yet convinced that the bills deliver the long-promised end to broadscale land clearing as we have been promised time and again. Staff in my

office and many other people have given a great deal of time to research these matters. They have prepared this response on behalf of the Greens. These people have a great deal of interest, experience and expertise in these areas. I warn the Government that we will continue oversight of these so-called reforms. I ask the Government to honour its fulsome promises, particularly in regard to an end to broadscale land clearing. We certainly are not going away. As I have said, the issue is basic to success in the farming community and our natural vegetation areas for future generations.

The Hon. JON JENKINS [11.13 p.m.]: Before getting to the main thrust of my speech I will deal with some of the issues raised by Mr Ian Cohen about greenhouse gases. I refer him to the latest issue of *Science* and a major study done by the Brazilian and United States governments. The study is reported under the heading "Trees may not reduce greenhouse gas", and it deals with how rainforests and forests in general contribute to the carbon dioxide balance in the atmosphere. I suggest the honourable member read it. Basically, the result of the study is that the effect on the carbon dioxide—

Mr Ian Cohen: If you have a mature forest or a rainforest it can be carbon neutral. It is just one part of it. It does not answer the whole question. You are just compartmentalising one tiny area.

The Hon. JON JENKINS: Read the article. The concept of tying carbon dioxide up in the biomass, in the ground or in the trees, is well understood but the actual carbon dioxide part of the forest versus a field of grass is debatable. In terms of animal loss, reptile loss and small mammal loss, any land clearing pales into insignificance compared with the numbers of animals lost per annum to feral cats. So if we want to preserve our natural environment—and land clearing is a very important part of it—it is far more important to do something about feral cats and foxes. Those are significant actions that we can take.

I will try to be brief because I know that it is late. I say at the outset that I support the thrust of the bills. The protection and preservation of our wonderful natural heritage is at the very core of why I am in this place. However, it continues to amaze me that the reason for this effort is never stated in legislation. Why do we want to preserve our environment? We could have a European-style environment almost devoid of native animals and native vegetation. People survive quite well in Europe: they live, they breathe, they eat and do all the things that we do. The reason that we want to preserve our natural environment is so that we can embrace it and enjoy it. That should be stated as an objective of the legislation. Why is it so hard for the Government to State this and implement it in legislation? We do not want our landscapes scarred, our fields rendered sterile by salinity or our precious forests desertified. Nor do we want a European landscape. The main objective of legislation to preserve our natural environment so that we can enjoy it, our children can enjoy it and future generations can enjoy it.

Farmers and people on rural residential blocks can live intertwined with the natural processes as far as possible while maintaining a reasonable lifestyle. This is entirely realisable without returning to the caves, as some would have us do. When dealing with any bills that seriously affect land-holders who produce our very sustenance we have to be extraordinarily careful. Farmers have endured and are still enduring some of the worst droughts in living history. The spectre of some government instrument able to determine how to manage one's property in these times is very frightening for land-holders. In fact, Australian Bureau of Agricultural and Resource Economics figures show that farm income has dropped to an all-time low. The average cash income is \$14,000 per farm and the average farm loss is \$78,000 per annum. Ask a farmer how he wants to contribute to sustaining the local environment at the moment and he will probably look dumbfounded and reply that he does not know how he is going to sustain his family next week, let alone the environment for the next generation.

This brings me to my four major criticisms of the bills. First, there is no mention of the overall goal of the bills. What is the point of having biodiversity of our native populations? What is the point of maintaining large native vegetation corridors? The aim is to preserve our environment for all members of this State, present and future, to enjoy. This should be stated in the objectives of the bills. Second, they contain only threats of penalty and control and do not give any real incentive, pecuniary or otherwise, to actively participate in this activity. Compensation for any lost productivity as a result of the bills is missing. Why would any farmer willingly declare in a vegetation plan areas to be classified as remnant or regrowth? Farmers will be penalised only if they are perceived to have mismanaged these areas. Third, the bills, although very well intentioned, have been implemented in haste.

Their drafting contains many serious flaws and problems. In view of the fact that the bills are among the most far reaching and important bills in the Parliament's history it would have been better had the Government adjourned debate until next year so that we could have proper time to analyse the consequences of the bills and consult properly with all stakeholders. Instead, the Government has attempted to rush these very

important bills through at the last minute. Fourth, the bills are supposed to reflect the intention of the Sinclair report. In this aspect it fails miserably. I cannot believe that this level of incompetence exists within the department. The alternative has been that the Greens or the extreme environmentalists have had their hands all over the bills.

For those and many other reasons, which I will go into in detail about now, I find it difficult to support this bill in its current form. I accept that I might not be aware of some of the processes and procedures of government and the Executive, so I will graciously accept guidance from the Minister in that area if I need it. Part of the problem lies in the fact that this bill was introduced at the last minute with no proper opportunity for discussion with the Minister or his minders. The Natural Resources Commission Bill sets up the commission that will oversee the management of our natural resources on both private and public land for the whole of New South Wales. Clause 4 (g) states:

For the purposes of this Act, natural resource management extends to the following matters relating to the management of natural resources...

(g) any other matter concerning resources prescribed by the regulations.

So, effectively, anything can be any included in that provision. That is far too wide a description, and it could include many other activities not intended either by the Sinclair or the Wentworth reports. That clause needs to be amended, removed or clarified. With regard to clause 6, the positions of commissioner and assistant commissioners are not insignificant positions. Those people will hold positions of extraordinary power in this State and they will be able to determine the right of entry, the onus of proof, impose penalties, and control many people's livelihoods. There should at least be some specification of the requirements for these positions. Clause 10 (1) states:

The Commission is not subject to Ministerial control in respect of the preparation and contents of any advice or recommendation of the Commission, but in other respects is subject to the control and direction of the Minister.

The clause does not state that the Minister has to listen to the advice; it just states that he cannot control what is in it. There is nothing in that provision that states that the Minister has to take note of the advice. It is a technical point and, as was stated earlier, the devil of these things is often in the detail. Clause 13 contains no mention of the guiding principles but its intention is for the benefit of the people—to ensure that the environment, at least in some small way, is retained in its natural state so that people can enjoy it. Why is it that we do not want another Europe, which is almost devoid of native forests and animals? Let us state that in the guiding principles of the bill. I might require the Minister's assistance in relation to clause 18 (2), which states:

For the purposes of this section, a certificate of the head of The Cabinet Office that any information relates or question relates to confidential proceedings of Cabinet or that a document is a Cabinet document is conclusive of the matter certified.

That provision worries me a little. I will refer later in this debate to the fact that there are many places in which reports and advice can be hidden. However, that might be standard practice. I will accept it as being standard practice, but it concerns me. The schedule referred to in clause 22 abolishes the fisheries and coastal management authorities. However, as Mr Ian Cohen pointed out at some length, the rest of the bill is completely silent on how these complex areas will be represented in the new scheme of management. I have received numerous representations about the special nature of the coastal environment and, in particular, the highly complex issues surrounding the interplay between coastal wetlands, and intertidal and reef areas. Yet again the legislation is silent on these issues.

What about the Natural Resources Advisory Council [NRAC]? Although the Minister made much of this body in his second reading speech I can see no mention of it in the legislation. How is that body to be constructed and under what rules will it operate? In the Minister's speech he made much of the make-up of the NRAC. However, when one considers the number of recreational activities that take place in or near waterways and along the coast, and one takes into account the fact that there is no tourism or recreational representation on the NRAC, it is at best an oversight and at worst a deliberate attempt to remove the fundamental right of people to enjoy the bounty of nature's gifts, which this bill seeks to preserve.

The Catchment Management Authorities Bill establishes the base level authorities to act at a community level. The boards do not have a single representative from three important parts of our communities. First, the tourism and recreational activities carried out on our waterways, both coastal and inland, are phenomenal—everything from a picnic beside the river to water skiing, sea and fly fishing and surfing. To not have any concern for people's recreational use of our waterways is reprehensible. Second, indigenous people

have unique insights into the management of our natural resources and their views should also be represented on this authority. Third, local councils also require some input into these areas. I refer the attention of honourable members to clause 8 of the bill. Why can the board not appoint its own chair? Why is the Minister appointing a chair of a community level board? So much for independence!

The chairman of the board will obviously control the agendas. Clause 12 deals with the efficiency and effectiveness review. The Minister can simply replace the authority without referral to any other body or committee. It is the same scenario in this bill. The Minister can arbitrarily replace any of the persons involved in this process. Similarly, under clause 20 (1) (c) the Minister may direct the inclusion of any other matter into the catchment plans. What is the point of having advisory, scientific, technical and community consultation if the Minister can include any other matter into the plans? Surely such matters should be limited to matters of technical, scientific or cultural heritage value or merit. Under clause 21 again the plan can be displayed only with the Minister's approval. If the Minister wants to hide the plan, there is no problem about that.

Clause 22 provides that the draft plan should go only to the Minister and the Natural Resources Commission [NRC]. The Minister can restrict the time that the NRC has to deal with submissions. The problem with clause 24 is that the catchment management plan is published only after it is a fait accompli. It states that the Minister may seek and take into account the advice of others but the problem is that the plan may be published only to the Minister and the NRC. Again, the plan is not available for viewing outside that small group. Subclauses (2) and (3) of clause 25 are interesting. The Minister may simply arbitrarily modify the plan or even totally revoke it without referral to anyone. What is the point of having scientific advisory content if the Minister can simply revoke the plan? We would not have seen the plan at that point in time; it would still be hidden within the processes of government.

At every level throughout this legislation there is ample opportunity for ministerial interference, completely legitimate interference. The theme of ministerial interference is threaded throughout the bill. The claims of independence are really quite lame in view of the rampant opportunity for the Government to intervene arbitrarily in the process. If it does not like the referee's decision, it can change the referee. Part 5 of the bill deals with annual implementation plans. Clause 28 (1) refers to the fact that the plans may be subjected to arbitrary modification by the Minister, with no review. What is the point of having this process if there is arbitrary modification? The next provision in the legislation deals with fees. How much will it cost to submit a property vegetation plan [PVP] and have it approved?

Clause 2 of schedule 4 provides that the Government can also levy a fee on "any" land within its catchment contribution area. It is up to the Minister to declare which land is within the catchment contribution area. Again, there is ministerial control at every level; there is no independent control. There is no provision relating to a person's ability to pay, and there is no reference to any degree of benefit. There is no requirement for scientific support for or inclusion of properties into the catchment contribution area. There are no appeal processes; there is no independent umpire. There is provision for the waiving of fees in cases of hardship. If the Government is serious about that provision it should spell it out clearly so farmers will know exactly what remedy they may have if some environmentally loaded catchment management authority [CMA] decides it does not like a particular landowner's attitude. Who makes the decision about hardship? It is the CMA again.

I return to the main part of the bill, and to one of what I call the nasties in it. Clause 36 (2) gives the authority a complete right of unrestrained entry to private land. It also gives that right to "other persons". The authority is also given the right to carry out work on the land. The provision with relation to compensation is draconian. What happens if the damage is not evident until after six months have elapsed? Often that is the case with vegetation issues. Clause 37 (d) does not require proof of a quorum. Why not? The catchment management authority will impose penalties. Any decision made to levy fees, to allow someone to enter land arbitrarily and to impose penalties should surely, at the very least, be a decision of the majority of the board. Clause 38 is the all-care-but-no-responsibility clause: if we mess up your livelihood, we are not responsible and there is no compensation.

Finally, I turn to the Native Vegetation Bill. I note the emotive language that has been used by the Government in the media. It conjures up visions of huge tractors towing a drag chain between them. Clearly, the bill is not targeted at that sort of broad-scale land clearing. It seems to be targeted at the other end of the spectrum. Clause 3 (e) of the Native Vegetation Bill provides that one of the purposes of the bill is to encourage the revegetation of land, a noble cause. The last thing any of these bills does is encourage the planting of native vegetation, or even allowing it to grow. The bill will not achieve its aim. According to clause 5 and schedule 1, all land now classed as rural residential is covered by the bill. Hundreds of thousands of people across the State

are living on small acreages that will come within the purview of this bill. Mom and Pop sitting on an acre of land with a garden would now have to submit a property vegetation plan.

I used to own a small acreage. We had several acres of wonderful gardens. According to this bill not only would we have to submit a property vegetation plan for it, we would not be able to cut down a single tree in our garden, because it would come within the purview of the bill. These are finetuning points which can be dealt with by amendment, but they should not be in the first draft of the bill. In clause 6 the definition of "indigenous" is a failure. What is indigenous to one area may be a pest in another area. The bill has to be careful how it defines indigenous vegetation. Not all native plants are good; some can be considered as weeds. What is the meaning of "clearing" in clause 8? Does the cutting down of one tree constitute clearing? If so, how much—10 per cent, five per cent? Again, there is no definition in the bill. Clause 9 has serious problems. The dates are totally irrelevant and should be set out on an area-to-area basis. On the North Coast where I live, two years after one moonscapes an area it cannot be penetrated. I have seen fire trials that had been used for 100 years disappear in three years with native vegetation growing over them. Again, this concept of dates needs to be more flexible and done on an area-to-area basis.

As I said before, why would anyone willingly declare a property vegetation plan? Why would one willingly declare some area to be remnant growth in a property vegetation plan? What is the effect of clause 13 on the considerations of the Land and Environment Court? Is the Minister now the one and only consent authority for anything under this bill? That again points to a level of ministerial control. According to clauses 22 and 23 the property vegetation plans are submitted to and approved by the Minister, not by the relevant authority. Clause 24 describes the property vegetation plan requirements. However, that is not binding on the Government or its instrumentalities. Only the land-holder is bound by the property vegetation plan. Clause 26 again involves the intervention of the Minister, who may arbitrarily cancel a property vegetation plan without referral to either the commission or the catchment management authority, again defeating the purpose of having this hierarchical structure and receiving input from the community and technical and consultative committees. Why not pass it back to the catchment management authority for review or, if necessary, to the Natural Resources Commission for an opinion?

I now come to some of the most serious and invidious parts of the bill. Under clause 31 an authorised person may enter the property to inspect the property as required. However, clause 31 (3) also enables "a person" to enter. There is no requirement as to who the person is and what his qualifications are. There is also no provision to protect confidential or commercial information that the officer or person may come across while on the property. Clause 32 compels a person to reveal incriminating information. That is in complete contravention of our most basic right as members of a modern democracy. My comments about confidential information also apply to this clause as well. There is no definition in clause 34 as to the end of work or satisfactory completion of any remedial work or how any dispute in that regard is to be handled. Again according to clause 31 (5), any person may be authorised to enter land with no restraint whatsoever. These are drafting errors that should have been picked up. Does clause 31 (7) include dams or man-made watercourses?

I now come to the second most invidious part of the bill. Any person may instigate proceedings under this Act. That provision has to go; there can be no discussion on this point. Only the catchment management authority board or the Natural Resources Commission should be able to instigate proceedings. There should also be a provision in relation to harassment by overly zealous officers. It would be an absolute disaster to allow anyone at all to instigate proceedings under this Act against any land-holder. Finally, there is the erosion of one's basic rights: guilty until proved innocent. That provision also has to go. Clause 43 allows unqualified delegation of the Minister's powers. Again, there is no qualification on persons, or limits on who may be delegated. How can councils and those who own private gardens deal with the constant maintenance of their parks and gardens in accordance with schedule 1? In summary, obviously this bill has been prepared in haste or to deliberately massage the extreme environmentalists, and the House should refuse to support it.

The Hon. Dr PETER WONG [11.37 p.m.]: I support the principles of the bills, but at this stage I have great difficulty in convincing myself to support them, especially as amendments from the Government are still coming through. We have just seen five proposed amendments to the Natural Resources Commission Bill, another five to the Catchment Management Authorities Bill and 47 to the Native Vegetation Bill. I believe these bills were drafted in haste, without much consultation with anyone, and they are confusing. I would be reluctant to vote for them unless almost all the stakeholders agreed.

The bills look fairly good in the Government's briefing to crossbench members. On 15 October the Government announced that natural resource management in New South Wales was to undergo a series of

historic changes following the recommendations of the native vegetation reform implementation group, chaired by Ian Sinclair. The three bills have been drafted to implement those recommendations. The Natural Resources Commission Bill will create the Natural Resources Commission. At this stage no-one knows what its composition will be. The Catchment Management Authorities Bill will create 13 locally driven catchment management authorities, and the Native Vegetation Bill will end broadscale land clearing. The concepts of the commission and of native management are good. However, as the Hon. Jon Jenkins said, there are many problems with the three bills that have not been considered carefully.

Mr Ian Cohen pointed out—this is also mentioned in the crossbench briefing—that under the new system the Minister for Infrastructure and Planning, and Minister for Natural Resources will not approve the clearing of remnant vegetation and protected regrowth unless it will improve or maintain environmental outcomes. What does that mean? The clearing of regrowth does not require approval unless it is classified as protected regrowth and neither does clearing that is part of routine agriculture management activities. That sounds good, but the debate has highlighted some confusing points. The Legislation Review Committee has considered the bills and identified several concerns. During the second reading debate in the other place the Leader of The Nationals, Mr Stoner, said:

It is not just stakeholders and the Liberals and The Nationals who are deeply concerned by this legislation. The Parliament's Legislation Review Committee, which includes Labor, Coalition and Independent members, has released a damning assessment of these bills. Among other functions, the Committee's role is to report to Parliament on whether legislation coming before it trespasses unduly on personal rights and liberties and inappropriately delegates the legislative power. The Legislation Review Committee Digest No 6 of 2003 dated just yesterday states on page 10:

The Committee notes that the right against self-incrimination (or "right to silence") is a fundamental right. This right should only be eroded when overwhelmingly in the public interest.

The Committee refers to Parliament the question whether compelling a person to make self-incriminating statements that (although not themselves admissible in criminal proceedings) may inform criminal investigations or be admitted in civil proceedings, unduly trespasses on personal rights.

Mr Stoner also expressed many other concerns. During a briefing tonight we were advised that some of those concerns will be addressed in Committee by more amendments. The New South Wales Aboriginal Land Council and the New South Wales Native Title Services have issued a paper entitled "Joint Position on the Natural Resources Reform Package" that highlights six critical issues in respect of the bills. These are: first, the lack of engagement with Aboriginal communities and representative organisations leading up to the reform proposals and legislation; second, the abolition of formal structures for Aboriginal involvement in natural resources management; third, the failure to replace these structures with bodies that have Aboriginal representation, or to provide any formal basis for Aboriginal involvement in natural resource management; fourth, the failure to address cultural heritage implications; fifth, the failure to include reference to cultural heritage in the Native Vegetation Bill; and, six, levies. If, as the Premier and his Ministers often proclaim, the Government wishes to have Aboriginal reconciliation and it respects the rights of the Aboriginal community, these issues must be addressed urgently. If they are not, I will have great difficulty supporting the bills.

Many previous speakers commented on the excellent work of Ian Sinclair. It seems that a compromise has been reached, and amendments to the legislation—I think there are 40—are expected to reflect the true feeling of, and the recommendations in, Ian Sinclair's report. If they do not, we should not pass these bills, and perhaps we should consider these issues at another time.

The Hon. JENNIFER GARDINER [11.46 p.m.]: Many of us have been waiting for the much-mooted Government amendments to these three bills for more than a week. I place on record the fact that the Government got around to producing amendments to the Native Vegetation Bill, the Catchment Management Authorities Bill and the Natural Resources Commission Bill at 11.30 p.m. on 4 December 2003. That reveals the Government's contempt for this House and for the stakeholders in this debate, who have been waiting for weeks to discover the Government's true intentions after the bills went down like a lead balloon throughout country New South Wales.

The Nationals strongly support integrated natural resource management but we have problems with the bills in their current form and we definitely do not embrace several of their key aspects. It is interesting to note that the Labor Government always makes natural resources bills the last items for debate in the final hours of parliamentary sessions. That seems to happen Parliament after Parliament.

Mr Ian Cohen: Craig Knowles's late-night party; it's a tradition.

The Hon. JENNIFER GARDINER: It is not only Mr Knowles. Other natural resources Ministers have done the same thing with forest bills and similar legislation. At this late stage it is scandalous that many details remain unclear in bills of such great importance to our country constituents, in particular. For example, on my recent visit to Walcha with the Leader of The Nationals, Mr Andrew Stoner, the bills were the talk of the town and the district. Graziers were greatly concerned about the Government's direction in these matters. Mr Stoner showed the bills to local graziers, who were dismayed to find that the provisions were as concerning as they had feared. The same thing happened last week when the Leader of the Opposition, Mr John Brogden, and I met farmers from the Gilgandra district. Their number one concern was this package of legislation. Our concerns include fears about the discretion that the Minister will be able to exercise over the catchment management authorities under this legislation.

Giving the Minister discretion with regard to the composition and geographic area of the catchment management authorities is a concern. The geographic area of the catchment management authorities is also a worry. The boundaries seem to emulate the unsatisfactory boundaries of the Carr Government's area health services, which in many parts of the State have been an absolute disaster. The Greater Murray Area Health Service covers about six State electorates across southern New South Wales. Under this proposal the catchment management authority in the south of the State will stretch from the Riverina town of Balranald across to Cooma in the Snowy Mountains, which strikes many people as absurd. The same applies in the north of the State, which will also apparently have inappropriate boundaries. It is disappointing that the honourable member for Tamworth has remained silent about this legislation despite the fact that the bill is very important to the farmers and graziers in his electorate. The proposals for the Walcha, Nundle and Gunnedah districts are prime examples of inappropriate boundaries.

During his comprehensive speech on these three bills my colleague the Hon. Rick Colless raised many concerns expressed by the local government fraternity. They point to the need for a memorandum of understanding and a proper relationship between local government areas and the new catchment management authority boundaries. The lack of detail in the bill about the establishment of these bodies is a concern not only to councils and the Local Government Association but also to The Nationals. The well-established pattern of natural resources legislation drafted by the Carr Labor Government is that the objectives include standard lines that pay lip-service to economic and social impacts. However, as I have found in another natural resource area, when push comes to shove, the economic and social impacts are put to one side. The Nationals do not believe that serious regard has been paid to the social and economic impact of this legislation on country communities.

Like all my colleagues, I have had a considerable number of representations from various constituents about these bills. Given the lateness of the hour I will not mention all of them. Barry and Susan Ramke from the Kempsey district have asked the House to note the protected regrowth issue referred by the Hon. Rick Colless. Mr James Flanagan expressed concerns that have been mentioned in many communications. He wants a number of amendments to ensure that the bills reflect the agreement in the report produced by the former member for New England and former Leader of the National Party, the Rt Hon. Ian Sinclair. He pointed to the need for practical definitions of routine agricultural management activities and protected regrowth. Like all farmers and business people, he wants security to operate his agricultural enterprises. These people need greater flexibility and security for property vegetation plans so that they cannot be cancelled or overridden by other regulations. Mr Flanagan also expressed concern about the normal presumption of innocence that should apply to anyone accused of illegal clearing. Constituents are also worried about the privacy provisions in property vegetation plans, the catchment management authorities' responsibility to authorise property vegetation plans and the management of private native forestry.

Wilf and Peggy MacBeth from the Coonabarabran district stated that if a big-stick approach were taken to the implementation of this legislation it would be doomed from the start. They are happy to co-operate and the strategies they employ on their properties verify their conservation-based approach to agriculture. However, like thousands of fellow Australians they will not respond positively to intimidation, threats or perceived injustices. Of course, that is one of the core points that the current Federal Leader of the Nationals, the Hon. John Anderson, has been making for some years. There must be a different philosophy underpinning legislation and regulations dealing with natural resources issues as they apply to farmers. Until that philosophy dominates, some aspects of the legislation are probably doomed in terms of winning the support of well-meaning primary producers. The Taylors of Owen Downs Station echo the points of contention that I have just mentioned. Mr Robert Carr of Newcastle said that—

The Hon. Christine Robertson: That is my brother.

The Hon. JENNIFER GARDINER: There are not many Labor Party people in the bush, but some of them share these concerns. As Mr Carr stated:

The Sinclair report reached agreement between parties on recommendations for inclusion in the Native Vegetation Act revision. This was much heralded in the media by the Government, the Greens and farmers as a historic agreement. Unfortunately the recommendations appear to me to have been hijacked somewhere between the Sinclair report and the drafting of the Native Title Legislation, potentially resulting in a return to a situation of conflict between important elements of the community ... the abuse or manipulation of the public consultation process demonstrated in this sequence of events erodes confidence in government and participation in such processes.

In a specific sense the farmers and the regional communities are set to bear the brunt of the de-railment of the Sinclair recommendations.

The Native Vegetation legislation tabled in NSW State Parliament last week requires major changes in order for it to be practical and acceptable to farmers.

Mr Carr echoes some specific concerns about the bill that I have already mentioned. Julene Blue shares those concerns, as does Mr David Duddy from the Pilliga area, who also calls for the bills to be amended to ensure that they reflect the agreements reached between the stakeholders within the context of the Sinclair report. It is unlikely that these concerns will be satisfied by the Government's position, even at this late stage of the debate.

Another representation was received from Mr Robert Dyason of the Australian Forest Growers association. He points out that that organisation wants private forestry to be promoted and encouraged, not regulated in a top-down punitive and onerous system of consent and policing by a government department with little experience and no culture of forestry. The organisation also believes that a culture of forestry should be developed by promoting forestry as a routine agricultural management practice, in accordance with the recommendations of the Sinclair report, and that profitability should be ensured by allowing a reasonable expectation of the rights to harvest. There should be incentives for good management and the avoidance of perverse incentives to manage badly. There should be a regime that allows for adaptive management in the long term, and there should be provision for public good benefits through the maintenance of unproductive forested land that should be paid for by the public at large, not just forest owners. The organisation also suggests that there should be a private native forestry reference group to investigate a code of practice for private forestry to provide auditable standards and guidelines for good management.

The code should focus on outcomes, not on processes. It should provide that operational forestry should be auditable against agreed standards. Simple management plans should be prepared for medium to large scale forests that should have force with flexibility for a period of up to 25 years. Small-scale operations—for example, the production of fencing timber or on-farm yields—should be exempt from any onerous regulation. The organisation also suggests that simple harvesting plans should be prepared for all harvesting operations, other than those producing wood for on-farm use. The forested area in New South Wales should be maintained or increased, and harvested forests should be adequately regenerated. Education in forest management should be made available for farm forest managers. Those are the views of a specialist organisation and they encapsulate the type of regime that should be implemented to manage private forestry.

At this stage of the debate The Nationals still have serious concerns about the definition of broadscale clearing. The Nationals believe that the catchment management authorities will turn out to be quite problematic because they have no explicit authority. It seems at this stage that the Labor Government will not be shifting its ground in respect of these matters. Clause 6 of the Native Vegetation Bill provides a definition of native vegetation. The definition in the bill differs from the recommended definition in the Sinclair report in a number of ways. Clause 6 (2) states:

Vegetation is *indigenous* if it is of a species of vegetation, or if it comprises species of vegetation, that existed in the State before European settlement.

That concern is not dealt with in the bill. My colleagues will seek to move an amendment to address that issue at the Committee stage. Similarly The Nationals are concerned that the provisions of clause 7 of the bill differ from the Sinclair report by adding to the definition of clearing native vegetation. It appears that the Government may be inclined to give some ground on the catch-all provision in clause 6 (2) (c). If that is the case, The Nationals will welcome it.

The Nationals are also concerned that the definitions of remnant native vegetation and regrowth in clause 9 also do not resemble the Sinclair report recommendations. The Nationals believe that we should move to address that shortcoming. Clause 5 excludes national parks and other conservation areas—in fact State Forest

land—in direct contradiction of the Sinclair report which recommended that Government agencies should be subjected to the same tests as are other managers of native vegetation. The Nationals believe that there should be increased accountability of government agencies in managing public land. The Nationals have consistently called for that type of accountability over a very long period.

The Nationals still have a number of concerns about clause 11, which relates to the interpretation of routine agricultural management activities. The latest developments seem to have ignored the Sinclair report's recommendations, which state that a routine activity should include the clearing of native vegetation for the purpose of maintaining existing cultivation, rotational or grazing areas. The Coalition will not be satisfied until a satisfactory definition of routine management is included in the bill. Clauses 21, 23 and 26 of the Native Vegetation Bill ensure that the Minister is still able to sign off on property vegetation plans. The Nationals would like catchment management authorities to carry out this role to ensure that property vegetation plans are signed off by local representatives who understand the issues that face land-holders. The Nationals also believe that the property vegetation plans should be signed off by catchment management authorities before they are authorised by the Minister.

The Nationals remain concerned about provisions relating to protected regrowth. I listened with interest to the remarks made by the Hon. Ian Cohen. Although the Coalition obviously has fundamental differences with the Greens on this legislation, I certainly agree with his observation that the bills are obviously an example of the Carr Labor Government making policy on the run. That is not good enough. It is a very poor start for a new Minister such as the Hon. Craig Knowles, who prospectively wants to be the Premier of New South Wales, to have well and truly mucked up this legislation. The disorganisation associated with the consideration of this bill by the Parliament shows just how far from the mark he is. I do not think I have seen a more pathetic disregard for Parliament in respect of major and long-awaited legislation than has been the case with this bill since I was elected to this House.

The Hon. Duncan Gay: I cannot remember as a member of the Opposition not having been briefed on amendments to a major bill, or having received the amendments at 11.30 p.m. during the debate.

The Hon. JENNIFER GARDINER: I acknowledge the comment made by the Leader of The Nationals, the Hon. Duncan Gay. I cannot recall anything that comes close to the shemozzle of this bill in my experience as a member of this Parliament. As far as I am concerned, there is absolutely no question that country communities, which are already angry, will be even more angry when they find out the process that has been adopted by the Government in this Parliament. Many country people understand the attitude of this Government because they have been following the debate very closely. They expected a late debate for this legislation, but I do not think that anybody accepts the manner of presentation of this bill as respectable. The Opposition has not been provided with proper briefings or adequate time in which to consider significant amendments at this stage in the life of this session. This legislation is an absolute disgrace.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [12.07 a.m.]: On behalf of the New South Wales branch of the Australian Democrats, I join in debate on these three very significant cognate bills that will reform how the State will implement sustainable natural resource policies. These bills will apparently implement recommendations made by the Native Vegetation Reform Implementation Group, which is commonly known as the Sinclair group. The Wentworth group is the scientific group. The Carr Government has allocated \$120 million over a period of four years to help implement new native vegetation plans. Already, \$90 million has been earmarked for implementing the National Action Plan on Salinity and Water Quality, and \$30 million will come from the Sustainability Trust.

I will deal first with the Natural Resources Commission Bill. The Natural Resources Commission Bill will dissolve 10 current statutory and advisory bodies and roll them all into one new commission to advise and report to the State Government on environmental issues, such as the management of water, native vegetation, salinity, soil conservation, biodiversity, coastal and other matters concerning natural resources prescribed by regulations. I hope that sustainable energy and greenhouse gas reduction will eventually be included as well.

The commission will have the power to recommend catchment action plans, statewide standards and targets for natural resource management, undertake compliance audits, undertake conservation assessments and inquiries as required by the Minister, and advise the Minister on priorities for research. The commission will have to consider matters following guiding principles such as the principles of ecologically sustainable development, and the social and economic implications of recommendations and advice. This is coming close, but not close enough, to implementing the triple bottom line principle.

The Governor will have the power to appoint a commissioner, who in turn will have the power to appoint assistant commissioners with the concurrence of the Minister. Clause 10 specifically states that the commission is not subject to ministerial control in the preparation and contents of advice or recommendations. While the commission is meant to be an advisory body to the Minister, the commission will still not be able to obtain Cabinet documents and proceedings under section 18. I am sure that the economic impact statements that are submitted to Cabinet would be very useful to the commission in ensuring it delivers the best possible advice.

Yet again, the Government is unwilling to become more transparent. In his second reading speech the Minister stated that the bill aims to "move away from the conflict that historically goes with the natural resource debate to a professional, outcomes based approach to natural resource management". As a person who knows at least three members of the Resource and Conservation Assessment Council [RACAC] I find this statement misleading. The members of the RACAC have always taken a meticulously scientific approach to developing plans on how to best manage forestry exploitation. They are passionate about their work, and they are very good at it. Just because they do not come up with the numbers that suit the forestry industry or State Forests, that does not mean they should be written off and abolished!

I am all for minimising conflict. I am in favour of developing a consensus-based approach to protecting and managing our State's finite natural resources, protecting native and old-growth forests from logging, wide-scale land clearing and inappropriate coastal development. But to simply lay all the blame on conservationists for the conflict that historically goes with the natural resource debate is way off the mark and totally unjustified. The Environmental Liaison Office raised reasonable concerns about the bill in a fax I received on 2 December. It reads:

The bill will dissolve many natural resource advisory committees; the bill must specify how the roles of these committees are to be carried out in the future. Environment groups are particularly concerned about the dissolution of the coastal council and the negative impact this will have on coastal management capacity.

The bill contains very little detail about the exact role and structure the new commission will adopt to replace bodies such as the RACAC and the Healthy Rivers Commission, who had a very comprehensive structure and produced quality data and reports. The Local Government and Shires Associations have also sought clarification on the establishment and functions of the Natural Resources Commission.

I now turn to the Native Vegetation Bill, which is perhaps the most controversial and contentious of the cognate bills. The bill will replace the Native Vegetation Conservation Act 1997. It will implement the Native Vegetation Reform Implementation Group [NVRIG] recommended standard definitions for native vegetation, broad-scale land clearing, and protected regrowth. It will establish a new consent process for native vegetation management based on property vegetation plans. The bill establishes a new system to support land-holders to voluntarily develop individual or group property vegetation plans [PVPs].

Part 4 outlines the new provisions for PVPs, which are based on recommendation 29 of the NVRIG. Under the PVPs farmers can now develop a plan for the whole property, and link plans at the property level to the catchment action plans developed by regional communities. Part 5 outlines much-needed enforcement and investigation measures whereby the Minister may appoint an authorised officer to conduct investigations into breaches of the Act and require land-holders to produce documentation relating to improper clearing of native vegetation.

A glaring omission from the bill is the provision of financial assistance to farmers to help them readjust their farming practices for sustainable agriculture. Members may recall that I successfully moved an amendment to the Threatened Species Conservation Bill 2002 to establish a Rural Stewardship Scheme so that farmers would be able to receive financial assistance when they negotiate with the scientific committee a plan for setting aside parts of their property for conservation purposes. It is unclear what will happen with that scheme under this bill. Once again the Carr Government has sold out regional New South Wales.

The Environmental Liaison Office argues that the environmental outcomes require definition. It is the critical measure by which clearing applications will be assessed. High conservation value [HCV] vegetation must be exempt from routine agricultural management activities to ensure that remaining HCV vegetation cannot be cleared under exemptions. A public register of property vegetation plans must be subject to public exhibition, and buffer zones for routine agricultural management activities must be reduced. The protection of native vegetation must be extended to dead trees, which play a role in providing protection and nesting places for birds and are vital in some ecosystems as recommended in the Sinclair report.

Another issue that has disappeared is Aboriginal cultural heritage. The property vegetation plans provision gives farmers the power to make a plan without having to prepare a cultural heritage management

plan. Aborigines were consulted about the bill two days ago. They have not had input into the negotiations on the bill. The Metropolitan Aboriginal Land Council is very distressed about that. The position of Aborigines is that this country was taken from them and that that fact has never been recognised, nor has any treaty been established. For them not to be consulted when major legislation is discussed just opens old wounds and rubs salt into them.

The lack of acknowledgment of Aborigines in new legislation effectively cuts them out of the future. A coherent Aboriginal culture is perhaps the major single factor that can be used to give disillusioned and dispossessed Aboriginal youth a stake in the future and a self-belief to help them re-engage, through their own people, with the wider society. This is being cut off at the knees. Ignorance, political convenience or malice does this. The current Native Vegetation Conservation Act, which will be repealed under the bill, requires consideration of anthropological or archaeological impacts. So if the bill does not acknowledge Aborigines, the Aboriginal situation will go backwards. This is after many thousands of people walked over the Harbour Bridge to support Aboriginal land rights, and the branches of Australians for Native Title and Reconciliation were set up. The public were hopeful, but John Howard's philistine attitude set a tone that, regrettably, the New South Wales Government seems to echo.

The New South Wales Aboriginal Land Council and New South Wales Native Title Services Ltd, which is the State representative body for Aboriginal cultural heritage management, seek the establishment of a statewide Aboriginal natural resource advisory committee. Such a committee would advise the Natural Resource Commission on cultural heritage and indigenous knowledge of natural resource management. The committee would be represented by regional Aboriginal natural resource advisory committees, which would liaise with catchment management authorities.

The Aboriginal land councils must also be protected from the catchment contribution process, which imposes rates on land-holders. Not surprisingly, Aborigines object to paying rates to repair land that was stolen from them and destroyed by the farming practices for which the repairs were carried out. Even if they are given land, which they see as a partial reparation for what was stolen from them, they remain cash poor. An exemption is needed. The Aboriginal Land Council and New South Wales Native Title Services Ltd have a joint position on the natural resources reform package, and they raise six critical issues.

The first is the lack of engagement with Aboriginal communities and representative organisations leading up to the reform proposals and legislation. The Sinclair group included representatives from farming, environmental and government interests. It did not have Aboriginal representation. The Minister has not responded to numerous letters concerning the proposals. This lack of consultation is inconsistent with the New South Wales Service Delivery Partnership Agreement signed in October last year by the Premier, the New South Wales Aboriginal Land Council and the Aboriginal and Torres Strait Islander Commission.

The second issue is the abolition of formal structures for Aboriginal involvement in natural resources management. The abolition of formal representative structures that include Aboriginal membership, such as the RACAC, the Coastal Council and the State Water Advisory Committee, means that there will be no formal structures through which Aboriginal people may be involved in natural resource management. These bodies also have specific legislative functions that impact on Aboriginal people. At a local level, committees to be abolished included vegetation committees and water sharing committees.

The third issue is the failure to replace these structures with bodies that have Aboriginal representation, or to provide any formal basis for Aboriginal involvement in natural resource management. Under the current proposal the catchment management authorities do not include Aboriginal representation, being skills-based organisations. The Natural Resources Commission also does not include Aboriginal representation. This is anomalous given that these bodies will have functions that require consideration of Aboriginal cultural heritage and related issues. For example, the Natural Resources Commission is required to exercise its functions having regard to stated guiding principles. These include "indigenous knowledge of natural resource management". It is unclear how this is to occur.

The fourth issue is the failure to address cultural heritage implications. The bills do not provide any scope for the assessment of the cultural heritage implications of property vegetation plans, catchment action plans or statewide targets. It is difficult to understand how property vegetation plans can be approved without consideration of the cultural heritage implications of clearing. It is also unclear how the legislation will impact on the Local Government Act and the Environment Planning and Assessment Act. It is noted that in the second reading speech the Minister states that part of section 79C of the Environmental Planning and Assessment Act may not be relevant to land clearing.

The fifth issue is the failure to include reference to cultural heritage in the Native Vegetation Bill. The Native Vegetation Conservation Act 1997, in section 27, includes a requirement that the regional vegetation plans take into consideration archaeologically and geographically sensitive areas. There is no similar provision in the current bill. The sixth issue is levies. It is suggested that there be exemptions from levies charged by catchment management authorities. The suggested amendment was provided in the New South Wales Native Title Services' letter to the Minister dated 26 November 2003. Those organisations would like those issues addressed. I understand the Greens have some amendments that will address those issues. Obviously, I will support those amendments. It is important, as far as my support for the legislation is concerned, that the Government take those matters seriously and accept those amendments.

The Catchment Management Authorities Bill will replace the 72 existing natural resource management committees with 13 new regional authorities. This bill implements recommendation 6 of the Sinclair group report—that the catchment management authorities will produce draft catchment plans. However, the bill before us does not include the Sinclair group's recommendation that the catchment management authorities certify and recommend accreditation of property vegetation plans. The Local Government and Shires Associations of New South Wales believe that the current bill relegates local government to another stakeholder with advisory status, rather than regard it as a partner.

The bill requires that the catchment management authorities have regard to environmental planning instruments under the Environmental Planning and Assessment Act 1979 in formulating draft catchment action plans under section 20 (2) (a). However, the bill fails to establish an appropriate mechanism for local government and catchment management authority interaction. The Local Government and Shires Associations are concerned that currently there is no requirement under the bill for catchment management authorities to develop a memorandum of understanding or similar agreement with local governments irrespective of regions and that this should not be left to the discretion of the individual catchment management authorities. In many cases this could be readily facilitated through existing regional groupings of councils and could be based on the model developed in consultation between the departments and the Local Government and Shires Associations.

The Local Government and Shires Associations are also concerned about the financial provisions outlined in part 6 of the bill. The associations are concerned that State grants or consolidated revenue funding for the activities of the catchment management authorities may be gradually reduced and replaced with catchment-based levies and fees. For example, some catchments would have greater revenue-raising capacity than others, regardless of their specific and complex natural resource management issues. This could result in areas with a limited capacity to pay being the regions with the largest and most urgent issues that need to be addressed. Continued commitment from the State Government to fund these catchment management authorities must be assured.

