

LEGISLATIVE COUNCIL AND LEGISLATIVE ASSEMBLY

Thursday 24 June 2004

JOINT SITTING TO ELECT A MEMBER OF THE LEGISLATIVE COUNCIL

The two Houses met in the Legislative Council Chamber at 5.00 p.m. to elect a member of the Legislative Council in the place of the Hon. Anthony Stephen Burke, resigned.

The Clerk of the Parliaments read the message from the Governor convening the joint sitting.

The PRESIDENT: I am now prepared to receive proposals with regard to an eligible person to fill the vacant seat in the Legislative Council caused by the resignation of the Hon. Anthony Stephen Burke.

Dr ANDREW REFSHAUGE: I propose Eric Michael Roozendaal as an eligible person to fill the vacant seat of the Hon. Anthony Stephen Burke in the Legislative Council, for which purpose this joint sitting was convened. I propose that Eric Michael Roozendaal be elected as a member of the Legislative Council to fill the vacancy in the Legislative Council caused by the resignation of the Hon. Anthony Stephen Burke. I indicate to the joint sitting that if Eric Michael Roozendaal were a member of the Legislative Council he would not be disqualified from sitting or voting as such a member, and that he is a member of the same party, the Australian Labor Party, as Anthony Stephen Burke was publicly recognised by as being an endorsed candidate of that party and who publicly represented himself to be such a candidate at the time of his election at the eighth periodic council election held on 22 March 2003. I further indicate that the person being proposed would be willing to hold the vacant position if chosen.

Unfortunately, Mr Roozendaal cannot be with us today. His 11-month-old daughter is having an operation and, quite appropriately, he is with her at the moment. I find it rather intriguing that I am assisting with Eric Roozendaal's leaving the headquarters of the Australian Labor Party.

The Hon. MICHAEL EGAN: I second the nomination.

The PRESIDENT: Does any other member desire to propose any other eligible person to fill the vacancy? As only one eligible person has been proposed and seconded, I hereby declare that Eric Michael Roozendaal is elected a member of the Legislative Council to fill the seat vacated by the Hon. Anthony Stephen Burke. I declare the joint sitting closed.

The joint sitting closed at 5.08 p.m.

LEGISLATIVE COUNCIL

Thursday 24 June 2004

The President (The Hon. Dr Meredith Burgmann) took the chair at 10.30 a.m.

The Clerk of the Parliaments offered the Prayers.

LEGISLATIVE COUNCIL VACANCY

Resignation of the Honourable Anthony Stephen Burke

The PRESIDENT: I report the receipt of the following communication from Her Excellency the Governor:

The Honourable
The President of the Legislative Council
of New South Wales
Parliament House
SYDNEY NSW 2000

Dear President,

I have the honour to inform you that I have received a letter from the Honourable A S Burke MLC tendering his resignation as a Member of the Legislative Council of New South Wales with effect from 24 June 2004.

I have acknowledged receipt of the letter from Mr Burke and have informed him that you have been advised of his resignation.

A copy of the resignation is attached.

Yours sincerely
Marie Bashir
Governor

I have acknowledged Her Excellency's communication. An entry regarding the resignation of the Hon. Anthony Stephen Burke has been made in the register of members of the Legislative Council.

Joint Sitting

The PRESIDENT: I report the receipt of the following message from Her Excellency the Governor:

I, Professor MARIE BASHIR AC, in pursuance of the power and authority vested in me as Governor of the State of New South Wales, do hereby convene a joint sitting of the Members of the Legislative Council and the Legislative Assembly for the purpose of the election of a person to fill the seat in the Legislative Council vacated by the Honourable Anthony Burke, and I do hereby announce and declare that such Members shall assemble for such purpose on Thursday the twenty-fourth day of June 2004 at 5.00pm in the building known as the Legislative Council Chamber situated in Macquarie Street in the City of Sydney; and the Members of the Legislative Council and the Members of the Legislative Assembly are hereby required to give their attendance at the said time and place accordingly.

In order that the Members of both Houses of Parliament may be duly informed of the convening of the joint sitting, I have this day addressed a like message to the Speaker of the Legislative Assembly.

Office of the Governor
Sydney, 24 June 2004

BUSINESS OF THE HOUSE

Precedence of Business

Motion by the Hon. Michael Egan agreed to:

That on Thursday 24 June 2004 Government Business take precedence of General Business.

BUSINESS OF THE HOUSE

Question Time

Motion by the Hon. Michael Egan agreed to:

That questions commence at 11.00 a. m. on Thursday 24 June 2004.

GENERAL PURPOSE STANDING COMMITTEE NO. 2**Report: Complaints Handling within NSW Health**

Reverend the Hon. Dr Gordon Moyes, as Chairman, tabled report No. 17, entitled "Complaints Handling within NSW Health", dated June 2004, together with evidence, transcripts, submissions, tabled documents, correspondence and answers to questions taken on notice.

Report ordered to be printed.

Reverend the Hon. Dr GORDON MOYES [10.40 a.m.]: I move:

That the House take note of the report.

Debate adjourned on motion by Reverend the Hon. Dr Gordon Moyes.

PETITIONS**Freedom of Religion**

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

Temporary Protection Visa Holders

Petition praying that temporary protection visa holders be provided with the same rights and services as permanent protection visa holders, received from **Ms Sylvia Hale**.

Casino to Murwillumbah Rail Services

Petition requesting reinstatement of rail services from Casino to Murwillumbah, received from **the Hon. Catherine Cusack**.

Anti-Discrimination Legislation

Petition requesting support for the Anti-Discrimination Amendment (Equality in Education and Employment) Bill and the Anti-Discrimination Amendment (Sexuality and Gender Diversity) Bill, received from **Ms Lee Rhiannon**.

The Domain Fig Trees

Petition requesting conservation of historic fig trees in The Domain, Sydney, received from **Ms Lee Rhiannon**.

CountryLink Rail Services

Petition opposing the replacement of CountryLink rail services with bus services in rural and regional New South Wales, and calling for reversal of the decision to close the Casino to Murwillumbah rail line, received from **Ms Lee Rhiannon**.

APPROPRIATION BILL**APPROPRIATION (PARLIAMENT) BILL****APPROPRIATION (SPECIAL OFFICES) BILL****CROWN LANDS LEGISLATION AMENDMENT (BUDGET) BILL****SUSTAINABLE ENERGY DEVELOPMENT REPEAL BILL**

Bills received, read a first time and ordered to be printed.

Motion by the Hon. Tony Kelly agreed to:

That standing orders be suspended to allow the passing of the bills through all their remaining stages during the present or any one sitting of the House.

Second readings ordered to stand as an order of the day.

STATE REVENUE LEGISLATION FURTHER AMENDMENT BILL

Bill received, read a first time and ordered to be printed.

Declaration of urgency agreed to.

Second reading ordered to stand as an order of the day.

STATE WATER CORPORATION BILL**Second Reading**

Debate resumed from 23 June.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [10.50 a.m.]: The Australian Democrats note that the State Water Corporation Bill will create a new statutory corporation that will be responsible to the Minister for Energy and Utilities. State Water is primarily concerned with the collection and selling of bulk water to approximately 6,200 licence holders involved in primary industries and manufacturing and small local utilities in country New South Wales. It is responsible for the management of 18 major dams and storage facilities and 246 weirs across the State. The Local Government and Shires Associations [LGSA] and the Environment Liaison Office [ELO], representing eight peak conservation groups, have approached my office raising several concerns about the proposed bill. The ELO argues that there is a significant lack of opportunity for public consultation, a disregard for ecological responsibility and a blatant bias towards successful business and financial return.