Part 6 also states that levies will be based on the valuation of land, the area of land or the degree of benefit derived by parcels of land. The Local Government and Shires Associations are concerned that fees-based levies will effectively become a new form of rate pegging. Being the "appropriate local agency" under this Act, regional and country councils will now be expected to collect those levies at their own expense. Under section 9 (3), commission payments can be made out to councils collecting the levy. However, there is no indication of the commission scale.

So the role of local government is diminishing under this bill, yet local government bodies are expected to collect the moneys that will go into the State's coffers. Once again the State Government is shifting costs and responsibilities onto local government in New South Wales. No wonder some councils are going broke. Pittwater Council has forwarded to me a letter from Premier Carr expressing concern that in its current form the bill fails to place appropriate importance on the unique issues associated with environmental planning on the coasts. These bills have fallen quite short of delivering all of the Sinclair report recommendations.

I am aware of intense backroom negotiations being conducted between the Government, NSW Farmers and representatives of the Total Environment Centre and the Nature Conservation Council. Just an hour ago my office received a whole raft of amendments to the bill. Those have been very difficult to digest in the time we have available—quite apart from the exhaustion we suffer from the fact that it is now after midnight. This is an unsatisfactory situation. However, it often happens that really important legislation is dealt with right at the end of the sitting, when we are unable to digest its content adequately. If the Government wants our support, it really has to do better. I reserve my decision on whether to support the bills until I have considered all of the proposed amendments to the best of my ability in the next hour or so.

The Hon. MELINDA PAVEY [12.26 a.m.]: I speak to the Natural Resources Commission Bill, and the cognate Catchment Management Authorities Bill and Native Vegetation Bill. Country people have been put

last again by this Government. We are now sitting into Friday of the last sitting week. We did have a reserve week next week.

Reverend the Hon. Fred Nile: Technically, it is still Thursday.

The Hon. MELINDA PAVEY: It is still Thursday as far as the parliamentary record goes, but I think Greenwich Mean Time would show it is actually Friday. The draft report of the Federal Productivity Commission was released today. It said:

In many cases, inflexible rules have imposed significant costs and hardships on landholders by preventing efficient farming practices, sometimes for negligible environmental benefits ... Some blanket restrictions, such as those applying to the clearing of regrowth, have disrupted normal agricultural practices and led to perverse environmental outcomes.

The Commission considers that government should seek to facilitate and remove impediments to increased private provision of environmental services. Landholders and local communities should be given greater flexibility to develop and implement regional solutions to local environmental problems.

As one farmer said to me on Saturday at Inverell:

If they want to shut my property down, they can pay me to become a zookeeper.

One of the arguments for rushing these bills through tonight is that farmers need certainty, and we need to ensure that things do not get worse over the parliamentary break. Things have become progressively worse for farmers over the past nine years of this Government—a Government that likes to pretend it is listening to farmers, instituting Country Labor to pretend that farmers' concerns were being put first. Well, if the farmers' concerns were put first, we would not be here discussing on this last sitting day the last bills of this sitting, and proposed amendments, at such a ridiculous hour and in such a disgraceful manner. But that is the way that all farming organisations have been treated.

A few months ago I visited the village of North Star, north of Moree. This is a community which, after years of drought, is starting to find its feet again. The countryside was absolutely beautiful. The rain saw paddocks filled with lush wheat that was billowing in the slight spring breezes. It was a magnificent sight. But the most magnificent thing about that day at North Star was that there is hope in those communities again, with the injection of some real local investment. Some really clever farmers have gone out there to do broadacre cropping. They are giving hope to those small villages. We want that feeling of hope to continue. We do not want a feeling of despair to come upon those farmers again.

Yes, the Government gave the farmers plenty of hope; it brought in the Rt Hon. Ian Sinclair—a former leader of the National Party. They have used him to produce a very good report that the Government could have just picked up and turned into legislation, but here we are at half past midnight trying to work out what he said in the report, what the committee said in the report, and what we are actually dealing with. It is a bit tricky and it is a bit of a shame. But we will fight here tonight for the timber communities throughout the north-west of New South Wales, throughout the western areas of New South Wales, and throughout the whole of the North Coast. In those areas there is some really exciting private forestry investment. It is an excellent initiative in terms of land use but it is still unclear at this hour of the night whether the private forestry investment is secure for people who want to make a long-term significant investment in private forestry; whether it is going to be worth their while and whether the Threatened Species Act will override their own properties because they have decided to plant native trees there to provide a source of income for them in years to come.

Earlier tonight Lexie Hurford was here from the North Coast. She has mill interests and has also invested enormous amounts of money in private forestry. Her family's company is a major employer and a major income generator on the North Coast. She was here tonight to ensure that the investments they have made are going to be worthwhile. We do not listen enough to what our communities and our farmers are doing. They are taking up the latest global positioning system [GPS] technology, and they are investing millions of dollars in the latest equipment and in proper business plans. The farmers of today and those who are successful are a lot more innovative than the farmers of yesterday, and education and opportunity have created an environment where farmers are doing an excellent job. They just want to get on and do their job and provide for their families and provide for their communities. Yet we have the promise that the Sinclair report was going to ensure that they could continue to get on with the job. As they say, the devil is in the detail.

There are people far more experienced than I at this very moment going through this legislation to pick out the problem areas and to see where the tricks are and where the treachery is. It is an absolute disgrace that

such a vital piece of legislation and such a vital area of concern to our communities is being traded in this way. The Government has signalled, through this legislation, a tougher compliance and enforcement regime using satellite mapping technology. The irony is that the Government is trying to rush this legislation through tonight. I know that New South Wales Farmers are under considerable pressure. In today's *Land* it was stated that they are hoping to get this bill through tonight, saying they have spent "a bloody lot of time trying to get this up".

It is pretty simple. All the Government has to do is say, "Yes, we will adopt all the recommendations made in the Sinclair report" and The Nationals will support them. It is as simple as that: 18 plus 13 carries the day in this Chamber. I do not know what the problem is. If the Government wants to support farmers and Country Labor wants to stand up for the farming community, I do not understand why we cannot have a proper look at this, and decide over a period of time after proper consultation—a couple of months, until we come back in February—what is in the farmers' best interests and what is in the best interests of our country communities.

I note that earlier tonight Mr Ian Cohen was bemoaning the fact that 4,000 square kilometres of land have been cleared in New South Wales since 1998. I have seen some of the land that has been cleared and where investment has taken place and machinery bought. There is an amazing belief in the land to provide an income and an opportunity for the families who have invested in it and it is exciting to see that. I find it sad that Mr Ian Cohen sees that as a travesty. But that is the difference between us. We are a party that supports freehold property rights; we are a party that supports business; we are a party that supports investment and we are a party that supports regional communities. We want to see them strong again.

If the Government wants to see the continued rejuvenation of the bush, it is happening out there right now. It is an exciting feeling out in the bush and we want that to continue. That is why the Government can be assured that The Nationals and the Liberals will support it in its endeavours to support the farmers. Basically that is what it comes down to.

We are concerned that it is still not clear whether the bill overrides the Threatened Species Act. It is still unclear in respect to private forestry whether, if you have made an investment, you will not be limited in what you can do with your land and will be stopped from doing what you intended to do. There is still some uncertainty in respect to broadscale clearing. I suppose the biggest issue in the Sinclair report, backed up by the draft recommendations from the Federal Productivity Commission, is that there is no mention of compensation for farmers. There is no mention of the words "compensation" if land is resumed for environmental purposes. There is no express requirement for the Minister to give the decision-making power to the catchment management authorities, as promised in the Sinclair report. The catchment management authorities could come up with the best solutions and the best plans, but if the Minister of the day does not like them he will veto them. That was not one of the original intentions of the plan.

The Hon. Dr Arthur Chesterfield-Evans referred to the extra impost on local government, and it occurs to me that the Minister for Local Government, who is the duty Minister, has said nothing about the impost on local councils that the bill provides for. So there are certainly a lot of unanswered questions and we are very concerned about them. At this point I will read out some of the correspondence that we have received from ordinary people within our communities, and farmers, the people about whom we are talking tonight and making monumental decisions on their behalf. One letter states:

There are two things that are absolutely essential to make the Sinclair Report workable on the ground:

- A base level PVP that does not require an on ground inspection ...
- Allow CMAs to have the ability to determine routine agricultural management activities on a regional basis ...

The other issues that are a major barrier to general acceptances is the base date for regrowth of 1990.

Remnant vegetation pre-1990 is an issue that has caused great concern. That letter was from Brian Tomalin, who is a farmer, who writes to us to explain his concern, and we thank him for doing so. As the Hon. Rick Colless reminds me, Mr Tomalin has been actively involved in this area for many years and he is an expert on the ground. These are some of the simple principles that we should be listening to. We have had a letter from Brian and Jennifer Deaves of "Justlyn" at Krambach in the Myall Lakes electorate. We have had a letter from Mr and Mrs McIver from "Rutherglen" at Willi Willi via Willawarrin. We have had a letter from Jan Shorrocks of Grafton supporting the Sinclair report and hoping that it is supported tonight.

Geoff Johnston of Bega expressed concern about the management of private native forestry and associated matters. Russell and Melanie Diffey of Doodle Cooma West, Ryan in the Albury electorate spoke

about the practical definitions of routine agricultural management activities and protected regrowth. Carla Cowles of Kilparney, Condobolin, in the electorate of the Hon. Ian Armstrong, referred to greater flexibility and security for property vegetation plans so that they cannot be cancelled or overridden by other regulations. In conclusion, I shall refer to my duty electorates in Port Macquarie and Queanbeyan. Steve Whan, the member for Monaro, supported the bill proposed by the Minister, Craig Knowles. He said:

The only person that The Nationals found to protest on this issue was one of their former shadow Ministers, Peter Cochran—a good friend of mine who rings me up and gives me lots of advice every now and then.

The Hon. Tony Kelly: He is a good friend of mine.

The Hon. MELINDA PAVEY: He is a good friend of mine, too. However, I do not think Mr Whan has outlined clearly the type of advice he has received from Mr Cochran. It would be along the lines, "Steve, I think it would be a good idea if you return the calls of your constituents" or "Steve, this native vegetation legislation is pretty bad. It wouldn't be a good idea to support it." However, Steve Whan only takes advice from the Labor Party; he does not stand up for farmers in the Monaro electorate, and for that he will be remembered.

Robert Oakeshott, the Independent member for Port Macquarie, did not make a contribution in the debate, even though several farmers within his community will be affected by these changes. The only contribution he made followed a directive, I suggest, from the Premier's Office. I am sure that the king of spin, Walt Secord, drafted a press release for him. It must have been done by the Premier's Office because it was extraordinary that on the very day the member for Barwon, Ian Slack-Smith, made his contribution, his speech in *Hansard* was given to someone in the Premier's Office that same day. In that speech Mr Slack-Smith, quite rightly, pointed out that this was Mugabe-style legislation. The Nationals and I stand by him in that claim.

Under this legislation, as presented to the other place, farmers are guilty until proven innocent. It is a great shame that Robert Oakeshott's only contribution was to criticise Ian Slack-Smith for supporting farmers within his community. It is pretty sad that he has resorted to those lengths just to gain support from the Government, although that support does not add up because the budget papers allocated more funding to Myall Lakes and Oxley than to the Port Macquarie electorate. It is a shame that a country-based member of Parliament would be prepared to criticise another country-based member for sticking up for farmers. But that is what happens when one sells out.

I conclude by noting that the Native Vegetation Bill exempts the following local government areas: Ashfield, Auburn, Bankstown, Baulkham Hills, Blacktown, Botany Bay, Burwood, Camden, Campbelltown, Canterbury, Concord, Drummoyne, Fairfield, Hawkesbury, Holroyd, Hornsby, Hunters Hill, Hurstville, Kogarah, Ku-ring-gai, Lane Cove, Leichhardt, Liverpool, Manly, Marrickville, Mosman, Newcastle, North Sydney, Parramatta, Penrith, Pittwater, Randwick, Rockdale, Ryde, South Sydney, Strathfield, Sutherland shire, Sydney city, Warringah, Waverley, Willoughby, Wollongong and Woollahra. This is yet another bill that will hurt the bush. We eagerly await developments with respect to consultation, and I look forward to the Committee stage.

The Hon. DAVID OLDFIELD [12.45 a.m.]: I did not intend to speak at length but, having heard the shot at Mr Oakeshott, I am glad to actually say something. One reason for not speaking at length is that many members have had much to say and I do not think it is necessary to continually go over the same ground. The Nationals had a great deal to say, understandably so, because they purport to be representatives of country people. The Hon. Jennifer Gardiner said that there were not many Labor people in the country, but there seems to be enough for Country Labor to exist.

The Hon. Tony Kelly: We have as many members.

The Hon. DAVID OLDFIELD: According to the Hon. Tony Kelly, Country Labor has as many members as The Nationals. My position on this has been always to support the farmers. I am not interested at all in the green agenda. Indeed, it angers me to a degree that so much attention is given to the green agenda with respect to native vegetation. I am awaiting advice from the farmers on their approach to the bill. I understand that this evening and earlier they have been working closely with the Hon. Duncan Gay. If things go according to plan, I will certainly support any motion to defer the bill, probably to some time next February, to allow further negotiation before the matter is finalised.

What spurred me to come down here from the work I was doing upstairs in my office was the bleeding-heart posturing and dishonesty of Hon. Dr Arthur Chesterfield-Evans with respect to Aboriginal history and

culture. I like the Hon. Dr Arthur Chesterfield-Evans but sometimes he speaks nonsense. I acknowledge that the Aboriginal people, as a people in the past, are an anthropological oddity and are no doubt significant and worthy of study. However, I find it abhorrent that Aboriginal land councils should be consulted on these matters or even that Aboriginal land councils should exist. It is also nonsense that they should be consulted on matters such as native vegetation.

They have nothing of any import to offer in the way of consultation. Perhaps the House should be reminded that prior to white settlement Aboriginal people, through their various practices, ignorant as they were, managed to wipe out approximately 500 species of flora and fauna—that is, make it extinct. I challenge the Hon. Dr Arthur Chesterfield-Evans to one day explain what it is in Aboriginal culture that is so worthy of preserving and teaching. The Aboriginal civilisation, if it could be referred to as that, is Stone Age. What aspect of the Stone Age is the Hon. Dr Arthur Chesterfield-Evans suggesting is noteworthy for Australians today? Apart from anthropological study and historical knowledge, there is nothing that can be offered. Aboriginal culture and its teaching helps keep Aboriginal people living progressively in the past. It does not serve Aboriginal Australians in any way to keep on pretending they are in some way special. They are no more special or less special than any other Australian. For them to waste time on their language and other teachings does not help them.

How on earth, in any practical sense, does anyone think the teaching of Aboriginal language will help an Aboriginal person? It is hard enough to appropriately teach children in our schools today the proper use of English without wasting time with Aboriginal languages, however many there are. Their history is a simple matter. The same thing happened day after day for thousands of years. The only thing unique about the Aboriginal people is that they never got out of the Stone Age, and without intervention never would have. When it comes to this nonsense of theft of land—

The Hon. IAN WEST: It's frightening, isn't it?

The Hon. DAVID OLDFIELD: Yes. I agree with the Hon. Ian West. It is absolutely frightening that this myth continues to pervade society. When it comes to this nonsense of theft of land, Aboriginal culture does not even recognise land ownership. And had white settlement not come along, what would the Aboriginal people be doing with the land today? They would be doing the same as they had always done: hunting, fishing and setting fire. Aboriginal people need us to help them make it into the twenty-first century. As Australians, this continual separation of them as a different group to the rest of us just holds them back.

Reverend the Hon. FRED NILE [12.50 a.m.]: I shall outline the objects of the Natural Resources Commission Bill, the Native Vegetation Bill and the Catchment Management Authorities Bill. For the record, the Natural Resources Commission Bill simply establishes an independent commission to provide the Government with advice on natural resource management. The Native Vegetation Bill is to provide for, encourage and promote the management of native vegetation on a regional basis in the social, economic and environmental interests of the State; to prevent the clearing of remnant native vegetation and protected regrowth unless it leads to better environmental outcomes; to protect native vegetation of high conservation value, having regard to its contribution to such matters as water quality, biodiversity, or the prevention of salinity or land degradation; to improve the condition of existing native vegetation, particularly where it has high conservation value; and to encourage the revegetation of land, and the rehabilitation of land, with appropriate native vegetation.

That is all to be done in accordance with the principles of ecologically sustainable development. The object of the Catchment Management Authorities Bill is to devolve to regional communities certain program delivery and other natural resource management functions. The key bill—we could say the controversial bill—is the Native Vegetation Bill. In 1997 this House dealt with the Native Vegetation Conservation Bill. Looking at *Hansard* of the 1997 debate, I note the remarks of the Hon. Doug Moppett, who spoke before me. In criticising the bill, he said:

The Government has resorted to the Environmental Planning and Assessment Act, to the requirement for a development application and to exposure to third-party objection. It will prove to be a tremendous millstone around the necks of the farming community, which is struggling to adjust in very difficult economic circumstances not only for its personal enrichment, but also to ensure the viability of industries that are still so important to our economy and on which the consumers of Australian products depend.

I spoke at 9.09 p.m. on 5 December 1997—we were not so late that night. In Committee I think I moved 44 amendments that had been prepared by the National Farmers Federation. In my opening remarks I said:

The Christian Democratic Party will oppose the bill. If the bill passes the second reading, the Christian Democratic Party will introduce a number of amendments in Committee. The Government has squandered the opportunity to break the cycle of hostility it created in the farming community over the introduction of SEPP 46 in August 1995.

I then said that as a result farmers constantly complained about the impact of that requirement. I said:

A fundamental concern about the bill relates to it coming under the auspices of the Environmental Planning and Assessment Act. An extra, and utterly unnecessary, layer of approval arises because clearing under a property agreement can occur only if the landholder also obtains development consent.

I made it clear that this was creating a lot of red tape—I call it green tape—which has brought us to where we are today. I concluded with these words:

That is how ridiculous it becomes when one tries to apply a suburban, metropolitan, city-type Environmental Planning and Assessment Act to rural New South Wales: farmers feel they are hogtied in their efforts to care for their property. It is as though the farmers are tenants of the Government, rather than people who own a farm, care for it and develop it with the best of intentions in the hope of making a profit from it. They will not do anything to harm the value of their property and reduce its profitability.

Over the intervening period, as a result of all the complaints from the farming community, at last the Government said it would do something. So it established the Native Vegetation Reform Implementation Group, with a number of people representing different areas of concern. I suppose one could say they were stakeholders, but it went beyond the stakeholders. The group was chaired by the Rt. Hon. Ian Sinclair, a former prominent National Party leader, and comprised Rob Anderson representing the New South Wales Farmers Association; Jeff Angel, the Total Environment Centre; Peter Cosier, the Wentworth Group; Col Gellatly, the Premier's Department; Glen Klatovsky, the Worldwide Fund for Nature; Jonathan McKeown, the New South Wales Farmers Association; John Pierce, Treasury; Jennifer Westacott, the Department of Infrastructure, Planning and Natural Resources; Roger Wilkins, the Cabinet Office; and Mike Young, the Wentworth Group.

That was all part of the Government's announcement of a new approach to resolve the problems in the farming community, and the report was entitled "Getting the Balance Right". The intention of the Sinclair inquiry seemed to be getting the balance right, with the objective of ending broadscale clearing of remnant vegetation and protected regrowth across New South Wales, using the definitions of "remnant regrowth" and "exemptions" as finalised by the implementation group—that is, the Sinclair group—and environmental standards as proposed by a new Natural Resources Commission.

The Government also said that it would make available \$120 million over four years from existing sources to support the farming community to implement the Government's plan, with funding made available to farmers as soon as possible to ensure public support for the new scheme, and to implement interim arrangements for the delivery of funds, including simplifying delivery and local environment mechanisms. So the plan for the Sinclair inquiry and the follow-up recommendations had so much promise. As the Government had said, the plan was to get the balance right. Clearly, the plan was to cut red tape, or green tape, by allowing farmers to prepare a voluntary 10-year property management plan that avoids land-clearing regulations; fast-tracking vegetation mapping to help farmers develop property management plans; removing any confusion about what is considered native vegetation by setting clear definitions; and reducing the number of State and regional committees and government agencies responsible for land and water conservation. They are positive objectives for recommendations that could be made by a panel of experts in accordance with the Sinclair report. The Government could then put those recommendations that had been agreed by the stakeholders into legislation, with agreement on both sides of the House, and the legislation could pass.

The Native Vegetation Reform Implementation Groups' final report was, I think, published in October 2003. I gather that it was expected to be finished in July, by which time it would have had a good idea of the main content of the recommendations. The great disappointment about legislation with so much promise is that when it was produced it differed in many respects from the Sinclair recommendations. The report was so simple to implement; we recognise that sometimes a reform implementation group can come up with ideas that are difficult to put into legislation. I have thoroughly read the New South Wales Farmers Association paper entitled "Native Vegetation Bill 2003". However, many of the points made in the Sinclair report are ignored in the legislation. The stakeholders assumed that there was agreement, and that should be reflected in the legislation. When that does not occur straight away suspicion and mistrust is created, and people know that we have not got the balance right now.

Since the Sinclair report was published other people have influenced the outcome of the legislation, which has moved away from many of the recommended protective mechanisms. The NSW Farmers Association put the farmers point of view as part of getting the balance right between the farming community and the environment community. It agreed with the Sinclair report but the Government, for reasons only known to itself, seems to have missed the point in this legislation. For example, in order to have consistency across New South

Wales recommendation 43 of the Sinclair report stated clearly that government agencies should be subject to the same test as other managers of native vegetation. Quite often a farmer who owns his property is cracked down on, but not national parks or someone supervising wilderness or other land who is indifferent and careless in regard to the care of native vegetation. It seems inconsistent to crack down on farmers and to be indifferent to government agencies. We know that government agencies make mistakes almost on a daily basis, are neglectful or even corrupt, as we have seen in the past 12 months.

"Native vegetation" has to be defined for the purposes of the legislation. The report was specific in order to get agreement. Recommendation 16.1 of the Sinclair report stated what "native vegetation" means, but the legislation does not include that definition. The New South Wales Farmers Association recommended that clause 6 of the Native Vegetation Bill be amended to include the definition of "native vegetation" under the current Native Vegetation Conservation Act. In other words, it supports the current definition but the new bill is not as clear. When one compares the recommendations of the Sinclair report with the bill, over and over again there are important omissions or simply different wording. Another important recommendation to the farming community was recommendation 16.2 of the Sinclair report, which states that clearing native vegetation means one or more of the following:

- (a) cutting down, felling, thinning, logging or removing native vegetation,
- (b) killing, destroying, poisoning, ringbarking, uprooting or burning native vegetation,

The same wording was used in the Sinclair report with the exception that it added:

but excludes clearing for routine agricultural management activities and the legislative exclusions or exemptions.

That clarified what farmers can do as part of their normal, essential farming activities, as distinct from just careless clearing of native vegetation. There are similar problems throughout the bill, which have been the subject of lengthy discussions all day between the Government, the New South Wales Farmers Association and Jeff Angel from the Total Environment Centre. That would not have been necessary if the Government's legislation had reflected the Sinclair recommendations. We are in a position of trust. The Government has just given us 47 amendments. I assume, although I cannot prove it, that many of them will try to put back into the legislation what had been agreed to in the Sinclair inquiry and report. The only point of difference with the New South Wales Farmers Association is amendment No. 44.

The Government said it wants to get the balance right and suddenly amendment No. 44 appears in the Government's recommendations, something that was not discussed in tonight's meetings with the New South Wales Farmers Association and Jeff Angel—that is another point of disagreement or irritation that seems to me to be absolutely unnecessary and almost provocative. In fact, the New South Wales Farmers Association said that if this amendment is not withdrawn we should vote for the adjournment of the bills until February to allow us time to look at the amendments more closely during the Christmas break, and perhaps have better legislation at the end of the day. It is a pity that the Government has got so close to solving the problems with the current Act, which, on the surface, seem to be a way ahead. On the one hand, they will reduce red tape and, on the other hand, they will provide adequate protection of the environment and native vegetation.

It is an attempt somehow to simplify the whole process. I know that some honourable members have been critical because they believe the Minister has a lot of say. But the Government and the Minister have to take responsibility for their legislation. For the 22 years I have been in this place I have accepted, and continue to accept, that that is the way the Parliament works. At the end of the day someone is responsible and we hope that, because the Minister has the power, he can provide a good solution. If he did not have the power, we could be tied up in red tape, and that could make it impossible to resolve disputes.

I am concerned about problems that have been brought to my attention by the New South Wales Aboriginal Land Council and the New South Wales Native Title Services. They have been spelled out in detail by the Hon. Dr Arthur Chesterfield-Evans, and I will not repeat them. It would have been simple to include an Aboriginal representative on the Sinclair implementation group. I have referred a number of times in debate on various bills to opportunities to appoint Aboriginal representatives to various groups. One Aboriginal probably will not change the outlook or the decision of a group, but at least there is an opportunity for Aboriginal input. If the views are rational, which they generally are, that person could carry the rest of the group—in this case the Sinclair group. But Aboriginal representatives feel deeply offended that throughout this process they have been ignored, and ultimately they are ignored in the legislation. Rejection, which is one of the problems the Aboriginal people have dealt with since the white man came to Australia, seems to be accentuated in the Government's dealings with these issues.

The Labor Government professes to be closer than, say, the Coalition to the concerns of the Aboriginal people, but it does not produce the fruit, and that is to be regretted. If we cannot amend the legislation or accept the amendments on such short notice I hope the Government will take on board some of the concerns of the various authorities, such as the Natural Resources Commission, and involve Aboriginal representatives wherever possible. In principle we agree with the bills, subject to the amendments being carried. If we reach a deadlock, we may be forced to defer the bills until February, when we will have more time to produce better legislation.

[The President left the chair at 1.15 a.m.]

Friday 5 December 2003

[Continuation of the sitting of Thursday 4 December 2003]

[The House resumed at 11.00 a.m.]

Reverend the Hon. FRED NILE [11.00 a.m.]: In conclusion, I believe the bill should be passed by the House. The Christian Democratic Party supports the amendments proposed by the Government. They are an attempt to rectify some of the matters which came out of the Sinclair report and which were omitted from the legislation. I understand the Government will give some consideration to the request from the Aboriginal land councils for a consultative role in the future, and that in his reply the Minister will give assurances on some of the other matters that have been raised by New South Wales Farmers and other organisations. Hopefully we can finalise this legislation promptly this morning.

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [11.01 a.m.]: It should be noted that Reverend the Hon. Fred Nile has now spoken twice on the matter, but very well I must say.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [11.02 a.m.]: It may be a moot point but I think the Leader of the Government has just spoken twice as well. That is not to indicate how good the bill is. I speak to this legislation today, which is technically the same day as we started, but I note that it is a day later. Most of us got home at 3.00 a.m. and struggled back here today. Rarely in my 15 years in this place has legislation come before this House that is so important to farmers, land-holders and communities who rely on it. The legislation will have an impact on generations of farmers across this State and will have a major impact on their ability to earn a living. It will impact on regional development and the future of many towns and villages across the State. Yet, sadly, the Government in this instance has treated the legislation, and consequently the farmers and country communities—and, more particularly, the Parliament—as a joke.

I would like the Minister in reply to explain why we were here at 2 o'clock this morning scrambling to correlate extensive Government amendments to the legislation. At 11.30 p.m. we received our first amendments to a bill that has been around for weeks, and at almost 1.00 a.m. we received the final draft of those amendments. Then there was the additional bonus of 120 Greens amendments. That is not good government—and this Minister would have people believe that he is the Premier in waiting. It is hardly the way a Premier in waiting would behave. He appeared on the front page of the *Land* with Jeff Angel and Mal Peters virtually saying that we have agreement, we have peace in our time. Sadly for Mal Peters, that was far from the position.

The legislation does not reflect the Sinclair report. As my colleague indicated, the Sinclair report was a compromise, but we did not get there. I am sad to report to this House that I believe the Minister is either silly or has deliberately misled Parliament, or both. He cannot have it both ways; he has deliberately left people out. At this stage the Opposition, and I suspect the crossbenches, have not been briefed on the ramifications of amendments that are coming before the Parliament, and I will challenge anyone in this Chamber during the Committee stage to indicate whether they have been briefed.

Minister Knowles and his office promised that we would have the amendments in plenty of time to consider their impacts. Frankly, they lied—I cannot put it any plainer than that. Last night the only reason the Opposition in this House saw amendments was that stakeholders dropped them in to us; they arrived while we were in the Chamber debating the legislation. There was no contact from the Minister's office and no offer of a briefing on the amendments. And as at this moment there has been no offer of a briefing on the amendments. I

find that extraordinary, given that the Leader of The Nationals spoke to the Minister months ago and pledged our support for this process if the Minister got it right. The Minister and his Government have got it so horribly wrong I am not surprised that they choose not to face us. I would like to know how they will face country communities after this debacle.

There is a fundamental question that the Government should answer today. Why is it that after it promised to implement the Sinclair recommendations for negotiations between the Government, the Greens and farmers, it is now engaging in last-minute panic amendments that no-one gets to see? We were told the Sinclair process was designed to reach a compromise, which the Government would implement in legislation. It is as simple as that. If the Government fulfilled its promise to implement the Sinclair recommendations—the agreement that Mal Peters and the New South Wales Farmers signed off in good faith, and I fully support them—we would support this legislation. I say to the Minister for Transport Services, who is at the table, that if the Government wants good legislation in this area it should not do back-room deals with the Greens, it should talk to the Coalition.

The Hon. Michael Costa: I don't think they will let me in the door, let alone do a back-door deal with them.

The Hon. DUNCAN GAY: I acknowledge that interjection. The fact is that the legislation is so wrong that many are saying they would prefer to continue under the much-maligned Native Vegetation Conservation Act—and that is not an idle comment. How many times have the Hon. Rick Colless and others heard the comment, "We thought SEPP 46 was bad"? State environmental planning policy [SEPP] 46 is starting to look good. There is an element of truth in the legislation as it stands before the House today—admittedly it will get a little better if we go into Committee—but beyond that, who knows? The Government has been asking everybody to compromise, as dictated by the backroom deals that had been done up until 2.00 a.m. today.

This is no way to make legislation governing a fundamental element of rural and regional life in commerce. It is an atrocious betrayal of the Parliament and of farmers and their communities across this State. The legislation is too important to get wrong because of some deal and because of incompetence. The whole process has been a disgrace and will be a lesson in how not to legislate—a big black mark against this Minister who would be Premier. Craig Knowles' reputation is in tatters across country New South Wales because of this legislation. There have been all the backslapping country visits with the continual theme of "Trust me", but at the pointy end, here in the House today, we find that this Minister and Labor have failed.

The final failure is that this morning we contacted the Minister's office to discuss our concerns. We were met with a limited response and a promise to get back to us—maybe. We are now ready to go, the Government remains evasive, and we still have not been contacted. So much for adjourning the House last night. Is the Minister prepared to give an assurance that the regulations for the transitional arrangements for private native forestry will be included by regulation in the legislation? If he will give this undertaking, why will he not give it as a definitive amendment, and commit the Government to a guarantee of resource security for the private native forest industry?

The Hon. Rick Colless: It won't happen.

The Hon. DUNCAN GAY: Sadly, my colleague is probably right. This is typical of key aspects of the Sinclair report and this bill where the Government is not prepared to be pinned down in legislation. It is ducking and weaving, but it has bludgeoned stakeholders into accepting promises that regulations will come some day and that all their problems will be miraculously solved. Farmers seek more than that type of surety. The Government still has not clarified the capability of catchment management authorities to determine what is broadscale clearing in their areas. I remain deeply concerned that the definition of broadscale clearing in the Native Vegetation Bill continues to be the clearing of any remnant native vegetation or protected regrowth. I was interested to read the comments of a Pilliga farmer in yesterday's edition of the *Land*, which stated:

People are at the end of their tether out there. In our area it is a matter of life and death for us to be able to clear. If we can't go ahead and develop more of our farms we're bugged.

He said that they would be condemned to rural poverty if they were not permitted to develop more country to take advantage of new farming technologies. We have been told unofficially that the ministerial powers of catchment management authorities are only transitional. However, the reason for this is not clearly spelt out in the bill. The bill does not explicitly state how compensation will be delivered to land-holders whose production capacity has been impaired. I am concerned that no additional funding has been allocated to native vegetation

management, despite the Premier's headline-grabbing statements. I understood this was the whole basis for the introduction of the bill, which arose out of the Wentworth meeting. Farmers are endeavouring to do the right thing but as the community has expressed concern, they, too, must be involved in the rationalisation.

We have had a lot of rhetoric from Labor but, sadly, very little substance. The Government has not moved amendments to cover the detrimental effect of the threatened species legislation, and that is a key issue for The Nationals and the Liberal Party. The Sinclair report contains recommendations in this area but the Government has fobbed those off by suggesting the matters will be dealt with through a Government inquiry into the administration of threatened species. I would suggest that if provisions with respect to threatened species do not appear in the legislation now, they will never appear, despite vague promises, nods and winks.

Farmers have been asked to trust the Government but, given its past record on native vegetation conservation and threatened species legislation, that would be difficult. We have been told that farmers can rely on routine agricultural practice definitions to cover removal of single trees, but—and it is a big but—that essentially encourages farmers to break the law; it leaves them wide open to serious consequences. Also, the doubling of non-compliance penalties introduced last night by Government amendment increases that risk.

The bill also fails to address the clearing of protected regrowth, which further confirms that the Minister's rhetoric about giving power to regional communities is a lot of hot air. The Catchment Management Authority Bill gives catchment management authorities levy collection powers that will allow the Government, at any time in the future, to reduce its allocation to catchment management authorities. As a result, land-holders will be forced to pay a levy to make up the shortfall. The bill does not contain an ironclad guarantee that farmers and other land-holders will not be charged for information relating to the formulation of the PVPs. I note that a small number of amendments also double penalties for breaches of the Native Vegetation Act. So much for rhetoric on partnership and incentives!

The combination of double penalties and Labor's planned "eye in the sky" technology blitz provides insight into the Government's position. On 15 October the Government announced that natural resources management in New South Wales would be reformed following recommendations from the Native Vegetation Reform Implementation Group, chaired by Ian Sinclair. There was general optimism that these recommendations would benefit not only the environment but also farmers and community representatives. The Government had the chance to get it right because there was a well of goodwill and a ready blueprint for the legislation in the form of the Sinclair report, a report authored by a former great Leader of the National Party. Indeed, I am sure he was deliberately chosen for that reason.

Farmers have agreed to compromise. This compromise was endorsed by the New South Wales Farmers Association and was supported, in broad terms, by the Opposition. It did not go as far as we would have liked, but it was a compromise. I ask why Minister Knowles did not stick to his word and create the appropriate legislation package instead of something completely different. Many farmers believe that they have been deceived and double-crossed. The Opposition, in good faith, has always been open to negotiation, even as late as this morning. We are not in the habit of obstructing what we believe to be good policies. We signed off on the Sinclair report, but we will not agree to a guillotine that forces shoddy, flawed amendments to be pushed through the Parliament in the middle of the night to enable the Government to save face and meet a cheap media deadline. It is unacceptable, on the last sitting day of the year, for such complex amendments to be presented to us, literally at the last minute.

The Opposition's position on the Native Vegetation Bill, the Catchment Management Authorities Bill and the Natural Resources Commission Bill was clearly spelt out by my colleague the Leader of The Nationals, Andrew Stoner, in his contribution in the other place. That situation has not changed. The principles behind the original Sinclair group reforms were valid. They include grassroots organisations responsible for decisions on natural resource management in their area, better management of native vegetation and an end to the widespread broadscale clearing of remnant vegetation on protected regrowth. The Opposition had concerns about the Sinclair report because it was not perfect. However, we accept that it was a compromise and we are willing to negotiate and support the intent of the report's recommendations.

When the Minister promised that the bills would reflect the recommendations in the Sinclair report, the Opposition was ready to come to the party and to work with the Government to create a positive legislation package. As Andrew Stoner said on 19 November, the three bills in this legislation package are riddled with flaws and hidden consequences that will be shouldered by farmers, their children and their grandchildren. And how right he was! Since the second reading of this bill two weeks ago we have been waiting for the Government

to come back to us with the amendments as promised. Not once in the past fortnight were we given the opportunity to convey our concerns to the Government.

The legislation is restrictive. It will sterilise vast tracts of land and further take away the rights of farmers and land-holders to manage their land properly. There is another obvious reason behind the Government's rush to get this legislation through, apart from the media deadlines I mentioned earlier. It seems clear that the Government was desperately hoping to avoid the Federal Productivity Commission's report into the impacts of native vegetation and biodiversity regulations. I am sure Minister Knowles was dismayed to see yesterday that the commission has released a draft version of its report and that the key points support everything the Opposition is arguing in the House today. The Productivity Commission's draft report states:

The effectiveness and efficiency of regulation in promoting public good, native vegetation and biodiversity conservation goals appears limited for a series of reasons.

The report made the point that regulations could be:

... efficient where the environmental objective is targeted directly and efficiently and the regulations are broadly accepted and complied with.

The point to make here is that the Government has left an enormous number of issues subject to regulations. They are not in the legislation; we must accept the Government's good faith on the regulations. On past form, we cannot trust the Government to get it right. Does the Government simply not care that it is trying to push through exactly the kind of legislation that the Productivity Commission has warned against? The Opposition could not seriously be expected to vote for these bills unless the amendments reflected, at the very least, a clear commitment to implement the Sinclair report in legislation. That commitment was backed up by the Minister, the head of the New South Wales Farmers Association and Jeff Angel. The three of them signed off on the Sinclair report. Yet this legislation is well away from the Sinclair report and even as amended does not get within a bull's roar of it, to use a country expression.

Having said that, I shall now go through some of the issues to indicate where the legislation is lacking. Compensation was the key point of the original discussions and the agreement. While the bill should operate freely and effectively, and limit the circumstances in which compensation is needed, there is no guarantee of compensation or how it would be administered. Will it be ongoing, or will it be a one-off payment, with the funding regulated? The remaining regulatory power of the Minister relates to compensation. No explicit authority is given to catchment management authorities [CMAs]. CMAs have no authority to determine property vegetation plans [PVPs] or broadscale clearing. Clauses 21, 23 and 26 ensure that the Minister has the power to sign off on PVPs. As for onus of proof, frankly, all the words after "vegetation" in the note after line 23 in clause 7 should be removed because they mean that the land-holder must establish that clearing was carried out for routine agricultural management purposes rather than the reverse.

The Hon. Rick Colless: Guilty until proven innocent.

The Hon. DUNCAN GAY: As my colleague says, guilty until proven innocent. We thought the Government would remove that provision. God knows why the Government included it in the first place! The basis of our parliamentary and legal systems is that people are innocent until proven guilty. I turn now to threatened species. Sinclair said that an approval under this Act is an approval of threatened species. That is not the case in this bill. It should be made the case either by making all of the routine practices and approvals under this Act routine farming practices for the purpose of the exemption of that practice under the Threatened Species Act or by giving a specific power to catchment management authorities to give threatened species approval, exactly as the National Parks and Wildlife Service is empowered under the Threatened Species Act.

Once again history has shown that promises have not been kept. The National Parks and Wildlife Service has the power. Yet despite signing off on this, it is not in this legislation. An absolute key is that adherence to this legislation should be seen as adherence under the Threatened Species Act. Clause 42 relates to the regulation of collection of timber. This is unacceptable in any form. It threatens the firewood industry that employs many, many people, generates major economic activity and provides returns to land-holders during times of drought, et cetera. In relation to broadscale clearing, there is a continued lack of clarity about the capability of CMAs to determine what is broadscale clearing in their areas.

The definition of "broadscale clearing" in the Native Vegetation Bill remains the "clearing of any remnant native vegetation or protected regrowth". At best, this means that there must be a neutral environmental

effect. However, it should be possible to encourage a positive social and economic impact. The definition as it stands in this legislation leaves emerging cropping areas in a time warp, and there are insufficient compensation funds to pay them what compensation they will need or deserve if their rights and opportunities to crop are impaired. The whole basis of this was meant to be that communities work together.

The definition of "broadscale" should include any definition determined by the CMA with regard to local conditions. I turn now to regrowth. Clause 9, lines 6 to 8, remove the words "following clearing of remnant native vegetation caused by bushfire, flood, drought or other natural cause". For example, in the Western Division, farmers traditionally crop on the back of floods, but they will be unable to do so under this legislation. After a drought the best way to recover is to put in a crop on as much of one's property as one can as soon as it rains. It is good for the economy and it is good for holding together the soil structure of the property with that vegetation. Sometimes there is no other vegetation there.

The Hon. Rick Colless: A quick ground cover as well.

The Hon. DUNCAN GAY: As my colleague says, it provides a quick ground cover as well. Bushfires are acts of God that take out productive land. In some cases the best way to bring the land back is to seed it immediately with an annual so that there is something to hold the soil together before the perennials come back. These are all commonsense measures that benefit the environment. Yet in the Government's rush and zealously to get this legislation through, those measures have been missed. Here is the doozy! The penalties have been doubled.

The Hon. Rick Colless: The favourite clauses.

The Hon. DUNCAN GAY: As my colleague says, they are the favourite clauses. If one adds the reversal of proof to the fact that the penalties have been doubled, clause 33 doubles the penalties from the original bill we were given. Is that moving forward? Of course it is not. This bill was meant to be an improvement. One of the biggest spectres of the Native Vegetation Conservation Act was the right of any "nutter", as some people would describe them, to tie up a farmer in green tape. That third-party right remains in this bill; it has not been removed. Third-party rights allow anyone to challenge a farmer. So much will be left for the regulations. Do we trust regulations? We have not been able to trust the bills. Why is it not in amendments?

New section 2 of schedule 4 to the Catchment Management Authorities Bill amends the Act to give the CMAs levy collection power, allowing the Government at any time in the future to cut its allocation to a CMA, forcing it to levy landholders to make up shortfalls. This is an absolute favourite of the Carr Government. I can imagine the Treasurer chuckling to himself that he has done it again—he has shifted responsibility to someone else. The Government will start CMAs on farms and the CMAs will have to levy their stakeholders. The Government did the same thing in local government. It removed its responsibility and now local councils are doing everything from healthcare to policing—State government roles. Where is the ironclad guarantee that farmers and other land-holders will not be charged for information relating to the formulation of the PVPs?

Clause 11 of the Native Vegetation Bill provides that the regulations may make provision for all activities that are routine agricultural management activities. Subclause (1) is to be construed accordingly. This provision should be removed completely as it allows the Minister unfettered powers to dictate what are routine agricultural management activities. Would honourable members want to give that unfettered power to the Ministers we have had in this State? I would not. There are probably one or two people on my side that I would not trust with that power—but there are more people I would not trust on the Government side. Clause 14 provides that broadscale clearing consent is not to be granted by the Minister unless the clearing concerned will improve or maintain environmental outcomes. This is a subjective provision that allows the Minister power to block property development. It also makes a farce of the promised devolution of power to the CMAs. Clause 20 permits the clearing of certain ground cover. Subclause (b) provides that the change be not less than 10 per cent, and that the regulations will determine that 10 per cent. Once again, why is this not spelled out in the bill rather than left to the Minister's discretion?

I referred earlier to private native forestry. Will the regulations for the transitional arrangements for private native forestry be included by regulation in the legislation? The Opposition has been told that this legislation depends on the concluding remarks of the Minister Assisting the Minister for Natural Resources (Forests), as that will be used as an interpretation of how this legislation will be used. We should have surety for farmers that they do not have to go to court. We should be able to use a Minister's comments in this Parliament. This legislation was meant to let people know where they stood. A lot depends on the comments that will come

from the Minister in his reply. Frankly, I do not believe that is good enough. It is not what we were led to believe should happen. If the Government believes what will be said by the Minister will be helpful, why was it not put into amendments? Why was it not put in regulations that the Committee, the Parliament and the farmers of New South Wales are able to see? That is a fair question, but I will be pleasantly surprised if I get an answer.

The Opposition believes that this legislation should have been used as an exposure bill. As there are hundreds of amendments to the legislation, we believe that it should be left on the table and finalised on the first sitting day next February. We have accepted in good faith the recommendations of the industry organisations that, as flawed as the bill is now, there is a chance to make it a bit better and that we should allow it to be considered in Committee so it can be improved rather than allow negotiations during the summer recess. Therefore, we will allow the bills to pass through the second reading and move to the Committee stage to see whether we can fix some of the problems. We will deal specifically with each amendment as it comes before the Committee. We have had a limited time to appraise the ramifications of some of the worst legislation I have ever seen.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [11.36 a.m.], in reply: I thank honourable members for their contributions to the debate. As honourable members will be aware, since the second reading debate in the lower House and the commitments given by the Minister for Natural Resources there has been considerable discussion with the Sinclair group to further refine the bill to properly reflect the spirit and intent of the Sinclair report. The Government amendments in each of these cognate bills achieve these objectives. The Government places on record its thanks to the groups that have had carriage of the negotiations—New South Wales Farmers, the Total Environment Centre and members of the Wentworth Group.

The Government particularly thanks Jeff Angel of the Total Environment Centre, Mal Peters, and Jonathan McKeon of the New South Wales Farmers' Association for their intense involvement in discussions in recent days and weeks, and even last night. It thanks the chair of the Native Vegetation Reform Implementation Group, the Rt Hon. Ian Sinclair, who has been critical to the outcome. Their efforts demonstrate their commitment to collaborate to ensure a balanced approach to natural resource management in this State. These amendments reflect the work of stakeholders, not just the Government. They have been endorsed by those groups as a sensible, balanced way forward. It is proposed to use the Committee stages to further affirm particular undertakings given during the recent negotiations, to make the Government's intent clear and to remove any ambiguity that may continue to exist. I commend the bills to the House.

Motion agreed to.

Bills read a second time.

In Committee

The CHAIRMAN: The Committee will deal first with the Natural Resources Commission Bill.

Clause 1 agreed to.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [11.40 a.m.]: I move Government amendment No. 1:

No. 1 Page 2. Insert after line 7:

3 Objects

The object of this Act is to establish an independent body with broad investigating and reporting functions for the purposes of:

- (a) establishing a sound scientific basis for the properly informed management of natural resources in the social, economic and environmental interests of the State, and
- (b) enabling the adoption of State-wide standards and targets for natural resource management issues, and
- (c) advising on the circumstances in which broadscale clearing is to be regarded as improving or maintaining environmental outcomes for the purposes of the *Native Vegetation Act 2003*.

The rationale for this amendment is that the addition of objectives helps to clarify the role of the Natural Resources Commission [NRC], the way it will operate and the objectives to be achieved through its work. The catchment management authorities will be responsible for developing catchment action plans consistent with statewide standards and targets. They will also take into account advice from the Natural Resources Commission on the circumstances that will improve or maintain environmental outcomes in determining property vegetation plans. The Government is also including a provision so that the NRC will advise on the circumstances that will improve or maintain environmental outcomes.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [11.41 a.m.]: The Opposition does not oppose the Government amendment.

Mr IAN COHEN [11.41 a.m.]: The Greens support the amendment but are we particularly disappointed that there is no clause saying that the National Resources Commission and others have to give effect to the objects. The Greens have lobbied hard for a definition of "environmental outcomes". The insertion of this object falls well short of what we had sought.

The CHAIRMAN: Does Mr Ian Cohen wish to move Greens amendment No. 1? Government amendment No. 1 and Greens amendment No. 1 are in conflict. We will need to deal with them at the same time because whichever one is adopted knocks the other out.

Mr IAN COHEN [11.42 a.m.]: I move Greens amendment No. 1:

No. 1 Page 2. Insert after line 7:

3 Objects

The object of this Act is to establish an independent Natural Resources Commission that will:

- (a) provide for, encourage and promote the conservation and management of natural resources, and
- (b) prevent the degradation and inappropriate use of natural resources, and
- (c) improve the condition of natural resources, and
- (d) improve the health of the natural environment,
- (e) provide for, encourage and promote the protection and maintenance of Aboriginal natural resources knowledge and practices, and

in accordance with the principles of ecologically sustainable development within the meaning of section 6 of the *Protection of the Environment Administration Act 1991*.

This amendment inserts a much-needed objects clause into the Act. The object is to establish a Natural Resources Commission that will do the following things: provide for, encourage and promote conservation and management of natural resources; prevent the degradation and inappropriate use of natural resources; improve the condition of natural resources; improve the health of the natural environment; and provide for, encourage and promote the protection and maintenance of Aboriginal natural resources knowledge and practices. This objects clause clearly sets the agenda for the new Natural Resources Commission that has regard to the circumstances that have led to the establishment of the commission and also puts the commission clearly on the path towards an improved outcome for the natural resources of New South Wales. While this objects clause largely speaks for itself, I refer the Committee to the Convention on Biological Diversity, which provides in Article 8 (j):

Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices;

I also note that Australia is a signatory to the convention and that by signing the convention the Australian Government, including the State of New South Wales—at least until a boatload of refugees arrives on Bondi Beach—has committed to "respect, preserve and maintain" such knowledge and practices, to promote their wider application with the approval and involvement of the communities concerned, and to encourage the equitable sharing of the benefits derived from the utilisation of such knowledge. I commend the Greens amendment to the Committee.

The Hon. JON JENKINS [11.44 a.m.]: I move Outdoor Recreation Party amendment No. 1, which will amend Government amendment No. 1 as follows:

No. 1 After "economic" in proposed clause 3 (a), insert ", recreational".

One of the issues missing from the comments of Government and Opposition members is that the bill also encompasses the whole of our aquatic environment. It encompasses all our public waterways, beaches, rivers, wetlands and other public areas. In my inaugural speech in this Chamber I mentioned that one of the reasons I was here was to ensure that the public of this State continue to be able to enjoy the bounties of nature's gifts. For that reason I have proposed a small amendment to Government amendment No. 1 to ensure that it is enshrined in the bill. One of the major purposes of the continuation of the management and preservation of our natural resources and our beautiful natural environment is so that people can continue to enjoy those wonderful gifts of nature. I commend the amendment to the Committee.

Mr IAN COHEN [11.46 a.m.]: I respect where the Hon. Jon Jenkins is coming from. The Greens feel that inserting "recreational" is beyond the spirit of protection that we are trying to achieve. The Greens oppose the amendment.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [11.46 a.m.]: The Government opposes Greens amendment No. 1 because it does not reflect the role of the Natural Resources Commission [NRC] as set out in the Sinclair report. Government amendment No. 1 inserts objectives that more accurately reflect that role. The Government also opposes the Outdoor Recreation Party amendment. The bill focuses on resources. The NRC will set standards and targets for resources; it will not regulate uses or activities.

The Hon. JON JENKINS [11.47 a.m.]: I reiterate that both the Government and the Opposition have failed to acknowledge that the bill also encompasses coastal waterways, rivers and every other aquatic environment in this State. They are extensively used by the people of this State for recreational activities. That has to be acknowledged in the bill.

The Hon. RICK COLLESS [11.47 a.m.]: The Opposition opposes the Greens amendment and supports the amendment moved by the Outdoor Recreation Party.

The CHAIRMAN: Order! Before putting the question on Outdoor Recreation Party amendment No. 1, I advise that if Government amendment No. 1 is successful Greens amendment No. 1 can no longer be admitted.

Outdoor Recreation Party amendment of Government amendment No. 1 negatived.

Government amendment No. 1 agreed to.

The CHAIRMAN: Government amendment No. 1 having been agreed to, Greens amendment No. 1 can no longer be admitted.

Clause 2 as amended agreed to.

Mr IAN COHEN [11.49 a.m.], by leave: I move Greens amendments Nos 2, 4, 24, 25, 26, 27, 28 and 29 in globo:

No. 2 Page 2, clause 3. Insert after line 14:

coastal region means:

- (a) the area within the coastal waters of the State as defined in Part 10 of the *Interpretation Act 1987* (including any land within those coastal waters), and
- (b) the whole area of operations of each catchment management authority that has an area of operations adjoining those coastal waters.

No. 4 Page 3, clause 4 (f), line 5. Insert "being protection of the coastal region in accordance with the objects of the *Coastal Protection Act 1979*," after "protection,".

No. 24 Pages 14, schedule 2, lines 4–8 and lines 19–20. Omit all words on those lines.

No. 25 Page 16, schedule 2.5, line 5. Omit all words on that line.

No. 26 Page 16, schedule 2.6, line 8. Omit all words on that line.

No. 27 Page 16, schedule 2.6, line 9. Omit "instead".

No. 28 Page 16, schedule 2, lines 10–20. Omit all words on those lines.

No. 29 Page 19, schedule 3, clause 2, line 25. Omit all words on that line.

These amendments provide for a more specific and detailed focus on the Natural Resources Commission because it is special. It is special because of the particular development pressure on our coastal resources. As a specific example, the Hastings population projection, as presented at the recent coastal conference by the Hastings Council planner Mr Michael Coulter, involves a growth of more than 50 per cent in 20 years. Interestingly, the local member, Mr Rob Oakeshott's, only dispute about this alarming population figure is not on the magnitude of the growth but on the time frame.

The Hon. Duncan Gay: He did not see fit to speak on the bill in the lower House.

Mr IAN COHEN: The Nationals should speak with their wayward members. Mr Oakeshott believes that this growth is more likely to occur in the next 12 to 15 years rather than the anticipated 12 to 25 years. The coastal zone is both dynamic and complex. It is not static like the bricks and mortar of development and it does not respect the fact that people have invested their superannuation on the moving sands of time. We need the continuity of the special focus on the coastal zone that has been afforded by the Coastal Council of New South Wales and the coastal policy of New South Wales since 1990. This policy has enjoyed genuine bipartisan support over the past 13 years. These Greens amendments will continue that policy and provide a special focus on the coastal zone of New South Wales. The Greens amendments are supported by the New South Wales Coastal Council, which passed the following resolution yesterday:

That Coastal Council of NSW (CCNSW) advise the Minister for Infrastructure & Planning and Minister for Natural Resources that the CCNSW is concerned that no advice has been provided by Government on how the State's special focus on coastal New South Wales will be maintained under the proposed new arrangements; existing means of community consultation on coastal management issues presently operated by CCNSW will be lost; the Minister did not address in his Speech in Reply matters raised with him at the deputation from the NSW Coastal Conference regarding transition arrangements; there is no information or advice available to the CCNSW or the community on the transition arrangements for the continued implementation of coastal policy especially the implementation of the Comprehensive Coastal Assessment (CCA) and Coastal Policy review.

That Coastal Council of NSW (CCNSW) advise the Minister for Infrastructure & Planning and Minister for Natural Resources that in the event that CCNSW is abolished advice from Government is urgently required on how the state's special focus on coastal NSW will be maintained under the proposed new arrangements. The Natural Resources Commission be asked to appoint a Coastal Commissioner. The NRC and CMAs be directed upon being established to quickly institute means for carrying out high levels of community consultation. The proposed Natural Resources Advisory Council include a specific advisory committee on coastal zone management. The existing CCA Steering Committee continue to oversee the development and implementation of the CCA. The Government announce a specific process and timetable for the Review of the NSW Coastal Policy. A Steering Committee be formed to ensure key stakeholder support for and input into the further development of the Coastal Zone Management Manual.

This is a follow-on from its resolution to retain the Coastal Council. The Greens respect the work and outcomes of the Coastal Council and the Government has not provided clear or consistent reasons for its abolition. These amendments are designed to retain the Coastal Council. Greens amendment No. 2 defines "coastal region" to allow the Natural Resource Commission to focus specifically on this region of New South Wales. Amendment No. 4 simply provides more definition of what constitutes protection of the coast in New South Wales. Unlike soil, salinity or native vegetation, coastal resources are described as "coastal protection". Amendment No. 3 simply ensures that coastal New South Wales enjoys a similar level of protection as it has had for the past 20 years. It refers the commission back to the objects of the Coastal Protection Act 1979 for the definition of "coastal protection". The objects of the Act are as follows:

The objects of this Act are to provide for the protection of the coastal environment of the State for the benefit of both present and future generations and, in particular:

- (a) to protect, enhance, maintain and restore the environment of the coastal region, and its associated ecosystems, ecological processes and biological diversity, and its water quality, and
- (b) to encourage, promote and secure the orderly and balanced utilisation and conservation of the coastal region and its natural and man-made resources, having regard to the principles of ecologically sustainable development, and to recognise and foster the significant social and economic benefits to the State that result from a sustainable coastal environment, including:
 - (i) benefits to the environment, and

- (ii) benefits to urban communities, fisheries, industry and recreation, and
- (iii) benefits to culture and heritage, and
- (iv) benefits to the Aboriginal people in relation to their spiritual, social, customary and economic use of land and water, and
- (d) to promote public pedestrian access to the coastal region and recognise the public's right to access, and
- (e) to provide for the acquisition of land in the coastal region to promote the protection, enhancement, maintenance and restoration of the environment of the coastal region, and
- (f) to recognise the role of the community, as a partner with government, in resolving issues relating to the protection of the coastal environment, and
- (g) to ensure co-ordination of the policies and activities of the Government and public authorities relating to the coastal region and to facilitate the proper integration of their management activities.'

Amendment No. 6 provides that at least one commissioner should have special responsibility for the coastal region. Amendments Nos 24 to 29 provide that the Coastal Council may continue its good work in providing specific protection for the coast of New South Wales. The Coastal Council's letter to the Hon. Craig Knowles dated 11 November 2003 states:

The Sydney Coastal Councils Group Inc. (SCCG) is extremely concerned with the new structure proposed for Natural Resources Management (NRM) reforms and the apparent limited consideration for coastal management ...

The loss of focus for integrated coastal zone management (ICZM) and the erosion of the many successful and nationally leading initiatives by State and Local Governments in coastal zone management for the last 5 years is of significant concern. The SCCG does not believe that the decommissioning of the Coastal Council of NSW, and the restructure DIPNR (Coasts and Estuaries) has adequately considered the significant needs of ICZM for regional and metropolitan NSW.

ICZM requires the considerations of a great deal more issues than the management of natural resources. It involves the integration of NRM into the many substantial issues relating to social, cultural and economic values and uses of the NSW coast. It is well acknowledged the NSW coast is a very significant contributor to the state's GDP and requires specialist and focused attention to ensure that this is sustainable. Based on DIPNR and ABS assessments, the NSW coast constituting more than 80 % of the State populus is facing an alarming population growth and is forecast to increase rapidly by up to 60 % over the next 20-25 years creating many very significant planning and environmental pressures.

The threat of the loss of the state's independent specialist body providing policy advice on ICZM, including the 14 years of corporate knowledge and experience developed via this process, is a significant concern and requires attention and coordination separate to the water and vegetation reforms currently taking place.

I commend these Greens amendments.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [11.58 a.m.]: The Government opposes these amendments. They either do not reflect the role of the new Natural Resources Commission or are not consistent with the spirit of the Sinclair recommendations.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [11.59 a.m.]: The Opposition will support the Greens amendments Nos 24 to 29, which relate to the reinstatement of the Coastal Council. We do not support amendments Nos 2 and 4, which referred to some of the Greens sneaky redefinitions. The Greens and the Coalition have an ongoing argument about redefining ecologically sustainable development. We accept and understand, as do our colleagues, particularly from the lower House who represent coastal areas, the pressures that are placed upon coastal areas, not the least of which is the seachange attitude. People are moving out there; it is a fragile environment. We believe that whilst the Coastal Council is not perfect by any stretch of the imagination, it is important. In some instances, its make-up and some of its operations could be refined and improved, but the total removal of the council is not a step that should be taken. If Mr Ian Cohen were to move amendments Nos 24 to 29 in globo and not move amendments Nos 2 and 4, we would support him.

Mr IAN COHEN [12.01 p.m.]: I thank the Deputy Leader of the Opposition for his support for the amendments relating to the Coastal Council. The issue is very close to the heart of many people in the community. I acknowledge that many constituents of The Nationals are also moving to the coastal areas of New South Wales, and that it is an important issue across the board. I seek leave to change the situation and put Greens amendments –

The CHAIRMAN: I was proposing to deal with amendments Nos 2 and 4 in globo and amendments Nos 24 to 29 in globo.

Mr IAN COHEN: Should I so move?

The CHAIRMAN: No. I will make a procedural decision on that basis.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [12.02 p.m.]: I support the Greens amendments, and I congratulate the Greens on their efforts in getting the comprehensive amendments together in such a short time frame. I was moved by Mr Ian Cohen's comments about the Coastal Council in his earlier contribution. It is important that we have bodies such as the Coastal Council, which have a tradition of examining things that have credibility. As I have said in this House on many occasions, I oppose the all-power-to-the-Minister type of legislation, of which we are tending to get large doses. I support the Greens definition of environmentally sustainable development, which I am disappointed the Opposition does not support. However, I congratulate the Opposition on its support for the Coastal Council, which we believe is extremely important.

The Hon. Dr PETER WONG [12.03 p.m.]: I also support the Greens amendments and acknowledge the importance of the Coastal Council of New South Wales. I ask the Minister to indicate the reason why the Government cannot support the Coastal Council.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [12.03 p.m.]: The Government's position is that it is not consistent with the changed institutional structure recommended by the Sinclair report. The whole purpose of changing the structure is to have different institutional arrangements, and this is inconsistent with that because it preserves a body that already exists.

The Hon. Duncan Gay: It didn't stop you in other areas.

The Hon. MICHAEL COSTA: I am not going to debate it; I am simply telling you the Government's position.

Reverend the Hon. FRED NILE [12.04 p.m.]: Given the establishment of the National Resources Commission and the catchment management authorities, there may be duplication or perhaps even conflicts. How do you resolve that, if the Coastal Council is operating? That seems to be a concern. We are trying to streamline the whole process. It seems to be complicating it.

Mr IAN COHEN [12.04 p.m.]: I do not think we will see conflict or duplication. We are dealing with a specific, intensive zone with a great deal of activity and a lot of importance riding on the fact that the coastal zone is currently under intensive threat. I think that is agreed by everyone across the board. The Greens amendments simply seek to maintain that focus. We have a great deal of proven expertise on the Coastal Council, and it would be throwing out the baby with the bathwater. The Coastal Council has proven to be effective, it has received support from a broad cross-section of the community over many years now under the very able leadership of Professor Bruce Thom. The Coastal Council has also been instrumental in giving expert advice on legal matters in various cases in the Land and Environment Court.

The Hon. Duncan Gay: There have been 20 or 30 speeches by the Premier and Minister Knowles saying how good the Coastal Council is.

Mr IAN COHEN: I agree with the Deputy Leader of the Opposition that the council is held in extremely high regard by local government, people in the Greens movement, conservation groups, and people who want to see developments proceed apace—as well as, I agree, developers who can make a fair buck out of improving their lots on the coast. It has been an ameliorating influence on a very fragile, irreplaceable coastal zone. I ask the House that this iconic area in terms of the Australian culture gets the focus that it deserves. It was getting the focus that it deserves under the auspices of the Coastal Council of New South Wales.

The Hon. JENNIFER GARDINER [12.06 p.m.]: I am pleased to support The Nationals-Greens coalition on this matter. As Mr Ian Cohen acknowledged, much of the constituency of The Nationals—

The Hon. Dr Arthur Chesterfield-Evans: You're going green.

The Hon. JENNIFER GARDINER: We are the dominant political party in terms of parliamentary representation on the coast of New South Wales. The coastal areas of the State are continuing to change very rapidly demographically, literally day by day. It was recently suggested at the Coastal Council conference at

Port Macquarie that there could be, for example, 100,000 people living in the Hastings area alone within nine years—an extraordinary change in the demographics of just that part of the mid-North Coast—and over one million people in non-metropolitan coastal areas of the State, again within nine years. So it is incumbent upon The Nationals to ensure that there is specialist expertise in advisory bodies to the Government on these issues because they are so profound, dramatic and rapidly changing. I am very happy to support these particular amendments.

The Hon. MELINDA PAVEY [12.08 p.m.]: I support the amendments relating to the Coastal Council of New South Wales. As the Hon. Jennifer Gardiner pointed out, in nine years time more than one million people are expected to be living on the North Coast between Newcastle and the Queensland border. I agree with Mr Ian Cohen that it is an iconic area. There are many other iconic areas across New South Wales, but the difference is the seachange attitude of many people who want to relocate and live near the ocean. The seachange attitude is strong, as reflected in the pressure and demands and the limited space between the Great Dividing Range and the ocean. We would like to see a coastal council operate in the area, fairly, without partisan politics involved, which has been the case to a certain extent in the past few years. We would like to see an independent body, with the appropriate people with the appropriate qualifications, to provide good policy direction and good advice to government and agencies so we can assure the right mix of people, the right mix of investment and the right mix of opportunities, while maintaining the magnificent environment that we all enjoy on the North Coast.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [12.09 p.m.]: I refer to the point made by Reverend the Hon. Fred Nile. The question of streamlining things in terms of the Sinclair report is all very well, but "streamlining" assumes that the other councils are not needed because they would be redundant and too many people would be doing the job. But there is plenty of work for the Coastal Council. Even if the Natural Resources Commission [NRC] is established in this legislation, which presumably it will be, the amount of work on that specific area of the coast is more than enough for the Coastal Council to do. It is not redundant to have this body retained, particularly given its impressive track record, which seems undisputed on both sides of this House.

Reverend the Hon. FRED NILE [12.10 p.m.]: I have just been reading a letter given to me on the issue of coastal management. I believe it confirms my earlier concern. It is from Counsellor Patricia Harvey, the head of Sydney Coastal Councils, who says in support of this amendment:

The outcomes of this simple hierarchy would result in the provision of focus and strategic coastal advice to the 13 proposed Catchment Management Authorities and firmly place New South Wales at the forefront of coastal management in Australia.

That is the point I make. The National Resources Commission has these management authorities. Northern Rivers covers the coast in the north, and the Hunter Centre Rivers covers the Hunter and Newcastle areas. There is also the Sydney Metro Catchment Management Authority [CMA] and the Southern Rivers CMA. It is not a vacuum; a series of CMAs cover the coastal areas, and the people promoting the Coastal Council consider it to be a body advising these management authorities. That seems to be completely contrary to the position of The Nationals, who would not be very happy if the Coastal Council starts to oppose recommendations. It creates another source of tension and confusion.

The Hon. Duncan Gay: We just have a difference of opinion. It does not mean you are right. I think you are wrong.

Reverend the Hon. FRED NILE: I think you are wrong, that is the point I am making.

Mr IAN COHEN [12.12 p.m.]: I think Reverend the Hon. Fred Nile is trying to make a presumption that somehow these broader catchment management authorities and organisations are going to be able to maintain the forensic focus that is needed on the coast. That is what we are disputing. That is the history of the coastal council. The letter that I gave to Reverend the Hon. Fred Nile indicated real concerns about moving away from having the Coastal Council. I add that the Sinclair committee did not look at coastal areas. It looked at inland vegetation and water but it did not pay attention to the coastal areas. Here is the very beginning of focus slipping away from these coastal areas.

I appreciate the acknowledgement by The Nationals of the need for attention to these areas but it is important to recognise that the Sinclair committee has not looked properly at the coast, and under the broader oversight it is going to be very difficult to maintain sufficient time, energy and funds to focus adequately on the

coast. I have heard time and time again Conservative members, including Reverend the Hon. Fred Nile, honestly and openly say, "If it ain't broke, why fix it?" That is the situation with the Coastal Council. It has been doing a fantastic job over a recognised almost generational period of time.

The Hon. RICK COLLESS [12.13 p.m.]: Given the fragile nature of the coastal areas— other members have alluded to this—and the pressure that is being placed on these areas as we move into the next millennium, it is all very well to say that the coast is an iconic area, and there are other iconic areas of the State, but those other iconic areas will never have the pressure placed on them that the coastal areas are going to have. We need an extra level of consultation in those areas. The Nationals have always favoured better community consultation: it is something we see as one of our cornerstones.

The coastal areas have particular and important strategic needs, pressures and needs that will not apply to other areas. As Mr Ian Cohen pointed out, Professor Bruce Thom's work on the Coastal Council has been tremendous; it has provided great feedback on the planning issues and the pressures and fragility of the coastal area. For those good reasons, maintaining the existing structure of the Coastal Council is well justified.

The Hon. JENNIFER GARDINER [12.15 p.m.]: It is all very well for Reverend the Hon. Fred Nile to quote from the Sydney Coastal Councils and the local governments associated with that body, but we are concerned about the work of the Coastal Council in non-metropolitan coastal areas and we think that that is important to continue.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [12.16 p.m.]: The Government's position is clear, and it is consistent with Reverend the Hon. Fred Nile's position. We are in the process of streamlining organisations. It is not a matter of what they did in the past; I think everybody can acknowledge what occurred in the past. The fact of the matter is, why engage in a process to put more effective and more efficient structures in place and then, through sentimental or for whatever reason, leave a body that is potentially either in conflict or is inconsistent with the spirit of the proposed changes.

Nobody in this place is disputing the good work that has been done in the past. This is really about getting a new body, a new structure. The same argument could be run about every other structure or organisation that has been superseded similarly to the Natural Resources Commission. It is necessary to genuinely look at change and ensure that the change is reflective of a new community consensus on these matters. There will always be situations where bodies that have operated effectively are subsumed by new structures. It does not mean that those new structures are going to work any less effectively. The potential for conflict between each of these bodies is clearly one that we are concerned about, and it is inconsistent with the spirit of the proposed changes.

Greens amendments Nos 2 and 4 negatived.

Question—That Greens amendments Nos 24 to 29 be agreed to—put.

The Committee divided.

Ayes, 17

Mr Breen	Miss Gardiner	Ms Rhiannon
Dr Chesterfield-Evans	Mr Gay	Mr Ryan
Mr Clarke	Ms Hale	Dr Wong
Mr Cohen	Mr Jenkins	<i>Tellers,</i>
Mrs Forsythe	Mrs Pavey	Mr Colless
Mr Gallacher	Mr Pearce	Mr Harwin

Noes, 16

Dr Burgmann	Mr Hatzistergos	Ms Tebbutt
Mr Burke	Mr Kelly	Mr Tsang
Ms Burnswoods	Mr Macdonald	
Mr Costa	Reverend Dr Moyes	<i>Tellers,</i>
Mr Egan	Reverend Nile	Mr Primrose
Ms Griffin	Ms Robertson	Mr West

Pairs

Ms Cusack
Mr Lynn
Ms Parker

Mr Catanzariti
Mr Della Bosca
Mr Obeid

Question resolved in the affirmative.

Greens amendments Nos 24 to 29 agreed to.

Clause 3 as amended agreed to.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [12.30 p.m.]: I move Government amendment No. 2:

No. 2 Page 3, clause 4. Insert after line 5:

- (g) marine environment (except a matter arising under the *Fisheries Management Act 1994* or the *Marine Parks Act 1997*),
- (h) forestry,

The rationale for this amendment is recognition of the linkages between land and freshwater-based national resources and the marine environment. However, it will exclude matters administered by my colleague the Minister for Agriculture and Fisheries and covered by the *Fisheries Management Act 1994* and the *Marine Parks Act 1997*. If matters are likely to impact on fisheries management, the Government will clearly expect the natural resources advisory council to engage representatives of the fishing industry. These representatives will be present when fisheries-related matters are being considered. The inclusion of forestry recognises that this is a native vegetation management issue with special characteristics and requirements.

I indicate that the Government will be opposing Greens amendments Nos 3 and 5. It opposes amendment No. 3 because the amendment does not define natural resource management matters. The existing list is very broad and if necessary can be expanded by legislation. As for Greens amendment No. 5, Government amendment No. 2 includes references to "marine environment" and "forestry". While the Natural Resources Commission is intended to address the marine environment, it is not intended to address specific fisheries management issues such as the setting of fish quotas.

The CHAIRMAN: Order! Greens amendment No. 5 is in conflict with Government amendment No. 2. If Government amendment No. 2 is agreed to, Greens amendment No. 5 cannot be moved. Mr Ian Cohen will need to move Greens amendments Nos 3 and 5 separately.

Mr IAN COHEN [12.32 p.m.]: I move Greens amendment No. 3 as circulated in my name:

No. 3 Page 2, clause 4, lines 29 and 30. Omit all words on those lines. Insert instead "to any matter relating to the management of natural resources and includes the following:

This amendment changes the current list of matters that the Natural Resources Commission may consider from an exclusive list of specified natural resource matters to a more inclusive definition of what might constitute natural resources. The need for this amendment is clear. Until 20 years ago salinity was only a talking point for soil scientists; today it is the most recognisable face of what unsustainable farming practices and a lack of political will mean for the environment and the communities reliant on that environment for their growth and prosperity.

Currently, scientists are investigating what role microbial organisms play in productive agriculture. There are debates about the impact that genetically modified organisms may have on agriculture and our natural environment. This amendment simply ensures that within the bounds of the objects and enumerated functions of the Natural Resources Commission, the commission can conduct inquiries into a wide range of matters. I commend the amendment to the Committee.

Greens amendment No. 3 negatived.

Mr IAN COHEN [12.34 p.m.]: The exclusion of "marine environment" from other Acts means that the inclusion of "marine environment" is now almost meaningless. However, the Greens do not oppose Government amendment No. 2.

Government amendment No. 2 agreed to.**Clause 4 as amended agreed to.****Clauses 5 and 6 agreed to.**

Mr IAN COHEN [12.36 p.m.]: I move Greens amendment No. 6 as circulated in my name:

No. 6 Page 4, clause 7, Insert after line 23:

- (4) At least one Assistant Commissioner is to be appointed to have responsibility for the coastal region.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [12.36 p.m.]: The Government opposes Greens amendment No. 6 because the bill already provides the flexibility to do what this amendment is proposing.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [12.36 p.m.]: Given that reference has been made to the Coastal Council, and given that the Government has said that there is flexibility, I am disappointed that the Government opposes this amendment. Perhaps the Government could support the amendment without being inconsistent with what it has already done. As the Coastal Council is being abolished, perhaps the Government will reconsider its position. Obviously, this amendment seems incongruous with a previous decision of the Committee. However, the amendment would not be a great imposition on the Government in the sense that it is capable of doing this anyway, as the Minister said.

The Hon. Dr PETER WONG [12.37 p.m.]: I support the amendment. As the Hon. Dr Arthur Chesterfield-Evans said, at least one assistant commissioner will have responsibility for the coastal region. Naturally, the commissioner or an assistant commissioner should have responsibility for the coastal region.

Reverend the Hon. FRED NILE [12.37 p.m.]: Greens amendment No. 6 highlights the reason the amendment to re-establish the Coastal Council should have been defeated. Now the Greens want a Natural Resources Commissioner to be responsible for the coastal region. Who would the commissioner listen to? Who would he follow—the Coastal Council or the Natural Resources Commission? Instead of streamlining the arrangement, the Greens amendment would complicate it. Clause 7 is flexible enough to enable the Natural Resources Commissioner to decide whether to appoint someone to represent the coastal region. That proves that we do not need the Coastal Council.

Amendment negatived.**Clause 7 agreed to.****Clauses 8 to 11 agreed to.**

Mr IAN COHEN [12.39 p.m.], by leave: I move Greens amendments Nos 7 and 13 in globo:

No. 7 Page 6, clause 12 (a), lines 10 and 11. Omit all words on those lines. Insert instead:

- (a) to set for natural resource management matters:
 - (i) State-wide standards and targets, or
 - (ii) if the Commission considers it appropriate, standards and targets for one or more catchment management authority's area of operations,
- being standards or targets that give effect to the objects of this Act and wherever possible, are measurable.

No. 13 Page 6, clause 13, lines 34 and 35. Omit all words on those lines. Insert instead:

In the administration of this Act, the Minister and the Commission are to give effect to the objects of this Act and are to have regard to:

These amendments give the Natural Resource Commission the independence it will require to carry out its functions. The overview of the bill states clearly that the bill will establish an independent commission. It obviously has a completely different idea about what constitutes independence. The Government in its wisdom

has given the Minister for Natural Resources, amongst other things, complete control over the commission. He will control references to the commission, shape the scope of its inquiries and get its reports prior to their public release. The Greens have a series of independence-related amendments. Greens amendment No. 7 allows the commission to set statewide targets for natural resource matters and establish minimum standards. This will at least allow the commission to independently establish a benchmark against which it will measure the performance of the Government. Without such independence the Government will effectively be able to nobble the commission by ignoring any recommendations the commission makes on standards.

Greens amendment No. 13, another independence-related amendment, provides that the commission may set statewide standards and targets in relation to the matters listed in the amendment. The independence of the commission is critical to its success. The Government should not simply be allowed to tell the commission what it can look at and when, and how it should determine matters. It should not be able to say, "What the commission says is well and good but we will decide the standard." I commend Greens amendments Nos 7 and 13 to the Committee.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [12.41 p.m.]: The Government opposes both amendments. We oppose amendment No. 7 because the power to set natural resource management matters is inconsistent with the Sinclair report. The Minister should have discretion to accept or vary recommendations of the Natural Resources Commission's [NRC], as is the case at the moment with the Independent Pricing and Regulatory Tribunal. Clause 13 already allows the NRC to take into account regional variations when making recommendations to the Government. In relation to amendment No. 13, the bill already requires the NRC to have regard to the principles of ecologically sustainable development. As referred to above, the proposed objectives are inconsistent with the role of the NRC set out in the Sinclair report.

The Hon. RICK COLLESS [12.42 p.m.]: The Coalition also opposes these amendments. It is not the role of the commission to be setting such targets. The commission is appointed and it will have no accountability if it sets inappropriate targets. It should be restricted to advising the Minister on those things.

Amendments negatived.

Mr IAN COHEN [12.43 p.m.], by leave: I move Greens amendments Nos 8 and 10 in globo:

No. 8 Page 6, clause 12 (d), line 21. Omit "as required by the Minister". Insert instead "at least once every 3 years".

No. 10 Page 6, clause 12 (f), line 25. Omit "as required by the Minister".

Greens amendment No. 8 does two things. It removes the words "as required by the Minister", thereby allowing the commission to determine which plans it audits and when. This will allow the commission to undertake audits strategically, for instance, when the commission is undertaking inquiries or when it is assisting in reconciling complex natural resource issues. It is another critical step in delivering independence to the Natural Resources Commission. Similarly, Greens amendment No. 10 allows the commission to determine the natural resource management issues it will inquire into. Of course, the Minister can still make referrals. It is just that the commission should, based on its experience, be able to determine the matters into which it inquires. The second part of the amendment is to ensure that every plan, like other statutory instruments, is audited regularly but at least once every three years. I commend Greens amendments Nos 8 and 10 to the Committee.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [12.45 p.m.]: The Government opposes the amendments. We oppose amendment No. 8 because clause 12 (c) already allows the NRC as it considers appropriate to undertake audits of the effectiveness and implementation of the plans in achieving statewide standards and targets. Clause 26 of the Catchment Management Authorities Bill provides that the catchment action plans are audited at least every five years. Audits can be carried out earlier if necessary. These arrangements are sufficient. Amendment No. 10 is clearly inconsistent with the Sinclair report.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [12.45 p.m.]: The Opposition does not support Greens amendments Nos 8 and 10. I note that earlier I was very critical of the Government because its amendments arrived late without any consultation. The behaviour of the Government in that regard was absolutely appalling. I should have indicated that the 120 amendments of the Greens arrived even later than the amendments of the Government. It is obvious that those amendments were drafted before 2.00 a.m. Mr Ian Cohen is well-briefed; he has detailed arguments. He could not have developed those arguments overnight. It is

obvious that he had his amendments earlier and they could have been circulated. Little wonder they are not being supported.

Mr IAN COHEN [12.46 p.m.]: I was desperate to get the amendments to all members, but there has been such a state of flux overnight. I did not withhold amendments from distribution. I was waiting for them to arrive from Parliamentary Counsel. I did not hold them back intentionally. I was waiting on the Government amendments to see how our amendments would respond to them. There certainly has been some confusion but it has not been my intention in any shape or form to withhold the amendments. That is not the way I work. I wish we had many more days to deal with this legislation.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [12.47 p.m.]: This is one of the worst cases I have ever heard of the pot calling the kettle black. It is never easy for members to get Opposition amendments and their arguments on them, even if there are several days between the bill being introduced and its consideration. The Opposition does not brief the crossbench on its amendments. We complain about that constantly. In this case, with things happening at 2 o'clock in the morning—

The CHAIRMAN: Order! Is the honourable member speaking in favour of or against the amendment?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I am speaking in favour of the amendments. The Opposition does not have a good record for briefing members on its amendments. It is the Government's fault that we have not been briefed since we adjourned early this morning. The comments of the Deputy Leader of the Opposition are not reasonable. It has been very difficult time, and I do not pretend to be as aware of all the amendments as I would like to be.

Mr IAN COHEN [12.48 p.m.]: My office received our amendments from Parliamentary Counsel at 10.17 last night. It has been a great effort to have adequate explanations of our amendments prepared in that time. I was waiting—and I do not seek to shift the blame to the Clerks—for schedules of amendments to be drawn up. That in itself was a mammoth task.

Amendments negatived.