Clause 5 (3) states that the principles of ecologically sustainable development are not as important as the capture and release of water in an efficient, effective, safe and financially responsible manner by the corporation. The ELO argues that that objective overrides the four other objectives, thus biasing the whole exercise of balancing social, environmental and economic objectives in favour of efficiency and financial responsibility, which presumably means short-term dollars. One can only agree with that statement when one reads clause 5. It is inappropriate for a Labor Government that boasts about its environmental credentials to make financial corporate governance a priority over ensuring that the water utility is environmentally responsible.

I know from conversations I have had with the Hon. Frank Sartor that he believes that an organisation must have an overriding objective so that it does not have half of its employees working towards one objective and the other half working towards another. He believes that external pressures should be imposed on organisations to make them behave responsibly in areas that affect their key objectives. That is all very well in theory. It means the corporation's objective is to be financially responsible and that the regulating environmental agencies will ensure that it is environmentally responsible. However, it also highlights the problem that there is not sufficient scope for public input into State Water's processes.

Interestingly, clause 7 does not specify the skills or qualifications required by directors of the board. Procedures relating to the selection process will be contained in regulations to be drafted at a later date. We have amended legislation in the past to specify the qualifications required of office holders on various boards and consultative committees, but that has not been done in this legislation. It reminds me of the extensive horticultural qualifications required of the Sydney Water gardener at Warragamba Dam when the managing director had none. Consistent with that philosophy, at one time there was a chief of operations who was a librarian with a very activist bent, and, of course, that caused a considerable ruckus. We should specify the skills required by office holders on boards such as this. The Government should assure the House that the regulations will specify that the skills and qualifications of board members will at least relate to the four objectives outlined in clause 5.

Clause 13 deals with amending operating licences. The ELO is particularly concerned about the lack of any formal consultation provisions regarding the amendment of the operating licence. If we are going to make money more important than the environment then we must make the corporation statutorily responsive to pressures other than the requirement to generate funds by doing whatever will favour that objective. While it may be argued that water-sharing plans will regulate the use of water, the ELO is concerned that the State Water Corporation will lobby for particular outcomes from the water management process and that that represents a conflict of interest.

Clause 31 concerns operational audits. It does not give the public any opportunity for consultation regarding the audits conducted by the Independent Pricing and Regulatory Tribunal [IPART]. Public comment is sought when reviews are conducted into the pricing regimes of State Rail, State Transit, Sydney Water and other utilities, but not State Water. Why not? That brings me to a letter about taxes from the LGSA dated 21 June 2004, stating its total opposition to the proposed 2 per cent price increase in bulk water contained in schedule 4, part 3 of the bill. The Australian Democrats established the Senate committee inquiry into rural water resources, which found that water is underpriced and that pricing regimes do not accurately reflect the true value of this precious national resource. Pricing water to reflect its true economic value is one way to improve the efficiency of water usage.

However, given that the State Government has been cost shifting the provision of services and amenities to local government, this concern must be addressed. The LGSA believes that any case for a price increase should be referred to IPART. That is a reasonable request and I look forward to the Minister's response. Clause 10 refers to the transfer of assets from local authorities to the new State Water Corporation. The LGSA is appropriately concerned about powers vested in the Minister to take over assets, rights and liabilities of councils' water supply operations. The LGSA states:

Whilst it is noticed that a council's assets can only be taken over with the consent of the council concerned, a consent forced upon a council is really no consent at all.

A consent forced upon a council is no consent at all. The LGSA sincerely believes that the Carr Government would play politics and would remove other available means of revenue raising to pressure councils to comply with its wishes. As I have said, a forced consent is no consent at all. The LGSA continues:

The circumstances of a particular matter may be such that the council has no option but to agree to a takeover when the matter could have been resolved with appropriate assistance from the Government without takeover.

It is worrying that there is this level of suspicion on the part of one of the largest and most important organisations in New South Wales and that it has that attitude to the Carr Government. The association is more or less saying that the Government cannot be trusted. That is here in black and white. Under this bill compensation for the transfer of an asset will be paid at the discretion of the Minister, which obviously means that not only can the costs of water be transferred to local government but also, if the council then cannot pay and goes broke, the Minister may determine the compensation package. That is the familiar Carr Government approach of giving all power to the Minister. It is what I call Minister-may legislation.

This bill should be amended. I do not have a problem with the overall concept of managing water in the State, but if we are going to do so a corporation should do it. However, I am worried that the Government will use it as a cash cow and not maintain dams and other infrastructure. If this corporation is to manage water in New South Wales it should do so for the long term. It should build dams and undertake the necessary capital works. It should not simply be another tax collector. The Government has treated Sydney Water as a cash cow. It sacked all its maintenance workers and downsized the organisation, and it is now not maintaining vital infrastructure. It has had to build the huge North Head ocean outfall pipeline from Lane Cove to Manly because it did not maintain stormwater pipes.

Effectively the Government said, "All this water is flowing in, but we can't do anything about it; we will just put in a whopping big pipe." Because Sydney Water had been treated as a cash cow, our revenue source, rather than being cost neutral, was not able to do what it was supposed to do, that is, deliver water sustainably. Everyone knows that many of the pipes are way past their use-by date and that the Government has not maintained them because it wants to retain the revenue. Obviously we do not want this to happen to the State Water Corporation. It is important that what we pay for water goes into water. I echo the concerns expressed by the Local Government and Shires Associations.

Pursuant to resolution business interrupted.

QUESTIONS WITHOUT NOTICE

MILLENNIUM TRAINS

The Hon. MICHAEL GALLACHER: My question without notice is directed to the Minister for Transport Services. Will the Minister indicate to the House and the workers of EDI whether he is ordering the third tranche of the Millennium trains, in light of his failure to fund those 60 carriages, as shown in the budget

handed down on Tuesday? Does this lack of dedicated funding mean the Minister is including those carriages in the 498 carriages, or will the 60 carriages still be ordered on top of the 498?

The Hon. MICHAEL COSTA: I could answer this question by referring to the public comments already made on this matter but, given my spirit of generosity today because question time has been brought forward and I only have to endure this for a little less time than normal, I will answer the question. The Leader of the Opposition should realise that it is not the Government that has the contract with EDI; it is RailCorp. Therefore it is a matter for RailCorp's board. In relation to the third tranche, RailCorp's board has indicated that it is carrying out an operational risk assessment of what is required to run the system, and it will make a decision in due course.

I can assure the honourable member that if tranche three is rolled into the public-private partnership [PPP], we will certainly be purchasing an additional 60 carriages on top of the 498 that were part of that PPP. The determination of what the Government does in terms of funding such matters always comes down to a decision about value for expenditure, and we will apply the same criteria to this matter.

CANNABIS INFORMATION CAMPAIGN

The Hon. IAN WEST: My question without notice is addressed to the Special Minister of State, and Minister for Commerce. Will the Minister inform the House of any new Government initiatives to inform young people of the dangers of using cannabis?

The Hon. JOHN DELLA BOSCA: The Hon. Ian West's question reflects an important concern that is widely held in the community. The New South Wales Government recognises that demonstrable health and social issues are associated with cannabis use. Cannabis use can be a significant cause of both mental and physical harm. Today I am pleased to inform honourable members that on Sunday 20 June the Government launched the third phase of its Cannabis Information Campaign. The campaign features a striking and unusual series of posters aimed at raising young people's awareness of the drug's consequences. It is important that young people understand the negative consequences of cannabis use. It is not a harmless drug. It can cause significant health and social problems, and it is important to get that message across to young people in ways they can relate to and in places where they go.

The third phase of the Cannabis Information Campaign, which is being launched in conjunction with Drug Action Week, will run throughout the upcoming July school holidays. The posters will be displayed in bathrooms at cinemas and shopping centres across New South Wales. For the first time, the posters will also be displayed in bus interiors, in street press, and as digitally animated slides on cinema screens as part of pre-movie entertainment. Cinemas and shopping centres draw thousands of young people during school holidays. The six black and white posters illustrate credible messages about the potential negative consequences of cannabis use for young people. The young people featured in the poster series are shown in situations relevant to teenagers. They portray the ways in which cannabis can impact on young people's relationships and friendships, physical health, driving ability, workplace behaviour and finances.