Mr IAN COHEN [12.50 p.m.]: I move Greens amendment No. 9:

No. 9 Page 6, clause 12. Insert after line 21:

- (e) to co-ordinate an ongoing series of natural resource and conservation assessments of each terrestrial and marine bioregion in the State, and to co-ordinate a natural resource and conservation assessment of the coastal region at least once every 10 years with the first such assessment to be completed within 5 years,

This amendment provides for bioregional assessments to be undertaken at least once every 10 years. A letter from the National Parks Association of New South Wales to the Hon. Craig Knowles dated 1 August 2003 and signed by Andrew Cox, the executive officer, states:

... regional assessments provide a useful mechanism to:

- move toward a comprehensive, adequate and representative reserve system;
- facilitate voluntary private land conservation;
- achieve resilient and sustainable agricultural systems;
- improve data coverage and data interpretation;
- review public land management, including reassessing historic allocations (eg. State forest); and
- support natural resource decision-makers to improve conservation, including NSW and Federal governments, local governments and natural resource committees and boards.

It has been demonstrated that the cost of managing threatening processes now is far more cost-effective than recovering species, ecosystems and ecological processes in the future.

I commend Greens amendment No. 9 to the Committee.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [12.52 p.m.]: The Government opposes Greens

amendment No. 9. It is not consistent with the core functions of the Natural Resources Commission [NRC] as recommended by the Sinclair report. The bill already contains the power for the Minister to request the NRC to conduct inquiries into priority areas.

Amendment negatived.

Mr IAN COHEN [12.52 p.m.]: I move Greens amendment No. 11:

No. 11 Page 6, clause 12, lines 31 and 32. Omit all words on those lines. Insert instead:

- (i) to arrange for information to be gathered and disseminated on natural resource management issues, with a particular emphasis on the following matters:
 - (i) gathering such information about the State's natural resources as may be needed by the Commission or by catchment management authorities,
 - (ii) property vegetation plans within the meaning of the *Native Vegetation Act 2003*,
 - (iii) information from assessments and inquiries co-ordinated or undertaken by the Commission,
- (j) to monitor the effectiveness of the *Native Vegetation Act 2003* in preventing the clearing of remnant native vegetation and protected regrowth within the meaning of that Act.

This amendment would ensure that the information-gathering exercises of the commission retain a particular focus on the need for all of this reform to improve catchment management in New South Wales and to end broadscale land clearing.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [12.52 p.m.]: The Government opposes Greens amendment No. 11. The bill already contains sufficiently broad powers to allow the gathering and dissemination of information as listed in paragraph (i) of clause 12. To the extent that the State Government adopts standards and targets on vegetation the commission already has a role in auditing the effectiveness of catchment action plans in achieving those targets. The Native Vegetation Bill requires the Act to be reviewed after five years.

Amendment negatived.

Mr IAN COHEN [12.53 p.m.]: I move Greens amendment No. 12:

No. 12 Page 6, clause 12. Insert after line 32:

- (2) Without affecting the generality of subsection (1), the principal functions of the Commission include the giving of advice and the making of reports and recommendations to the Minister with respect to:
 - (a) policies that may or should be adopted by the Government and public authorities concerning the planning and management of natural resources, and
 - (b) the co-ordination of policies and activities of the Government and public authorities that relate to natural resources, and
 - (c) the lands that should be acquired by or on behalf of the State or any public authority, whether for the purpose of protecting natural resources or providing access to or enjoyment of those resources, or for other purposes.

This amendment picks up critical functions currently undertaken very effectively by the New South Wales Coastal Council and ensures that the commission can advise on what constitutes best practice government policy on natural resources. I commend the amendment to the Committee.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [12.54 p.m.]: The Government opposes Greens amendment No. 12. Proposed subclause (2) is inconsistent with the Sinclair report. However, if these matters become priority issues the Minister would request the commission to report on them.

Amendment negatived.

Clause 12 agreed to

Mr IAN COHEN [12.54 p.m.]: I move Greens amendment No. 14:

No. 14 Page 7, clause 13 (e), line 6. Insert "and interests in" after "knowledge of".

This amendment recognises that indigenous culture and practices in relation to natural resources are not simply a historical well that the commission can dip into from time to time but that the very real relationships, practices and ownership rights of indigenous people are recognised by the commission.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [12.54 p.m.]: The Government opposes this amendment. Indigenous interests in natural resource management fall within the scope of the social implications of clause 12 (b). No other interests are specifically referred to in the clause.

Amendment negatived.

Mr IAN COHEN [12.56 p.m.]: I move Greens amendment No. 15:

No. 15 Page 7. Insert after line 8:

14 State-wide standards and targets

The Commission is to set State-wide standards and targets in relation to the following matters:

- (a) the delivery of incentives and funds in relation to natural resource management,
- (b) the conduct of forestry operations involving the clearing of native vegetation on private land,
- (c) the principles to be adopted in relation to the clearing of native vegetation within the meaning of the *Native Vegetation Act 2003*,
- (d) the conditions to be attached to a development consent granted under the *Native Vegetation Act 2003*,
- (e) the methods of evaluating whether vegetation is native vegetation, remnant native vegetation or regrowth for the purposes of the *Native Vegetation Act 2003*,
- (f) property vegetation plans within the meaning of the *Native Vegetation Act 2003*,
- (g) catchment action plans within the meaning of the *Catchment Management Authorities Act 2003*,
- (h) the methods for assessing the impact of activities on environmental outcomes within the meaning of the *Native Vegetation Act 2003*,
- (i) the methods for assessing the impact of activities on natural resources,
- (j) the conduct of field assessments that relate to natural resource management,
- (k) any other matter that the Commission considers to be necessary in order to achieve the objects of this Act.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [12.56 p.m.]: The Government opposes Greens amendment No. 15. The National Resources Commission setting standards and targets is inconsistent with the Sinclair report. The commission has been given complete independence in making recommendations about statewide standards and targets on natural resource management issues. Setting standards and targets is to be a matter for the Government. The NRC will focus on recommending outcomes, standards and targets, auditing and carrying out assessments and inquiries. It is the role of the Department of Infrastructure, Planning and Natural Resources and the catchment management authorities to develop systems for delivering these. It is already provided that all draft catchment action plans must be referred to the commission for advice and the Minister must take into account such advice.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [12.57 p.m.]: I support the amendment. Legislation should set targets and means for quantifying whether we have met them. In other words, we should have evidence-based legislation—that is, what are we trying to do and have we succeeded in doing it? The present provision only does half of that: it simply sets the targets. The late lamented Greens amendment No. 11 asked for an audit of how things were going. It would have tied in nicely with this requirement but it was defeated. The Government says that its job is to set targets. If the Minister does not want the commission to set targets, will the Minister set targets? Will these standards and targets be set or will they not be? Will it simply be his prerogative not to set them?

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [12.58 p.m.]: It is the Government's responsibility to do that. I cannot—

The Hon. Dr Arthur Chesterfield-Evans: Will you do it, though?

The Hon. MICHAEL COSTA: It has the power to do it if it sees it as necessary.

Amendment negatived.

Clause 13 agreed to.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [12.58 p.m.]: I move Government amendment No. 3:

No. 3 Page 7, clause 14 (1), lines 10 and 11. Omit "reports on its recommendations, audits, inquiries and advice". Insert instead "reports on the exercise of all its functions under section 12".

This amendment makes it clear that all major reports of the Natural Resources Commission will be made public. This will help to ensure that the advice it provides is independent.

The Hon. RICK COLLESS [12.59 p.m.]: The Opposition will not oppose the amendment.

Mr IAN COHEN [12.59 p.m.]: The Greens do not oppose Government amendment No. 3. We understand that it just ensures that all functions are reported on. We are happy to support that.

Reverend the Hon. FRED NILE [12.59 p.m.]: The Christian Democratic party supports the amendment.

Amendment agreed to.

Mr IAN COHEN [1.00 p.m.]: I move Greens amendment No. 16:

No. 16 Page 7, clause 14 (2) (b), line 17. Omit "adopted by the Government".

I commend the amendment.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [1.00 p.m.]: The Government opposes this amendment because the NRC is an advisory body. While its advice will be considered by the Government, it is not appropriate for such an advisory body to have an effective veto over the making of plans. The Minister for the Environment's comment about amendment No. 15 is also relevant.

Amendment negatived.

Mr IAN COHEN [1.01 p.m.]: I move Greens amendment No. 17:

No. 17 Page 7, clause 14. Insert after line 20:

- (3) The reports of the Commission are, in relation to any recommendation made by the Commission, to contain details of the matters considered and the reasons for making the recommendation.

This amendment relates to the commission's reporting processes. It ensures that reports are released to the public within 14 days. This Government has a long and undistinguished history of not releasing reports that are not to its liking. They remain in draft, never to be released. This amendment ensures that the reports are released within two weeks, not in a reasonable time as proposed by the Government.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [1.01 p.m.]: The Government opposes this amendment. The NRC's reporting function is independent of the Government and the content and details of its reports will vary depending on their nature.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [1.02 p.m.]: I support this amendment in preference to the Government's amendment. I am very concerned about the Government sitting on reports. The mental health report may have been released yesterday, but I am not sure. It is about nine months since a major report has been released and the Government's response is extremely delayed, yet its release was said to be imminent during the estimates committee hearings in June. It would be much better if the Government were required to respond within a fixed period rather than to stipulate "a reasonable time", which is extremely elastic in the hands of this Government.

Amendment negatived.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [1.03 p.m.]: I move Government amendment No. 4:

No. 4 Page 7, clause 14 (3), line 21. Omit all words on that line. Insert instead:

- (3) Each report of the Commission is to be made public within a reasonable time after it is provided to the Minister.

This amendment aims to make it clear that there should be no unreasonable delays in commission reports being made public. This helps to strengthen the role of the commission as a source of independent advice to the Government.

The CHAIRMAN: Order! As Government amendment No. 4 and Greens amendment No. 18 are in conflict, Mr Ian Cohen should move that amendment now.

Mr IAN COHEN [1.03 p.m.]: I move Greens amendment No. 18:

No. 18 Page 7, clause 14 (3), line 21. Omit all words on that line. Insert instead:

- (3) A report made by or on behalf of the Commission is to be made public within 14 days after any such report is provided to the Minister.

The Greens' conflicting amendment provides that the Government must make reports available within 14 days. That is far more appropriate than "a reasonable time". That is wishy-washy. "A reasonable time" can be interpreted differently from the Minister down. The Greens believe that the Government's amendment is not strong enough. I commend the Greens amendment. Requiring that reports be released to the public within 14 days is reasonable and ensures transparency in terms of the activities of this commission.

Government amendment No. 4 agreed to.

The CHAIRMAN: Order! As Government amendment No. 4 has been passed, Greens amendment No. 18 can no longer be admitted.

Clause 14 as amended agreed to.

Mr IAN COHEN [1.05 p.m.]: I move Greens amendment No. 19:

No. 19 Page 8. Insert after line 2:

16 State Aboriginal Natural Resource Advisory Committee

- (1) The Commission is to appoint a State Aboriginal Natural Resource Advisory Committee.
- (2) The Committee is to consist of 13 members, appointed on the nomination of the Catchment Aboriginal Natural Resource Committees established under the *Catchment Management Authorities Act 2003*, one person being nominated by each of those Committees.
- (3) The functions of the Committee are to provide advice and assistance to the Commission in relation to matters that may impact on Aboriginal people or Aboriginal people's interests.
- (4) The procedure of the Committee is to be determined by the Commission or (subject to any determination by the Commission) by the Committee.

This amendment provides for proper indigenous consultation and engagement in natural resource management in New South Wales. The Aboriginal Natural Resource Committee will comprise one member from each regional Aboriginal natural resource committee and will provide advice and assistance to the Natural Resources

Commission, particularly in relation to the introduction of indigenous knowledge of natural resources management to the processes, and the development of standards and targets that reflect the need for the members of the CMAs to have knowledge of and skill in cultural heritage. In this way, the custodians of the lands and waters, especially those who have developed skills and expertise from participation in natural resource management processes, can have a formal role in the management of their lands and culture. I commend the amendment to the Committee because it provides the opportunity for Aboriginal cultural groups to participate appropriately in natural resource management, which is very important to their communities.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [1.06 p.m.]: The Government opposes this amendment. As recommended in the Sinclair report and the Minister's second reading speech, a new high-level stakeholder group known as the Natural Resources Advisory Council is to be created and will include members of the Aboriginal community.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [1.07 p.m.]: As I said in the second reading debate, I support this amendment and other amendments that recognise the need for formal Aboriginal input, which has been sadly neglected in the deliberation process leading up to this bill. Although the Government has given this assurance, once again it is in the future. The Australian Democrats would like it included in the legislation and this amendment does that very well. The Australian Democrats will also support other amendments relating to this issue.

Mr IAN COHEN [1.08 p.m.]: Patricia Harvey of the Metropolitan Local Aboriginal Land Council has written to me in the following terms:

I write to you regarding the Natural Resources Cognate Bills 2003.

The Metropolitan Local Aboriginal Land Council statutory corporation established by the NSW Government for the purposes of representing the Aboriginal people within its area in relation to matters of land and water management. This organisation is one of the largest private land holders in Sydney. This Aboriginal Land Council owns vast tracts of land throughout northern Sydney and Hawkesbury regions. This Land Council has land claims currently under consideration by the Department of Lands in respect of Pittwater, Narrabeen Lakes, Dee Why Lagoon, Manly Dam, Sydney Harbour and Port Botany.

The Metropolitan Local Aboriginal Land Council is the custodian of the lands and waters within its Land Council area. Mr Allen Madden, the Metropolitan Local Aboriginal Land Council Cultural Heritage Manager, is the person who your government calls upon to welcome to the procession of government events that occur. Mr Allen Madden is also the person who represented Metropolitan Local Aboriginal Land Council on the Sydney Harbour Catchment Management Committee.

As the custodians of our lands and waters and as significant land owners we are real stakeholders who have real concerns regarding the Bills. Our concerns are:

1. Consultation—The absolute failure of the Minister, the Hon Craig Knowles MLA, to engage with Aboriginal interests and seek our views or borrow from our knowledge is symbolic of the regard he has given us in these Bills. Aboriginal interests were not represented on the Native Vegetation Reform Implementation Group. Requests for meetings with the Minister were ignored until the NSWALC Aboriginal Land Council, our peak body, was given an audience with the Minister two days ago. We question whether at the time of the meeting all the Government's amendments to the legislation had already been drafted. We understand that the Minister wants Aboriginal people to have faith that he will look after us in the exercise of the very, very broad discretions he has in respect of these Bills. The Minister does not understand that any trust we had in him evaporated when he failed to talk to our peak body about the appointment of a representative to the Sinclair Group. The Minister must understand, however, that we realise that he must also be making the same promises to the green groups and the farmers because the legislation is bereft of detail. We call upon the Minister to disclose the promises he has made to the other stakeholders.
2. Aboriginal Cultural Heritage—Our most important function as custodians of these lands and waters is the protection and management of our cultural heritage. The Native Vegetation Bill 2003 removes the need for consideration of archaeological and anthropological impacts in considering the effects of land clearing which exists in the current legislation. The small mindedness of the powers that be within Government in relation to this issue is difficult to comprehend. While the Queensland Government has within the last few months enacted Aboriginal cultural heritage legislation that requires landholders to engage with the Aboriginal custodians of cultural heritage and develop cultural heritage management plans, the NSW Government has removed the only check on land clearing that gives effective protection to Aboriginal cultural heritage.
3. Representation—The NSW Aboriginal Land Council has sought guaranteed representation for Aboriginals on Catchment Management Authorities. We understand the response from Government has been to the effect that the Minister wants to appoint people on the basis of skills and knowledge alone. The Minister seems to forget that Aboriginal people are the custodians of all the lands and waters and that we have obligations under law and religion to care for those lands and waters. Without a guarantee of the representation of Aboriginal people on each of the CMA's we believe the natural resources reforms are built on flawed foundations that will see Aboriginal people relying upon the Minister remaining charitable to Aboriginal interests to even maintain those positions we are able to obtain in the current appointment process.

4. Catchment Contribution—We are aware that the Catchment Management Bill provides a mechanism for the CMA's levy catchment contributions against landholders. The failure to put any limitations upon these "rates" which protects Aboriginal land councils from having to pay contributions to a Government authority is an insult. In effect Aboriginal land councils can be required to pay rates to fund the repair of European land management practices. The requirement to pay the rates arises because the Aboriginal land councils are given land to compensate for the prior theft. We want some protection from the catchment contributions.
5. Critical Analysis—It is apparent from the wording of the Bills and the debate in the Legislative Assembly that the Minister and Government has failed to take the necessary time to critically analyse its proposals. Legislation having such far-reaching impacts should be the result of considered debate and community consultation. Instead the people of NSW will have legislation imposed on them which will be more remarkable for the concessions that were made by the Government to get the support of the NSW Farmers Association, than structural or philosophical reform of natural resource management that was promised.

We ask that you, Mr Cohen, convey to the NSW Legislative Council our utter dissatisfaction at the way that the Minister and the NSW Labor Government has conducted this reform process. When the Government wants something from us we are told that they wish to work with us in an open and co-operative manner, and we have tried to accommodate them. It seems now, at this most important moment, that the traffic is all one way and we have not had the courtesy returned.

The disregard with which we have been treated in these reforms leads us to conclude that we must reassess the way in which we deal with government. We do not support any of the Bills in the present form and encourage the Greens to oppose them in the Legislative Council.

I was specifically asked to place that letter on record.

Amendment negatived.

Clause 15 agreed to.

Clauses 16 and 17 agreed to.

Mr IAN COHEN [1.15 p.m.], by leave: I move Greens amendments Nos 20 and 21 in globo:

No. 20 Page 9, clause 18 (2), lines 13-16. Omit all words on those lines.

No. 21 Page 9, clause 18 (3), lines 20-22. Omit all words on those lines. Insert instead:

Cabinet document means a document prepared specifically for Cabinet.

These amendments act together to reduce the amount of secret-squirrel business that goes on in the guise of the Cabinet Office in New South Wales. This Government clause—which is now, unfortunately, pretty standard in New South Wales—has crept into all sorts of Acts across New South Wales. It enables the Director-General of the Cabinet Office to deem a document to be a Cabinet document by issuing a certificate. The certificate can be issued for an "information or question relating to the confidential proceedings of Cabinet". It is unnecessarily broad, as is the definition of "Cabinet Document" referred to in subsection (3). The amendments narrow the scope of what could be considered a Cabinet document which therefore is not able to be legitimately scrutinised by the commission. I commend the amendments to the Committee.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [1.16 p.m.]: The Government opposes the amendments. The current provisions are consistent with section 25A of the Independent Pricing and Regulatory Tribunal Act and the Freedom of Information Act.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [1.17 p.m.]: I strongly support Greens amendments Nos 20 and 21. The fact that Cabinet documents have been used to keep documents secret is a disgrace. As I have done on other occasions, I flag that the Government should adopt the open government legislation model of New Zealand, under which public interest documents regarding resources and policies are required to be made public, to ensure that its Cabinet documents are not kept secret. The amendment is very sensible, and I hope that the Opposition will support it.

Amendments negatived.

Clause 18 agreed to.

Clause 19 agreed to.

Mr IAN COHEN [1.18 p.m.]: I move Greens amendment No. 22:

No. 22 Page 9, clause 20, line 29. Omit "a Local Court". Insert instead "the Land and Environment Court".

This amendment ensures that proceedings for an offence against the Act are heard summarily by the Land and Environment Court. The Land and Environment Court has specialist jurisdiction and knowledge in natural resource management. It is an expertise that should be brought to bear when considering offences against the Act. I commend the amendment to the Committee.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [1.18 p.m.]: The Government opposes Greens amendment No. 22. Offences under the regulations are likely to be minor matters. Given the 100 penalty units limit, such matters are appropriately dealt with through a Local Court. A person may still commence proceedings in the Supreme Court where they allege the Act has been breached.

Amendment negated.

Clause 20 agreed to.

Clauses 21 to 24 agreed to.

Mr IAN COHEN [1.20 p.m.]: I move Greens amendment No. 23:

No. 23 Page 13, schedule 1, clause 7. Insert after line 28:

- (3) Despite subclause (2), the Commissioner or an Assistant Commissioner is prohibited from holding other office or engaging in employment outside the duties of the office of Commissioner or Assistant Commissioner if the other office or employment:
 - (a) appears to raise a conflict with the proper performance of the duties of the office of Commissioner or Assistant Commissioner, or
 - (b) results in a direct or indirect pecuniary interest in a matter that relates to, or may relate to, the duties of the office of Commissioner or Assistant Commissioner.
- (4) In this schedule:

pecuniary interest has the same meaning as in section 442 of the *Local Government Act 1993*.

If this House has learnt anything the past year it has been about what constitutes pecuniary interests. The *Sydney Morning Herald* stated:

But the latest round of entries on the NSW pecuniary interests register reveals that the State's politicians have either forgotten its importance, no longer take it seriously or are simply unaware of exactly what they are supposed to declare.

This amendment ensures that the commissioners are required, as are other members of our civil society who hold positions of privilege, to report upon their pecuniary interests. It is a standard pecuniary interest clause, a mirror of section 443 of the Local Government Act 1993. I commend the amendment to the Committee.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [1.20 p.m.]: The Government opposes this amendment as it is unnecessary. The commission is providing advice to the Minister, he is not making natural resource allocation decisions himself. In addition, the Independent Commission Against Corruption Act 1998 would apply to this body as it does to all government agencies.

Amendment negated.

Schedule 1 agreed to.

Schedule 2 as amended agreed to.

Mr IAN COHEN [1.21 p.m.]: I move Greens amendment No. 30:

No. 30 Page 20, schedule 3, clause 2. Insert after line 7:

- (4) On the abolition of any such body, any assessment into a matter relating to the management of natural resources that was being conducted by the body immediately before its abolition is transferred to the Commission and is to be conducted by the Commission on the same terms as the assessment was conducted by the body.

This amendment relates to any of the current assessments under way in New South Wales, such as the coastal assessment, and the western regional assessments at Bragalow and Nandewar. A lot of money, preparatory work and community consultation have been fed into these assessments. It would be an absolute crime to allow all of that work to fall into abeyance while the new commission gets up and running, leaving the data to become stale. This amendment will remedy this situation and I commend it to the Committee.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [1.22 p.m.]: The Government opposes Greens amendment No. 30. The future role of the Natural Resources Commission [NRC] in these assessments has not been determined. The first priority of the NRC will be to set standards and targets relevant to catchment action plans so that funds can begin to flow. The bill allows the Minister to refer these assessments to the NRC where appropriate by legislation as required for assessments to be conducted by the Department of Infrastructure, Planning and Natural Resources.

Amendment negatived.

Schedule 3 as amended agreed to.

Title agreed to.

The CHAIRMAN: Order! The Committee will now deal with the Catchment Management Authority Bill.

Clauses 1 and 2 agreed to.

The TEMPORARY CHAIRMAN (The Hon. Kayee Griffin): Order! As Government amendment No. 1 and Greens amendment No. 1 as circulated are in conflict, they will be moved together.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [1.25 p.m.]: I move Government amendment No. 1:

No. 1 Page 2, clause 3, lines 9 and 10. Omit all words on those lines. Insert instead:

The objects of this Act are as follows:

- (a) to establish authorities for the purpose of devolving operational, investment and decision-making natural resource functions to catchment levels,
- (b) to provide for proper natural resource planning at a catchment level,
- (c) to ensure that decisions about natural resources take into account appropriate catchment issues,
- (d) to require decisions taken at a catchment level to take into account State-wide standards and to involve the Natural Resources Commission in catchment planning where appropriate,
- (e) to involve communities in each catchment in decision making and to make best use of catchment knowledge and expertise,
- (f) to ensure the proper management of natural resources in the social, economic and environmental interests of the State,
- (g) to apply sound scientific knowledge to achieve a fully functioning and productive landscape,
- (h) to provide a framework for financial assistance and incentives to landholders in connection with natural resource management.

This amendment aims to provide greater detail about the role of the catchment management authorities, the functions they will perform, how they will operate and what they are expected to achieve. Catchment management authorities have the important role of assisting and supporting land-holders in natural resource management. In doing so, it should be noted that they will not be charging fees to land-holders to develop and approve property vegetation plans in the initial phase of their operations. While on the subject of financial matters, I should say that the contribution powers in the bill carry forward from the Catchment Management Act 1989. Those powers have been used sparingly in the past. However, it is necessary to retain them so that the levies in place work effectively and can continue. The Government does not intend generally allowing the new catchment management authorities to begin raising new levies elsewhere in the State.

Mr IAN COHEN [1.27 p.m.]: Government amendment No. 1 deals with the functions of the catchment management authorities in the bill rather than intended overall goals. I understand there is no reference to ecologically sustainable development [ESD] in this amendment and the Greens have concerns about that matter. I move Greens amendment No. 1:

No. 1 Page 2, clause 3, lines 9 and 10. Omit all words on those lines. Insert instead:

The objects of this Act are as follows:

- (a) to provide an integrated approach to catchment management,
- (b) to provide for, encourage and promote the conservation and management of natural resources,
- (c) to prevent the degradation and inappropriate use of natural resources, and to improve the condition of natural resources,
- (d) to improve the health of the natural environment in catchments,
- (e) to encourage the rehabilitation (including revegetation) of land in accordance with State-wide natural resource management standards and targets,
- (f) to ensure that plans relating to land use and the use of natural resources are integrated,
- (g) to set standards and targets for natural resource management within catchments that are in accordance with State-wide natural resource management standards and targets,
- (h) to ensure community participation in catchment management,

in accordance with the principles of ecologically sustainable development within the meaning of section 6 of the *Protection of the Environment Administration Act 1991*.

Greens amendment No. 1 provides an object clause for the Act. It establishes an integrated framework for catchment management in New South Wales. It reflects and adds to the objects of the Catchment Management Act 1989. The objects are embedded in the principles of ecologically sustainable development. The Environment Protection Authority [EPA] has been the guardian of implementing the New South Wales Government's delivery of our responsibilities under the Councils of Australian Government [COAG] framework, that is, the Federal Government's implementation of its international obligations. The EPA described the New South Wales Government approach to delivering ESD as:

In 1992 the Council of Australian Governments agreed that ESD is "*development which aims to meet the needs of Australians today, while conserving our ecosystems for the benefit of future generations*" (Commonwealth of Australia 1992). The United Nations Commission on Environment and Development defined ESD as "*development that meets the needs of the present without compromising the ability of future generations to meet their own needs*" (WCED 1987). There are many difficulties in expecting such a general concept as ESD to be clearly understood or to mean exactly the same thing to all people when it covers such diverse areas of activity, yet the term is used universally and has application in international, national and local settings.

The core objectives of the National Strategy for ESD, signed by all Australia's governments in December 1992 are:

to ensure a path of economic wellbeing that safeguards the welfare of future generations, often referred to as "intergenerational equity"

to enhance the individual and community wellbeing within and between generations, often referred to as "intragenerational equity"

to conserve and protect biological diversity and essential ecological processes and life-support systems.

Additional guiding principles of ESD in the National Strategy include the following:

Decision-making processes should effectively integrate both long and short-term economic, environmental, social and equity considerations.

Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation (often called the "precautionary principle").

The global dimension of environmental impacts of actions and policies should be recognised and considered.

The need to develop a strong, growing and diversified economy which can enhance the capacity for environment protection should be recognised.

The need to maintain and enhance international competitiveness in an environmentally sound manner should be recognised.

Cost-effective and flexible policy instruments for protecting the environment should be adopted, such as improved valuation, pricing and incentive mechanisms.

Decisions and actions should provide for broad community involvement on issues that affect the community (Commonwealth of Australia 1992).

In New South Wales section 6 of the Protection of the Environment Administration Act 1991 [POEA Act] is the basis for many of the ESD objectives that are now enshrined in New South Wales legislation. The most fundamental aspect of these objectives, consistent with national and international views, is that the present generation needs to ensure the health, diversity and productivity of the environment for the benefit of future generations. Put simply, each generation is expected.

Yet another Minister in the same Government does not want to ensure that catchment management in this State happens in accordance with ESD. A clear objects clause will provide guidance to the new catchment authorities, which will have a much greater range of responsibilities than the previous catchment management committees. This is a sensible amendment. I commend Greens amendment No. 1 to the Committee.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [1.31 p.m.]: The Government opposes this amendment. It is inconsistent with the agreed position, the Sinclair report.

Government amendment No. 1 agreed to.

The CHAIRMAN: As Government amendment No. 1 has been agreed to, Greens amendment No. 1 cannot be admitted.

Clause 3 as amended agreed to.

Clause 4 agreed to.

Mr IAN COHEN [1.32 p.m.]: I move Greens amendment No. 2:

No. 2 Page 3, clause 5, lines 11–14. Omit all words on those lines. Insert instead "set by the Natural Resources Commission in accordance with the *Natural Resources Commission Act 2003*."

This is a simple amendment that ensures that an independent Natural Resources Commission can set statewide targets and standards, rather than leaving it as a toothless tiger continually saying to the Government, "Oh wouldn't it be nice if you adopted this standard?" I commend Greens amendment No. 2 to the Committee.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [1.32 p.m.]: The Government opposes Greens amendment No. 2. The standards and targets are to be set by the Government. The Natural Resources Commission will provide advice to the Government on these standards and targets.

Amendment negatived.

Clause 5 agreed to.

Clauses 6 and 7 agreed to.

The Hon. JON JENKINS [1.33 p.m.]: I will not proceed with Outdoor Recreation Party amendment No. 1 as circulated, which relates to a drafting error.

Mr IAN COHEN [1.34 p.m.]: I move Greens amendment No. 3:

No. 3 Page 4, clause 8. Insert after line 19:

- (4) Each board member must be able to demonstrate:
 - (a) an active involvement in the community and an understanding of community values, and
 - (b) an understanding of the key natural resource management issues within the catchment management authority's area of operations, and
 - (c) a proven capacity to work in collaboration with others, and
 - (d) an understanding of ecologically sustainable development.

This amendment ensures that each board member has good negotiation, consultation and collaboration skills, which will be vital to the success of each catchment management authority. In addition, each board member will be required to have a good working knowledge of local natural resource management issues. I commend Greens amendment No. 3 to the Committee.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [1.34 p.m.]: The Government opposes Greens amendment No. 3. These matters have already been considered in the process for selecting board members and it is unnecessary for them to appear in the legislation.

Amendment negatived.

Mr IAN COHEN [1.35 p.m.]: I move Greens amendment No. 4:

No. 4 Page 4, clause 8 (4) (c), line 25. Omit all words on that line. Insert instead:

- (c) local government administration, land use planning and natural resource management,
- (d) knowledge of local aboriginal communities and their laws and customs,

This amendment provides that State Government experience is not one of the skills required by the board of the CMAs. First, State Government will have plenty of opportunity to recommend outcomes to CMAs as they hold the keys to any funding arrangements. Second, the entire point of the Catchment Management Authority Bill is to devolve decision-making to a regional level. The State Government cannot have a bet each way and still control outcomes at a regional level. If it is satisfied with the robustness of this legislative framework and the skill set to deliver to the catchments of New South Wales, it should let the CMAs get on with it, utilising local and regional skills.

In addition, the Greens amendment provides for genuine representation and engagement of Aboriginal communities in the process of catchment management. Cultural heritage, while important to indigenous community, is only part of a rich and vibrant relationship indigenous communities have with their environment. The State Aboriginal Land Council has met with Minister Knowles to discuss its deep concerns with the lack of consultation on these bills, and in particular the total disregard for the role indigenous people play in caring for country: their land, their practices and their culture. The New South Wales Aboriginal Land Council [NSWALC] sent me a letter on 4 December outlining its concerns. The letter is from William Johnstone, Chief Executive Officer, and it states:

To say that Aboriginal people have been overlooked by the Government in this process is the most favourable light in which the Government's actions can be put. This failure of process and protocol, on its own, is sufficient reason for the NSWALC to oppose the amendments.

The NSWALC feels, however, that when added to the failure to provide any legislative guarantee of representation on the Catchment Management Authorities, the lack of detail in relation to the guidelines and strategies, the failure to require the protection of Aboriginal cultural heritage, and the failure to legislatively provide for Aboriginal advisory committees, it has no option but to strenuously oppose the legislation.

The concerns outlined in that letter are quite clear. It is appalling that the Government can lock up two stakeholders—farmers and some of the environment groups—to hammer out an agreement which, precisely because of its limited scope, does not cater for the needs of major stakeholders such as local government or the New South Wales Aboriginal Land Council. Not only were they ignored as being relevant to natural resources outcomes in New South Wales and kept outside of this major reform process, but when they went to the Minister to exercise their democratic rights this exclusionary process was the precise excuse they were given for their legitimate concerns to be set aside. They are not alone; it is exactly the same short shrift the New South Wales Coastal Council was given in relation to its concerns on the Natural Resources Commission Bill. So far, with the wonderful support of the Coalition, that situation may be turned around. I commend Greens amendment No. 4 to the Committee.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [1.40 p.m.]: The Government opposes Greens amendment No. 4. The existing clause 8 (4) (c) is sufficiently broad to cover the matters outlined in the first part of the amendment. The second part of this amendment is covered by paragraph (b) of clause 8 (4), which refers to social and economic analysis, and paragraph (f), which refers to community leadership.

Amendment negatived.

The CHAIRMAN: Order! Government amendment No. 2 and Greens amendment No. 5 are in conflict. If the Government amendment is accepted, the Greens amendment can no longer be admitted.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [1.41 p.m.]: I move Government amendment No. 2:

No. 2 Page 4, clause 8 (4). Line 29. Omit all words on that line. Insert instead:

- (g) biodiversity conservation,
- (h) cultural heritage,
- (i) water quality.

This amendment clarifies that the expertise in biodiversity required by the board of the Catchment Management Authority should be expertise with a conservation focus, and it recognises that programs to support biodiversity conservation will be a significant part of the authority's work. The reference to cultural heritage recognises the interrelationship between natural resource management and cultural heritage. The addition of "water quality" recognises that this is a major issue that the authorities will be addressing in their catchment action plans, particularly as it is influenced by both land and water management in the catchment. As was noted in the Minister's second reading speech, this list of skills and knowledge is to be held by the board members collectively. It is not intended that there be an individual member assigned to each skill in the list.

The Hon. RICK COLLESS [1.42 p.m.]: The Opposition opposes this amendment. We do so on the ground that over the years since these natural resource management committees started appearing we have had a continuing battle to get proper and adequate representation of our constituents on the boards. We are fearful that if a further range of classifications is provided for that it will further reduce the representation that we have, given the limited number of people that are on these boards in the first place. The Minister pointed out that there is not necessarily one representative from each of those classifications; that it is a skills-based board, rather than an individual board. Quite frankly, that also concerns us, because it could be that no-one on the boards would have the sorts of skills that we would require them to have. It was interesting that the Minister spoke in such glowing terms about the need to have biodiversity conservation representatives on the board. It rather surprised the Opposition that he made that comment. This is a very important issue for The Nationals and the Coalition.

The Hon. Duncan Gay: It waters down the mix.

The Hon. RICK COLLESS: As my colleague the Leader of The Nationals points out, it waters down the mix on those boards. For those reasons, we will oppose the amendment.

Mr IAN COHEN [1.43 p.m.]: The Greens support the Government amendment. The skills of catchment management authorities are important, but land restoration is missing. Given the millions to go through these committees supposedly to restore our degraded lands and waterways, this is a serious oversight, and we seek to remedy it. We believe the amendment goes part of the way to doing that.

Reverend the Hon. FRED NILE [1.43 p.m.]: Our position has been to try to support the group that has been co-operating in the preparation of these amendments. We understand the amendment moved by the Government has the support of the Total Environment Centre and New South Wales Farmers. The Government could clarify the position by reiterating that in appointing those persons the Minister would make sure there were people on the authorities who know something about primary production, for example. Obviously, the Opposition is concerned that the board will be loaded with environmentalists. I ask the Minister to give that assurance. We support the Government's amendment.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [1.44 p.m.]: I can give that assurance. It would be the intention of the Government to have on the board people who have knowledge and expertise in primary production.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [1.45 p.m.]: Given the Minister's assurance, what is the point of the amendment? The amendment is not needed. If we have the Minister's assurance, the bill should be left as it is. We should not provide for a whole lot of diversified groups and water down the desired representation. There is absolutely no need for the amendment. Make the intention clear in the legislation so that farmers and industry groups do not have to have a court look at a Minister's second reading speech on this issue. Stick to the provision as it is.

The CHAIRMAN: Order! If Mr Ian Cohen wishes to proceed with Greens amendment No. 5, he should formally move it now. It will be ruled out of order if the Government amendment is agreed to.

Mr IAN COHEN [1.46 p.m.]: I move Greens amendment No. 5:

No. 5 Page 4, clause 8 (4), line 29. Omit all words on that line. Insert instead:

- (g) biodiversity conservation,
- (h) water conservation,
- (i) landscape restoration and rehabilitation.

This amendment introduces three new skills essential to the effective functioning of each catchment management authority: biodiversity conservation, water conservation, and landscape restoration and rehabilitation. These are core tasks for each catchment. This is a worthwhile amendment. But, having said that, as I have said already, I support the Government's amendment.

Question—That Government amendment No. 2 be agreed to—put.

The Committee divided.

Ayes, 23

Mr Breen	Ms Griffin	Ms Rhiannon
Dr Burgmann	Ms Hale	Ms Robertson
Mr Burke	Mr Hatzistergos	Ms Tebbutt
Ms Burnswoods	Mr Kelly	Mr Tsang
Dr Chesterfield-Evans	Mr Macdonald	Dr Wong
Mr Cohen	Reverend Dr Moyes	<i>Tellers,</i>
Mr Costa	Reverend Nile	Mr Primrose
Mr Egan	Mr Oldfield	Mr West

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Mr Clarke	Mr Gay	Mr Ryan
Mrs Forsythe	Mr Jenkins	<i>Tellers,</i>
Mr Gallacher	Mrs Pavey	Mr Colless
Miss Gardiner	Mr Pearce	Mr Harwin

Pairs

Mr Catanzariti	Ms Cusack
Mr Della Bosca	Mr Lynn
Mr Obeid	Ms Parker

Question resolved in the affirmative.

Government amendment No. 2 agreed to.

The CHAIRMAN: Order! As advised previously, Greens amendment No. 5 cannot be admitted with the passing of Government amendment No. 2.

The Hon. JON JENKINS [1.53 p.m.]: I move Outdoor Recreation Party amendment No. 2:

No. 2 Page 4, clause 8 (4). Insert after line 29:

- (h) ecotourism and recreational activities.

I have previously outlined the reasons for the amendment but I shall reiterate them. The Hon. Melinda Pavey stated that one million people live on the coast of this great State, and they do so to be near our waterways. Our population centres are our rivers and waterways, which are the main recreational facilities in this State. Fishing, swimming, boating and surfing are very important to the people of New South Wales. I ask the Minister to tell the boating and fishing community, in particular—which is the most important recreational activity in terms of numbers—the reason they will have no input whatsoever into the management of the waterways they enjoy. In the not too distant future boating, hook and line fishing and waterskiing will be banned from many of our rivers and waterways.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [1.56 p.m.]: The Government opposes the amendment for the reasons already outlined. I do not have a problem with recreational activities. However, the bill does not focus on the question of use but management. They are two separate matters that will be dealt with at another time. There appears to be confusion over the provisions in the bill. It should not be regarded as an attempt to restrict people in their enjoyment of various legal pursuits.

Mr IAN COHEN [1.55 p.m.]: The Greens oppose the amendment. We have a similar perspective to the Minister. The bill deals with management issues, which will concern all sections of the community, but recreational activities are outside the leave of the bill. The bill outlines in considerable detail environmental protection and appropriate catchment management. However, it is inappropriate at this time to include recreational use. Many other interested groups may also feel that they should be represented. It is important that the bill maintains its focus on management.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [1.57 p.m.]: The Opposition opposes the amendment. The rank hypocrisy of the Government and the Greens is unbelievable. They supported the previous amendment but oppose this amendment. Frankly, the amendments are the same; they seek to water down the gene pool. The board will comprise five to seven members with expertise in the following areas: primary production; environmental, social and economic analysis; State and local government administration; negotiation and consultation; business administration; community leadership; and biodiversity. However, Government amendment No. 2 increases the areas of expertise from seven to 10 with the addition of biodiversity conservation, cultural heritage and water quality. This amendment seeks to add two further areas: ecotourism and recreational activities. As a result both primary production and business administration will miss out but biodiversity, conservation and cultural heritage will be included. That is the one signed off on by Reverend the Hon. Fred Nile, the Government and the Greens. The Opposition opposed the previous amendment and for the same reasons opposes this amendment.

Reverend the Hon. FRED NILE [1.59 p.m.]: I have great sympathy for the amendment moved by the Hon. Jon Jenkins. The bill refers to skills and knowledge in the following areas in the opinion of the Minister. A primary producer could have knowledge of business administration, and negotiation consultation skills, but he could still be a primary producer. People are multiskilled. He is mistaken if he is trying to label these people. Many of these people also have an interest in recreational activities, and that would be in their minds. A primary producer could have a boat.

The Hon. Duncan Gay: Fred, it's a nice thought, but you and I both know what the construction is.

Reverend the Hon. FRED NILE: The honourable member does not have to accept the amendment. I agree with him. A primary producer could have interests in recreational activities. It is not something that will be banned. People have multiple interests.

The Hon. JON JENKINS [2.00 p.m.]: The Minister said that the Act does not contain within its management purview the management of boating and fishing activities on our rivers and waterways. I would like him to state that in reply so that it is in *Hansard*.

The Hon. Michael Costa: I didn't say that.

The Hon. JON JENKINS: Yes he did.

The Hon. Michael Costa: When did I say that?

The Hon. JON JENKINS: He said that recreational activities, boating and fishing, would not be managed by the Act, and therefore it was not appropriate to put it into this section.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [2.01 p.m.]: I did not say what is being alleged. I said that the Act deals with catchment management, not usage.

The Hon. Jon Jenkins: Is it going to cover fishing or what?

The Hon. MICHAEL COSTA: I will not debate it. I want to make it clear, in case there was any confusion—perhaps at this late hour, after going through this tortuous process with all these amendments, I might have said something inadvertently—I did not mean to say that, if I said it. I think the *Hansard* will show

that I did not say it. But to make it absolutely clear, I will make the point again that the Act deals with management, not usage, in terms of recreational activities.

The Hon. Jon Jenkins: It is a simple question. Will this Act manage boating and fishing on our waterways? Simple question, yes or no?

The Hon. MICHAEL COSTA: It is not question time.

Amendment negatived.

Mr IAN COHEN [2.02 p.m.]: I move Greens amendment No. 6:

No. 6 Page 4, clause 8 (5), line 31. Insert "or have knowledge of" after "reside in".

The amendment ensures that expertise in a particular catchment should be accepted if that is the best available expertise, regardless of where that person actually resides. There are many natural resource committee members across the State who are currently involved in decision making at a catchment level. They are well respected by the Government and other members of those committees. I am not talking about representatives of the environment movement. In some catchments it may be difficult to find appropriate expertise to sit on the board of a catchment. In catchments where there are plenty of people nothing is to be lost by considering expertise from outside the catchment. I commend Greens amendment No. 6 to the Committee.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [2.02 p.m.]: The Government opposes the amendment. Amendment No. 2, which we have already dealt with, deals with biodiversity, conservation and water quality, and they are considered adequate. Landscape restoration and rehabilitation are covered already by references to biodiversity, conservation, water quality and environmental analysis.

The Hon. RICK COLLESS [2.03 p.m.]: We very much oppose the amendment. One of the problems with all the vegetation and catchment management committees and various bodies I served on before I came into this place is that the environmental movements on these boards were controlled by a small number of people who went from board to board with the same agenda—professional committee goers picking up the \$60 or so an hour they were paid to attend board meetings. The same people were turning up at every committee. I made a note when I was reading through the bill that the words in clause (5) "as far as practicable" should be taken out also. It would be better if it read that the Minister is to ensure that the persons appointed as members of the board of an authority reside in the area of operations of the authority. Mr Ian Cohen is attempting to water that down even further by including the words "or have knowledge of". If those words were to be included we would be back to exactly the same situation we are in now: professional committee goers dropping in on every committee with little understanding of local issues that impact on the local area.

Amendment negatived.

Mr IAN COHEN [2.05 p.m.]: I move Greens amendment No. 7:

No. 7 Page 4, clause 8 (5), line 32. Insert "and at least one of the persons appointed is an Aboriginal person" after "the authority".

The amendment provides a more formal involvement for the indigenous community, which has been increasingly recognised as a key stakeholder in natural resources management in recent years. The form of consultation involvement has varied, but generally it has been inadequate. It is essential that community consultation take place in an appropriate form. This can be delivered only by ensuring that a member of the board or the authority is an Aboriginal person. I commend Greens amendment No. 7 to the Committee.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [2.05 p.m.]: The Government opposes the amendment. The intention is that people will be local residents, as far as practicable.

Amendment negatived.

Clause 8 as amended agreed to.

Clauses 9 to 14 agreed to.

Mr IAN COHEN [2.07 p.m.]: I move Greens amendment No. 8:

No. 8 Page 7, clause 15, lines 28 and 29. Omit all words on those lines. Insert instead:

- (f) to encourage and support the involvement of Aboriginal people within the area of operations of the authority in natural resource management,
- (g) to develop a memorandum of understanding between the authority and the council for each local government area that is within (whether wholly or partly) the area of operations of the authority, in order to provide a mechanism for interaction between the council and the authority,
- (h) to monitor, evaluate and report on its performance in relation to:
 - (i) its catchment management standards and targets, and
 - (ii) its strategies and programs for natural resource management,
- (i) to exercise any other function relating to natural resource management as is prescribed by the regulations

in accordance with the principles of ecologically sustainable development within the meaning of section 6 of the *Protection of the Environment Administration Act 1991*.

The amendment seeks to extend the functions of the authority to ensure an appropriate, meaningful consultation with all stakeholders to ensure accountability and transparency, which will garner community support for the authority, and ensure that all actions and decisions are carried out in accordance with the principles of ecologically sustainable development. I commend Greens amendment No. 8 to the Committee.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [2.07 p.m.]: The Government opposes the amendment. Paragraph (f) is already covered by the intention of clause 21, which requires the authorities to consult widely. Paragraph (g) is opposed because CMAs are expected to interact with a wide range of interests in their catchments, including local government. It is important that CMAs have the flexibility and the structure to interact in a way that suits the local situation. Paragraph (h) is considered to be covered by the reporting functions under clause 17. Paragraph (i) duplicates paragraph (f) in the bill. Reference to ecologically sustainable development is necessary, as it is considered by the Natural Resources Commission when the standards and targets are developed.

Amendment negatived.

Clause 15 agreed to.

Clauses 16 and 17 agreed to.

Mr IAN COHEN [2.09 p.m.]: I move Greens amendment No. 9 as circulated in my name:

No. 9 Page 8, clause 18, line 15. Insert "a function of the Minister that has been delegated to the authority under the *Native Vegetation Act 2003* or" after "other than".

This amendment seeks to ensure that the Act only allows the Minister to delegate the functions that relate to this Act. I commend the amendment to the Committee.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [2.10 p.m.]: The Government opposes Greens amendment No. 9. The delegation of powers under the Act should be addressed in that the source of the Act is the instrument of delegation.

Amendment negatived.

Clause 18 agreed to.

Clause 19 agreed to.

Mr IAN COHEN [2.10 p.m.]: I move Greens amendment No. 10:

No. 10 Page 9, clause 20 (1). Insert after line 14:

- (c) matters relevant to natural resource management in the area of operations of the authority, taking into consideration the conservation of:
 - (i) native vegetation and native species (particularly threatened species) and their habitats, and
 - (ii) soil and water and the control and prevention of salinity, and
 - (iii) archeologically, anthropologically or geologically sensitive or significant areas of land, in so far as they relate to natural resource management,
- (d) as far as is reasonably practicable, maps showing the location, type and condition of all native vegetation in the area of operations of the authority,
- (e) strategies and goals that demonstrate how the authority will achieve the objects of this Act,
- (f) a cultural heritage management plan dealing with such matters as are prescribed by the regulations.

This amendment seeks to broaden the scope of the content of plans to ensure that catchment action plans are an improvement on current natural resources management plans. It seeks also to ensure that catchment management plans include all aspects currently covered by regional vegetation management plans and catchment management blueprints while at the same time carrying the work and desired results of these plans further. This amendment also seeks to shorten the interval between having no plan and having a workable plan.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [2.11 p.m.]: The Government opposes Greens amendment No. 10. These matters of detail will be covered in the regulations and guidelines.

Amendment negatived.

The CHAIRMAN: Order! Greens amendment No. 11 and Government amendment No. 3 are in conflict. If the Greens amendment were to be successful, the Government amendment could not be admitted.

Mr IAN COHEN [2.12 p.m.]: I move Greens amendment No. 11:

No. 11 Page 9, clause 20 (2), lines 17–23. Omit all words on those lines. Insert instead:

- (2) In formulating a draft plan, the authority must:
 - (a) give effect to the objects of this Act and the *Native Vegetation Act 2003*, and
 - (b) give effect to any applicable standard or target set by the Natural Resources Commission in accordance with the *Natural Resources Commission Act 2003*, and
 - (c) ensure that the plan provides no less protection (with respect to the natural environment) to the land to which the plan applies than is afforded to that land by the provisions of any environmental planning instrument under the *Environmental Planning and Assessment Act 1979*, and
 - (d) have regard to other existing natural resource management plans (including any such plans in the course of preparation) for its area of operations, and
 - (e) obtain the consent of the Catchment Aboriginal Natural Resource Committee to the draft plan (such consent is not to be unreasonably withheld).

This amendment seeks to better integrate the three bills to ensure that any plans made under this legislation fully consider and abide by the provisions of the Native Vegetation Bill and the Natural Resources Commission Bill. I commend the amendment to the Committee.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [2.12 p.m.]: The Government opposes Greens amendment No. 11. The Government opposes proposed subclause (a) as the work of the catchment management authorities [CMAs] will extend beyond native vegetation matters to include soil conservation, water quality and other natural resource management issues. It opposes proposed subclause (b) because the provisions in the amendment are already covered by Government amendment No. 3. Proposed subclause (c) is unnecessary as a catchment action plan will not affect the provisions of any environmental planning instrument. Proposed subclause (d) repeats the provisions in subclause (b) of the bill. The Government opposes proposed subclause (e) as clause 21 already requires a CMA to consult widely on a draft catchment action plan.

Amendment negatived.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [2.13 p.m.]: I move Government amendment No. 3:

No. 3 Page 9, clause 20 (2), line 23. Omit all words on that line. Insert instead:

- operations, and
- (c) the need for the plan to comply with any State-wide natural resource management standards and to promote any such State-wide targets.

This amendment establishes a direct link between the statewide standards and targets adopted by the Government on the advice of the Natural Resources Commission and the catchment action plans developed by catchment management authorities.

Mr IAN COHEN [2.13 p.m.]: The Greens support Government amendment No. 3. However, I state for the record that omission of the requirement for cultural heritage management plan components is another example of the shabby treatment of the first Australians by this legislation. That merits acknowledgement. The feeling in the indigenous community, through its representatives, is that yet again it has not been fairly treated. I had hoped the Government would take steps to remedy the situation.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [2.14 p.m.]: I take exception to that. Clearly, the Government has made provisions for the representation of Aboriginal interests in terms of the advisory committee that deals with the prime body. This is just nonsense.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [2.14 p.m.]: What the Minister said is interesting. Obviously he did not participate in the negotiations or in the development of this bill. Last night I met with principals from the Aboriginal community, who reinforced the comments made by the Hon. Ian Cohen, and with many other people who were left out of the loop when the development of this legislation and other rationalisation took place behind closed doors.

Mr IAN COHEN [2.15 p.m.]: I refer the Minister to a number of letters from various indigenous peak bodies expressing concern. I have read them out in the Chamber. The Minister may care to look at the record of that correspondence. The Aboriginal community is extremely upset and angry. I suggest that the Minister not only read *Hansard* of this debate but also perhaps discuss the matter with the Minister involved.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [2.16 p.m.]: I took exception to the word "shabby". That is an opinion; it is not necessarily a fact. The fact is that the Government has made provisions. We may differ on those provisions, but that does not warrant the "shabby" description.

Amendment agreed to.**Clause 20 as amended agreed to.**

Mr IAN COHEN [2.16 p.m.], by leave: I move Greens amendment Nos 12 and 13 in globo:

No. 12 Page 9, clause 21, line 29. Insert "the preparation of" after "widely on".

No. 13 Page 9, clause 21. Insert after line 32:

- (2) Once the authority is satisfied that a draft catchment action plan is suitable for public exhibition, the authority:
 - (a) must give public notice of the draft plan, and such notice:
 - (i) must specify the places at which, the dates on which, and the times during which, the draft plan may be inspected by the public, and
 - (ii) must specify a period of at least 42 days during which submissions may be made to the authority in relation to the plan (the *submission period*), and
 - (iii) must be published in a daily newspaper circulating throughout New South Wales and in a local newspaper, and

- (b) must exhibit a draft catchment action plan and any supporting information on the Department of Infrastructure, Planning and Natural Resources' website and at the authority's offices, and
- (c) must allow any person to inspect and make copies of the draft plan and supporting information during that period, and
- (d) must receive submissions in relation to the draft plan from any person during the submission period and take those submissions into account before submitting the draft plan for approval.

Amendment No. 12 seeks to improve the requirements for consultation with the community regarding any draft plans at the start of the process rather than in an ad hoc fashion after the first draft is completed, as has happened previously. Amendment No. 13 seeks to provide consistency with other similar legislation, such as the Environmental Planning and Assessment Act, and to ensure adequate consultation with all interested members of the community. I commend the amendments to the Committee.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [2.17 p.m.]: The Government opposes these amendments. Amendment No. 12 is unnecessary as it already reflects the intention of the bill. As for amendment No. 13, clause 21 of the bill requires that catchment management authorities [CMAs] consult widely. While all CMAs would be expected to carry out a process similar to that set out in the proposed amendment, it would not necessarily represent a suitable means of consulting all communities within the catchment. CMAs should be free to use whatever mechanisms are effective in their catchments. If necessary, regulations can be made to specify consultation arrangements.

Amendments negatived.

Clause 21 agreed to.

Mr IAN COHEN [2.18 p.m.], by leave: I move Greens amendments Nos 14 and 15 in globo:

No. 14 Page 9, clause 22 (1). Insert after line 36:

- (b) the Minister for the Environment, and

No. 15 Page 10, clause 23 (2), lines 19 and 20. Omit "is satisfied (having regard to the advice of the Natural Resources Commission) that". Insert instead "for the Environment has given his or her concurrence to the making of the plan and the Natural Resources Commission has certified that".

These amendments seek to formalise the role of the Minister for the Environment and, by association, his department. Natural resources management, although being under the portfolio of the Minister for Infrastructure and Planning, and Minister for Natural Resources, is closely entwined with that environmental management. In fact, many of the catchment blueprints make reference to natural resources and environment management as the purpose of the catchment blueprints. It is essential, therefore, that the Minister for the Environment have a formal role of concurrence in approving the draft catchment action plans. Amendment No. 15 also gives greater strength and validity to the role of the Natural Resources Commission. I commend Greens amendments Nos. 14 and 15 to the Committee.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [2.19 p.m.]: The Government opposes both amendments. The Minister for the Environment can contribute to statewide standards and targets that the Government is considering or adopting. It is unnecessary for him or her to consider each catchment action plan. The Natural Resources Commission [NRC] will be an advisory body. While its advice will be considered by the Minister, it is not appropriate for such an advisory body to have an effective veto over the making of plans. The comment about the Minister for the Environment in relation to amendment No. 14 is also relevant to amendment No. 15.

The Hon. RICK COLLESS [2.20 p.m.]: The Coalition is opposed to this amendment. A fundamental problem with native vegetation legislation in New South Wales over the past few years is that we continually have to obtain the concurrence of the Minister for the Environment. All along the line the Minister for the Environment has an input into the process. The requirement of plans having to be signed off by the Minister for the Environment will incorporate yet another bureaucratic layer into the process. One of the major concerns of the Coalition with this bill is that the Threatened Species Conservation Act overrides the Native Vegetation Bill. The Coalition believes that the Native Vegetation Bill should override the Threatened Species Conservation Act on agricultural land. This is vegetation management on agricultural land, not national park land. On agricultural

land the Native Vegetation Bill should take precedence over the Threatened Species Conservation Act. The Coalition is very much opposed to this amendment.

Amendments negatived.

Clause 22 agreed to.

Mr IAN COHEN [2.22 p.m.]: I move Greens amendment No. 16:

No. 16 Page 10, clause 23 (2), line 24. Insert at the end of the line:

and

(c) the plan is in accordance with and gives effect to the objects of the *Native Vegetation Act 2003*,

This amendment seeks to further integrate this legislation with the native vegetation legislation, which will ensure greater integration of natural resources management actions and functions, including management plans. I commend Greens amendment No. 16 to the Committee.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [2.23 p.m.]: The Government opposes this amendment. Standards and targets are intended to achieve this. In addition, the focus of the catchment management authorities will not be limited to native vegetation. There will be many other Acts relevant to these plans, and they will cover matters such as water quality and soil conservation.

Amendment negatived.

Clause 23 agreed to.

Clause 24 agreed to.

Mr IAN COHEN [2.24 p.m.]: 2.24 I move Greens amendment No. 17:

No. 17 Page 11, clause 25. Insert after line 11:

(4) Before amending or revoking a catchment management plan, the Minister is to give the public at least 28 days notice of the Minister's intention to amend or revoke the plan.

This amendment seeks to add transparency and accountability to the process of managing natural resources in New South Wales. It is not unreasonable to request reasonable notification and explanation regarding natural resources management plans that affect the community's involvement with natural resources management. I commend Greens amendment No. 17 to the Committee.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [2.24 p.m.]: The Government opposes this amendment. In general, the Minister would be expected to give notice to a catchment management authority of his intention to amend or revoke a plan. However, the Minister should have the flexibility to rapidly end or revoke a plan, should this prove necessary.

Amendment negatived.

Clause 25 agreed to.

The CHAIRMAN: There are two amendments to clause 26, Greens amendment No. 18 and Government amendment No. 4. These amendments conflict so I propose that they both be moved. The Greens amendment will be voted on first. If the Greens amendment is successful, the Government's amendment cannot be admitted.

Mr IAN COHEN [2.25 p.m.]: I move Greens amendment No. 18:

No. 18 Page 11, clause 26 (3), lines 24 and 25. Omit "or by an audit panel appointed by the Minister". Insert instead "and the results of any such audit are to be made publicly available".

This amendment seeks to ensure that any audit or power to audit maintains independence and is not inappropriately delegated. This amendment also seeks to give greater transparency and accountability to the auditing process. I commend Greens amendment No. 18 to the Committee.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [2.25 p.m.]: I move Government amendment No. 4:

No. 4 Page 11, clause 26 (3), line 24. Insert "independent" before "audit panel".

This amendment makes it clear that any audit panel appointed by the Minister is an independent one and aims to maintain the integrity of the system of catchment action plans. The performance of boards will be guided and monitored through the development and performance agreements with the Minister. This will make clear what is expected of the boards and will be a major mechanism for holding the boards accountable. The Government opposes Greens amendment No. 18. It is unnecessary, as the Natural Resources Commission Bill already provides that the reports of the Natural Resources Commission will be made public.

The Hon. RICK COLLESS [2.26 p.m.]: The Opposition will not oppose the Government's amendment. However, the Opposition opposes the Greens amendment.

Mr IAN COHEN [2.26 p.m.]: That is disappointing. It was a very short détente between the Greens and The Nationals, despite such fertile expectations. Although I believe that the Greens amendment has a superior design, the Greens do not oppose Government amendment No. 4. The independence of any audit is vital to ensuring that the community can have confidence in the outcomes.

Greens amendment No. 18 negatived.

Government amendment No. 4 agreed to.

Clause 26 as amended agreed to.

Mr IAN COHEN [2.27 p.m.], by leave: I move Greens amendments Nos 19 to 22 inclusive in globo:

No. 19 Page 12, clause 27 (2), line 7. Omit "to seek".

No. 20 Page 12, clause 28 (2), line 19. Omit "may seek". Insert instead "must seek".

No. 21 Page 15. Insert after line 5:

35 Documents of authority to be publicly available

- (1) An authority must make the following documents available to be inspected by the public at the office of the authority during ordinary business hours:
 - (a) the authority's code of conduct (if any),
 - (b) the authority's code of meeting practice (if any),
 - (c) any annual reports of the authority,
 - (d) any annual financial reports of the authority,
 - (e) any auditor's reports,
 - (f) any catchment action plans and supporting documentation,
 - (g) any agendas and business papers for meetings of the board of the authority and those of its committees of which all the members are members of the board (a *committee of the board*), but not including business papers for matters when a meeting is closed to the public,
 - (h) any minutes of meetings of the board of the authority (including any committee of the board) but restricted (in the case of any part of a meeting that is closed to the public), to the resolutions and recommendations of the meetings,
 - (i) any annual reports of bodies exercising functions of the board of the authority,
 - (j) any other document of the authority or the board of the authority, subject to subsections (2) and (3).
- (2) The authority is not required to allow public inspection of a part of a document that deals with one of the following matters:
 - (a) personnel matters concerning an individual (other than a member of the board of the authority),

- (b) the personal hardship of a person who resides in the area of operations of the authority,
 - (c) a trade secret,
 - (d) matters that would disclose the nature and location of a place or an item of Aboriginal significance if the authority has reason to believe that an Aboriginal person traditionally associated with the land may have concerns about making such information publicly available,
 - (e) a matter that if disclosed would be an offence under another Act or that would be a breach of confidence.
- (3) The authority is not required to allow public inspection of a document if:
- (a) the document is not current and allowing public inspection is not reasonably practicable, or
 - (b) the authority determines that allowing public inspection of the document would be contrary to the public interest.
- (4) For the purpose of determining whether public inspection of a document would be contrary to the public interest, it is irrelevant that inspection of the document may:
- (a) cause embarrassment to the authority or to a member of the board of the authority or to an employee of the authority, or
 - (b) cause a loss of confidence in the board of the authority, or
 - (c) cause a person to misinterpret or misunderstand the information contained in the document because of an omission from the document or for any other reason.

No. 22 Page 15. Insert after line 5:

35 Catchment Aboriginal Natural Resource Committees

- (1) Each authority is to establish a Catchment Aboriginal Natural Resource Advisory Committee.
- (2) Each Committee is to consist of 10 members (5 of which are to be male and 5 of which are to be female), appointed by the Minister in consultation with the Minister for Aboriginal Affairs.
- (3) The members of a Committee are to be persons who together have, in the opinion of the Minister, skills and knowledge in the following areas in so far as they relate to the area of operations of the authority establishing the Committee:
 - (a) Aboriginal natural resources management and practices,
 - (b) Aboriginal heritage management,
 - (c) Aboriginal land council systems and functions,
 - (d) Aboriginal social and economic issues.
- (4) The functions of a Committee are:
 - (a) to provide advice and assistance to the authority establishing the Committee in relation to matters that may impact on Aboriginal people or Aboriginal people's interests in the authority's area of operations,
 - (b) to provide advice to the State Aboriginal Natural Resource Advisory Committee if requested to do so by that State Committee,
 - (c) such other functions as are conferred or imposed on the Committee by or under this or any other Act, including functions as may be prescribed by the regulations.
- (5) The procedure of a Committee is to be determined by the authority establishing the Committee or (subject to any determination by the authority) by the Committee.

Greens amendment No. 19 simply seeks to strengthen the clause. Greens amendment No. 20 seeks to strengthen the role of the Natural Resources Commission and strengthen the integration of natural resources management. Greens amendment No. 21 seeks to ensure better transparency and accountability of the board of an authority. This amendment is consistent with similar provisions of the Local Government Act.

The success of the devolution of natural resource management from the State Government to the CMAs depends upon the confidence that the community has in the CMAs. The public must have confidence that CMAs are fulfilling their duties in a responsible and accountable manner. To this end, it is essential that CMA

documents are available for public inspection. This amendment guarantees an appropriate level of transparency and accountability. It lists the documents that the CMA must make available for public inspection. It also lists documents that may be exempt from public inspection provisions. They include documents relating to personnel matters concerning an individual other than a board member, the personal hardship of a person who resides in the area of operations of the authority, a trade secret, matters which would disclose the nature, location or items of sensitivity to Aboriginal people, or a matter whose disclosure would breach another Act or that would be a breach of confidence.

Furthermore, a document will be exempt from public inspection provisions if the document is not current and it is not reasonably practicable to allow public inspection, or if the authority determines that allowing public inspection of the document would be contrary to the public interest. Paragraphs (a) and (b) of clause 36 (4) provide that the board may not determine that public inspection of documents would be contrary to the public interest simply because such disclosure would embarrass the authority or a board member, or cause a loss of confidence in the board.

It is important that the authority maintain transparency and accountability to the community. The authority should not shield itself from public scrutiny of its actions. Paragraph (c) provides that the public inspection of a document should also not be prevented on the basis that such inspection may cause a person to misinterpret or misunderstand information it contains, because of an omission from the document or for any other reason. The authority should not have the ability to refuse disclosure of documents because of its concerns about how they will be interpreted by the public. I commend Green amendments Nos 19, 20, 21 and 22 to the Committee.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [2.31 p.m.]: The Government opposes these amendments. Amendment No. 19 is not appropriate, as a catchment action plan will extend over a number of years, whereas an annual implementation program only covers one year of operation. It will not be possible for a one-year program to give effect to an entire catchment action plan extending over several years.

In relation to amendment No. 20, it is not essential for the NRC to consider each annual implementation program as it will have already considered the catchment action plan. The public disclosure of documents can be provided for in the regulations that govern the operation of the authorities, if this is found to be necessary. Amendment No. 21 is therefore opposed. In relation to amendment No. 22, the bill is consistent with clause 53 of the Catchment Management Act 1989, and the Government has aimed to base these provisions on the relevant provisions of that Act as much as possible.

Amendments negatived.

Clause 27 agreed to.

Clauses 28 to 35 agreed to.

Mr IAN COHEN [2.33 p.m.]: I move Greens amendment No 23:

No. 23 Page 15, clause 36 (3), line 29. Omit "10 penalty units". Insert instead "100 penalty units".

This amendment makes the penalty for the obstruction or hindrance of an authority acting under this section consistent with the penalty in the existing Native Vegetation Conservation Act. I commend Greens amendment No. 23 to the Committee.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [2.34 p.m.]: The Government opposes this amendment. There is a risk that open-standing provisions would result in CMAs evaluating legal cases rather than concentrating on their primary function.

Amendment negatived.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [2.34 p.m.]: I move Government amendment No. 5:

No. 5 Page 16, clause 36 (6) (a), line 4. Omit "6 months". Insert instead "one year".

This amendment recognises that on large properties landowners may not wish to visit all parts of their properties every six months. By increasing the time to 12 months a landowner will have a reasonable time in which to make a claim for compensation for any damage caused by an authority constructing works.

Amendment agreed to.**Clause 36 as amended agreed to.****Clause 37 agreed to.**

Mr IAN COHEN [2.35 p.m.]: I move Greens amendment No. 24:

No. 24 Page 16, clause 38, lines 21–25. Omit all words on those lines. Insert instead:

38 Restraint of contraventions of this Act

- (1) In this section, *contravention* includes a threatened or apprehended contravention.
- (2) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a contravention of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that contravention.
- (3) Proceedings under this section may be brought by a person on the person's own behalf or on behalf of that person and on behalf of other persons (with their consent), or a body corporate or unincorporate (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.
- (4) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.
- (5) If the Court is satisfied that a contravention has occurred, or that a contravention will, unless restrained by order of the Court, be committed, it may make such order as it thinks fit to remedy or restrain the contravention.

The intent of this legislation is to devolve natural resource management responsibilities from the State Government to the CMAs. For this reason it is imperative that the legislation has teeth, and that contraventions of the Act are treated seriously. It is essential that the Land and Environment Court have the power to remedy or restrain a contravention of the Act. To this end, these amendments provide that any person may bring proceedings in the Land and Environment Court to remedy or restrain a contravention of the Act. The amendments specify that in this section "contravention" includes a threatened or apprehended contravention. They empower the court to make such order as it thinks fit to remedy or constrain the contravention. I commend Greens amendment No. 24 to the Committee.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [2.36 p.m.]: The Government opposes this amendment. While it is unlikely that the Minister would remove a member for reasons other than those stated, there may be other valid reasons that are not apparent today.

Amendment negatived.**Clause 38 agreed to.****Clauses 39 to 44 agreed to.****Schedules 1 and 2 agreed to.**

Mr IAN COHEN [2.37 p.m.]: I move Greens amendment No. 25:

No. 25 Page 21, schedule 3, clause 6 (2), lines 26 and 27. Omit all words on those lines. Insert instead:

- (2) The Minister may remove a member from office for misbehaviour, incompetence or incapacity.

This amendment creates consistency between this Act and the Natural Resources Commission Act in the provisions for dismissal by the Minister of a member of the board of an authority. It provides a necessary limit on the Minister's powers of dismissal. Board members may only be removed from office for "misbehaviour, incompetence or incapacity". I commend Greens amendment No. 25 to the Committee.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [2.38 p.m.]: The Government opposes this amendment for reasons already stated.

Amendment negatived.

Mr IAN COHEN [2.39 p.m.]: I move Greens amendment No. 26:

No. 26 Page 23, schedule 3, clause 9 (6), lines 9 and 10. Omit all words on those lines.

This amendment ensures that appropriate disclosure of pecuniary interests by members of the board is necessary for decisions of the board of an authority to be valid. It is essential that the board's decisions be made in full knowledge of all relevant conflict of interest. Where it is clear that members have voted on a matter for which relevant pecuniary interests have not been disclosed, such decisions must be made null and void.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [2.40 p.m.]: The Government opposes the amendment, as it may lead to those dealing with the authority in good faith to be unintentionally penalised. Poor CMA processes should be subject to the processes of the Audit Office and the Independent Commission Against Corruption, and to ministerial review and intervention.

Amendment negatived.

Mr IAN COHEN [2.40 p.m.]: I move Greens amendment No. 27:

No. 27 Page 23, schedule 3, clause 9. Insert after line 10:

(7) In this clause:

pecuniary interest has the same meaning as in section 442 of the *Local Government Act 1993*.

This amendment provides that "pecuniary interests" has the same meaning as in section 442 of the Local Government Act 1993. I commend the amendment to the Committee.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [2.41 p.m.]: The Government opposes the amendment. It is not necessary to more closely define "pecuniary interests". Clause 9 is considered adequate as it stands.

Amendment negatived.

Mr IAN COHEN [2.41 p.m.]: I move Greens amendment No. 28:

No. 28 Page 23. insert after line 36:

13 Notice of meetings

- (1) The general manager of an authority must ensure that each member of the board of the authority is sent, at least 3 days before each meeting of the board, a notice specifying the date, time and location of the meeting and the business proposed to be transacted at the meeting.
- (2) A shorter period of notice may be given in relation to an extraordinary meeting if such a meeting is called in an emergency.
- (3) A notice under this section may be given in electronic form to a member of the board if the member has agreed to notice being given in this form.

This amendment specifies the appropriate procedure for notice of meetings of the board of an authority. It is important that the boards maintain professional standards in relation to meeting processes. It is therefore necessary to specify the process for providing notice of standard meetings, and to clarify the circumstances in which a shorter period of notice may be given.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [2.41 p.m.]: This matter will be dealt with in the regulations.

Amendment negatived.

Mr IAN COHEN [2.42 p.m.]: I move Greens amendment No. 29:

No. 29 Page 24, schedule 3, clause 16, lines 14–35. Omit all words on those lines. Insert instead:

16 Open meetings

- (1) Except as provided by this clause:
 - (a) everyone is entitled to attend a meeting of the board of an authority and those of its committees of which all the members are members of the board (a *committee of the board*), and
 - (b) an authority must ensure that all meetings of the board and any committee of the board are open to the public.
- (2) However, a person (whether a member of the board of the authority or another person) is not entitled to be present at a meeting of the board or a committee of the board if expelled from the meeting:
 - (a) by a resolution of the meeting, or
 - (b) by the person presiding at the meeting if the board has, by resolution, authorised the person presiding to exercise the power of expulsion.
- (3) A person may be expelled from a meeting only on the grounds specified in, or in the circumstances prescribed by, the regulations.
- (4) The board of an authority, or a committee of the board, may close to the public so much of its meeting as comprises:
 - (a) the discussion of any of the matters listed in section 35 (2), or
 - (b) the receipt or discussion of any of the information so listed.

This amendment clarifies that all meetings of the board of an authority are open to attendance by the public. The success of the CMAs will be in part determined by their ability to engage the local community in collaborative natural resource management. To this end, holding open meetings is an important part of facilitating a productive dialogue with the local community. The amendment specifies the circumstances in which a person, whether a board member or otherwise, may be expelled from a meeting. The amendment also provides that the board of an authority may close to the public so much of a meeting as relates to the receipt or discussion of any information on matters listed. I commend the amendment to the Committee.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [2.42 p.m.]: The Government opposes the amendment. This matter will be dealt with in the regulations.

Amendment negatived.

Schedule 3 agreed to.

Mr IAN COHEN [2.43 p.m.]: I move Greens amendment No. 30:

No. 30 Page 26, schedule 4, clause 2. Insert after line 29:

- (3) Despite subclause (1) a catchment contribution may not be levied on the following land:
 - (a) land that is exempt from all rates under section 555 of the *Local Government Act 1993*, or is exempt from all rates (other than water supply special rates and sewerage special rates) under section 556 of that Act,
 - (b) land that is managed primarily for conservation purposes,
 - (c) vacant land that is vested in an Aboriginal Land Council under the *Aboriginal Land Rights Act 1983* including land reserved under the *National Parks and Wildlife Act 1974* in accordance with Part 4A of that Act,
 - (d) land possessed or owned by a registered native title body corporate within the meaning of section 253 of the *Native Title Act 1993* of the Commonwealth or by a prescribed body corporate within the meaning of that Act, and held in trust for the native title owners of the land.

This amendment details the circumstances in which it is not permissible to levy a catchment contribution. It is inappropriate to levy a catchment contribution on land that is being managed for primarily public use or benefit, for conservation objectives, or for its Aboriginal cultural values. Such lands are already providing a significant public benefit. This amendment therefore provides that catchment contributions may not be levied on land that is exempt from all rates under sections 555 or 556 of the *Local Government Act 1993*.

The amendment also exempts land that is managed primarily for conservation purposes from catchment contribution levies. Vacant land that is vested in an Aboriginal Land Council under the Aboriginal Land Rights Act 1983, including land that is reserved under the National Parks and Wildlife Act 1974, is also exempt. Similarly, land that is possessed or owned by a registered native title body corporate within the meaning of section 253 of the Native Title Act 1993 is exempt. I commend the amendment to the Committee.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [2.43 p.m.]: The Government opposes the amendment. The regulations can be used to exempt classes of land from a catchment contribution should it prove necessary.

Amendment negatived.

Schedule 4 agreed to.

Mr IAN COHEN [2.44 p.m.]: I move Greens amendment No. 31:

No. 31 Page 32, schedule 5.2. Insert after line 14:

[2] **Section 20 Class 4—environmental planning and protection and development contract civil enforcement**

Insert after section 20 (1) (de):

(de1) proceedings under section 38 of the *Catchment Management Authorities Act 2003*,

This amendment amends the Land and Environment Court Act 1979 to permit proceedings under section 38 of the Catchment Management Authorities Act 2003 to be brought in the Land and Environment Court. This permits civil proceedings to restrain or remedy a breach of the Act, as detailed in Greens amendment No. 24. I commend Greens amendment No. 31 to the Committee.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [2.45 p.m.]: The Government opposes this amendment, which is consequential upon Greens amendment No. 24, which was negatived.

Amendment negatived.

Schedule 5 agreed to.

Title agreed to.

The CHAIRMAN: The Committee will now deal with the Native Vegetation Bill.

Clauses 1 and 2 agreed to.

Mr IAN COHEN [2.48 p.m.]: I move Greens amendment No. 1:

No. 1 Page 2, clause 3 (a), line 10. Insert "conservation and" after "promote the".

This amendment inserts "conservation" into the objects of the Act. The previous Act, which will be repealed by this bill, was called the Native Vegetation Conservation Act. Surely we would all agree on the need to be specific: the object of the Act is to promote the conservation of native vegetation. I commend the amendment to the Committee.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [2.48 p.m.]: The Government opposes the amendment. It is unnecessary as the bill already refers to management in the environmental interests of the State, which encompasses conservation.

Amendment negatived.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [2.50 p.m.]: I move Government amendment No. 1:

No. 1 Page 2, clause 3 (b), lines 13–15. Omit all words on those lines. Insert instead:

(b) to prevent broadscale clearing unless it improves or maintains environmental outcomes, and

This amendment aims to meet the objectives of the bill consistent with the environmental test included in clauses 14 and 25.

The CHAIRMAN: Order! As Greens amendment No. 2 is in conflict with Government amendment No. 1 Mr Ian Cohen should move that amendment now.

Mr IAN COHEN [2.50 p.m.]: I move Greens amendment No. 2:

No. 2 Page 2, clause 3 (b), lines 14 and 15. Omit "unless it leads to better environmental outcomes".

This amendment removes the qualifying phrase from the objects of the bill. It again makes it explicit that the bill is about preventing the clearing of remnant native vegetation and protecting regrowth.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [2.51 p.m.]: The Government opposes the amendment. It would be inconsistent with the intent of the Sinclair report.

Government amendment No. 1 agreed to.

The CHAIRMAN: Order! As Government amendment No. 1 has been passed, Greens amendment No. 2 can no longer be admitted.

Mr IAN COHEN [2.51 p.m.]: I move Greens amendment No. 3:

No. 3 Page 2, clause 3. Insert after line 21:

(e) to protect the quality and quantity of native vegetation in the State, and

This amendment seeks to add an additional object to the bill to protect the quality and quantity of native vegetation. While the other objects of the bill are good, none actually protects the quality of our remaining native vegetation from being degraded. Also, the provision to ensure that the quantity of native vegetation is protected can be used to guide decision makers when they are considering clearing applications. I commend the amendment to the Committee.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [2.52 p.m.]: The Government opposes the amendment. It is unnecessary as the intention is already covered by the other objects of the bill.

Amendment negatived.

Mr IAN COHEN [2.52 p.m.]: I move Greens amendment No. 4:

No. 4 Page 2, clause 3, line 25. Insert "within the meaning of section 6 of the *Protection of the Environment Administration Act 1991*" after "development".

This amendment clarifies what is meant by ecologically sustainable development [ESD]. It gives it a legal meaning that can be referred to by the courts. New South Wales Farmers has suggested that ecologically sustainable development is a phrase that is no longer in vogue. Let us be clear then that that we mean ESD as defined in the Protection of the Environment Administration Act.

Amendment negatived.

Mr IAN COHEN [2.53 p.m.]: I move Greens amendment No. 5:

No. 5 Page 2, clause 3. Insert after line 25:

(2) In the administration of this Act, the Minister, the Director-General and each catchment management authority are to give effect to the objects of this Act.

This amendment would ensure that the objects of the bill are given meaning. It inserts the provision that the Minister, the director-general and the catchment management authorities are all to give effect to the objects of the bill as they perform their various duties with respect to native vegetation.

Amendment negatived.

Clause 3 as amended agreed to.

Mr IAN COHEN [2.54 p.m.], by leave: I move Greens amendments 6, 7, 8 and 10 in globo:

No. 6 Page 2, clause 4 (1). Insert after line 27:

area of operations of a catchment management authority has the same meaning as in the *Catchment Management Authorities Act 2003*.

No. 7 Page 2, clause 4 (1). Insert after line 29:

catchment action plan has the same meaning as in the *Catchment Management Authorities Act 2003*.

No. 8 Page 2, clause 4 (1). Insert after line 32:

central area of the State means all land that is in an area of operations of a catchment management authority other than land that is in:

- (a) the coastal region (within the meaning of the *Natural Resources Commission Act 2003*), or
- (b) the Western Division.

No. 10 Page 3, clause 4 (1), lines 4 and 5. Omit "of Infrastructure, Planning and Natural Resources".

These amendments are consequential on other amendments to this bill and the cognate bills. They seek only to ensure that terms used in the bill are consistent with those in other bills.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [2.55 p.m.]: The Government opposes amendments Nos 6 and 7 as they are unnecessary. The concepts they contain are already understood. Amendment No. 8 is consequential to an amendment to the Natural Resources Commission Bill that the Government did not support. In relation to amendment No. 10, the bill is to be administered by the Minister for Infrastructure and Planning, and Minister for Natural Resources. So the director-general of the department should be recognised. The Government opposes all four amendments.

Amendments negated.

Mr IAN COHEN [2.56 p.m.], by leave: I move Greens amendments Nos 9 and 16 in globo:

No. 9 Page 3, clause 4 (1). Insert after line 1:

cultural heritage management plan has the same meaning as in the *Catchment Management Authorities Act 2003*.

Department means the Department of Infrastructure, Planning and Natural Resources.

No. 16 Page 6, clause 10 (1). Insert after line 16:

- (d) a cultural heritage management plan included in a catchment action plan, or

These amendments were suggested by the New South Wales Aboriginal Land Council and Native Title Services. The proposed protection of some regrowth on account of its importance to life, water, soil and salt must be extended to recognise and protect that vegetation, where the carrying out of cultural activities is dependant upon the existence of the vegetation. These amendments ensure that where regrowth vegetation has importance because of cultural values it can be recognised as cultural heritage. This is no vague mechanism for tens of thousands of hectares of regrowth to be protected via some vague provision, it is to give substance to our respect for the original, and in many cases, current caretakers of this land. Without these provisions, the bills ride roughshod over their legitimate interests.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [2.57 p.m.]: The Government opposes both amendments. While the Government supports catchment management authorities taking account of cultural heritage as it relates to natural resource management, the development of cultural heritage management plans is beyond the scope of the catchment management authorities.