The campaign uses language that is unashamedly forthright. The posters are aimed squarely at young people. The displays use bold terms to highlight the adverse health effects of cannabis use, coupled with the social impacts such as relationship difficulties. Young people were consulted throughout the development of the posters, and this has resulted in messages that are realistic and of considerable appeal to the audience they target. Young people told us about consequences that are most relevant to them. One of the key messages in the series focuses on the effect that cannabis use can have on people's driving ability. Young people need to be aware that driving when affected puts at risk not only their own lives but also the lives of those around them. The campaign encourages young people to think twice about the serious consequences that can result from cannabis use. The posters will be seen on buses and in free music magazines in Sydney, Newcastle and Wollongong. Community language radio stations will play anti-cannabis messages throughout the school holidays.

The advertisements target parents of teenagers and have been produced in eight community languages, including Arabic, Cantonese, Greek, Italian, Mandarin, Pacific Islander, Spanish and Vietnamese. As honourable members would be aware, the Cannabis Information Campaign commenced in January 2003 with what was then called the "wasted" poster series. That series included images of young people at a party, playing sport, and at a school formal, and showed the ways in which cannabis can harmfully impact relationships, friendships, fitness and physical health. The second phase of the campaign was a radio campaign, which ran in

June last year. It used strong language and featured a character called Johnny, whose relationships, family life, work and health were suffering as a result of his cannabis use. This campaign is an important part of our four-year, \$230 million drug program. [*Time expired.*]

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

The Hon. JOHN DELLA BOSCA: This campaign builds on our response to the Drug Summit. The obvious feature of the "Johnny" campaign is that it is targeted towards young people who find that cannabis use becomes such a serious problem that they need clinical treatment. Together with the roll-out of four cannabis treatment clinics across New South Wales and our new high school cannabis resource kits, the campaign demonstrates the Government's commitment to preventing the harmful effects of cannabis use amongst young people.

DEPARTMENT OF PRIMARY INDUSTRIES WORK FORCE MANAGEMENT PLAN

The Hon. DUNCAN GAY: My question is directed to the Minister for Primary Industries. Did he distribute to a secret meeting held at Parliament House last night a proposed work force management plan that detailed the planned decimation of New South Wales primary industry services?

[*Interruption*]

It's no joke, mate! Will the Minister now confirm that the plans to shut down the specialised field research stations around the State? Furthermore, is it true that this document contains plans for a top-heavy, new Department of Primary Industries, with one director-general and seven new executive director positions to head each new division? How can the Minister justify this excessive spending on executive salaries when he is slashing 325 front-line services jobs from throughout the State and increasing charges?

The Hon. IAN MACDONALD: I love the description of the meeting as a "secret" meeting. Never has a consultation process followed form as properly as this one has. With regard to the first part of the Deputy Leader of the Opposition's question, no, I did not distribute a document.

The Hon. Melinda Pavey: Who did?

The Hon. IAN MACDONALD: I will explain. The meeting was, in fact, a meeting of the delegates and unions involved in all the agencies that, as at 1 July, will form the Department of Primary Industries. It was not a secret meeting. The delegates and unions wanted a meeting, and I agreed to a meeting, which is quite appropriate.

The Hon. Duncan Gay: How many were at the meeting?

The Hon. IAN MACDONALD: There would have been about 20 union officials in Parliament House. Now if I wanted to have a secret meeting, I would not be having a meeting here; there are plenty of good little places around town to go to for a secret meeting. To have a secret meeting at Parliament House is a ludicrous concept right from the beginning. In relation to the document, the interim board of management over the past few months has put it together.

The Hon. Melinda Pavey: Who's that?

The Hon. Duncan Gay: Who delivered the document last night?

The Hon. IAN MACDONALD: I love these questions and I will answer them all.

The Hon. Duncan Gay: Did you deliver it?

The Hon. IAN MACDONALD: I certainly did not deliver the work force document. I did not release the proposed work force document. I will explain it to the Deputy Leader of the Opposition, because I think he needs better sources. The meeting was conducted as such: Ministers Hickey and I presented the new structure for the Department of Primary Industries [DPI], which has been the subject of considerable discussion over a period of time, and I outlined the document itself. In relation to the proposed work force document—and I hope the Deputy Leader of the Opposition asks me a supplementary question—that was presented by Dr Richard

Sheldrake. I had left the meeting, along with Minister Hickey. The department in fact presented the document. It is a proposed document. The Deputy Leader of the Opposition has failed to grasp this point. It is the proposed response by the Government to—

The PRESIDENT: Order! I call the Hon. Melinda Pavey to order for the first time.

The Hon. IAN MACDONALD: The department presented the proposed document. At 4 o'clock all staff at the affected sites across the State met with senior officials of the relevant departments where they were told quite clearly that there were potential closures. We will be engaging in consultation with the unions and staff, not with The Nationals—what is left of it—in relation to these departments. The Deputy Leader of the Opposition has been going around telling everyone Trangie is to close. Well, Trangie is not closing. Some of the land might be sold and that asset will be used to plough into the department's facilities, and that was made very clear. So the Deputy Leader of the Opposition, as usual, is wrong: I did not present any proposed work force plans.

The Hon. DUNCAN GAY: I ask the Minister a supplementary question. In light of the Minister's answer, why has he allowed Treasury to cut 15 per cent from NSW Agriculture staff and approximately 10 per cent of the primary industries budget during his watch in a year of drought? Why is the Minister so pleased that 325 people are going to lose their jobs because of his inadequacy?

The Hon. IAN MACDONALD: The Deputy Leader of the Opposition is obviously very disappointed because the *Land* this morning gave an excellent coverage of the new primary industries budget. It says, "Lean, thrifty, super department takes shape". It is a very good, fair article on it. And the Deputy Leader of the Opposition is jumping up and down about it. In fact his figures are quite wrong—but he would make them up anyway. Anyone, even blind Freddy, even someone who has got an accountancy background, would know that these four departments probably already have corporate services sectors, and when you put the four together you will not need four separate corporate platforms. So there are going to be some cost savings in those areas. We will be discussing the issues with the staff and the unions over the next few weeks and, let us be very clear, we are talking about potential closures and a proposal.

HOTELS AND CLUBS SMOKING RESTRICTIONS

Reverend the Hon. Dr GORDON MOYES: I ask the Special Minister of State, representing the Assistant Minister for Health (Cancer), a question without notice. Is the Minister aware of the recent report released by the Cancer Council, which shows that five bar staff are killed by passive smoke each month in New South Wales pubs, clubs and casinos? Is the Minister also aware of a recent study by the University of York that found smoking imposes a huge economic burden on society, currently up to 15 per cent of total health care in developed countries? Given that the Minister is on record that smoking bans are inevitable, will the Government urgently bring in smoking bans in pubs, clubs and the casino to save lives and help reduce the economic burden smoking is having on our economy, as has been done in the last fortnight in Norway and Toronto, Canada?

The Hon. JOHN DELLA BOSCA: I do not represent the Hon. Frank Sartor in this Chamber but I am happy to take on notice that part of the question relevant to the Minister. I think other parts of the question, in relation to smoking in workplaces, were addressed to me. Let me say very clearly that I am not in a position today to make any declarations about what I do or do not think is inevitable. But the WorkCover Authority and the Government take very seriously the impact of occupational smoking—so-called secondary smoking—on a variety of occupations, including that in the hospitality industry.