Amendments negated.

Mr IAN COHEN [2.58 p.m.]: I move Greens amendment No. 11:

No. 11 Page 3, clause 4 (1). Insert after line 5:

environmental outcomes include the following:

- (a) the extent, quality and condition of native vegetation and the degree to which areas of native vegetation are connected,
- (b) the conservation and viability of biodiversity,
- (c) the extent and condition of native vegetation on riparian land,
- (d) the control and prevention of salinity,
- (e) the control and prevention of soil erosion and degradation,
- (f) the quantity and quality of environmental water within the meaning of section 8 of the *Water Management Act 2000*,
- (g) the water quality in streams, wetlands and other waters,
- (h) the protection and management of heritage sites both Aboriginal and non-Aboriginal.

This amendment seeks to define environmental outcomes. The bill provides that broadscale clearing is to be prevented unless it maintains or improves environmental outcomes. Yet nowhere in the bill are environmental outcomes defined. Clearly, the entire success of the bill depends on this phrase. If environmental outcomes are defined in some dubious or meaningless way then clearly it opens the floodgates for clearing under the guise of its somehow being good for the environment. The Greens think that it is important that environmental outcomes with respect to clearing should relate directly to native vegetation.

If a land-holder donates money for a solar hot water installation on a house 1,000 kilometres away is this an environmental outcome that would allow clearing? The previous offset policy of the Department of Land and Water Conservation was bankrupt. It allowed mature vegetation to be bulldozed if some time in the following three years some seedlings were placed in the ground. There was no accountability and no assurance that such offsets would lead to no net loss, let alone environmental gain. The amendment seeks to forestall that approach and makes it clear that if \$406 million of taxpayers' money is to be spent on the process then the public should get in return improvements in all the values listed.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [3.00 p.m.]: The Government opposes the amendment. The task of defining environmental outcomes is to be referred to the Natural Resources Commission for its independent advice.

Amendment negatived.

Clause 4 agreed to.

Clause 5 agreed to.

Mr IAN COHEN [3.01 p.m.]: I move Greens amendment No. 12:

No. 12 Page 5, clause 6 (1) (a), line 5. Insert ", whether living or dead or standing or fallen" after "trees".

This amendment seeks to ensure that commercial firewood operations are specifically covered by this legislation and that the habitat and biodiversity values of dead timber are recognised and preserved. Taking standing dead timber and logs is recognised as a key threatening process to biodiversity and has not been adequately addressed in the bill. I commend the amendment.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [3.02 p.m.]: The Government opposes this amendment. This is not consistent with the definition in the Sinclair report.

Amendment negatived.

Clause 6 agreed to.

Mr IAN COHEN [3.02 p.m.], by leave, I move Greens amendments Nos 13 and 14 in globo:

No. 13 Page 5, clause 7 (a), line 19. Insert "or substantially damaging or injuring such vegetation" after "vegetation".

No. 14 Page 5, clause 7 (c), line 22. Insert "or significantly reduce the quality or quantity of" after "kill".

These amendments add to the definition of clearing. The Act acknowledged that substantially damaging or injuring native vegetation was a clearing mechanism. Likewise, significantly reducing the quality or quantity of vegetation is clearing by the back door. The amendments will close that back door, and I commend them.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [5.03 p.m.]: The Government opposes Greens amendments Nos 13 and 14. Amendment No. 13 is too broad and would be impractical to implement. Amendment No. 14 is not consistent with the definition in the Sinclair report.

The Hon. RICK COLLESS [5.03 p.m.]: The Opposition opposes these amendments. Earlier today I referred to the words "reasonably likely to kill native vegetation" in relation to droughts and floods. Overstocking occurs during droughts as farmers try to keep stock alive with low levels of feed. When the western rivers flood the surrounding areas can be under water for months and any high ground that farmers have will be overstocked. In both situations native vegetation is likely to be killed. We do not want to see farmers caught by this provision. These amendments will make it substantially more restrictive for farmers because the Greens want to include the words "or significantly reduce the quality or quantity of" to apply to any grazing operation. The Opposition most definitely opposes these amendments.

Amendments negated.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [5.04 p.m.]: I move Government amendment No. 3:

No. 3 Page 5, clause 7 (c), lines 22 and 23. Omit all words on those lines.

This amends the definition of "clearing" to remove the ambiguity introduced by paragraph (c). The words in paragraph (b) are adequate because they make it clear that actions that kill native vegetation constitute clearing. The addition of the words "any other act that is intended or reasonably likely to kill native vegetation" is not considered necessary.

The Hon. RICK COLLESS [5.05 p.m.]: The Opposition supports this amendment for the same reasons that I outlined in respect of the last amendment. Paragraph (c) could restrict land-holders in some situations and we congratulate the Government on removing it.

Mr IAN COHEN [5.05 p.m.]: The Greens oppose this amendment. It provides that unless vegetation is bowled over and killed or destroyed, damaging practices such as fertilisation, direct seeding and intensive grazing that leads to the decline of the native vegetation—

The Hon. Rick Colless: We are talking about agricultural land, not national parks.

Mr IAN COHEN: I remind the honourable member that in certain circumstances these could be seen as damaging practices. Intensive grazing practices that lead to the decline of native vegetation, which I am sure honourable members opposite would not wish to see, will not be able to be controlled under this bill. It weakens the current definition of clearing under the Native Vegetation Conservation Act. The Greens oppose this amendment.

Amendment agreed to.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [5.06 p.m.]: I move Government amendment No. 2:

No. 2 Page 5, clause 7. Insert after line 23:

Note. See Division 3 of Part 3 for the exclusion of routine agricultural management and other farming activities from constituting the clearing of native vegetation if the landholder can establish that any clearing was carried out for the purpose of those activities.

This note has been included to clarify the structure of the bill.

The Hon. RICK COLLESS [5.06 p.m.]: The Nationals oppose this amendment and for a very good reason. The last few words of the note state, "if the landholder can establish that any clearing was carried out for the purpose of those activities". That is another way of writing "guilty until proven innocent". That is the

fundamental tenet behind The Nationals' rejection of this amendment. We are talking about agricultural lands. Those words contradict what the Government said earlier about the onus of proof. People should be deemed innocent until proven guilty. The Nationals strongly oppose the amendment.

Mr IAN COHEN [5.07 p.m.]: This amendment, along with Government amendment No. 20, is good old-fashioned spin doctoring. The Government has been asked by farmers to come up with a way to allow them to clear native vegetation, including the most valuable remnants no longer being cleared in New South Wales. The Greens oppose this amendment. We predict that the Government will seek to present deflated clearing figures and say that it has solved the problem. Instead it will be ignoring the lion's share of clearing that will continue unabated under cover of routine agricultural management activities and rotational farming practices that are excluded under myriad planning processes as set out in clause 21 of the bill. The Greens oppose this amendment.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [5.08 p.m.]: I support the comments of my colleague the Hon. Rick Colless. The Nationals oppose this amendment and will call for a division when it is put. We find it appalling that farmers must establish their innocence. The amendment refers to the "exclusion of routine agricultural management and other farming activities from constituting the clearing of native vegetation if the landholder can establish that any clearing was carried out for the purpose of those activities". Farmers must prove their innocence rather than the forces of evil being required to prove their guilt. It is common justice; it is fundamental. This Government is turning farmers into criminals. Farmers will have to prove their innocence rather than the onus being on the Government to prove their guilt. It is absolutely appalling and we oppose it.

Reverend the Hon. FRED NILE [3.09 p.m.]: From my recollection, the Sinclair report recommended that words similar to those proposed in the Government amendment be included in the Act. There may be an argument about the wording. However, I understand that the purpose of the Act was to assist farmers so they can engage in routine agricultural management and other farming activities. The Opposition is jumping at shadows here.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 16

Dr Burgmann	Mr Hatzistergos	Ms Tebbutt
Mr Burke	Mr Jenkins	Mr Tsang
Ms Burnswoods	Mr Macdonald	
Mr Costa	Reverend Dr Moyes	<i>Tellers,</i>
Mr Egan	Reverend Nile	Mr Primrose
Ms Griffin	Mr Oldfield	Mr West

Noes, 14

Mr Breen	Miss Gardiner	Mr Ryan
Dr Chesterfield-Evans	Mr Gay	Dr Wong
Mr Clarke	Ms Hale	<i>Tellers,</i>
Mr Cohen	Mr Pearce	Mr Colless
Mr Gallacher	Ms Rhiannon	Mr Harwin

Pairs

Mr Catanzariti	Ms Cusack
Mr Della Bosca	Mr Lynn
Mr Kelly	Ms Parker
Mr Obeid	Mrs Pavey
Ms Robertson	Mrs Forsythe

Question resolved in the affirmative.

Amendment agreed to.

Clause 7 as amended agreed to.

Clause 8 agreed to.

Mr IAN COHEN [3.08 p.m.]: I move Greens amendment No. 15:

No. 15 Pages 5 and 6, clause 9 (2), line 32 on page 5 to line 5 on page 6. Omit all words on those lines. Insert instead:

- (2) For the purposes of this Act, *regrowth* means any native vegetation that has regrown since 1 January 1983 in the case of land in the Western Division and 1 January 1990 in the case of other land.

This amendment removes the uncertainty that is brought to the legislation by what are called rotational farming practices. Office holders of the New South Wales Farmers Association boasted to their members that they pulled the wool over the Greenies' eyes on the Sinclair committee by getting the generic term "rotational farming practices" into the report. They correctly identified that this term is open to interpretation. This process is meant to be about clarity. The Greens amendment seeks to make sure that no-one is pulling the wool over anyone's eyes, and I commend it to the Committee.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [3.19 p.m.]: The Government opposes this amendment as it is not consistent with the definition.

The Hon DUNCAN GAY (Deputy Leader of the Opposition) [3.19 p.m.]: If I had been thinking of supporting this amendment the contribution of Mr Ian Cohen would have convinced me not to do so.

Amendment negatived.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [3.20 p.m.]: I move Government amendment No. 4:

No. 4 Page 6, clause 9, lines 3–5. Omit all words on those lines. Insert instead:

- (b) the date specified in a property vegetation plan for the purposes of this definition (in exceptional circumstances being a date based on existing rotational farming practices).
- (3) In subsection (2) (b), *existing rotational farming practices* means rotational farming practices:
- (a) that are reasonable and in accordance with accepted farming practice, and
- (b) that have been in place since the date specified in the plan.

This amendment clarifies how an earlier date for the definition of regrowth can be set. It clarifies what is meant by rotational farming practices, an important concept in the report of the Native Vegetation Reform Implementation Group, commonly known as the Sinclair report. As the Minister said in his second reading speech, this is not intended to be an open door to allow any area of remnant vegetation to be declared regrowth and so be cleared. It is intended to cover those situations where regrowth has arisen as part of a planned and legitimate cropping or grazing rotation that commenced before the standard cut-off date for defining regrowth. A higher standard of evidence will be required to establish that such a long-term rotation has been planned at the time it was initiated. This will be further defined in the regulations.

Mr IAN COHEN [3.23 p.m.]: The Greens oppose Government amendment No. 4. It has been extremely difficult to meet with Minister Knowles and to discuss amendments with him. Jeff Angel and Mal Peters have agreed to certain amendments but this amendment does not reflect the agreement that was made with Jeff Angel. The Government agreed to "exceptional circumstances" not to "existing rotational farming practices". The Greens are still wondering what is a rotation period. Does it refer to a period in 1954 when granddad knocked over remnant vegetation to plant mung beans that were an abject failure? Is it taking advantage of a wet year after a drought to knock over 25-year-old remnant vegetation and plant crops not in existing rotational farming practice? We think that this is yet another loophole to allow the clearing of remnant vegetation.

[Interruption]

The people who helped me to write my stuff have done a wonderful job considering the sitting hours and the conditions under which they were working.

The Hon. Duncan Gay: I suspect that their knowledge of 1954 is incorrect.

Mr IAN COHEN: I am giving honourable members an example of what occurred in that period, which was often in keeping with what was recommended and required. I am not casting aspersions on anyone who did anything in the past. As I asked earlier, is taking advantage of a wet year after a drought to knock over 25-year-old remnant vegetation and plant a crop not an existing rotational farming practice? The Greens think that this is just another loophole in the legislation to enable the clearing of remnant vegetation that should be protected. The Greens oppose this amendment.

The Hon. RICK COLLESS [3.25 p.m.]: The Coalition does not oppose Government amendment No. 4.

Amendment agreed to.

The Hon IAN MACDONALD (Minister for Agriculture and Fisheries) [3.26 p.m.]: I move Government amendment No. 5:

No. 5 Page 6, clause 9, lines 6–8. Omit all words on those lines. Insert instead:

- (4) Regrowth does not include any native vegetation that has regrown following unlawful clearing of remnant native vegetation or following clearing of remnant native vegetation caused by bushfire, flood, drought or other natural cause.

Proposed subclause (4) makes it clear that the definition of "regrowth" is only intended to apply to clearing that was caused by a person and was lawful. It is not intended to apply to a clearing that occurred as a result of natural events, such as a bushfire, flood, drought or illegality. If one of these natural events clears remnant vegetation, only that part of the ensuing regrowth that replaces the cleared vegetation is considered remnant. That is, if one tree is destroyed and three grow back only one is considered remnant.

Mr IAN COHEN [3.27 p.m.]: With an exquisite sense of balance the Greens support the Government's amendment.

The Hon. RICK COLLESS [3.27 p.m.]: The Opposition does not support the Government's amendment. Referring to an example in the Western Division, traditionally farmers crop on the back of a flood. As floodwaters go down and there is good soil moisture farmers plant a crop. The best way to recover from a drought, particularly in the eastern areas of the State, is to plant a crop as soon as it rains on as much of one's property as one can to obtain quick ground cover, quick feed for livestock and some benefit from cash cropping. Bushfires, which are acts of God, take out productive land. In some cases the best way to restore those areas is to plant immediately an annual crop or pasture so that one has something in place before the return of the perennials. In many cases the regrowth that occurs after bushfires, floods and droughts, is as a result of germination. It is not appropriate to include those events in the legislation. The Opposition does not support this amendment.

Amendment agreed to.

Clause 9 as amended agreed to.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [3.29 p.m.]: I move Government amendment No. 6:

No. 6 Page 6, clause 10. Insert after line 17:

- (2) For the purposes of this Act, **protected regrowth** also includes any native vegetation that is regrowth and that has been grown or preserved (whether before or after the commencement of this Act) with the assistance of public funds granted for biodiversity conservation purposes.
- (3) Before native vegetation is identified as protected regrowth in an instrument referred to in subsection (1) (a)–(c), the person or body making or approving the instrument must be satisfied that, based on available scientific evidence, the preservation of the vegetation is consistent with State-wide natural resource management standards and targets adopted for the purposes of the *Catchment Management Authorities Act 2003*.
- (4) Before native vegetation is identified as protected regrowth in a property vegetation plan, the Minister is to have regard to the social and economic implications of the preservation of the vegetation.

Proposed subclause (2) is designed to protect from clearing any native vegetation that is being grown or preserved for biodiversity conservation purposes using public funds. It should ensure that work funded from the Native Vegetation Management Fund or Commonwealth programs such as the Natural Heritage Trust or the national action plan for salinity and water quality will continue into the future.

Proposed subclause (3) aims to strengthen the requirement that protected regrowth can be identified only if that identification is based on scientific evidence and is consistent with standards and targets adopted statewide. This is intended to ensure that the system is rigorous. It should be noted, however, that catchment management authorities will be responsible for interpreting the statewide standards and targets at the catchment scale, using the best available science and taking account of social and economic impacts. Proposed subclause (4) reaffirms the need to have regard to the social and economic implications of protecting regrowth.

The CHAIRMAN: As Government amendment No. 6 and Greens amendment No. 17 are in conflict, Mr Ian Cohen should move his amendment now.

Mr IAN COHEN [3.30 p.m.]: I move Greens amendment No. 17:

No. 17 Page 6, clause 10. Insert after line 17:

- (2) For the purposes of this Act, *protected regrowth* also includes any native vegetation that is regrowth and that meets a standard (whether State-wide or otherwise) to be set by the Natural Resources Commission for determining whether native vegetation is to be protected regrowth.

I will speak first to Government amendment No. 6. The Greens support the amendment but believe our amendment No. 17 is substantially better. Although Government amendment No. 6 recognises that vegetation planted for biodiversity conservation purposes should be considered as protected regrowth, we are concerned about the narrower interpretation of plantings for environmental purposes. Will plantings to reduce salinity or riverbank revegetation or erosion stabilisation plantings be considered as protected regrowth under this clause? This amendment highlights once again the mess that the Government gets into when it tries to ram complex legislation through Parliament and to move many of its own amendments that were not available to the Committee until literally the eleventh hour.

The Government has consistently refused to comment on Greens amendments. We support Government amendment No. 6 because it is better than nothing, but we believe that Parliament will have to try to fix the provision in the future. Greens amendment No. 17 seeks to ensure that Government policy and the Wentworth and Sinclair reports are reflected in the legislation. The Natural Resources Commission has been given the task of developing statewide standards and targets to identify regrowth for protection. Yet in this clause of the bill regrowth identified by statewide standards or targets is not defined as protected. This appears to be an oversight. I commend Greens amendment No. 17 to the Committee.

The Hon. RICK COLLESS [3.32 p.m.]: I seek a point of clarification from the Minister in relation to Government amendment No. 6. The amendment states:

... *protected regrowth* also includes any native vegetation that is regrowth and that has been grown ... with the assistance of public funds ...

Will that include species that are not regionally indigenous? For example, would native trees from Western Australia or South Australia that are planted in a Landcare area be regarded as protected regrowth even though they are not indigenous to the area?

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [3.33 p.m.]: I am advised that the species must be native to the State. So trees native to Western Australia would not be considered protected regrowth.

Government amendment No. 6 agreed to.

The CHAIRMAN: As Government amendment No. 6 has been agreed to, Greens amendment No. 17 cannot be admitted.

Clause 10 as amended agreed to.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [3.34 p.m.]: I move Government amendment No. 7:

No. 7 Page 6, clause 11 (1) (a), lines 31–33. Omit all words on those lines.

Sustainable grazing has been moved to division 3 of part 3 as a permissible activity because the limitation that applies to routine agricultural management activities—that is, that they must be only "to the minimum extent necessary"—is not relevant to grazing and would be impractical to implement.

The Hon. RICK COLLESS [3.35 p.m.]: The Opposition opposes this amendment. We believe the words after "sustainable grazing" should be removed because sustainable grazing should be considered to be a routine agricultural practice and should be encouraged. We do not want to see that activity restricted.

Mr IAN COHEN [3.35 p.m.]: The Greens support Government amendment No. 7. It removes an exemption for an act that will replicate the unmitigated disaster that exemptions create in the complex task of managing native vegetation in New South Wales.

Amendment agreed to.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [3.36 p.m.]: I move Government amendment No. 8:

No. 8 Pages 6 and 7, clause 11 (1) (b), line 34 on page 6 to line 12 on page 7. Omit all words on those lines. Insert instead:

- (b) the construction, operation and maintenance of rural infrastructure:
 - (i) including (subject to the regulations) dams, permanent fences, buildings, windmills, bores, air strips (in the Western Division), stockyards, and farm roads, but
 - (ii) not including rural infrastructure in areas zoned as rural-residential under environmental planning instruments or on small holdings (as defined in the regulations).

There has been considerable discussion about the details of these provisions on all sides of the debate. To address these concerns in a more responsive fashion and to allow for regional variations to be introduced when this is necessary, this amendment allows these matters of detail to be dealt with in the regulations. As the list is not closed, the amendment allows regulations to be made for new types of rural infrastructure should this be necessary in the future. The second part of the amendment addresses the concern that in rural-residential areas with smallholdings not all routine agricultural management activities may be appropriate or justified. Without this amendment it would be difficult to limit the landscape impact of clearing in these areas. This is a particularly important issue on the coastal strip, where there is great pressure on native vegetation. Please note that this provision is not intended to hinder in any way legitimate farming operations on smallholdings.

The Hon. RICK COLLESS [3.37 p.m.]: The Opposition has a few problems with this amendment. I refer honourable members to paragraph (i) of clause 11 (b), which refers to airstrips in the Western Division. I am not sure whether the Government is aware of this, but there are many airstrips elsewhere in the State that also require the clearing of vegetation for aviation purposes. In my contribution to the second reading debate I asked why the Government was focusing on airstrips in the Western Division when there are thousands of airstrips in the Eastern Division—almost every property on the Northern Tablelands, for example, has its own airstrip for the purpose of applying superphosphate and other fertilisers by air—that require the same appropriate safeguards. Paragraph (ii) refers to areas zoned as rural-residential. This will be a nightmare as many commercially operated farms are located in areas that are zoned rural-residential.

This exemption will not apply to agricultural properties situated in areas zoned as rural-residential, and as a result they will not be able to continue their normal farming practices. The amendment does not refer to rural-residential areas—areas that have been subdivided for rural-residential blocks. There could be a 5,000-hectare property in an area that is zoned rural-residential. How does the regulation define "small holding"? Is it a farm of 100, 200 or 500 hectares? It is not defined, which could be a real problem for commercial operations in rural-residential zoned areas. A lot of small farms that are commercially financially viable may be caught up by this amendment. For those reasons, the Coalition opposes this amendment.

Mr IAN COHEN [3.40 p.m.]: I move Greens amendment No. 18:

No. 18 Pages 6 and 7, clause 11 (1) (b), line 34 on page 6 to line 12 on page 7. Omit all words on those lines. Insert instead:

- (b) the construction, operation and maintenance of the following permanent rural infrastructure (other than permanent rural infrastructure on land zoned as rural-residential or on small holdings):
 - (i) buildings (other than habitable buildings) with a maximum cleared buffer of not more than 10 metres,
 - (ii) habitable buildings with a cleared buffer no greater than the minimum asset protection zone for a residential building as set out in the NSW Rural Fire Service July 2003 publication *Bushfire Environmental Assessment Code*,
 - (iii) windmills or bores with cleared buffers of not more than 3 metres,
 - (iv) construction or maintenance tracks with a width (including buffers) of not more than 4 metres,
 - (v) boundary fences with cleared buffers of not more than 6 metres on either side of the fence,
 - (vi) other fences with cleared buffers of not more than 3 metres on either side of the fence,
 - (vii) dams consisting of a dam wall and the area that is under water when the dam is full,
 - (viii) stockyards with cleared buffers of not more than 3 metres,
 - (ix) other structures with cleared buffers of not more than 4 metres.

The Greens support Government amendment No. 8 and understand its impacts on Greens amendment No. 18. Greens amendment No. 18 seeks to put limits on the clearing that can be carried out as an exemption to the Act. Under the previous Native Vegetation Conservation Act both an independent scientific group and the community reference panel, which examined how the exemptions had been used, found that they were the main mechanisms for thwarting the intention of the Act. Both scientific experts and the Government's departmental staff have estimated that land clearing from exemptions could be as high as 140,000 hectares a year. Of course, exemptions are not controlled.

The Hon. Rick Colless: Come on!

Mr IAN COHEN: I ask the honourable member to prove otherwise. That is the information I have. They are not monitored and records are not kept. I challenge the Hon. Rick Colless to meet with people who support me. We will look at the satellite photos and lines on maps on the computer.

The Hon. Rick Colless: I suggest that you come out and have a look at what is happening on the land.

Mr IAN COHEN: We can do that as well. I will walk around any paddock you like. Exemptions are not controlled or monitored, and records are not kept of where and when they are used. Regional vegetation management committees have grappled with this issue for years. The figures in this amendment came from draft regional vegetation management plans that were the compromise between farmers and conservationists. Clearing along boundary fences should be limited to six metres on either side of the fence, in line with the Bush Fire Environmental Assessment Code drafted by the Rural Fire Service in 2001. Internal fences and stockyards should have a cleared buffer of no more than three metres, and four metres from other structures. These distances are adequate to allow for maintenance and functioning of rural infrastructure while minimising unnecessary clearing of valuable remnant bush. I commend Green amendment No. 18 to the Committee. The Greens support Government amendment No. 8.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [3.42 p.m.]: The Government opposes Greens amendment No. 18. The detail of these routine agricultural management activities will be dealt with through the regulations to provide flexibility to ensure that they are effective and responsive to regional differences. In relation to the points made by the Hon. Rick Colless, I am advised that regulations can exempt, where appropriate, the type of activity he referred to. The Western Division is the critical issue as properties there are much larger and more dispersed.

The Hon. RICK COLLESS [3.43 p.m.]: Perhaps the Minister will explain about airstrips all over the State. I am sure that the Minister, having had a commercial-size operation, had an airstrip on his property. If not, I am sure that many of his neighbours had an airstrip on their properties. I have only a smallish property, but all my neighbours have an airstrip on their properties. If this bill is passed why should they be restricted and normal maintenance not be available to their airstrips? I know that properties are bigger in the Western Division and that they have airstrips, but there are many airstrips on commercially operated farming land in the rest of the State. It is only fair that the same rule apply in that regard across the whole State.

Reverend the Hon. FRED NILE [3.45 p.m.]: This amendment has pluses and minuses, and is an improvement on the bill because it does not detail measuring the 10 and 20 metres from fences and two hectares from buildings. The amendment allows more flexibility. Obviously, there will be some definitions in the regulation; it is easier to change them if they are unworkable than to change the legislation. I assume that airstrips are maintained in a safe manner under air regulations. In fact, Federal legislation would override this legislation.

Government amendment No. 8 agreed to.

The CHAIRMAN: Order! As Government amendment No. 8 has been agreed to, Greens amendment No. 18 can no longer be admitted.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [3.45 p.m.]: I move Government amendment No. 9:

No. 9 Page 7, clause 11 (1). Insert after line 12:

- (c) the removal of noxious weeds under the *Noxious Weeds Act 1993*,
- (d) the control of noxious animals under the *Rural Lands Protection Act 1998*,

This amendment ensures that farmers can carry out the necessary pest and weed control responsibilities as part of their routine agricultural management activities.

Mr IAN COHEN [3.46 p.m.]: The Greens oppose this amendment as it opens up several extra categories of routine agricultural management activities, a list that is already too long and indistinct. I certainly do not support this amendment.

Amendment agreed to.

Mr IAN COHEN [3.47 p.m.], by leave: I move Greens amendments Nos 19, 20 and 21 in globo:

No. 19 Page 7, clause 11 (1) (c), line 13. Insert "limited to 10 trees (of less than 40 centimetres diameter at ground level in the Western Division or central area of the State or less than 70 centimetres diameter at ground level elsewhere in the State) per year for each property and provided that the stumps of the cut trees are left in place," after "commercial purposes),"

No. 20 Page 7, clause 11 (1) (d), line 15. Insert "and authorised under the *Plantations and Reafforestation Act 1999*" after "commercial purposes".

No. 21 Page 7, clause 11 (1) (e), lines 16 and 17. Omit "(including uprooting mulga in the Western Division)".

Amendment No. 19 seeks to ensure minimal impact from the collection of firewood as part of a routine agricultural management activity by placing a size and number limit on trees to be felled for this purpose. I re-emphasise that firewood is identified as a key threatening process to biodiversity. Amendment No. 20 is applicable only in the case of native vegetation where the entire plant will be killed, mainly in the case of harvesting or logging trees. As I have said elsewhere, logging has been one of the main exemptions that has been abused under the previous Act. This amendment ensures that only genuine plantations or planted areas can be logged under exemption. If a land-holder wants to clear planted native vegetation under exemption he needs to have demonstrated that such vegetation was planted and obtain the relevant authorisation under the *Plantations and Reafforestation Act 1999*.

Amendment No. 20 stops the uprooting of mulga. The Government proposes to allow the uprooting of mulga in times of declared drought. Have we learnt nothing about soil conservation? Have we not seen the clouds of topsoil blown across the oceans and turning the snow on New Zealand alps brown? Uprooting mulga in times of drought increases the risk of soil structure decline and erosion. This exemption is yet another example of the flaws in this legislation that will lead to ongoing environmental degradation. The Greens amendment seeks to protect the fragile soil structure in the west of the State. I will be interested to hear the comments of the Hon. Rick Colless on this matter as a soil expert.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [3.50 p.m.]: The Government opposes Greens amendments Nos 19, 20 and 21. Amendment No. 19 is a matter to be dealt with through the regulations. Amendment No. 20 is considered too restrictive. Amendment No. 21 is considered a necessary pastoral practice for dealing with drought in the more arid parts of the State.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [3.51 p.m.], by leave: I move Government amendment Nos 10 to 47 in globo:

No. 10 Page 7, clause 11 (1) (e), lines 17 and 18. Omit all words on those lines. Insert instead "uprooting mulga in the Western Division in areas officially declared to be drought affected).".

No. 11 Page 7, clause 11 (2), line 27. Omit "regulations may extend, limit or vary". Insert instead "regulations may make provision for or with respect to extending, limiting or varying".

No. 12 Page 8, clause 12 (2), line 7. Omit all words on that line.

No. 13 Page 8, clause 12. Insert after line 11:

- (4) It is a defence in any proceedings for an offence against this section if it is established that the clearing was permitted under Division 2 or 3 or was excluded from this Act by Division 4.

No. 14 Page 8, clause 12, lines 12–16. Omit all words on those lines.

No. 15 Page 8, clause 14 (3), line 31. Omit "unless the Minister is satisfied that". Insert instead "by the Minister unless".

No. 16 Page 9, clause 15. Insert after line 16:

- (2) The regulations may also make provision, consistent with Part 4 of the EPA Act, for or with respect to the determination of applications for development consent for development comprising:

- (a) the clearing of native vegetation, and
- (b) any other form of development that requires development consent pursuant to an environmental planning instrument.

Any such regulation has effect despite anything in this Part.

No. 17 Page 9. Insert after line 20:

17 Clearing not affected by subsequent environmental planning instruments

If native vegetation is, or is about to be, cleared in accordance with:

- (a) development consent granted in accordance with this Act, or
- (b) a property vegetation plan,

that clearing cannot be prohibited, restricted or otherwise affected by a provision of any environmental planning instrument made after the consent was granted or the plan was approved (as the case requires).

No. 18 Page 10, clause 19, lines 1–9. Omit all words on those lines.

No. 19 Page 10, clause 20 (b), lines 15 and 16. Omit all words on those lines. Insert instead:

- (b) not less than 10% of the area is covered with vegetation (whether dead or alive), and
- (c) those percentages are calculated in accordance with the regulations.

No. 20 Page 10. Insert after line 16:

Division 3 Permitted activities

21 Application

- (1) This Division sets out the activities that do not constitute the clearing of native vegetation for the purposes of this Part and, accordingly, are permitted to be carried out without the authority conferred by a development consent or property vegetation plan.
- (2) This Division does not permit an activity without an approval or other authority required by another Act or in contravention of another Act.

22 Routine agricultural management activities

- (1) Clearing for routine agricultural management activities is permitted.
- (2) This section does not authorise any clearing of native vegetation:
 - (a) if it exceeds the minimum extent necessary for carrying out the activity, or
 - (b) if it is done for a work, building or structure before the grant of any statutory approval or other authority required for the work, building or structure.

23 Continuation of existing farming activities

- (1) The continuation of existing cultivation, grazing or rotational farming practices is permitted if it does not involve the clearing of:
- (i) remnant native vegetation, or
 - (ii) in the case of the Western Division—native vegetation comprising trees not less than 3 metres high of any of the following species: *Eucalyptus camaldulensis* (river red gum), *Casuarina cristata* (belah), *Casuarina pauper* (belah) or *Callitris glaucophylla* (white cypress pine).
- (2) In this section, *existing* means existing at the commencement of this Act.

24 Sustainable grazing

Sustainable grazing that is not likely to result in the substantial long-term decline in the structure and composition of native vegetation is permitted.

No. 21 Page 10, clause 21 (d), line 29. Omit all words on that line.

No. 22 Page 11, clause 21 (s), lines 33–35. Omit all words on those lines.

No. 23 Page 13, clause 22 (3), line 11. Insert "as to the form and content of the plan that are" after "requirements".

No. 24 Page 13, clause 23. Insert after line 17:

- (2) In determining whether to approve a draft plan, the Minister is to have regard to any relevant provisions of catchment action plans of catchment management authorities, and to the matters required by the regulations.

No. 25 Page 13, clause 24, line 19. Insert "submitted by a landholder" after "plan".

No. 26 Page 13, clause 24, lines 22 and 23. Omit "(called a "development PVP")".

No. 27 Page 13, clause 24 (b), line 24. Insert ", as referred to in section 9 (2)," after "regrowth".

No. 28 Page 13, clause 24, line 25. Omit "(called a "continuing use PVP")".

No. 29 Page 13, clause 24. Insert after line 25:

- (c) proposals relating to the thinning of native vegetation in the central area of the State that has regrown between 1 January 1983 and 1 January 1990,

No. 30 Page 13, clause 24, line 26. Omit "proposals". Insert instead "proposals to enable landholders to obtain financial incentives for the management of natural resources, being proposals".

No. 31 Page 13, clause 24, line 28. Omit "(called an "incentive PVP")".

No. 32 Page 13, clause 24. Insert after line 28:

- (d) proposals relating to the continuation of existing farming or other rural practices,

No. 33 Page 13, clause 24, line 30. Insert "or other" before "activities".

No. 34 Page 14, clause 26 (2) (b), line 12. Insert "(being reasons relating to a contravention by the landholder of the plan)" after "reasons stated in the notice".

No. 35 Page 14, clause 26 (3), line 14. Omit "or another specified period".

No. 36 Page 15, clause 28 (a), line 15. Insert "clearing principles or other" before "matters".

No. 37 Page 15, clause 28 (b), line 17. Insert "broadscale" before "clearing".

No. 38 Page 15, clause 28. Insert after line 24:

- (e) the keeping of a public register by the Director-General relating to any such plans approved by the Minister under this Act that authorise the clearing of native vegetation or provide financial incentives, and applications for such approvals.

No. 39 Pages 16 and 17, clause 31 (1), line 28 on page 16 to line 3 on page 17. Omit all words on those lines. Insert instead:

- (1) An authorised officer may enter land for the purpose of determining whether a person is contravening or has contravened this Act, but only if:
- (a) the landholder consents, or
 - (b) the Director-General has authorised the entry onto the land concerned.

No. 40 Page 18, clause 32. Insert after line 32:

Note. Section 30 (4) requires an authorised officer exercising functions under this section to produce his or her identification card if requested to do so.

No. 41 Page 19, clause 33 (5), lines 24–27. Omit all words on those lines. Insert instead:

- (a) in the case of a corporation—2,000 penalty units and 200 penalty units for each day the offence continues, or
- (b) in any other case—1,000 penalty units and 100 penalty units for each day the offence continues.

No. 42 Page 20, clause 34 (4), lines 22–25. Omit all words on those lines. Insert instead:

- (a) in the case of a corporation—2,000 penalty units and 200 penalty units for each day the offence continues, or
- (b) in any other case—1,000 penalty units and 100 penalty units for each day the offence continues.

No. 43 Page 23, clause 40, lines 25–34. Omit all words on those lines. Insert instead:

40 Evidentiary provision

No. 44 Page 25, part 6. Insert after line 1:

42 Regulation of collection of timber

- (1) In this section, *dead wood* means any dead tree or part of a dead tree, whether or not:
 - (a) it is standing, or
 - (b) it is of an indigenous species.
- (2) The regulations may regulate or prohibit the clearing or the removal of dead wood from any land, by the landholder or any other person.
- (3) This section is not limited by the objects set out in section 3.

No. 45 Page 28, schedule 1. Insert after line 8:

- 3** Land identified under *State Environmental Planning Policy No 44—Koala Habitat Protection* as core koala habitat.

No. 46 Page 29, schedule 1. Insert after line 18:

- 14** The Director-General may, for the purposes of resolving any dispute, determine whether a zone not referred to in clause 13 has the substantial character of such a zone.

No. 47 Page 32, schedule 3, clause 4 (2), lines 5–10. Omit all words on those lines. Insert instead:

- (2) The provisions of the former Act continue to have effect (despite its repeal) to and in relation to State protected land until a State environmental planning policy under the EPA Act otherwise provides.

Amendment No. 10 corrects a drafting error caused by having the bracket in the wrong place. It ensures that the lopping of native vegetation for stock fodder is not restricted to areas in the Western Division officially declared to be drought affected, but that the uprooting of mulga is. Amendment No. 11 is consequential to amendment No. 8. Amendment No. 12, in combination with amendment No. 13, aims to clarify the defences that apply when an allegation of illegal clearing is in court. Amendment No. 13 is consequential to amendment No. 12. As to amendment No. 14, it is proposed to delete this note as it is not an exhaustive list of the types of clearing that require approval and so may lead to confusion.

Amendment No. 15 aims to make the environmental test that applies to development consent in subclause (3) of clause 14, consistent with that for approving a property vegetation plan. The matter of the environmental test, and what constitutes the maintenance or improvement of environmental outcomes, is clearly a major issue in the implementation of this bill. Given its importance, this matter will be referred to the Natural Resources Commission for its consideration. Amendment No. 16 allows regulations to be made to avoid the need for dual consents for the same clearing activity. This is intended to create a simple and streamlined system of regulation without compromising the outcomes achieved. When dual consents systems are found to be operating, consideration will be given to making the CMA the primary authority for decisions related to farming activities, and the council for consents related to other activities.

Amendment No. 17 carries forward the intention of clause 20 of the Native Vegetation Conservation Act 1997. It provides security against future planning instruments for landholders who have gained a consent or who have an approved property vegetation plan. Amendment No. 18, in combination with amendment No. 20, changes the structure of the bill as stated in amendment No. 2. Amendment No. 19 implements the definition of "groundcover" from the Sinclair report. It is based on the definition of "groundcover" from clause 6 of the Native Vegetation Conservation Act 1997. However, it allows for a methodology for calculating the percentages in the definition to be prescribed by regulation. This is because the structure and composition of groundcover varies greatly from season to season and place to place. A level of technical detail is required to allow it to be described accurately; however, this detail is more appropriately set out in the regulations.

Amendment No. 20, in combination with amendment No. 18, changes the structure of the bill as stated in amendment No. 2. It also introduces the intent of routine agricultural management activity, from recommendation 16.8 of the Sinclair report. The amendment ensures that existing cultivation or grazing can continue as a routine agricultural management activity, except where it involves clearing of remnant native vegetation or regrowth of species previously covered by the Western Lands Regulation 1997. The amendment also makes it clear that sustainable grazing may involve plants other than groundcover, such as understorey plants and shrubs. Without this amendment the definition would be impractical to implement as stock would be permitted to graze some species but not others.

Amendment No. 21 is consequential to amendment No. 9. Amendment No. 22 is consequential to amendment No. 9. Amendment No. 23 clarifies that the regulations can prescribe requirements for the form and content of a property vegetation plan, but not for other matters. Amendment No. 24 establishes a strong linkage between catchment action plans and property vegetation plans, consistent with the recommendations of the Sinclair report. It also establishes a linkage with any regulations made under clause 28. It should be noted that the Minister intends to delegate the authority to approve property vegetation plans [PVPs] to the CMAs as soon as it is practicable. When considering a PVP to maintain a continuing land use, a CMA will need to take account of the catchment action plan but could not reject a PVP because of the contents of the catchment action plan.

A major theme of the Sinclair report is the need to cut red tape and deliver a more streamlined regulation of on-farm activities. Section 14 of the Catchment Management Bill enables functions to be conferred on the catchment management authorities under other Acts or environmental planning instruments. The catchment management authorities will be delegated responsibility for issuing consents and approving property vegetation plans under the Native Vegetation Bill. It is also intended that catchment management authorities will be progressively delegated consent functions under the Environmental Planning and Assessment Act and responsibilities for threatened species decision making.

My colleague the Minister for the Environment is presently reviewing the Threatened Species Conservation Act and is examining the changes that are needed in that Act in light of the extensive changes embodied in these bills and the Sinclair report. It is intended that catchment management authorities will incorporate appropriate measures in their catchment action plans to protect threatened species and endangered ecological communities and so meet the statewide biodiversity and native vegetation standards and targets, as set by the Natural Resources Commission. Catchment management authorities will then become responsible for considering impacts on threatened species when developing property vegetation plans and issuing consents under the Native Vegetation Act, and will not need to obtain the concurrence of the Department of Environment and Conservation in granting these approvals.

With this system in place, landholders will not require a licence to harm a threatened species or be exposed to prosecution under the Threatened Species Conservation Act, so long as their actions are in accordance with a property vegetation plan or clearing development consent. It is envisaged that practical guidelines will be developed by the Department of Environment and Conservation to facilitate consistent dealing with threatened species issues by CMAs and landholders. It is also envisaged that the commission will audit compliance by CMAs with their catchment action plans to ensure they are being implemented in such a way as to be consistent with the statewide standard. Responsibility for enforcement under the Threatened Species Conservation Act will continue to be the responsibility of the Department of Environment and Conservation. The legislative changes required to implement this arrangement are being considered for introduction to Parliament next year.