Legislation to protect people from exposure to environmental tobacco smoking is governed by two separate legislative instruments: those general obligations employers have in the hospitality industry under the Occupational Health and Safety Act, and quite specific obligations that exist under the Smoke-free Environment Act 2000, which is the Act, I think, the honourable member is referring to when he talks about the administration of the Hon Frank Sartor. I understand that Act is due for review. Clearly that has an interrelationship with the current way in which the occupational health and safety laws relate to the specific group of people who work in contact with environmental smoke in bars, pubs, clubs and so on, and there will obviously be a Government position developed about that. I understand that there is a statutory obligation to review that Act and I think the Government will be in a position to make statements about that sometime in the immediate future.

As for my part of the question in relation to licensed premises and work force issues, as I said, WorkCover takes its responsibilities most seriously. The honourable member is probably aware of a number of

actual cases at the moment in relation to the issue of improvement notices about environmental tobacco smoke and work force matters. A joint working group on smoking in licensed premises has been considering these matters. The group consisted of the WorkCover Authority, elements of the Hon Frank Sartor's administration and the health Minister's administration as well as the hotel liquor industry and representatives of the liquor work force. The Government is yet to take a final view on those matters. The Premier has made a number of statements in the past week or so also expressing views that we would need a gradual approach if there is an effect on jobs, but also a fairly definitive approach if there are undeniable effects on health. As I said, I cannot go into any more detail because a policy statement would be required, which I am not in a position to give.

Reverend the Hon. Dr GORDON MOYES: I ask a supplementary question. Minister, with five hospitality staff dying each month before you release that statement of policy, how many months will it be before that will be released?

The Hon. JOHN DELLA BOSCA: I think Reverend the Hon. Dr Gordon Moyes would know the sad fact that if the latest scientific finding is that five people die each month as a result of occupational tobacco smoke, it would almost certainly be the case that it has been happening for some time. As I had forecast, the Government will move definitively in relation to this debate, however, I am not in a position to give a policy statement today. I have given the background to Frank Sartor's administration and his consideration of that, which has drawn to a conclusion, although it has yet to be considered by Cabinet. I have given information about my portfolio and occupational health and safety issues. At the moment that is all I can provide. I expect that in the next weeks and months there will be formal consideration of the consultative process that the Hon. Frank Sartor has had in train and there may or may not be policy statements relevant to that.

DEPARTMENT OF PRIMARY INDUSTRIES ESTABLISHMENT

The Hon. TONY CATANZARITI: My question is addressed to the Minister for Primary Industries. Can the Minister update the House on the formation of the new Department of Primary Industries?

The Hon. IAN MACDONALD: As honourable members would be well aware, when delivering his mini-budget speech on 6 April the Treasurer announced that a new Department of Primary Industries [DPI] would be formed, amalgamating the former departments of NSW Agriculture, Fisheries, State Forests and Mineral Resources. By bringing these departments together under the one head, we hope to build on the obvious synergies that exist while consolidating duplicated administrative functions. The consolidation of the existing partner agencies will give rural and regional New South Wales a much stronger voice in government through the establishment of a department that focuses on enhancing primary production through the wise use of natural resources.

The change will also provide primary industries with a stronger voice in natural resources and environmental debates. The DPI completes the group of major agencies involved in sustainable natural resource management in New South Wales, the others being the Department of Environment and Conservation and the Department of Infrastructure Planning and Natural Resources. Importantly for our major stakeholders, the DPI provides the production emphasis. This improved approach will give us the critical mass we need to ensure that our world-class research and advisory services are carried out with greater efficiency and focus.

Although significant changes were to come, I made it clear that emphasis would be placed on maintaining front-line services and, as far as possible, protecting jobs in rural and regional areas. Since that time the interim board and agencies staff have worked hard to deliver a detailed strategy and structural reform program for consideration by staff. As this process proceeded staff were kept informed of developments through regular bulletins or newsletters. There has never been any doubt that some very difficult decisions would have to be taken. I had every confidence that Mr Buffier and the interim board would do the best job possible. Yesterday, as soon as it was finalised, a proposed work force plan and the executive structure for the new department was distributed to unions and staff for consideration.

The Hon. Duncan Gay: Mr Buffier does not start until 1 July.

The Hon. IAN MACDONALD: He has been discussing these issues with the interim board.

The Hon. Duncan Gay: You told me by document that his job does not commence until 1 July.

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

The Hon. IAN MACDONALD: I will talk to the Hon. Duncan Gay about this later. Let me make this clear.

The Hon. Duncan Gay: Make sure you get it right.

The Hon. IAN MACDONALD: He will not start as director-general until 1 July, but he has been assisting in discussions about the shape of the department. There is nothing wrong with that.

The Hon. Duncan Gay: Have you employed him?

The Hon. IAN MACDONALD: I have not employed anyone. I only employ people in my own office. The work force plan, as spelt out in the document, was a proposal only to be considered by both staff and unions. The structure, however, was official. I am pleased to announce that the new department will have seven new divisions. Building on State Forests' role as a trading entity, a new division called Primary Industries Trading will be created to focus on providing commercial services to build a profitable primary industries business. Two of the divisions—Agriculture and Fisheries and Mineral Resources—are to be accountable for ensuring integrated and cost-effective delivery of services to communities and primary industries. The strategy and policy division will contain all the outward facing units and ensure that the issues that really matter to rural and regional New South Wales are addressed in a strategic, co-ordinated manner.

The science and research division will work to focus the research effort and to develop priorities in the context of the broad business strategy for the department, as well as assisting with the commercialisation of new product lines and breeds. The biosecurity, compliance and mine safety division will focus on those exact areas. Finally, the corporate services functions will be delivered from one division across the department to deliver savings through scope and scale, consolidation and standardisation. These changes will build on our strengths—world-class science for primary industries, effective partnerships with industry, a world-class track record in fishery management, forestry and mineral resource management, and an ability to facilitate an appropriate balance between productivity and protection of the environment. An integrated department will improve our overall performance and service delivery by reducing fragmentation and duplication of support functions across multiple agencies.

The proposed document—and I stress "proposed" work force plan—will have seven key elements. The co-location of DPI offices in the same or nearby towns; relocation of underutilised offices to better equipped sites; consolidation and centralising cross-agency functions; a flatter structure with fewer senior managers; increased revenue streams across all four agencies; the focus of resources on core business across all four agencies—*[Time expired.]*

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

The Hon. IAN MACDONALD: And a general voluntary redundancy program.

The Hon. Don Harwin: Point of order: I draw your attention to Standing Order 64 as it relates to questions to Ministers and other members, in particular, part 5, as it relates to times. The clock was set erroneously to allow the Minister to have five minutes to answer his first question. Therefore, I submit that the supplementary answer must not exceed one minute rather than the two minutes that appeared on the clock when the Minister finished his answer.

The PRESIDENT: Order! The Hon. Don Harwin may well have a valid point, but he should have made it while the main question was being answered.

The Hon. IAN MACDONALD: It gives me no joy to make any announcement that will have any impact on staff, but changes were required to ensure that the new Department of Primary Industries would continue our proud history of world-class scientific, extension and education efforts. Yesterday a communication was sent to all staff in all affected areas. Departmental executives personally notified staff in all of the proposed areas for changes, at 4.00 p.m. A briefing was held with unions at 5.30 p.m.

The Hon. Duncan Gay: Point of order: This is clearly not a question without notice. This is a ministerial statement. If this Minister had any ticker or any decency, when he is cutting the guts out of regional New South Wales, he would make a ministerial statement so that the Opposition, representing the farmers, would be able to reply.

The Hon. Michael Egan: To the point of order: The Deputy Leader of the Opposition said that this is clearly not a question without notice. I have been in this place longer than anybody else and for Government members in this House of either persuasion, the notion of a question without notice has always been a glorious fiction.

The Hon. Tony Kelly: To the point of order: The Deputy Leader of the Opposition is misleading the House because clearly he does not represent farmers.

The PRESIDENT: Order! The standing orders are very clear about whether a question is in order. They are very clear also about whether an answer is in order. An answer must be relevant and the Minister, when answering the question, must not debate the question. The Minister's answer was in order. [*Time expired.*]

KOSCIUSZKO NATIONAL PARK HUTS

The Hon. JON JENKINS: My question without notice is directed to the Minister for Justice, representing the Minister for the Environment. Following the devastating fires, Parks Victoria has fenced off the remains of high country huts, procured and delivered materials, and obtained experts in the field of restoration. The Victorian Four Wheel Drive Association is intimately involved in this Parks Victoria effort. In other words, Parks Victoria intends to rebuild the vast majority of huts in the high country in order to encourage people to visit and enjoy the high country and to protect our heritage. Is the Minister aware of the actions taken by Parks Victoria towards rebuilding their high country huts destroyed by the fires? Will the Minister commit to rebuilding the majority of our huts in high country in Kosciuszko National Park? Will the National Parks and Wildlife Service provide any funds towards rebuilding the high country huts? In view of the longstanding relationship with the Four Wheel Drive Association with the maintenance and building of our huts, will the Minister commit to consultation with, and involvement of, the association in the rebuilding of the huts, as Parks Victoria has?

The Hon. JOHN HATZISTERGOS: The answer to the first question is yes. The answer to the second question is that a review is currently being undertaken, which may result in many historic huts being rebuilt. The answer to the third question is yes. The answer to the fourth question is that the Government is consulting with the hut committee. As to whether the Minister can advise the House when consultation will take place, this matter is currently under discussions with the hut committee.

WAHROONGA RESPITE FACILITIES

The Hon. JOHN RYAN: My question is addressed to the Minister for Disability Services. Has the Department of Ageing, Disability and Home Care made plans to open a new respite facility in the Wahroonga area to replace the John Williams centre, which closed on 26 April? Why were arrangements not made for a replacement respite facility to open as soon as the John Williams centre closed to ensure a smooth transfer of services and staff, and to ensure that clients and their families were not disadvantaged?

The Hon. CARMEL TEBBUTT: I am sure the Hon. John Ryan would agree that the John Williams centre had significant maintenance and other issues that meant it was no longer appropriate to continue as a respite centre. I understand that the department put in place arrangements for users of the John Williams respite centre to ensure that parents and children were not disadvantaged by its closure. The department continues to look at options for how the funding freed up by the closure of the John Williams centre should be used to continue to provide respite services.

The Hon. JOHN RYAN: I ask a supplementary question. When will a replacement facility become operational?

The Hon. CARMEL TEBBUTT: I just said that the department was looking at a range of options for how to use the funding freed up by the closure to continue to provide respite services, and I will report further to the House in terms of details of what that will involve.

FORBES GLOBAL CHIEF EXECUTIVE OFFICERS CONFERENCE

The Hon. HENRY TSANG: Will the Treasurer, and Minister for State Development inform the House about Sydney's securing of the 2005 Forbes Global Chief Executive Officers Conference?

The Hon. MICHAEL EGAN: Sydney will play host to one of the world's most prestigious business forums next year when the 2005 Forbes Global Chief Executive Officers Conference is held at the Sydney Opera House from 30 August to 1 September. More than 300 of the world's leading chief executive officers will attend the event, which will be the first time the conference is held in Australia. The three-day conference is organised by the United States of America-based Forbes Incorporated. *Forbes* is the world's leading business magazine. Its international edition, *Forbes Global*, enjoys a worldwide audience of nearly five million readers. The Premier, Bob Carr, and the Federal industry Minister, Ian McFarlane, announced Sydney's securing of the Forbes conference on 8 June, during a visit to Bio 2004 in San Francisco.

The Forbes organisation targeted Australia as the favoured location for the 2005 conference ahead of other countries, including Japan and Korea. Forbes vice-chairman Christopher Forbes describes Australia as one of the most exciting business destinations in the world. The New South Wales and Australian governments will jointly host the conference, which will be sponsored by the New South Wales Department of State and Regional Development and Invest Australia. Sydney's hosting will be a vital opportunity to showcase the strengths of New South Wales as a business and investment location: Our strength as a global financial capital, our reputation as a stable and competitive economic business base for the Asia Pacific, our highly skilled and multilingual work force, our culture of openness and innovation and, of course, our enviable lifestyle consistently rated among the world's best. The win is testament to the city's status as a global capital, and the conference will encourage some of the world's largest companies to establish and expand their Asia Pacific operations here.

PLEDGE OF ALLEGIANCE

Reverend the Hon. FRED NILE: I ask the Treasurer, representing the Premier, a question without notice. Is it a fact that the United States of America Supreme Court, by eight to nil, has just upheld the United States historic pledge of allegiance for reciting in American government schools? Will the New South Wales Government require all school students to recite, during the rising of the Australian flag, a similar pledge of allegiance with the possible New South Wales wording, "I pledge allegiance to the flag of Australia and our Commonwealth and State constitutions, one nation under God, indivisible, with liberty and justice for all"?

The Hon. MICHAEL EGAN: As Reverend the Hon. Fred Nile asked me that question in my capacity as the Minister representing the Premier, I will refer the question to the Premier. It is dangerous for Ministers to express a personal opinion because we are not here in our personal capacity; we are here as members of Her Majesty's Government, and the maxim is the King or Queen's speech with one voice—a very important maxim of the Westminster system. Nevertheless, I am tempted to give a personal response. First, I point out that the historic pledge of allegiance in the United States of America, to which the honourable member referred, is not all that historic. I think the words "under God" were inserted in the 1950s.

While I certainly would have no trouble if I were an American making a pledge in those terms, I think some Americans would have difficulty because not everybody is a believer and not everyone is of the one denomination, but that is irrelevant. Personally, I do not think it is appropriate; nor, frankly, am I a great one for these routine pledges of allegiance. I think they are diminished and undermined by the fact that they are routine. Likewise, while I sometimes—

The Hon. John Ryan: That's like not singing the national anthem.

The Hon. MICHAEL EGAN: You do not sing the national anthem every minute of the day, or even every day of the week. One difficulty we as Australians have is that of singing *Advance Australia Fair*. It is a very difficult song to sing, particularly for someone like me who got thrown out of singing lessons at the age of eight. I simply make the point that I am not sure that the way Americans go about things is the way Australians want to go about things. We have quite a different temperament and culture. Sometimes I find genuine displays of patriotism by Americans a bit over the top and uncomfortable.

The Hon. David Oldfield: Have you got something against something being genuine?

The Hon. MICHAEL EGAN: No, I have not, but it is not our way.

[*Interruption*]

What I am saying is that it is not our way to have those overt and routine demonstrations of—

The Hon. David Oldfield: Genuineness.

The Hon. MICHAEL EGAN: No, of nationalism. It is not something we do. I do not think we ever will.

RAILCORP STAFF OVERTIME

The Hon. DAVID CLARKE: My question is directed to the Minister for Transport Services. Is the Minister aware of Vince Graham's pledge yesterday to abolish all station staff overtime restrictions and to double the planned worker intake for 2004 in a bid to avert planned strikes by station workers? Will the Minister explain to the House how RailCorp will remain within its already overstretched budget in the 2004-05 financial year and meet the additional payments without cutting back on essential services throughout RailCorp?

The Hon. MICHAEL COSTA: I congratulate the Leader of the Opposition on flicking two paragraphs straight out of the *Daily Telegraph* to the Hon. David Clarke. He is the only member silly enough to ask the question.

The Hon. Michael Egan: The Leader of the Opposition is always trying to set him up.

The Hon. MICHAEL COSTA: I know—he set him right up.

The Hon. John Ryan: Point of order: Not only is the Minister being offensive and unnecessarily offensive—

The Hon. MICHAEL COSTA: Offensive?

The Hon. John Ryan: I think using words like "silly" is unnecessarily offensive. The Minister is debating the question, which is against the standing orders. I ask you to draw his attention to the need to be relevant.