Amendment No. 25 is to confirm that a PVP is a voluntary instrument and conditions will not be imposed on a PVP without agreement from the landholder. Amendment No. 26 is intended to clarify that a PVP can include a range of matters and need not be restricted to addressing development only. These PVPs will be

voluntary. There are several reasons why a farmer will seek to submit a PVP. These PVPs are voluntary and reasons for submitting them will include, first, to continue existing land use to provide a farmer with security that will prevent future EPIs affecting continued farming or other rural practices; second, to obtain funding through incentive programs being offered by CMAs; third, to undertake thinning of native vegetation that has grown between 1983 and 1990 in the Central Division—the Central Division will be clarified in regulations—and, fourth, to develop land by clearing remnant vegetation, and this will be equivalent to a development application.

Amendment No. 27 makes it clear that regrowth identified in a continuing use PVP must meet the definition of "regrowth" in subclause (2) of clause 9 of the bill. Amendment No. 28 is similar to amendment No. 26. This amendment is intended to clarify that a PVP can include a range of matters and need not be restricted to addressing continuing use only. Amendment No. 29 carries forward the intention within recommendation 16.10 of the report of the Native Vegetation Reform Implementation Group. That recommendation listed the different types of PVP that should be provided for, including one that allowed thinning of 1983 to 1990 regrowth in the Central Division. While the Minister indicated in his second reading speech that this would be done through a regulation, this commitment has been strengthened by including this provision in the bill.

I take this opportunity to explain how the Government intends to deal with private native forestry [PNF]. It is intended that a regulation will be made to include a code of practice for private native forestry. If private native forestry operations conform with that regulation, a PVP will be approved. The code of practice will be developed in full consultation with PNF stakeholders, including the growers. Conforming operations should be able to be processed quickly. If necessary, interim arrangements can be established through the regulations to continue the current exemption under the Native Vegetation Conservation Act 1997 until the new arrangements are in place. Using this approach, the Government aims to avoid disrupting current operations, particularly those on the North Coast.

Consistent with the Sinclair report, amendment No. 30 clarifies that PVPs can be the basis of landholders gaining financial incentives for natural resource management. Amendment No. 31 is similar to amendment No. 26. This amendment is intended to clarify that a PVP can include a range of matters and need not be restricted to addressing incentives only. Programs will be established for native vegetation incentive funding. These will include targeted incentives for on-ground action to manage and protect native vegetation, support for the property planning process and a revolving fund to purchase properties. CMAs will be encouraged to give priority incentive funding to preserve protected regrowth, which farmers can accept on a voluntary basis. This fund will be used to implement recommendation 28 of the Sinclair report to purchase properties and to provide financial assistance to those who have been affected directly by the ending of broadscale land clearing.

Amendment No. 32 implements the intention from the Sinclair report to allow a PVP to include proposals for confirming and continuing existing uses. Amendment No. 33 confirms that a PVP can include provisions describing a range of clearing activities that are not to occur on the property. Amendment No. 34 provides additional security to the landholder by limiting the circumstances in which the Minister can terminate a PVP. With this amendment in place, a PVP can be terminated only if the landholder has contravened the terms of the PVP. Amendment No. 35 provides additional security to the landholder by ensuring that a PVP can be reviewed only after 10 years has elapsed. This is consistent with the recommendations of the Sinclair report.

Amendment No. 36 is to ensure that the regulation making powers that apply to property vegetation plans are consistent with those that apply to development applications in clause 15. Amendment No. 37 is made for the same reason as amendment No. 36. Amendment No. 38 is made for the same reason as amendment No. 36. The public register of PVPs will only include information about clearing allowed under the PVP and any positive conservation actions required by the PVP. It will not include information about the personal financial situation of the landholder or other commercial information. Information submitted by a landholder in connection with a PVP will not be passed on to third parties. In particular, farm business plans that include crop types and acreages will not be passed on. It should be noted that continuing use PVPs will not appear on the register. And, of course, the protections of the NSW Privacy Act in the management and handling of personal information apply to catchment management authorities.

Amendment No. 39 has been included to clarify that an authorised officer can enter land only to determine whether a person is contravening or has contravened the Act. It also makes it clear that the Director-General's authority must apply to the specific area of land concerned. Amendment No. 40 inserts a note. This note has been included to make it clear that the requirement to produce identification if requested, that is set out

previously in the bill, is relevant to these provisions also. Amendment No. 41 carries forward the penalties that currently apply under the Native Vegetation Conservation Act 1997 but in addition provides for higher penalties where corporations are involved. This is intended to provide a greater level of deterrence against breaches of the Act. Amendment No. 42 has the same effect as amendment No. 41.

Regarding amendment No. 43, these provisions were removed because the criminal law already deals with these matters. Amendment No. 44 inserts a new clause 42. This clause relates to the need to identify that dead wood can be collected. There are obviously many purposes for which dead wood is used. This clause is included to provide certainty to landholders that dead wood may continue to be collected or cleared. The Government wishes to make it clear that regulations on this matter will only apply to the collection of firewood for commercial purposes. The Government does not intend regulating for the collection of dead branches or dead saplings. I note that the protected lands provisions of the soil conservation laws have protected dead wood for many years. Further, no regulation of the collection of dead wood will occur until the consequences have been fully discussed with relevant stakeholders, including the NSW Farmers Association. And, of course, the use of firewood for non-commercial purposes is already exempt under clause 11. This regulation-making power cannot be used for the purposes of other legislation such as the Threatened Species Conservation Act.

Amendment No. 45 has been included to ensure that core koala habitat is protected using SEPP 44 and is not subject to this Act. Amendment No. 46 is included because the names and intent of zonings in environmental planning instruments vary widely around the State. This amendment allows the Director-General to assess whether the zone in question has the substantial character of the zones referred to in clause 13. Amendment No. 47 aims to ensure that an area that is currently protected as State protected land will continue to have that protection until a State environmental planning policy provides otherwise. I thank honourable members for bearing with me while I addressed the amendments.

Mr IAN COHEN [4.07 p.m.], by leave: I move Green amendments 22, 24, 27, 38, 42, 43, 48, 50, 52, 53, 56, 57, 59 and 60 in globo:

No. 22 Page 7, clause 11 (2), lines 27–29. Omit all words on those lines. Insert instead:

- (2) The regulations may:
 - (a) limit the activities that are routine agricultural management activities, and subsection (1) is to be construed accordingly, and
 - (b) prescribe the minimum area of land that must be held for the land not to be a small holding for the purposes of this section, different minimum areas may be prescribed for different parts of the State.

No. 24 Page 8, clause 12, line 14. Insert "harvesting or clearing for private native forestry purposes," after "commercial firewood,".

No. 27 Page 8, clause 14, lines 30–32. Omit all words on those lines. Insert instead:

- (3) Development consent must not be granted for clearing of native vegetation grown or preserved (whether before or after the commencement of this Act) with the assistance of public funds granted for conservation purposes.
- (4) Development consent for broadscale clearing must not be granted unless the clearing concerned will improve environmental outcomes.
- (5) In determining whether to grant development consent, the Minister must give effect to any applicable standard or target set by the Natural Resources Commission in accordance with the *Natural Resources Commission Act 2003*.

No. 38 Page 11, clause 21 (s) and (t), lines 33–38. Omit all words on those lines.

No. 42 Page 13, clause 24 (a), lines 22 and 23. Omit all words on those lines.

No. 43 Page 13, clause 24 (c), lines 26–28. Omit all words on those lines. Insert instead:

- (c) proposals relating to the protection and management of native vegetation (including improving the condition of existing native vegetation) by catchment management authorities or other bodies or persons, with an emphasis on measures that are permanent (called an "incentive PVP"),

No. 48 Page 15, clause 27. Insert after line 3:

- (5) Public funding must not be made available for proposals contained in an incentive PVP within the meaning of section 24 (c) if the plan is not registered.

No. 50 Page 15, clause 28 (b), lines 17–19. Omit all words on those lines.

No. 52 Page 19, clause 33 (5), lines 24–27. Omit all words on those lines. Insert instead:

- (a) in the case of a corporation—2,000 penalty units and 200 penalty units for each day the offence continues, or
- (b) in any other case—1,000 penalty units and 100 penalty units for each day the offence continues.

No. 53 Page 20, clause 34 (4), lines 22–25. Omit all words on those lines. Insert instead:

- (a) in the case of a corporation—2,000 penalty units and 200 penalty units for each day the offence continues, or
- (b) in any other case—1,000 penalty units and 100 penalty units for each day the offence continues.

No. 56 Page 26, clause 46 (2), line 21. Omit "100 penalty units". Insert instead "400 penalty units".

No. 57 Page 28, schedule 1. Insert after line 8:

- 3** Land identified under *State Environmental Planning Policy No 44—Koala Habitat Protection* as core koala habitat.

No. 59 Page 29, schedule 1, clause 13, lines 16–18. Omit all words on those lines. Insert instead "under an environmental planning instrument."

No. 60 Page 32, schedule 3, clause 4 (2), lines 5–10. Omit all words on those lines. Insert instead:

- (2) The provisions of the former Act continue to have effect (despite its repeal) to and in relation to State protected land until a State environmental planning policy under the EPA Act otherwise provides.

I thank the Committee for not objecting to the moving of these amendments in globo. The only objection might be from me, as I had no choice. If I did not do so, I would once again be rendered redundant by the wily artifice of Minister Macdonald. Greens amendment No. 22 closes an open door on routine agricultural management activities. They must be severely curtailed as recommended by the Wentworth report. These exemptions have in the past been the subject of much abuse with excessive clearing under the current Act and have proven difficult to prosecute. My amendment limits the routine agricultural management activities and their application to small holdings.

Greens amendment No. 24 makes it clear that private native forestry will be subject to a consent process or a PVP in the note to clause 12. Amendment No. 27 ensures that the \$406 million of public investment for vegetation regeneration and conservation works on private land is protected and that the land cannot be cleared in years to come. The overarching principle for assessment of development applications must be a requirement to demonstrate improved environmental outcomes from the activity. All consents must be in keeping with applicable standards and targets set by the Natural Resources Commission. With respect to amendment No. 38, the previous legislation, the Native Vegetation Conservation Act, did not include this provision. Therefore, is not necessary to include this provision in the Act.

Amendment No. 42 seeks to clarify the purpose of the development PVP. These reforms are not about clearing but about the prevention of inappropriate clearing and the sustainable management of our limited natural resources. Amendment Nos 43 and 48 seek to clarify the purpose of the incentive PVP. The bill, as presented, would allow the allocation of public funds to conservation works on a farm but without any guarantee that the commitments made by the land-holder must be of a permanent nature. Spending of public funds on private land through a PVP must be publicly reported upon. With respect to amendment No. 50, the clause makes provision for a regulation to be made to allow clearing of remnant vegetation. The intent of the legislation and the rhetoric of the past several months have been to end broad-scale land clearing, in particular, to protect native vegetation defined as remnant. This clause undermines that intent.

Amendment Nos 52, 53 and 56 seek to redress a drafting error. I believe it was always the intention of the Government to increase the penalties in legislation. They provide for higher penalties for breaches. It is well known that penalties under the current Act are too low and do not act as a deterrent to illegal clearing or repeat offenders. The new Act must target those individuals and corporations that have flouted the law. To that end, breaches of regulations must be met with effective penalties. With respect to amendment No. 57, State environmental planning policy 44 provides for the protection and management of land identified as koala habitat and has been well supported by the New South Wales Government and the community. One of the priorities for initiatives under the new legislation will be to map native vegetation across the State. SEPP 44 has already resulted in mapping of some areas of koala habitat, and we must acknowledge the importance of that mapping by recognising this regulation at this point.

With respect to amendment No. 59, there has been a proliferation of zones in recent years that vary from council to council, and the rural residential zone has been modified. Other Government initiatives seek to reduce this proliferation and bring about a standard set of zones that are consistent across the State. This amendment is consistent with that aim. With regard to amendment No. 60, clause 4 (2) of schedule 3 contains provisions for State-protected lands. The second part is unnecessary and undermines these provisions. It is not necessary to have a sunset clause that relates to State-protected land. I commend Greens amendments Nos 22, 24, 27, 38, 42, 43, 48, 50, 52, 53, 56, 57, 59 and 60 to the Committee.

I turn now to the Government amendments. The Greens oppose Government amendment No. 11 as it leaves the door wide open for the establishment of inappropriate and destructive regulations. The intent should be to provide guidance for the regulations rather than deliberately vague language. Government amendment Nos 13 and 43 remove the reverse onus requirement on land-holders who have been clearing. It will be a defence for them to say that they were either clearing remnant land under the routine agricultural management activities, clearing in accordance with a property vegetation plan that renamed remnant as regrowth as part of rotational farming practices, or clearing in accordance with any one of the exclusions. This bill will deliver chain loads of legal clearing.

The Greens oppose Government amendment No. 17 as it would have the effect of removing consent from effective subsequent planning and policy decisions. The community must retain the means to revisit decisions that may have far-reaching consequences. The Greens also oppose amendment No. 20 as it sets up a new division of permitted activity. Although it is a worthwhile measure, it fails to describe, in any useful detail, the nature of the activities permitted. Routine agricultural activities have an extremely wide compass. The purpose of legislation is to specify sufficient detail to enable the court to decide whether a given activity is or is not permitted. The amendment cynically constrains the definition of clearing and would make the bill less able to achieve its stated intent.

The Greens oppose Government amendment No. 35 as it limits the ability of CMAs to review the property vegetation plans in the light of better knowledge or changing conditions. The bill allows for other periods of review. Greens amendments Nos 46 and 47 seek to provide for five-yearly reviews. This is not to undermine the certainty of the certified plans but to ensure that the plans are examined from time to time in line with the legislative requirements to review other licences and approvals. The Greens oppose Government amendment No. 39 as it weakens the right of a departmental officer to enter a property for the purpose of determining whether a breach of the Act has occurred. In the event that entry is refused by the land-holder, the officer would have to seek the specific approval of the director-general to investigate. This would create a cumbersome and unworkable structure, hindering the ability of authorised officers to effectively carry out their duties.

The Hon. IAN MACDONALD (Minister for Agriculture and Fisheries) [4.19 p.m.]: The Government opposes Greens amendment No. 22, which would reduce the flexibility with which the regulations can be made and varied in response to regional circumstances. A Government amendment will deal with small land-holdings. In relation to Greens amendment No. 24, a Government amendment will delete this note because it is not an exhaustive list and could lead to confusion. The Government opposes Greens amendment No. 27 because protection for publicly funded vegetation is covered by a Government amendment, which makes the Greens amendment unnecessary. The other amendments are unnecessary because they are consistent with the intentions of the bill. The Government opposes Greens amendment No. 28 because these matters can be dealt with through the regulations, if necessary.

The Government opposes Greens amendment No. 38 because it would unnecessarily restrict farmers from carrying out pest animal control and would unnecessarily disrupt the daily work of surveyors. The Government opposes Greens amendment No. 42 because it is inconsistent with the Sinclair report. The Government opposes Greens amendment No. 43 as it is unnecessary; the bill already covers its intention. The Government opposes Greens amendment No. 48 because catchment management authorities [CMAs] can deal with this matter when they develop and implement their incentive programs, should they consider it necessary. The Government opposes Greens amendment No. 50. It is essential that the regulations can provide guidance on this environmental test, which will ensure consistency and rigour as necessary.

The Government opposes Greens amendment Nos. 52 and 53 because they are covered already by a relevant Government amendment. The Government opposes Greens amendment No. 56. The limit of 100 penalty points is considered appropriate for offences created through regulations. The Government opposes Greens amendment No. 57 because it is covered already by a Government amendment. The Government

opposes Greens amendment No. 59. The provisions in the bill should stand because it is necessary to take a flexible approach to interpreting the purpose of planning zones. These zones and their names are not expressed in consistent terms around the State. The Government opposes Greens amendment No. 60 because it is covered by a Government amendment.

The Hon. RICK COLLESS [4.22 p.m.]: I indicate that the Opposition opposes a number of Government amendments and will cause the Committee to divide in relation to some of them. I ask that one question be put encompassing Government amendments Nos. 15, 41, 42 and 44 in order that they may be resolved by one division rather than four divisions.

We oppose Government amendment No. 11, which relates to the meaning of routine agricultural management activities. Clause 11, part 2, lines 27 to 29 should be removed completely from the bill. It gives the Minister unfettered power to dictate what constitutes routine agricultural management activities, and to alter the intent of the bill and the list of routine practices at his whim. These matters should be bolted down in black letter law to give certainty to farmers, particularly those who wish to invest in their farming operations.

We oppose Government amendment No. 18, which relates also to routine agricultural management activities. Lines 1 to 4 should remain so that clause 19 should read "clearing for routine agricultural management activities permitted, clearing of native vegetation only for the purposes of and to the minimum extent necessary for routine agricultural management activities is permitted." This clause is vital to avoid any ambiguity with regard to routine practices. It is the only way to provide some certainty that a farmer will not be prosecuted for doing what is necessary to operate his land under the definition of "routine agricultural practices".

The reverse onus of proof remains on the farmer as a result of the note to clause 7, which requires that the land-holder establish that any clearing is carried out for the purposes of routine agricultural management. Clause 19 (1) is not perfect, but it is better than nothing. We oppose Government amendment No. 19, which relates to vegetation cover on 10 per cent of land. The Sinclair report was explicit about the definition of percentages being the same as that which appears in the Act, which guarantees the presence of 10 per cent of native vegetation. But the amendment allows for some variation of this simple and explicit standard. It is too open-ended. We comment on, rather than oppose, Government amendment No. 24. The Minister should have no authority to approve, or be required to approve, a property vegetation plan. It should be done as a matter of course by the CMAs with strong local knowledge rather than a permitted delegation by the Minister. We comment also on rather than oppose Government amendment No. 29. The regulations do not define the central area of the State.

We oppose Government amendment No. 38. Property vegetation plans contain commercial-in-confidence information about the terms of a property's business plan. Once this has been approved it should be retained by the land-holder. No other person should have access to either its details or its terms. There may be also details of commercial secrets about a farmer's production skills or productive capacity of the farm that give the business a competitive advantage. We oppose Government amendment No. 39 on the basis that no person, other than the land-holder, should decide who has access to his or her property. Public liability and safety have to be considered, as well as the operation of machinery and the risk of allegations of theft, which should not be forced upon either the land-holder or the authorised officer—unless the land-holder alone consents. The proposed provision is tantamount to authorised trespassing by the director-general. We cannot have people tramping over our properties without permission. I will comment later on Government amendments Nos 15, 41, 42 and 44.

Government amendments Nos 10 to 14, 16 to 40, 43, and 45 to 47 agreed to.

Question—That Government amendments Nos 15, 41, 42 and 44 be agreed to—put.

The Committee divided.

Ayes, 22

Mr Breen	Ms Griffin	Ms Rhiannon
Dr Burgmann	Ms Hale	Ms Tebbutt
Mr Burke	Mr Hatzistergos	Mr Tsang
Ms Burnswoods	Mr Jenkins	Dr Wong
Dr Chesterfield-Evans	Mr Kelly	
Mr Cohen	Reverend Dr Moyes	<i>Tellers,</i>
Mr Costa	Reverend Nile	Mr Primrose
Mr Egan	Mr Oldfield	Mr West

Noes, 8

Mr Clarke
Mr Gallacher
Miss Gardiner

Mr Gay
Mr Pearce
Mr Ryan

Tellers,
Mr Colless
Mr Harwin

Pairs

Mr Catanzariti
Mr Della Bosca
Mr Macdonald
Mr Obeid
Ms Robertson

Ms Cusack
Mrs Forsythe
Mr Lynn
Ms Parker
Mrs Pavey

Question resolved in the affirmative.**Amendments agreed to.**

The Hon. RICK COLLESS [4.39 p.m.]: I would like to place on the record some of the issues that were involved in the four amendments just agreed to, about which the Opposition is really concerned. In relation to amendment No. 15, it has to be said that the amendment gives the Minister no discretion, whereas the bill at least allows him to be satisfied. Although the bill provides a subjective standard, it at least it gives some hope that broad-scale clearing might be allowed with consideration of social and economic issues taken into account. Those issues otherwise will not be taken into account in the event that they are not included in the bill.

Amendment Nos 41 and 42 double the penalties under the bill. I point out that the penalties in clause 33 (5) (a) and (b) are double the penalties in the original bill that the Opposition was shown. This bill is dodgy. It does not resolve threatened species issues. It requires land-holders to prove that action is routine. By setting dates of 1983 and 1990 by which to define remnant vegetation, there is no margin for error when it is impossible to determine the age of a tree accurately, let alone all the trees on a cleared paddock. Add to that the right of third party prosecutions, and the penalties begin to look far too high for such an imperfect and unclear law, the details of which rely so heavily upon the intent of the Government uttered during this debate but yet to be resolved before a court.

Amendment No. 44 is absolutely a die-in-the-ditch issue for The Nationals. This amendment restricts to commercial activity the clearing of firewood and the collection of firewood for commercial purposes—that is what the Government and its cohorts have just voted for. There is a very substantial red gum industry in the Riverina that is worth millions of dollars to local communities. With the passage of amendment No. 44, farmers who are left with post-logging litter on the forest floor in flood-prone areas will not be able to touch that litter. That will have major ramifications for the governments of New South Wales and Victoria because large volumes of post-logging litter floating downstream in times of flood will bank up against bridges, wash bridges away, and damage other infrastructure such as buildings and railway lines.

Another important result is that the value of firewood to these farmers—it should be remembered that it is freehold agricultural land, not State forest, and it is being logged under private forestry arrangements—is enormous, particularly in times of drought. In many cases, the only income farmers have been able to generate during the drought was by collecting firewood and selling it directly in Melbourne and Adelaide. Firewood is worth millions of dollars a year to towns such as Balranald, Wentworth and other towns along the Murray River.

The amendment will have a serious impact on the economy of Balranald and on individual farmers such as John and Kathy Manning at Kyalite, for example. They were absolutely adamant that the collection of firewood and its sale in Melbourne and Adelaide were the only reason they survived the drought. They had no feed for their stock and they had no crops because of the drought. It was only the sale of firewood that kept them going through the drought. As a result of the Committee passing this amendment, that source of income will dry up. This is a sad day for the people in the Riverina. I am sure they will be very disappointed and angry that that amendment has been passed.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [4.44 p.m.]: I wish to briefly comment on the amendments that have just been passed and the Opposition's objections to them. My colleague referred to firewood. The fact is that the Government and its acolytes have just passed an amendment to stop the

professional collection of firewood. If people have a wood heater, there will be no professionals to collect firewood and supply it to them. For the information of Reverend the Hon. Fred Nile, I point out that charities operating in country towns that collect firewood to sell on the weekend can forget about that source of funds. Honourable members need to wake up. They need to look and listen in relation to amendments that this Committee is passing.

Amendment Nos 41 and 42 double the penalties applying under this legislation. That imposition must be considered in conjunction with the reverse onus of proof, which means that farmers will be guilty until they prove themselves innocent. It should be remembered also that this Labor Government and its acolytes who have just voted in favour of those amendments not only have made farmers guilty until they prove themselves innocent but have increased the penalties for any farmers who are unable to do so.

That is why the Opposition opposed the amendments—not for some silly reason. We opposed the amendments because when they are read in connection with the provisions that make farmers guilty until they are proven innocent, they will require farmers to pay a fine that is double that currently provided in clause 33. That is the type of provision that this Government has just voted into the bill.

The CHAIRMAN: Greens amendments Nos 21, 22, 24, 27, 38, 42, 43, 50, 52, 53, 57, 59 and 60 conflict with the Government amendments that were just carried, so they cannot be admitted. Greens amendments Nos 19, 20, 48 and 56 have not yet been voted on, and the question now is, That those amendments be agreed to.

Greens amendments No 19, 20, 48 and 56 negatived.

Mr IAN COHEN [4.46 p.m.], by leave: I move Greens amendment Nos 23, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 44, 45, 46, 47, 49, 51, 54, 55, 58 and 61 in globo.

No. 23 Page 8, clause 12 (3), lines 8–11. Omit all words on those lines. Insert instead:

- (3) A person who carries out, or authorises the carrying out of clearing in contravention of this section is guilty of an offence and is liable to:
 - (a) the maximum penalty provided for under section 126 of the EPA Act for a contravention of that Act, or
 - (b) if the court is of the opinion that the penalty under paragraph (a) is inadequate given the circumstances of the case—twice the maximum penalty provided for under section 126 of the EPA Act for a contravention of that Act.

No. 25 Page 8, clause 14 (1), line 24. Insert "(except section 76A (5))" after "EPA Act".

No. 26 Page 8, clause 14 (2), lines 26–29. Omit all words on those lines. Insert instead:

- (2) In determining an application for development consent under this Act:
 - (a) the Minister must not reduce the level of protection afforded to native vegetation by:
 - (i) a catchment action plan, or
 - (ii) an environmental planning instrument, and
 - (b) the Minister is to have regard to such matters as may be required by the regulations.

No. 28 Page 8, clause 14. Insert after line 32:

- (4) As soon as practicable after a development application is made in relation to the clearing of native vegetation, the Minister must:
 - (a) exhibit the application and any supporting information on the Department's website and at its Head Office and regional offices, and
 - (b) forward a copy of the application to the Natural Resources Commission and to the catchment management authority in whose area of operations the clearing is proposed to take place, and
 - (c) allow a period of not less than 30 days for public comment, and
 - (d) allow any person to inspect and make copies of the application and supporting information during that period, and

- (e) receive submissions in relation to the application from any person during that period and take those submissions into account when determining the application.
- (5) A person who makes any statement that is false or misleading in a material particular in, or in connection with, the obtaining of development consent is guilty of an offence.

Maximum penalty: 300 penalty units.

No. 29 Page 8. Insert after line 32:

15 Director-General to keep register

- (1) The Director-General is to keep a register, in a form determined by the Minister, of all development consents granted under this Part and all property vegetation plans approved under Part 4.
- (2) The register is to include, for each development consent granted under this Part:
 - (a) the area of native vegetation sought to be cleared in the development application, and
 - (b) the area of the native vegetation permitted to be cleared by the development consent and a summary of that native vegetation's attributes and conservation values.
- (3) The register is to be available for public inspection, without charge:
 - (a) during ordinary business hours, at the Department's Head Office, its regional offices and at the offices of each catchment management authority, and
 - (b) on the Department's website.
- (4) Copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Director-General.

No. 30 Page 9, clause 18, lines 29–33. Omit all words on those lines.

No. 31 Page 10, clause 19. Insert after line 9:

- (4) Despite subsection (1), clearing of native vegetation for the purposes of routine agricultural management activities is not permitted:
 - (a) if those activities are used to progressively clear the native vegetation from a property, or
 - (b) if the native vegetation is grown or preserved (whether before or after the commencement of this Act) with the assistance of public funds granted for conservation purposes, or
 - (c) if the native vegetation to be cleared is a tree with a diameter greater than:
 - (i) 35 centimetres at ground level in the Western Division or central area of the State, or
 - (ii) 70 centimetres at ground level anywhere else in the State, or
 - (d) if the native vegetation is on land that is State protected land within the meaning of the *Native Vegetation Conservation Act 1997*, immediately before the repeal of that Act, or
 - (e) if the native vegetation is on land that a property vegetation plan or development consent under this Act specifies to be land that is managed for conservation purposes, or
 - (f) if the native vegetation is on land that a catchment action plan or an environmental planning instrument identifies to be of high conservation value.

No. 32 Page 10, clause 20, lines 10–16. Omit all words on those lines.

No. 33 Page 10, clause 21 (c), line 27. Omit "clearing carried out in accordance with". Insert instead "clearing specified in".

No. 34 Page 10, clause 21 (e), line 30. Omit "clearing carried out in accordance with". Insert instead "clearing specified in".

No. 35 Page 11, clause 21 (l), line 15. Omit "clearing carried out in accordance with". Insert instead "clearing specified in".

No. 36 Page 11, clause 21 (q), line 29. Omit "clearing carried out in accordance with". Insert instead "clearing specified in".

No. 37 Page 11, clause 21 (r), line 31. Omit "clearing carried out in accordance with". Insert instead "clearing specified in".

No. 39 Page 12, clause 21 (u), line 1. Omit "clearing carried out in accordance with". Insert instead "clearing specified in".

No. 40 Page 13, clause 22. Insert after line 10:

- (3) A draft plan cannot be submitted for approval unless:

- (a) the landholder or group of landholders have consulted with the Catchment Aboriginal Natural Resources Committee, and
 - (b) the Committee has provided its advice as to whether the plan is consistent with the cultural heritage management plan included in a catchment action plan for the land to which the draft plan applies, and
 - (c) the landholder or group of landholders have attached a copy of that advice to the draft plan.
- (4) A person who makes any statement that is false or misleading in a material particular in, or in connection with, the obtaining of approval of a property vegetation plan is guilty of an offence.

Maximum penalty: 300 penalty units.

No. 41 Page 13, clause 23. Insert after line 17:

- (2) In determining whether to approve a property vegetation plan, the Minister must give effect to any applicable standard or target set by the Natural Resources Commission in accordance with the *Natural Resources Commission Act 2003*.
- (3) As soon as practicable after a draft property vegetation plan is submitted to the Director-General, the Director-General must:
 - (a) exhibit the draft plan and any supporting information on the Department's website and at its Head Office and regional offices, and
 - (b) allow a period of not less than 30 days for public comment, and
 - (c) allow any person to inspect and make copies of the draft plan and supporting information during that period, and
 - (d) receive submissions in relation to the draft plan from any person during that period and provide those submissions to the Minister, who must take those submissions into account when determining whether or not to approve the plan.

No. 44 Page 13, clause 24. Insert after line 31:

- (2) A property vegetation plan must take into consideration the conservation of:
 - (a) native vegetation and native species (particularly threatened species) and their habitats, and
 - (b) soil and water and the control and prevention of salinity, and
 - (c) archaeologically, anthropologically or geologically sensitive or significant areas of land, in so far as they relate to native vegetation management.
- (3) A property vegetation plan must give effect to any applicable standard or target set by the Natural Resources Commission in accordance with the *Natural Resources Commission Act 2003*.
- (4) A property vegetation plan must not reduce the level of protection afforded to native vegetation by a catchment action plan or by an environmental planning instrument.

No. 45 Pages 13 and 14, clause 25, line 32 on page 13 to line 2 on page 14. Omit all words on those lines. Insert instead:

25 Plans must not propose broadscale clearing

The Minister must not approve a property vegetation plan that proposes broadscale clearing of native vegetation.

No. 46 Page 14, clause 26, line 13. Insert "and amendments to" after "reviews of".

No. 47 Page 14, clause 26, line 14. Omit "10 years". Insert instead "5 years".

No. 49 Page 15, clause 28, line 13. Omit "regulations may". Insert instead "regulations are to".

No. 51 Page 17, clause 31 (1), lines 2 and 3. Omit all words on those lines.

No. 54 Page 20, clause 34. Insert after line 31:

- (7) Until repayment, the cost is to be a charge on the land.

No. 55 Page 22, clause 38 (1), lines 7–9. Omit all words on those lines. Insert instead "be dealt with summarily before the Land and Environment Court."

No. 58 Page 29, schedule 1, clause 12, line 13. Omit "Wollongong,".

No. 61 Page 32, schedule 3. Insert after line 11:

5 Existing property management agreements

A property management agreement made under the former Act and in force immediately before that Act's repeal continues in force and the provisions of the former Act continue to have effect (despite its repeal) to and in relation to the agreement until the agreement is terminated in accordance with the former Act.

Mr IAN COHEN [4.47 p.m.]: Greens amendment No. 23 allows for the discretion of the courts in delivering financial penalties, in keeping with the defence of clearing in contravention of this clause of the bill. Penalties in the bill as it stands now are grossly inadequate and do not serve as any sort of disincentive for large operations and corporations. Greens amendment No. 25 ensures that the complying development provisions of the Environmental Planning and Assessment Act do not operate. It is necessary to have access to this tool because the bill already has a list of complying developments—that is, the list of permitted activities. Greens amendment No. 26 seeks to ensure that in granting development consent for the clearing of native vegetation, the Minister does not compromise the protection that is afforded under the provisions of the catchment action plan, or any relevant environmental planning instrument. The Greens also seek to ensure that the regulations are considered in the consent process.

Greens amendment No. 28 is important in that development applications for the clearing of native vegetation are to be exhibited for public comment. The clearing of native vegetation is of great interest to the public, and a consent authority should have the opportunity to consider the views of the broader community. The amendment sets out the procedure for exhibiting applications and receiving submissions.

Amendment No. 29 provides for public access to a register of all development consents granted and all property vegetation plans [PVPs] approved under part 4. This provision currently exists under the Native Vegetation Conservation Act and must be maintained to ensure public accountability and transparency. The details to be kept by the register should be as per the Greens amendment, consistent with the Native Vegetation Act. Amendment No. 30 proposes that the entirety of clause 18 be omitted. This clause undermines the intent of the bill, to end broadscale land clearing of native vegetation. Even the so-called unprotected regrowth should not be cleared unless the clearing falls under a routine agricultural management activity or other permitted clearing.

Greens amendment No. 31 seeks to place some reasonable conditions on permitted clearing under the routine agricultural management activity extensions. The cumulative impacts of countless exemptions proved to be the major downfall of the current Act, and therefore it makes sense that exemptions in the new bill cannot be flouted in the same way. The provisions in the bill relating to ground cover are unacceptable. That is why we moved amendment No. 32. There should be no provision to allow clearing of ground cover without consent. Amendments Nos 33 to 37 seek to clarify the relationship between this Act and the other Act mentioned herein. It is essential that clearing carried out under the provisions of these Acts is specified by these Acts, which is a clearer requirement.

To date there has been an ongoing lack of consultation with the indigenous community on natural resources management. Greens amendment No. 40 provides an opportunity to redress this omission. Greens amendment No. 41 reconnects the property vegetation plans with the standards and targets of the Natural Resources Commission. According to the bill, a plan need simply be approved by the Minister, with no constraint upon him to act in accordance with the policies of the Natural Resources Commission. The fundamental mechanism of these Wentworth reforms was to be an integrated system of policies, objectivity, plans and targets. By this means New South Wales could move beyond the uncertainty of arbitrary approvals. To leave this much to the Minister's discretion would be to return to the unsatisfactory past.

This amendment also requires that exhibition of and public comment on the draft plans are guaranteed. It is by these property vegetation plans that \$406 million is to be invested on behalf of the people of New South Wales in the land and water of the State. These plans also form the continuing development consents to carry out certain activities with immunity from change for an extended period. Not to provide for an open and accountable system of public oversight would be a grave error. The content of plans, as set out in this bill, is silent on the matter of conservation of native vegetation and species, of soil and water, or of management of salinity. There is no requirement to recognise archaeological, anthropological or geological features.

Remarkably, it is not even required to observe the standards or targets set by the Natural Resources Commission or any other planning instrument. Amendment No. 44 seeks to reconnect the bill with the intent of the natural resource reforms. The intent of the PVP system was not, after all, to authorise broadscale clearing. Indeed, the purpose of the reforms was to end that activity. Amendment No. 45 simply removes the means to

undermine the reforms. The duration of the plans has been stretched out beyond the initial 10 years, surely long enough for any legitimate agricultural activity. The continuing approval for 15 years must be reviewed from time to time. Amendments Nos 46 and 47 provide for five-yearly reviews and for the ability to amend the plans.

Amendment No. 49 seeks to emphasise the responsibility of the Government to clarify, through regulation, provisions that are not fully addressed by the bill. These are not optional requirements. Amendment No. 51 seeks to reduce unnecessary duplication. There is already precedent in the Environmental Planning and Assessment Act for unauthorised persons to have powers of entry and inspection. It is not necessary for the unauthorised person to have the consent of the owner or of the director-general. Amendment No. 54 seeks to clarify the responsibility of the landholder and tie the debt to the land. This way, the landholder cannot escape payment of debt by selling the land.

We have moved amendment No. 55 because the Land and Environment Court has much greater experience in dealing with matters relating to natural resources and is the appropriate forum for their resolution. Although the local government areas listed under part 3 of the schedule 1 are considered urban local government areas, Wollongong local government area has a substantial portion of land zoned rural that is unprotected by any native vegetation legislation. Amendment No. 58 seeks to redress this gap. This new legislation seeks to improve the management of native vegetation and encourage the community to become actively involved. One of the positive initiatives under the old Native Vegetation Conservation Act was the establishment of property management agreements. It is essential that this good work continue under the new legislation. Amendment No. 61 seeks to deliver that outcome. I commend the Greens amendments to the Committee.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [5.57 p.m.]: The Government opposes all the Greens amendments. They are inconsistent with the framework the Government has agreed to.

Amendments negatived.

Clause 11 as amended agreed to.

The CHAIRMAN: Order! I propose to put the remainder of this bill to the Committee by parts, in each part citing the clauses therein to enable members to debate them.

Part 3 as amended agreed to.

Part 4 as amended agreed to.

Part 5 as amended agreed to.

Part 6 as amended agreed to.

Schedule 1 as amended agreed to.

Schedule 2 agreed to.

Schedule 3 as amended agreed to.

Title agreed to.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [5.03 p.m.]: I move:

That the Chairman of Committees do now leave the chair and report the Natural Resources Commission Bill, the Catchment Management Authorities Bill and the Native Vegetation Bill to the House with amendments.

The Hon. PETER PRIMROSE [5.04 p.m.]: I move:

That the motion be amended by omitting all words after "that" and inserting instead "schedules 2 and 3 of the Natural Resources Commission Bill be further considered".

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [5.04 p.m.]: I find this highly unusual. The Opposition has dealt with a bad situation in the best way it could. Last night, when we had the numbers for

this bill to be adjourned until next year, we agreed in good faith to let it come back for further negotiation today. An important amendment was moved in the House today concerning the Coastal Council, and the Opposition won that motion. At that stage we had the numbers to adjourn this bill until next year, but we did not do so; we allowed the Committee stage to continue, in good faith. Having gone beyond that, with changed numbers that good faith has gone. Once again there has been a breach of faith, and a bullying by the Government. The Government gets whatever outcome it wants by manipulating the numbers.

Amendment agreed to.

Question—That the motion as amended be agreed to—put.

The Committee divided.

Ayes, 15

Dr Burgmann	Mr Hatzistergos	Mr Tsang
Mr Burke	Mr Kelly	<i>Tellers,</i>
Ms Burnswoods	Reverend Moyes	Mr Primrose
Mr Costa	Reverend Nile	Mr West
Mr Egan	Mr Oldfield	
Ms Griffin	Ms Tebbutt	

Noes, 15

Mr Breen	Mr Gay	Dr Wong
Dr Chesterfield-Evans	Ms Hale	<i>Tellers,</i>
Mr Clarke	Mr Jenkins	Mr Colless
Mr Cohen	Mr Pearce	Mr Harwin
Mr Gallacher	Ms Rhiannon	
Miss Gardiner	Mr Ryan	

Pairs

Mr Catanzariti	Ms Cusack
Mr Della Bosca	Mrs Forsythe
Mr Macdonald	Mr Lynn
Mr Obeid	Ms Parker
Ms Robertson	Mrs Pavey

The CHAIRMAN: Order! There being 15 ayes and 15 noes, to facilitate further debate I cast my vote with the ayes and declare the question to be resolved in the affirmative.

The Hon. MICHAEL COSTA (Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests)) [5.14 p.m.], by leave: I move the following seven Government amendments in globo:

No. 1 Page 14, schedule 2. Insert after the heading to schedule 2.1:

[1] **Long title**

Omit "to constitute the Coastal Council of New South Wales and to specify its functions;".

[2] **Section 3 Objects of this Act**

Omit section 3 (h).

No. 2 Page 14, schedule 2. Insert after schedule 2.1 [4]:

[5] **Part 2 The Coastal Council of New South Wales**

Omit the Part.

No. 3 Page 16, schedule 2.5. Insert "NSW Coastal Council" at the end of the schedule.

- No. 4 Page 16, schedule 2.6. Insert "Omit "Coastal Council of New South Wales"" after "**Schedule 2 Statutory bodies**".
- No. 5 Page 16, schedule 2.6. Insert "instead" before "in alphabetical order".
- No. 6 Page 16, schedule 2. Insert after schedule 2.6:

2.7 Public Finance and Audit Regulation 2000

Clause 17 Definitions of "authority" and "officer of an authority"

Omit "Coastal Council of New South Wales" from the Table to clause 17 (4).

2.8 State Environmental Planning Policy No 71—Coastal Protection

[1] Clause 3 Definitions

Omit the definition of *Coastal Council* from clause 3 (1).