The PRESIDENT: Order! I am very happy not to rule on whether the word "silly" is unparliamentary. However, I rule that the Minister must not debate the question.

The Hon. MICHAEL COSTA: It is very touching to see Ned Flanders defend the bloke who is trying to stab him in the back. It is an indication of who is getting the upper hand in the Liberal Party.

The Hon. John Ryan: Point of order: The Minister is flouting your ruling. He is still debating the question.

The PRESIDENT: Order! The standing orders provide two rules governing answers to questions. One of those rules is that questions must not be debated. I ask the Minister to answer the question and not debate it.

The Hon. MICHAEL COSTA: It is interesting to see the honourable member take a point of order in support of his loyal and esteemed colleague. It gives an indication of who is winning the intense factional war going on in the Liberal Party at the moment. It is also interesting that nobody is disputing it or taking a point of order on it—so it must be true! In relation to the specifics of the question, industrial relations activity is a matter for the chief executive officer of RailCorp. I caution honourable members not to always take what is in the newspapers as being an accurate reflection of what the Government is doing. I draw the attention of honourable members to what was in the *Sun-Herald* on the weekend, an obviously inaccurate statement that a number of Opposition members ran with and then made fools of themselves, as usual. This is clearly a case where they have to be careful about what they read in the newspapers. It is not necessarily a reflection of what is going on in State Rail.

The Hon. Michael Gallacher: The money is not quite there.

The Hon. MICHAEL COSTA: The honourable member interjects to ask whether I have told Vince the money is not there.

The Hon. Michael Gallacher: No, I did not say Vince. I said Nick.

The Hon. MICHAEL COSTA: The honourable member will see in the budget there were supplementary funds for RailCorp and the whole of the rail sector. I thank the Treasurer for that.

The Hon. Michael Egan: Thank you. You are the only Minister who has thanked me.

The Hon. MICHAEL COSTA: I am.

The Hon. Michael Egan: You will get more next year.

The Hon. MICHAEL COSTA: Good, I want more next year. Clearly, railways management has a responsibility to manage overtime.

The Hon. Michael Gallacher: Wipe your hands of it when it turns deadly.

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

The Hon. MICHAEL COSTA: If you wanted me to answer the question, you should have asked me. You should not have flicked it to that poor sucker on the backbench who is coping it all now. I would be quite happy to take the question from the Leader of the Opposition. Just ask me the question. We will manage overtime. There is a responsibility to manage it. There is also a legitimate role for overtime. Those decisions will be made by management, not by the Government.

ABORIGINAL CHILD, YOUTH AND FAMILY STRATEGY

The Hon. KAYEE GRIFFIN: My question is to the Minister for Community Services. What is the New South Wales Government doing to support Aboriginal children, young people and families?

The Hon. CARMEL TEBBUTT: The honourable member's question raises the important issue of how we can better support Aboriginal children, young people and their families. The Government is committed to doing that through a broad range of support services, in particular through the Aboriginal Child, Youth and Family Strategy, which has received an allocation of \$12.3 million over four years from 2002-03 to 2005-06. The strategy is focused on improving the outcomes for Aboriginal children and young people, who represent nearly half the total Aboriginal population of New South Wales. Unfortunately, I am sure all members of this House are all too familiar with statistics that show that current outcomes for Aboriginal children and young people are often poor, with them overrepresented in the juvenile justice population, overrepresented among the number of children in care, and underrepresented in good outcomes and educational achievements. However, this is now changing.

The Aboriginal Child, Youth and Family Strategy has a strong emphasis on working to test new ways that will improve the health, wellbeing and safety of children and young people, to help them achieve at school and in future employment. It is developing services that include after school and school holiday programs, Aboriginal youth groups, parental support and development projects, high school transition and career development programs, and programs to strengthen individuals and communities. The strategy also focuses on better co-ordination and the targeting of existing resources to ensure that mainstream services are meeting the needs of Aboriginal people and investigating new ways of supporting these communities. The Government is working hard to improve the working relationships between services and communities, to respond more effectively to what Aboriginal children and young people and their families need.

Services that have been funded through the strategy and that are making a real difference include, for example, the Aboriginal Youth Well Being Project in Forster, which is improving culturally appropriate service provision and support for Aboriginal children and youth within the Great Lakes local government area by creating a range of early intervention and preventative initiatives developed in partnership with the Aboriginal community. In Glebe, Marrickville and Riverwood, Aboriginal supported playgroups are introducing programs such as nutrition for Koori mums and dads and budgeting for families, to help families give their kids the best possible start in life. Other programs they are involved in include after school activities such as arts and crafts, sporting teams, music and performing arts, as well as school holiday programs and supporting children and young people at risk of disengaging from the education system.

A project in Brewarrina supporting young Aboriginal mums is providing young Aboriginal women with a series of educational and social workshop programs, again focusing on building their capacity to bond with and parent their children so that their children have the best possible opportunities to go on to have successful lives. The Aboriginal Child, Youth and Family Strategy is being co-ordinated through the regional structures of the New South Wales Government's successful Families First initiative. The Government is

determined to address the issues that face Aboriginal children, young people and families. We will continue to work towards better outcomes for all indigenous children, families and young people through programs designed to build strong families and strong communities.

ROYAL FLYING DOCTOR SERVICE FUNDING

The Hon. DAVID OLDFIELD: My question is directed to the Special Minister of State, representing the Minister for Health. Is the Minister aware of the plight of the Royal Flying Doctor Service with regard specifically to the desperate need for funding for a new aircraft? Does the Minister acknowledge the thousands of rural Australians whose lives have been saved by the Royal Flying Doctor Service? Will the Government assist the Royal Flying Doctor Service to acquire the necessary and urgently needed funding to replace existing grounded aircraft? Will the Government commit to providing regular funding beyond just fuel and wages for this vital service? Will the Government acknowledge such a funding commitment will go a long way to upholding its purported position of support for country New South Wales?

The Hon. JOHN DELLA BOSCA: I respond to just two elements of the honourable member's question. I find a hint of sarcasm in his summary about our purported support for regional New South Wales. Perhaps the honourable member is a bit cranky towards the end of the sitting week, but he understands from the budget and other activities he has immersed himself in within Parliament, debates and public affairs that this Government is absolutely committed to regional and rural New South Wales. The only other observation I make is to congratulate him on his association with the Royal Flying Doctor Service. What is the well-known organisation that publishes a poll about popular organisations and institutions, as well as professionals?

The Hon. Henry Tsang: *Reader's Digest.*

The Hon. JOHN DELLA BOSCA: The Hon. Henry Tsang is absolutely right: it is *Reader's Digest*. It conducted a poll of Australian institutions that are regarded with a high level of confidence—such as St Vincent de Paul, the Salvation Army, the Royal Life Saving Association, the Rural Fire Service, the Fire Brigade and so on. The organisation that polled the highest was the Royal Flying Doctor Service. The Royal Flying Doctor Service is held in high esteem by the New South Wales public. I congratulate the honourable member on bringing this matter to the attention of the House. Unfortunately, I cannot give a substantive answer to the question he has asked. However, I am sure that the Minister for Health will give it his absolute attention. I will provide the honourable member with an answer to his question as soon as practicable.

The Hon. DAVID OLDFIELD: I ask a supplementary question. Given the Minister's comment regarding the high esteem in which the public holds the Royal Flying Doctor Service, will he pressure the Minister for Health to show that the Government also holds the service in the highest esteem by improving its funding and assisting with the new aircraft?

The Hon. JOHN DELLA BOSCA: The Hon. David Oldfield probably does not understand the relationship between me and other members of my party. I am not known as somebody who puts any pressure on people, certainly not as a Minister of the Crown. In any case, that would not be necessary because my good friend and colleague the Minister for Health is a man of eminent good sense. I am sure the answer he will provide will be satisfactory.

The PRESIDENT: Order! I call Ms Lee Rhiannon to order.

DEPARTMENT OF PRIMARY INDUSTRIES WORK FORCE MANAGEMENT PLAN

The Hon. RICK COLLESS: My question is directed to the Minister for Primary Industries. Will the Minister outline in greater detail his decision to sell off Department of Primary Industries land and use those funds to rationalise departmental facilities, as outlined in the department's proposed work force management plan? How does he plan to continue to provide research and advisory services to farmers in the Western Division after selling off Trangie Research Station land? How many front-line staff cuts will be made at the Trangie Research Station as a result of this decision? How will the department undertake field research in the Western Division without any land on which to do it?

The Hon. Michael Costa: "I refer to my previous answer."

The Hon. IAN MACDONALD: I do refer to my previous answers. I will have a go at answering the question because the Hon. Rick Colless must have a new way of thinking these days on how we handle research. I do not anticipate any staff losses at Trangie if the sell-off proposal goes ahead.

The Hon. Duncan Gay: No supplementaries.

The Hon. IAN MACDONALD: Why not? The Deputy Leader of the Opposition told the Hon. Rick Colless not to ask a supplementary question. Why can the member not ask a supplementary question? I do not anticipate that a decision to sell off land at that site will have any impact on jobs. As far as I know, the department has not determined what parcel of land might be sold. I would assume if it needs part of the 10,000 acres for research it will keep a parcel of land for that purpose. These days there are all sorts of arrangements to undertake research on leased property in co-operation and in partnership with farmers. There are many ways research can be conducted. It is not necessary to own 10,000 acres at Trangie to conduct fundamental or any other type of research. Locking up a great deal of assets, in terms of land that is not necessarily being utilised for research capabilities, is an antiquated concept, when that surplus land, or what I would call a lazy asset, could be put to better use and the money used for the refurbishment of laboratories at Trangie. That is one proposal that could be followed.

The Hon. Duncan Gay: But you are not doing that, are you?

The Hon. IAN MACDONALD: That is precisely what we are going to do. The Deputy Leader of the Opposition has not been listening.

The Hon. Duncan Gay: You won't have any money left.

The Hon. IAN MACDONALD: Very shortly I will present a substantial reinvestment.

The Hon. Duncan Gay: Not on those figures. You're a fool.

The Hon. IAN MACDONALD: The Deputy Leader of the Opposition should wait for that reinvestment proposal. He will love it and he will support me.

The Hon. Michael Egan: No way!

The Hon. IAN MACDONALD: He will support me. It has nothing to do with anyone being a dope or a fool. The Deputy Leader of the Opposition will support my reinvestment proposal because some of the facilities have been run down over a long period of time. The Deputy Leader of the Opposition and the Hon. Rick Colless should think a little about this decision because the department will be able to utilise the moneys gained from these surplus properties to create and refurbish laboratories and research facilities. I have been thinking about these issues for a long time. Because of this decision, in the not too distant future I will be able to announce a major refurbishment program for our antiquated facilities on many of our research sites. That is a very good thing. This initiative will be brought about because on some of the properties held within the Department of Primary Industries across a range of areas and interests the research facilities or activities are not being maximised. Those areas can provide a platform for the department to reinvest in the future and get rid of old buildings, some having been around since the 1930s and 1940s.

STAMP DUTY

The Hon. CHRISTINE ROBERTSON: My question without notice is addressed to the Treasurer, and Minister for State Development. Will the Minister inform the House how the Government's First Home Plus Scheme is helping young first home buyers get into the New South Wales market?

The Hon. MICHAEL EGAN: I am amazed that two days after the New South Wales budget was presented to this Parliament I have had not one question from the Opposition on the budget—not one. This is an unbelievably lazy Opposition. It is almost a national scandal. If the Federal Opposition had not asked the Federal Treasurer one single question about his budget we would say it is hopeless.

The Hon. Duncan Gay: Point of order: It has been very hard to ask questions of the Treasurer on the budget over the last two days because he has not been here.

The Hon. MICHAEL EGAN: But I am here today. I have been here for 55 minutes of question time and I have had not one question from the Opposition on the budget. I can report today that the Government has given first home buyers more than \$1 million a day in stamp duty exemptions since the April mini-budget. Between 7 April and 21 June 2004, \$84.1 million in First Home Plus exemptions was given to 8,668 first home

buyers. First home buyers across New South Wales are now saving an average of \$9,705 under our new scheme of benefits. In Sydney first home buyers are saving an average of \$11,540 in stamp duty costs. That is a great opportunity for these people to get into their first home. Our measures have received support not only from the thousands of young people who can now get into their first home, but from the one person who heads up the institution that determines interest rates. On 4 June 2004 the Reserve Bank Governor, Ian Macfarlane, referring to our property tax reforms, told a Federal parliamentary committee:

They have done something which we approve of, in the sense that they have made it a bit easier for owner-occupiers and a bit more difficult for investors

It is a disgrace that the Opposition has vowed to tear apart the Government's integrated package of property tax reforms, which were designed not only to fill the revenue hole left by their Liberal colleagues but also to even up the playing field for first home buyers who have been very disadvantaged by the large number of speculators who have entered the market in recent times. About 60 per cent, or 5,311, of the 8,668 first home buyers come from metropolitan New south Wales. Half of these first home buyers have purchased homes in Western Sydney. The top 10 suburbs where first home buyers have secured a home since our mini-budget include Liverpool, Wentworthville, Gosford, Campbelltown, Blacktown, Hornsby, Kings Langley, Parklea, Quakers Hill and Cabramatta. In Liverpool 170 first home buyers saved an average of \$10,595 in stamp duty; in Wentworthville, 131; in Blacktown, 105; in Gosford, 114; and in Campbelltown, 115. Many of these people would not have had the opportunity to buy a first home if it had not been for our abolition of stamp duty for all purchases up to \$500,000.

The Hon. Duncan Gay: That is why the property market is going so well, because of his intervention.

The Hon. MICHAEL EGAN: If the Deputy Leader of the Opposition thinks that tearaway home prices do anything for the people or the economy of New South Wales he is sillier than he looks.

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

STATE LABOUR ADVISORY COUNCIL MEMBERSHIP

Ms LEE RHIANNON: I direct my question to the Minister for Industrial Relations. When did the State Labour Advisory Council last meet? Who are the current members of the council? Does the Minister appoint the members of the council? If the Minister does not appoint the members of the council, how are they appointed? Has the council met this year to discuss industrial disputes, including those involving members of the Rail, Bus and Tramways Union? If so, how many times has the council met?

The Hon. Amanda Fazio: Point of order: Under the standing orders questions can be asked of Ministers about matters that relate to their portfolio responsibilities. Asking about an advisory council that is part of another political party is clearly inappropriate. Madam President, I ask you to rule the honourable member's question out of order.

Ms Lee Rhiannon: To the point of order: I am referring to the State Labour Advisory Council, which the Premier announced a number of years ago. I understood clearly that it was a Government initiative. Surely the Minister can answer questions about his own work as a member of the Government.

The PRESIDENT: Is the State Labour Advisory Council a government body or an Australian Labor Party body?

The Hon. Michael Egan: It is a government body.

The PRESIDENT: Order! If it is a government body, the question is in order because the honourable member is asking the Minister about public affairs over which he has charge.

The Hon. JOHN DELLA BOSCA: I draw the honourable member's attention to the fact that I answered a question in identical terms and it is on the *Notice Paper* this week.

CAPITAL WORKS FUNDING

The Hon. GREG PEARCE: I direct my question to the Treasurer. Can he inform the House whether his decision to move from leasing to buying \$73 million worth of government computers has the effect of

inflating capital works expenditure and that it therefore allows him to say that he is spending more on infrastructure? Without this tricky change in accounting and procurement practice, is it true that the increase in asset acquisitions for the general government sector in 2004-05 is only \$42 million, which is less than 1.25 per cent of projected government expenditure and less than inflation?