[2] Clauses 18 (1) (e), 21 (2) and 22 (1) (b)

Omit "Coastal Council" wherever occurring.

Insert instead "Natural Resources Commission".

- No. 7 Page 19, schedule 3, clause 2. Insert "Coastal Council" after "Healthy Rivers Commission".

It has been explained to me that what was previously amendment 24 has been divided into two parts, and these are precisely the same amendments as before. I will not speak to the amendments as the arguments have already been canvassed.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [5.14 p.m.]: The Opposition formally opposes the amendments for all the reasons that were given before.

Amendments agreed to.

Bills reported from Committee with amendments, 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)) [5.15 p.m.]: I move:

That these bills be now read a third time.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [5.16 p.m.]: The third reading stage follows the Committee stage. We indicated before the Committee stage that we would not move to adjourn the bills at the Committee stage but allow them to be dealt with by the Committee to see whether they could be fixed. As we have indicated, these bills are of the highest importance to farmers, land-holders, and the communities that rely on them. Yet, as I said earlier, the Government has treated the entire process, and consequently farmers and country communities, as a joke. Had the Government fulfilled its promise to implement the intent of the Sinclair report, today we would support and applaud these bills. We have always been willing to negotiate in good will to achieve a positive overall result. Today we even accepted the position of the industry organisations that the bills should be debated in Committee rather than deferred for detailed negotiations over the summer recess.

As I stand here I am not confident that passing the bills will be in the best interests of country and rural New South Wales. They are simply too important to sacrifice to the incompetence that has pervaded them. The Government seems more focused on meeting media deadlines than on getting laws right for the people that the Government should be representing. These bills remain fundamentally flawed and potentially damaging to the people that they should be looking after. I will deal with some of the key issues that remain unresolved and unacceptable to the Opposition in these cognate bills. There remains no guarantee of compensation or how it will be administered. There is no long-term commitment to a budget after four years—just in time for an election. The catchment management authorities have no explicit authority of their own to determine property vegetation plans [PVPs] for broadscale clearing. Proposed sections 21, 23 and 26 in the Native Vegetation bill ensure that the Minister has the power to sign off on the PVPs. On the onus of proof, under the amendments land-holders must establish that clearing was carried out for routine agricultural management purposes rather than the reverse: guilty until proven innocent.

Sinclair said that an approval under this Act is an approval of threatened species. That is not the case according to the bill. Clause 42 is still unacceptable as it relates to the regulation of timber collection. We will not be able to collect firewood. There is a continued lack of clarity in relation to the capability of catchment management authorities [CMAs] to determine what is broadscale clearing. Clause 9 remains too restrictive and prevents traditional post-drought, flood and fire cropping techniques. The penalties have been doubled. I cannot believe that this House supported that provision. Clauses 3 (5) (a) and (b) double the penalties in the original version of the bill.

This bill was meant to be an improvement. However, it keeps farmers tied up in green tape and vague regulations, and third parties are still in the equation. CMAs will have a levy collection power that will allow the Government to cut allocations to a CMA and thereby force it to levy land-holders to make up shortfalls. That is exactly the same thing the Government is doing to local government. The definition of "routine agricultural management activities" allows the Minister unfettered power to limit those activities. We do not need that. Granting of development consent is subjective and gives the Minister the power to block property development and makes a farce of the promised devolution of power to the CMAs. Once again, the Government's promised regulations will resolve the issue of clearing of certain ground cover. Why was that not spelt out in the bill rather than left to the Minister's discretion? The regulations for the transitional arrangement for private native forestry have not been included in the legislation.

These are only some of the problems we have found with this legislation in the limited time that we have had it. Honourable members can bet there are many more. The devil will be in the detail. There are too many examples of key aspects of the Sinclair report being contradicted because the Government is not prepared to be pinned down in legislation. Instead, it prefers to bully stakeholders into accepting vague promises that regulations will be enacted one day and that all their problems will be solved. The Government is asking us to trust it on too many vital issues. That is too great a leap of faith given its record on the Native Vegetation Conservation Act and the threatened species legislation. Stakeholder groups remain concerned about the Government's conduct on this issue. They are concerned about the capacity of the private native forest industry to continue to operate under this new bill. One forest group was assured by the department that the need for transitional arrangements would be noted in the Minister's second reading speech or reply speech in the Legislative Council, but that has not happened.

The Government has totally ignored Sinclair's recommendations on this issue and most others. The legislation is restrictive and totally unreflective of Sinclair and will lead to the sterilisation of vast tracts of land and the further erosion of the right of farmers and land-holders to manage their land properly. The bottom line is that too much remains unresolved, too much has been left to regulations and too much has been offered on trust by a Government that has proven by its recent actions that it cannot be trusted. Therefore, the Opposition is forced to oppose this legislation. To do otherwise would be a serious betrayal of the farmers and regional communities that we represent.

Mr IAN COHEN [5.23 p.m.]: I will not waste the time of this House, but I will read something that adds another dimension in an attempt to change the often harsh reality of the robust debate in this place over the past few days. It has been an interesting experience. William Blake offers a different point of view:

The tree which moves some to tears of joy is in the eyes of others only a green thing that stands in the way. Some see nature all ridicule and deformity . . . and some scarce see nature at all. But to the eyes of the man of imagination, nature is imagination itself.

Reverend the Hon. FRED NILE [5.27 p.m.]: I support the third reading of these three bills. Negotiations have been conducted in an attempt to improve the bills and discussions have been held between the New South Wales Farmers Federation, the Total Environment Centre and the Government. This legislation is an improvement on the original drafts and other improvements may be needed in due course. However, it would be foolish to vote against these bills and to go backwards. The Christian Democratic Party supports the third reading.

Question—That these bills be now read a third time—put.

The House divided.

Ayes, 21

Mr Breen	Ms Griffin	Ms Tebbutt
Mr Burke	Ms Hale	Mr Tsang
Ms Burnswoods	Mr Hatzistergos	Dr Wong
Dr Chesterfield-Evans	Mr Kelly	
Mr Cohen	Reverend Dr Moyes	
Mr Costa	Reverend Nile	<i>Tellers,</i>
Mr Egan	Mr Oldfield	Mr Primrose
Ms Fazio	Ms Rhiannon	Mr West

Noes, 9

Mr Clarke
 Mr Gallacher
 Miss Gardiner
 Mr Gay
 Mr Jenkins
 Mr Pearce
 Mr Ryan
Tellers,
 Mr Colless
 Mr Harwin

Pairs

Mr Catanzariti	Ms Cusack
Mr Della Bosca	Mrs Forsythe
Mr Macdonald	Mr Lynn
Mr Obeid	Ms Parker
Ms Robertson	Mrs Pavey

Question resolved in the affirmative.

Motion agreed to.

Bills read a third time.

ASSENT TO BILLS

Assent to the following bills reported:

Bail Amendment (Firearms and Property Offences) Bill
 Crimes Legislation Further Amendment Bill
 Marketing of Primary Products Amendment (Rice Marketing) Bill
 Veterinary Practice Bill

**THE HONOURABLE PETER BREEN INDEPENDENT COMMISSION AGAINST CORRUPTION
 INVESTIGATION**

The PRESIDENT: Order! I report the receipt of the following communication from the Commissioner of the Independent Commission Against Corruption:

Dear Dr Burgmann,

RE: Return of documents seized from the Parliamentary office of the Hon. Peter Breen MLC on 3 October 2003

I refer to your correspondence of 4 December 2003 advising of the resolution of the Legislative Council in respect of documents seized from the Parliament House office of the Hon. Peter Breen MLC on 3 October 2003 and the subsequent amendment to that resolution made on the evening of 4 December 2003.

Given the position taken by the House and in order to advance the ICAC's investigation I am prepared to place the seized material in your possession. Attached to this letter is an itemised list identifying 16 boxes containing this material. I note that the electronic material was placed in the possession of the Deputy Clerk on 10 October 2003.

I am satisfied that the agreed procedure addresses my obligation to ensure the integrity of the material is maintained until the investigation is concluded. Furthermore in returning these documents I maintain the right of the ICAC to seek any judicial remedy in relation to use of the documents should that become necessary. In respect of making any submissions to the House on contested documents I would also expect that ICAC officers would be able to view the necessary documents for the purposes of drafting any such submission.

I have considered the report of the Standing Committee on Parliamentary Privilege and Ethics into this matter and in particular the findings that are contained within that report. I disagree with the finding that the immunities of the Legislative Council were breached in the execution of the search warrant. I also consider that the uncertain state of the law dealing with the application of Article 9 of the *Bill of Rights 1688* (UK) is not fairly reflected in the contents of the report. Furthermore the report fails to acknowledge the opinion of French J in *Crane v Gething* that the issue and execution of a search warrant does not infringe Section 16 of the *Parliamentary Privileges Act 1987* (Cwth) which reflects Article 9 of the Bill of Rights.

Nevertheless the agreed procedure will ensure that the integrity of the investigation is in no way compromised.

Finally I would like to thank the officers of the House for their efforts in working with the ICAC that resulted in this agreement to deal with material seized under the search warrant executed in the case of Mr Breen. My officers will contact the Clerk of the Legislative Council to arrange a mutually convenient time for the viewing of the material in accordance with the procedure.

Yours sincerely

Irene Moss AO
Commissioner

BILL RETURNED

The following bill was returned from the Legislative Assembly without amendment:

Clyde Waste Transfer Terminal (Special Provisions) Bill

SELECT COMMITTEE ON MENTAL HEALTH

Government Response

The Hon. John Hatzistergos tabled a report entitled "NSW Government Response to the Select Committee—Inquiry into Mental Health Services in NSW", dated 5 December 2003.

Ordered to be printed.

M5 EAST TUNNEL VENTILATION

Return to Order

The Clerk tabled documents relating to the M5 East and other road tunnels' ventilation from the Department of Environment and Conservation and the Roads and Traffic Authority received by him today from the Director-General of the Premier's Department which had been masked and returned in response to recommendations made by the Independent Legal Arbitrator.

SPECIAL ADJOURNMENT

Seasonal Felicitations

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [5.36 p.m.]: I move:

That this House at its rising today do adjourn until Tuesday 24 February 2004 at 2.30 p.m. unless the President, or if the President is unable to act on account of illness or other cause, the Chairman of Committees, prior to that date, by communication addressed to each member of the House, fixes an alternative day or hour of meeting.

On behalf of Government members and, I am sure, all members of the House, I take this opportunity to thank all those associated with the Parliament who have assisted us in our duties during the past 12 months. I particularly thank the Clerks and the Table Officers, but also all the staff of the Parliament. I also sincerely thank the staff of members and Ministers, who do a sterling job every year. I thank members on all sides of the House for their co-operation and goodwill during the year. On behalf of the Government and on my own behalf, I wish you all a very happy Christmas. I look forward to seeing you all, bright-eyed and bushy tailed, on 24 February next year to deal with a great swag of legislation that the Government will put before you. Indeed, in the first session next

year the House will again have the opportunity to debate another excellent budget from the Carr Government. I am a great believer in and a supporter of Christmas. However, as honourable members would expect of the Treasurer, I do not believe in Santa Claus.

The Hon. Rick Colless: Do you believe in this House?

The Hon. MICHAEL EGAN: No, my views in relation to that issue are on the record. My opposition to it is well known. I thank all honourable members for their assistance during the year and I sincerely hope that they all have a very happy Christmas.

The Hon MICHAEL GALLACHER (Leader of the Opposition) [5.40 p.m.]: On behalf of Opposition members I take this opportunity to join the Leader of the Government in wishing all honourable members a safe and enjoyable Christmas and New Year. In particular, I congratulate all new members on this side of this House. We had a reasonable turnover as a result of the March 2003 State election. They have picked up the ball and operated well in this Parliament and in discharging their committee responsibilities and their responsibilities to their electorates. I thank both new and old Opposition members for their continued support and for their hard work during the past 12 months. Following the lead of the Leader of the Government, I also thank the Clerks for their work and for being so patient with members of the Opposition and crossbench members in our endeavours to try to make Government legislation better.

Opposition members take seriously their responsibility to review the actions of the Government. We believe that we do quite a good job of that. The attendants, who have done an excellent job during the year, should also be thanked for their work. This year has been a big year, in particular, the last couple of sitting weeks. There has been a lot of passion and fire in debate. I look forward to seeing all honourable members back next year. The passion and fire that has been demonstrated in the past few weeks certainly should be controlled but it is a good thing to ensure that this House remains relevant. Unlike the Leader of the Government, members on this side of the Chamber will continue to uphold those fine traditions. In conclusion, I wish Tony Burke all the best as he pursues his new endeavours next year and takes on the role as the new Leader of the Opposition in the Federal Parliament.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [5.43 p.m.]: I join the Leader of the Government and the Leader of the Opposition in expressing best wishes to everyone. I get on well with some people and I do not get on well with others, but when we leave this House it is normally all forgotten, which is the way it should be.

The Hon. Michael Egan: You maybe!

The Hon. DUNCAN GAY: That might be what the Treasurer does, but it is not what most other honourable members do. I wish the Minister for Local Government well, but I express a degree of disappointment, as we have not yet debated any local government bills. Amy Dwyer, a year 10 work experience student from Yass High School, did a great deal of work in researching regional newspapers and obtaining all the comments of support and non support for the Minister.

The Hon. Michael Costa: Did you use Rehame?

The Hon. DUNCAN GAY: We do not have Rehame.

The Hon. Tony Kelly: She comes from a very good family.

The Hon. DUNCAN GAY: The Minister acknowledges that Amy Dwyer comes from a very good family.

The Hon. Tony Kelly: Her mother is one of my wife's best friends.

The Hon. DUNCAN GAY: The Minister's remark is now on the record. Amy was an outstanding work experience student. As I did not have an opportunity to speak to the local government bills I was not able to acknowledge her work at any other time.

The Hon. Tony Kelly: I actually went to her uncle's fortieth birthday party when her mother was pregnant.

The Hon. DUNCAN GAY: That remark of the Minister is also on the record. I thank Hansard for making us all sound better than we normally do, I thank the Clerks for their wise counsel and I thank David in the dining room for keeping us in the condition that we are. It is one of the few professions in the world where you lose weight over Christmas. I wish everyone a happy Christmas.

Reverend the Hon. FRED NILE [5.45 p.m.]: In view of the time I will speak only briefly tonight. I wish everyone a happy Christmas—I will not ask members to sing Christmas carols! As we celebrate Christmas I ask honourable members to remember that it is the birthday of Jesus Christ our Lord. The opening chapters of Matthew state "They shall call his name Jesus for he shall save the people from their sins." We should remember that as we celebrate Christmas. May God bless each one of you, all your families, as well as the staff and all those who help us in the Parliament.

Ms SYLVIA HALE [5.46 p.m.]: On behalf of Mr Ian Cohen and Ms Lee Rhiannon I wish everybody the compliments of the season. I thank the Clerk, his staff and the parliamentary officers who introduced me to the arcane rules governing this place and who have almost made them make sense. I thank the Hansard staff. During my tours with the committees I have got to know some of them and I now understand what a truly difficult job it is for them to make sense of many of our remarks. I would like especially to thank Stephen Reynolds, Helen Minnican and other committee staff who have made complex issues seem clear and interesting. I look forward to some of their work on current inquiries coming to fruition in the new year. I thank the attendants and support staff who are always helpful and cheerful despite the long hours, the sometimes far from happy parliamentarians and the other trials with which they are faced.

I thank the library staff. Discovering the library, its contents and the talented people who work there has been one of the most enjoyable aspects of working in this building. Many thanks to the behind-the-scenes people who keep the place moving—the administration officers, the security staff, the cafeteria and food services and, of course, the cleaners, in particular, Patricia, who is there every morning and who is always cheerful. The work of the cleaners and the behind-the-scenes staff might not often be mentioned but it is certainly appreciated. I thank my dedicated staff. This first year in Parliament has been an amazing journey and I have enjoyed travelling it together with those talented people. I look forward to working with all of them in the new year. I have particularly enjoyed the cut and thrust of the debate but, most particularly, I have enjoyed the bill that we have failed to debate.

The Hon. Dr PETER WONG [5.48 p.m.]: I take this opportunity to thank the Clerk and his staff. I also thank Government, Opposition and crossbench members for their advice and friendship over the year. In particular, I thank the Hansard staff. They have been wonderful to me and have put up with me. I thank all the staff in this Parliament, especially my own staff members, Margherita Tracanelli and Frances Tan. I wish everyone a very merry Christmas and happy New Year.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.48 p.m.]: I wish all honourable members a merry Christmas. I hope that they all come back safe and refreshed and with new degrees of political enlightenment. I thank the library staff for doing the research that allows me to flay members of this House. I thank the security staff who are wonderful when I leave my key behind. I thank Patricia who keeps the cups nice and clean and who does a good job of cleaning our offices. Isaac in the gym is good when I lose my key, David Draper keeps us fed, and Paul and Guy make me look a lot better than the other members in this Chamber. I thank Parliamentary Counsel and Hansard for their solid support over the year.

The Hon. JON JENKINS [5.49 p.m.]: I thank all honourable members of this House for their warm welcome and assistance during the past approximately six days that I have been in this House. It has been a very eventful six days; the learning curve has been very steep. I thank everyone for their warm welcome and help, and wish you all a very merry Christmas. I have received many Christmas cards from members. I did not realise that was a custom, and I apologise if I have not reciprocated. My parting message, honourable members and Madam President, is that while you are away on the break enjoying recreation, think of the Outdoor Recreation Party. If I do not get an occasional win here, honourable members might not be enjoying that recreation. Merry Christmas.

The Hon. DAVID OLDFIELD [5.50 p.m.]: Enough thanks have been extended to one another, so I will simply focus on thanking Madam President and the staff of the Parliament, particularly those who work with us in the Legislative Council—the Clerk and his staff, and the attendants. I thank also the security personnel in general; they do not get a great deal of acknowledgment. Of course, David Draper and his staff are deserving of the many expressions of thanks from members; their catering and room service is fabulous. I thank all staff, wherever they are and whatever they do throughout the Parliament.

Motion agreed to.

ADJOURNMENT

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [5.53 p.m.]: I move:

That this House do now adjourn.

YEAR IN REVIEW

The Hon. DAVID OLDFIELD [5.53 p.m.]: This is my last opportunity to add something to the record for 2003, and I consider it appropriate to speak very much from a personal point of view about the year gone by. The year started out badly. I freely acknowledge the first three months were some of the most difficult of my political life, not purely as a consequence of politics as such, but due to interrelated personal matters and choices forced by responsibilities. One Nation New South Wales suffered setbacks because of personal agendas, not in the interests of what we represent, and while some may point the finger at me in such respects, any competent evaluation would find my motives and intent to have been honestly based and politically sound. One Nation would have had the highest probability of winning a seat at the last election if the candidate had been my wife, Lisa.

Indeed, what has not been publicly disclosed till now is that when the members themselves had the opportunity to voice their opinion, Lisa's candidacy was supported by some 400 members, as opposed to the pretender, who could barely rustle up 80 votes. In fairness to my wife, I must point out she never had political ambition and truly was the most reluctant of candidates. Only because of my insistence, the urging of others and to help the people we represent, did Lisa agree to give up her happy life and very successful career. As a consequence, Lisa suffered a series of dishonest assaults, the majority of which will never be publicly known. I am greatly sorry for what she endured for the sake of others, and with no expectation of benefit to herself, and I am immensely proud of the courage she displayed throughout the ordeal of that commitment. It should be noted Lisa is unaware I am saying this now or that I had intended saying it publicly.

While this and associated matters were occurring, and the election was fast approaching, my best friend was dying of liver cancer and I was forced to choose between my responsibilities here and being with him. Ron Poirot was a friend with whom I had shared experiences I am unlikely to replicate. He was a man of great understanding and intellect whose friendship was rare in that he gave it to me without expectation of anything other than the friendship itself. Ron was rightfully a proud American, but he very much wanted to move to this country, and I have no doubt he would have made a substantial contribution to Australia if he had had the chance. I did not get to him before he died, and while I feel certain he understood, I will not soon forgive myself for not seeing him. His friends, his family, in particular his parents, Jim and Raeda, have suffered a great loss. He will always be in our thoughts.

There were times this year when I felt I was on hold just waiting for the next bit of bad news. There were too many sad events to mention, but they included the deaths of three other people for whom I had great fondness, as well the loss of my beloved avian friends, Audie and Rizzo—something few would understand. It is easy to take good things for granted, and if I did not know that at the beginning of this year, I certainly know it now. I have an intelligent, beautiful, witty and incredibly supportive and successful wife in Lisa, some great friends, and a lot of people, many of whom I have never met, who believe in what I do.

My Mum continues to survive a cancer that quickly kills virtually all who have it, and only a few weeks ago we celebrated her eightieth birthday. Earlier this year we celebrated Dad's eighty-fifth. A close family friend recently pointed out that not only do I still have my parents, but I still have them together. That in itself is a significant gift for which I am thankful. I am often a target—unfairly and unjustly served—but more often than not, I am the recipient of good things and life has a way of working out for me. It was a bad year that took its toll, but at its end, like every year before it, I have far more for which to be glad than sad, and with luck I will one day learn to take my own good advice about always keeping things in perspective.

CANTERBURY CITY COUNCIL VISUAL ARTS PROGRAM AND POWER OF POTENTIAL ART EXHIBITION

The Hon. KAYEE GRIFFIN [5.57 p.m.]: Today I want to acknowledge the Visual Arts Program and Power of Potential Art Exhibition by children attending Canterbury City Council's Children's Services. Canterbury City Council provides a range of children's services that have received recognition in the early childhood profession for innovative, high-quality early childhood education and care programs. The philosophy

of the services entails a strength-based approach in working with children and families. Educators identify and empower the potential within each individual child. One very unique component of the council's children's services is a visual arts program that was first introduced three years ago, with the casual employment of a visual arts teacher to work with children and educators across all the centres.

The potential in every child, the aspirations of educators and the provocations of the visual artist have cultivated a shared vision for nurturing the visual arts within early childhood programs. The program caters for any child attending the centres, but specifically focuses on ages 2 to 5 years. With the encouragement and assistance of the visual artist, early childhood educators have developed their own creativity and enthusiastically integrated the visual arts program within their services. The recognition and response from families and the community to the visual arts program has contributed to the commitment of all participants in appreciating art as serious work. Each service continues to cultivate a climate of value and respect for the process of art making.

The program has been so successful that the visual artist was employed full time this year in order to support the maintenance and extension of the work undertaken in the centres. The children have been given the opportunity to reflect on the beauty and mastery of various art media. Critical appreciation is inherent in the practice. As avid observers, young children develop an appreciation for the expertise of many different artists. This has taken place both within the centres, through books and other images, as well as during visits to art galleries and other environments. The opportunity to study artworks impels children to interpret imagery and redefine it through their own creations. Observations and discussion of the environment, both natural and man made, support children's aspirations to create images that reflect an understanding of the world.

The visual arts program gives children access to authentic tools and materials and they are instructed in the application of sophisticated techniques, thus enabling their creativity to flourish. An integrated visual arts focus in early childhood education stimulates growth and development of young children, intellectually, socially, emotionally, aesthetically and physically. It endows children with multiple gifts, inspiring an intrinsic capacity for creativity, imaginative and divergent thinking. It reaffirms the rich learning potential of young children. The arts program culminates in an exhibition of the children's work titled "Power of Potential", and the exhibition has now been held annually for the past three years.

The exhibition itself is an opportunity to appreciate the possibilities and expressive potential of young children. It celebrates a continuum of learning and the growing confidence of our young art makers. It also recognises the dynamic collaboration between children, educators and the visual artist. This year's exhibition reflected an expansion of interests, subject matter and art media. The works that were displayed encompassed a range of paintings, including watercolour, acrylic and Chinese painting on paper, canvas and rice paper. Some artworks used several mediums whilst others reflected works of the masters, such as Monet, contemporary artists like Ken Done, and some were representative of popular culture, for example Spiderman.

The artworks included sketching in various mediums, sculptured pieces ranging from small clay works to large papier-mâché creations and exhibits including wire, wood and tissue. A number of the artworks this year focused on portraiture, again making use of various art forms and media. The works were very representative of the children's interests with themes of fairies, cars, snails, monsters, trees and buildings. The children's excursion to the city also prompted a range of painting and sculpture along with the introduction of a new medium. A photographic documentary of the visit was a highlight of this year's exhibition, and the abilities of the young photographers were the subject of much discussion.

Canterbury's Children's Services visual arts program acknowledges the importance of the early years for children's learning and development. The value of early childhood education is intensified through an alignment with the visual arts, extending learning through interests and supporting the development of various skills and abilities. This program recognises the potential of young children, and the annual exhibition has been a wonderful opportunity to celebrate the "Power of Potential" and to acknowledge the work and commitment of the staff.

CONSTITUTIONAL MONARCHY

The Hon. DAVID CLARKE [6.02 p.m.]: As we enter the final days of 2003 I want to reflect on what a great year it has been for constitutional monarchists and the great cause they uphold in the name of mainstream Australia. First of all, the sly manoeuvrings by the Republican Opposition in the Senate earlier this year to ignore and circumvent the referendum result by reviving the whole Republican debate has been a total fiasco and an absolute farce. And, let us face it—why would it not be a fiasco and a farce when it is heavily

promoted and led by a leadership group of Senators including Natasha Stott-Despoja. She was rejected by the Democrats as their leader and she will be rejected by South Australia when next she faces the voters.

I very much hope that Mark Latham—Labor's temporarily current leader—will carry out his threat to revive the Republic as an issue because his support will surely signal the Republic's death knell. The Mark Lathams and Natasha Stott-Despojas of the political scene have a blind spot: they can never accept the fact that Australia has already given its verdict on the Republic. Australia gave a very loud and clear no!

This year has also been a notable one because for the first time we have seen an effective literary counteroffensive against the Republican elites who operate as a self-chosen subculture of the media. We have had, for example, the release of Paul Sheehan's latest book *The Electronic Whorehouse*. And let me say to this House what a penetrating and outstanding exposure of the double standards of the Republican media elite it is. No wonder Paul Sheehan's leftist media critics have been wielding their knives to do over him and his book. I have no doubt that he would welcome these attacks because they serve to illustrate his case. This year has also seen the release of Professor David Flint's latest work *Twilight of the Elites*. I was very honoured to have been present at its launching only a few weeks ago. Professor Flint has delivered us a work that is a devastating demolition of the republican elitist, set in this country. As Tony Abbott writes in his foreword to *Twilight of the Elites*:

To the Paddington Republican set, Flint should have been one of them. Were not people like Flint supposed to be the victims of a racist Crown and the boring, conformist Australia which flourished under it?

As it happened "White Australia" in its heyday seems to have given Flint's family the same welcome as has been more widely extended to people from Asia since the 1960s.

As a "non-Anglo" Flint is far from oblivious to Australia's flaws. But neither does he take its strengths for granted nor feel compulsory guilt about its institutions.

Flint is living refutation of the culture determinist argument that the "British" monarchy somehow stops people from other backgrounds feeling at home in Australia.

If you are part of the real world, if you are part of mainstream Australia, if you are part of the great majority who voted four years ago to preserve our present constitutional arrangements, then you will be inspired and enthused by these two great books. Over the past few months I have been privileged to have spoken at many gatherings of constitutional monarchists. And one thing stands out very clearly: there has been a noticeable upsurge in support for the constitutional monarchy among young people. For example, I take great pleasure in being able to record that more than 80 per cent of the executive of the Young Liberal Movement of New South Wales—the largest political youth movement in this State and in this country—are committed constitutional monarchists. That is the highest level it has been for many years. I want to conclude with a further quotation from Professor Flint's book. It is a quotation that gives me great confidence and hope for the future:

Australia's media and legal elites wanted us to vote for a Republic in 1999 – WE DIDN'T.

They wanted us to change the flag –WE WOULDN'T.

They wanted the Prime Minister to say "sorry" –HE WOULDN'T.

They wanted us to hand over power to international elites—WE WON'T.

They wanted us to kick out John Howard in 2001—WE DIDN'T.

They wanted us to support unlimited illegal immigration—WE DIDN'T.

But still they live in hope that they can get round Australia's system of democratic checks and balances to impose their own agendas

- secularism
- hard multiculturalism
- judicial activism
- an end to individual responsibility
- big government.

As we move towards 2004 I know with absolute conviction and with complete faith that these elites will never achieve their agenda. And they will never achieve their agenda because it runs counter to the aspirations, the beliefs and the sentiments of mainstream Australia, which is and always will be the great majority of Australians.

MENTAL HEALTH SERVICES

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [6.06 p.m.]: I express concern about mental health in the Gosford region, where a nurse has made a compensation claim alleging bullying after she drew a number of matters to the attention of management. That was the subject of my question on Tuesday in question time. A patient was killed. I was, correctly, upbraided for using the word "murdered" because the perpetrator of the killing was, at least possibly, a person of unsound mind. The lack of a duress alarm was possibly a factor in that event. It certainly was a sudden and tragic incident. Since then there have been cases of demented patients having escaped, and allegations have been made that the duress alarms still do not work. Some degree of bullying is involved.

There is a worrying parallel. Generally, I do not like to take up workers compensation cases in this Chamber, but the culture of bullying has been the subject of an allegation made to me by people in a number of areas. This was prior to my setting up the mental health inquiry. The bullying of the nurse whistleblowers in the Macarthur area also is worrying. Evidence is emerging about that. We are hoping that the Health Care Complaints Commission report on that matter will come out next week. I note the New South Wales Government's response: a report of a select committee of inquiry into mental health services in New South Wales. The tone of it is quite worrying. I have not had a chance to go through it thoroughly. It appears to be saying that all people are suggesting that everything is under control. If ever there was a message that came from the mental health inquiry, it was that things are not at all under control and a considerable amount of work needs to be done.

I think the Government has to fess up to this. I am not saying it is entirely the fault of the Government. The fact that the Federal Government is putting \$2.4 billion into private health insurance, rather than a universal public health system, is a matter much to be criticised. Of course, my colleagues in Canberra have told the Government what it is doing with Medicare is simply not adequate. I can claim some input to that decision. Simply entrenching a two-tier health system because money has been offered to help those at the bottom of the health system who are most disadvantaged is not satisfactory. By helping some people, you are effectively entrenching a two-tier system. But the New South Wales Government has to be a lot more honest and up front in facing the difficulties it has, particularly in regard to mental health.

I am concerned about the nature of the Government's response. Obviously, I will take this matter further. I will do some research over the Christmas break and into the new year. We know that everything is not all right. Allegations of problems are often treated as comments from individuals who have been under stress on the job, or responses to inadequate management, or whatever. In fact, there are a lot of problems in a number of areas of mental health. Clearly, the Government needs to address those concerns with a more substantive response than it has made—a delayed response to the work of the select committee of inquiry into mental health services in New South Wales.

SHOALHAVEN RESPITE CARE SERVICES

The Hon. JOHN RYAN [6.10 p.m.]: I would like to spend a few minutes tonight making a submission to the Minister for Disability Services on behalf of 20 families from the Shoalhaven area who are concerned about the grossly inadequate facilities for respite care in their region. Until about three years ago, families caring for children with disabilities had access to a four-bed cottage for respite care called Kids House in Albatross Road, Nowra. Unfortunately, some years ago the four beds in the cottage came to be taken up permanently by four clients whose families fell into crisis and could no longer cope with the task of caring for them. I understand that these people are now young adults, aged around 18 years.

For around three years, while the beds at Kids House were blocked, families in the Shoalhaven area had no access to centre-based respite care. About two years ago, the Department of Ageing, Disability and Home Care [DADHC] acquired a property in nearby Berry Street, Nowra to set up as a site to permanently accommodate the four young people who are living in the children's respite cottage. There is a house on the land, but it is not of a suitable standard and needs to be demolished. But as so often happens in DADHC, these plans have been circulated from desk to desk within the department and nothing has happened in two years. Finally the parents could take it no more, and last Thursday, 27 November, they convened a crisis meeting with their local member, Ms Shelly Hancock, the member for South Coast.

The parents begged the Minister to meet with them, but, sadly, although the Minister was visiting in nearby Wollongong on the same day she was not able to find time to meet them. The regional director, Mr

James Christian, did meet them. He made a commitment to get things going at Berry Street. However, he also told the parents that when Kids House eventually reopens as a five-bed respite cottage it will not be a facility exclusively for children. Families with children will have to share the centre with adults needing respite care. Because it is not appropriate to mix children with adults, the centre will be available on a rotational basis to families who are caring for children with disabilities. The proposed five-bed facility is expected to be the only respite care centre for the entire Shoalhaven area.

It is fairly obvious what will happen. If a single adult takes up permanent residence in one of the beds because of a crisis, the respite facility will again be closed permanently to children. It is obvious that, given its population, the Shoalhaven needs two cottages: one for adults and one for children. I remind the Government that, according to recently published figures by the Productivity Commission, respite care rates in New South Wales are lower than those in any other Australian State or Territory. New South Wales provides less than half of respite support available in Victoria, South Australia and Western Australia. These people have waited long enough. It is time for the Carr Government to act and provide the Shoalhaven with the facilities it needs for people with disabilities.

Today in question time the Minister for Justice referred to the annual report of the Inspector-General of Corrective Services. He gave a very one-sided commentary of the contents of the report, and he rudely abused the Opposition for not yet having read it. However, he failed to mention that he had tabled the report only a few minutes before he commenced his speech and that he had provided only a single copy. It was impossible for us to have read it, let alone make any objective assessment of what he said about its contents. I have noticed that although the report makes a number of positive observations about the Department of Corrective Services, many of which are modest improvements on what has been a low-base performance, it also says that because of the—

... many antiquated work practices that persist within the Department ... these outcomes were arrived at an inordinately high comparative financial cost to the community ... New South Wales has the second most expensive system in the country. Productivity losses through high rates of sick leave and dependence on overtime continue to plague the Department.

Sadly, of course, the Inspector-General of Corrective Services has now gone. I note that the Minister has not done what he promised and introduced legislation to smoothly finalise the transition from the Inspector-General of Corrective Services to a new regime under the Ombudsman and other bodies. As a result, we have not had an opportunity to debate the demise of the Inspector-General of Corrective Services. One of the reasons for abolishing the office of Inspector-General of Corrective Services was a report written by Mr Vern Dalton as a consultant. Since the report was published I have discovered that Mr Dalton does many things on a commercial basis that the Inspector-General did. It was grossly inappropriate for the Government to hire a person to provide a consultancy service identical to the—

The Hon. Jan Burnswoods: He has been highly respected in that area for years.

The Hon. JOHN RYAN: No matter how respected he might be, it is clear that he has a conflict of interest. It was inappropriate to have someone who has such a conflict of interest write a report about the job done by the Inspector-General of Corrective Services. It is a pity we no longer have the Inspector-General of Corrective Services. His final report illustrated the skills, objectivity and openness he brought to the task. There is no doubt that the Department of Corrective Services is in a better condition for the work done by Mr Lindsay Le Compte and his successor, Mr Steve Griffin.

CHINESE FILM FESTIVAL

The Hon. HENRY TSANG [Parliamentary Secretary] [6.15 p.m.]: I congratulate the Chinese Film Festival 2003 on its success. The film festival, which has been held at the Dendy Cinema, Opera Quays from 2 December to 5 December, coincides with the visit to Australia of Madam Zhao Shi, China's Vice Minister, State Administration of Radio, Film and Television [SARFT], which is responsible for developing and promoting the Chinese film industry. The festival, represented by SARFT, will introduce to Australians some of the latest films from the new generation of Chinese filmmakers. I had the great honour of representing the Premier at the opening, and I was able to welcome this important delegation—Madam Zhao and her distinguished guests—to Sydney.

The delegation is important because it has the authority to approve the importation of Australian television and film into China. It also approves the use of Australian film and television expertise into the Chinese filmmaking industry. The Premier saw fit to host the delegation at a formal lunch held at level 41 Governor Macquarie Tower on Wednesday 3 December. The Premier took the opportunity to invite Sydney's

film representatives, which provided Madam Zhao with the opportunity to understand that Australia is an accomplished film and television-making nation. It also provided the Premier with the opportunity to promote our industry. I congratulate the Premier, Bob Carr, on supporting the Australian film industry.

The Visit of Madam Zhao Shi and her delegation follows the recent visit to Australia of Chinese President Hu Jintao, who was the guest of honour at a State reception with the New South Wales Governor and Premier only last month. Australia, like China, is a nation of movie lovers. And, like the Chinese, we are also pretty good filmmakers. The Chinese Film Festival is more than an important festival for the Chinese community in Sydney. It is an important part of the diverse multicultural calendar we enjoy in New South Wales leading up to the Sydney Festival in January. In the past decade Chinese cinema has achieved international prominence, and it has received the recognition it deserves.

If the Chinese film industry could benefit by using our skills we would both enjoy an even greater level of success. Australia has been lucky to enjoy such films as *Crouching Tiger, Hidden Dragon* and *Raise the Red Lantern*. The audience for Chinese films in Australia is not limited to the Chinese community. New South Wales is a sophisticated cinema-going public that enjoys good films no matter where they are made, as this festival has demonstrated. Filmmaking is an effective and accessible way of bridging the cultural division between our countries, of exposing each other to our different cultures and societies, and promoting greater cultural understanding. The Chinese filmmaking industry, like the Hong Kong industry, has matured greatly: it has moved beyond its portrayal of action-based film. Its influence on Western cinema is undeniable. I wish to comment on the co-operative nature with which we dealt with the Native Vegetation Bill. It will be good for farmers and the environment. It is now in the lower House.

The Hon. Jan Burnswoods: Point of order. The honourable member is breaching standing order 91 by reflecting on that vote of the House, which he just did by referring to the farmers.

The Hon. HENRY TSANG: It is good for the farmers. Surely, the honourable member agrees.

The Hon. Jan Burnswoods: Section 91 (1) of the proposed new standing rules and orders states that a member may not reflect on any resolution or vote of the House unless moving for its rescission. The Hon. Peter Primrose moved to rescind a certain portion of that report, but it is not appropriate for the Hon. Henry Tsang to reflect on a resolution or vote of the House at this stage.

The Hon. HENRY TSANG: I withdraw that remark. I wish everybody a merry Christmas and a happy New Year. I thank Hansard, the staff of Parliament House, and everybody else.

The PRESIDENT: Order! I think the word "reflect" in Standing Order 91 (1) means reflect in a poor way, rather than simply making a reference. To simply make a reference to a resolution or a vote of the House is in order. However, any adverse or critical reference to a vote of the House would contravene Standing Order 91 (1).

The Hon. HENRY TSANG: To the point of order: In that case, I do not withdraw my remark.

The PRESIDENT: I rule that there is no point of order, and that the remarks of the Hon. Henry Tsang were indeed in order.

DEPARTMENT OF EDUCATION AND TRAINING RESTRUCTURE

Ms LEE RHIANNON [6.20 p.m.]: The Workers Educational Association Sydney [WEA] has made comments about the proposed restructuring of the New South Wales Department of Education and Training, as outlined in its paper "Lifelong Learning—the Future of Public Education in NSW". The WEA Sydney plays a very valuable role in our society. It is a major non-profit, community-owned and managed adult and community education organisation in Sydney, with 20,000 enrolments per year in 1,500 short courses. It provides the State with some 268,659 student contact hours. Its work is very valuable and it has been conducting courses for 90 years. Indeed, this year is its ninetieth anniversary.

In 1913 the New South Wales Government decided to support this important organisation. WEA Sydney is virtually unique in adult and community education because it still provides a large program of humanities and social science courses. The association has a turnover of some \$2.8 million, but recurrent New South Wales Government funding remains a vital element in what is a very delicate financial balancing act.

Statements made by the Minister for Education and Training, Dr Refshauge, that "consideration will be given to streamlining the operations" of the Board of Vocational Education and Training, the Vocational Training and Accreditation Board and the Board of Adult and Community Education have resulted in a number of us becoming concerned about the future of the WEA.

The Greens support the call of WEA Sydney that in any restructuring of the Department of Education and Training, measures be put in place to ensure the continued viability and vitality of adult and community education through the existing mechanisms of recurrent funding agreements and statutory departmental support to the community colleges network. This will assist the survival of organisations such as WEA Sydney. I also wish to share with the House a letter I received from the teachers of the Mona Vale primary school, who have highlighted their concerns about the way that teachers in this State are being treated. They state that they are disgusted by the miniscule pay offer made to them by the Carr Government. Part of their letter states:

To add insult to injury, we note that beginning backbenchers are getting \$100,000 plus allowances and benefits. Staffers are on a similar rate. We used to earn the same as backbenchers did. How times change! Now we don't get as much as the council garbage collectors.

Why don't teachers receive automatic salary flow-ons like politicians do? State politicians have just collected an extra \$4 000 per annum as a flow-on from the federal politicians' award. With no pain or strain required!

[Time for debate expired.]

Motion agreed to.

The House adjourned at 6.23 p.m. until Tuesday 24 February 2004 at 2.30 p.m.