The Hon. MICHAEL EGAN: Someone made a comment earlier about the Leader of the Opposition selling the dump to another member of his party. The Hon. Greg Pearce should be more careful about asking the questions he is given. It is a fact that computers are a capital acquisition, and that the Government used to lease them and now it buys them. The honourable member says that that somehow means that the Government's capital works budget for the coming year is not comparable with the capital works budget for the previous year.

The Hon. Duncan Gay: That is a fair summation of his question.

The Hon. MICHAEL EGAN: Is it? Okay. Given that logic, instead of its being a \$30 billion capital works program it is a \$31.5 billion capital works program, because the Government used to buy train carriages and it will now lease 1,500. If the honourable member wants to follow that logic, the Government has underestimated the capital expenditure program by \$1.5 billion. Next time some underling from the Leader of the Opposition's office gives the honourable member a silly question to ask he should do some homework, otherwise he will continue to be humiliated as he has been today.

If honourable members have any further questions, they might like to place them on notice.

BANKSTOWN HANDICAPPED CHILDREN'S CENTRE ASSOCIATION

The Hon. CARMEL TEBBUTT: Yesterday the Hon. John Ryan asked a question about the referral of clients to the Blacktown Handicapped Children's Centre, known as "the centre". I advise that the Department of Ageing, Disabilities and Home Care is not making further referrals to the centre during the course of the review. It last referred a client in April. I am also advised that the Department of Community Services also does not intend to make any new referrals to the centre until the review is complete.

Questions without notice concluded.

BILLS RETURNED

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

Crimes Amendment (Child Neglect) Bill

PASSENGER TRANSPORT AMENDMENT (BUS REFORM) BILL

NATIONAL COMPETITION POLICY HEALTH AND OTHER AMENDMENTS (COMMONWEALTH FINANCIAL PENALTIES) BILL

NATIONAL COMPETITION POLICY LIQUOR AMENDMENTS (COMMONWEALTH FINANCIAL PENALTIES) BILL

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

STATE WATER CORPORATION BILL

Second Reading

Debate resumed from an earlier hour.

Reverend the Hon. FRED NILE [12.07 p.m.]: The Christian Democratic Party supports the State Water Corporation bill, the main purpose of which is to create the State Water Corporation as a statutory State-owned corporation effective from 1 July 2004. The corporation's principal objective is to capture, store and release water to licensed users and the environment and to meet basic landholder rights in an efficient, effective, safe and financially responsible manner. It will also be required to run a successful business, to demonstrate social responsibility, to comply with ecologically sustainable development principles and to operate responsibly with regard to regional development.

The corporation will be headed by a board of directors appointed by voting shareholders in consultation with the responsible Minister. It will consist of a minimum of three but no more than eight directors, including the chief executive officer and a nominee from the New South Wales Labor Council. Like other parties, the Christian Democrats have a basic objection to nominating a particular organisation for a seat on a government board. We see no need for a Labor Council nominee to be appointed. The board will be able to consult with the Labor Council, the New South Wales Farmers Association and all the other stakeholders. The board should not be influenced or intimidated by a representative of the Labor Council. In the past few weeks we have witnessed the turmoil experienced at the ABC caused by a staff-elected director. The ABC board's efficiency has been undermined and a prominent board member has resigned. The Christian Democrats will support the Opposition's proposed amendment to remove the reference to the nominee from the Labor Council.

State Water's prices are determined by the Independent Pricing and Regulatory Tribunal [IPART], which is an independent pricing watchdog. IPART will also audit the corporation's compliance with its operating licence and make recommendations to the Minister. This is similar to the Sydney Water and Hunter Water model. Is there any plan for the State Water Corporation to take over Sydney Water and Hunter Water? If it were to do so, there would be only one body in New South Wales responsible for water. That may be more efficient, but it may also have some negative implications given the way in which Sydney Water has operated in the metropolitan area. It raises the question of who will be responsible for the development of new dams and for addressing the serious water shortage in this State. Will that be the responsibility of the State Water Corporation or Sydney Water? Will the State Water Corporation be concerned only with country regions? In other words, will a line be drawn on the map delineating the areas of responsibility? That is my concern. Prompt decisions must be made to address the serious water situation facing New South Wales.

This cannot be achieved by telling people to reduce the time they take under the shower and to stop watering their gardens; the matter is far more serious than that. It is not a solution simply to continue to restrict the amount of water people use; water must be available for the people of New South Wales. In my view that is a primary responsibility of both Sydney Water and the State Water Corporation. With the proviso that we see no need for a New South Wales Labor Council nominee on the board, we support the bill.

Ms SYLVIA HALE [12.10 p.m.]: I support the remarks of my colleague Mr Ian Cohen, who indicated that the Greens oppose the bill. Water is the source of life. It is possibly the most precious resource of all, and the management of its quality and availability must be of the highest priority for any government. As an essential building block of life, water belongs to everyone. It must be collectively managed for the collective good.

As I said during the debate on the Water Management Bill, the Greens are utterly opposed to the privatisation of water. Around the world the privatisation of water has been an unmitigated disaster for local communities. Water is a community resource, and it is vital to the sustainability and viability of regional economies. Unfortunately, by proposing to corporatise the State's water resources, the bill takes us a step closer to the ultimate privatisation of water in New South Wales—which is where the Government is determinedly heading.

Potable water supply systems, storage systems and stormwater are interrelated and must be managed in an integrated manner. This demands a holistic approach to the water cycle, incorporating the principles of ecological sustainability rather than economic rationalism. It cannot occur without the full involvement of local communities and local government. For this reason, local government has a vital role to play in the management of water. Local government and key environment groups have been staunchly opposed to the provisions of the bill that remove the role of councils in water management. The Director of the Total Environment Centre, Jeff Angel, said:

The NSW government's State Water Corporation Bill favours financial return over ecological responsibility and the interests of the rural and regional communities.

It is a socially and environmentally irresponsible Bill ... it does not respect our most precious resource. Maximum financial return at the cost of the environment and rural and regional communities is untenable.

The Bill explicitly sidelines social and environmental objectives and also prevents the public from being consulted on the key operating licence, which will govern State Water.

Councils, in particular, strongly oppose the State Government taking over a council's water management assets, rights and liabilities. As other members have said, the Local Government and Shires Associations have written to my office, as I am sure they have written to other members, expressing their concerns. Their letter reads:

... of great concern to members of both the LGA and the Shires Associations [is] the power to be vested in the Minister to take over the assets, rights and liabilities of a council's water supply operation.

This concern arises from the fact that there could be any number of legitimate reasons why a council may have problems with its water supply. In turn, these problems could be fixed with appropriate assistance from the government. Assistance, rather than takeover, is the preferred view of the Associations.

While it is noted that a council's assets can only be taken over with the consent of the council concerned, a consent forced upon a council is no consent at all.

I have spoken to the mayors and general managers of a number of councils, and they all express concern about the heavy-handed approach of this legislation. Clearly, the bill is yet another attempt to control and manipulate councils, and to centralise power in the hands of the State Government. I should have thought that the Government would have learnt its lesson from the debacle of forced amalgamations across the State, followed by a damning result in the elections earlier this year. But it seems not, because the Carr Government is once again imposing its will on councils against their wishes. The Greens will strive to ensure that water in New South Wales is managed in an ecologically sustainable and socially just manner. This requires the full involvement of local government, and we will move amendments in Committee to remove the power of the Minister to take over the assets, rights and liabilities of a council's water supply operation against that council's wishes.

The Hon. HENRY TSANG [Parliamentary Secretary] [12.15 p.m.], in reply: I thank honourable members for their contributions to the debate. State Water is being corporatised to provide efficient and reliable delivery of water to farmers, industrial users and town water suppliers, as well as to the environment, and stock and domestic users. This is especially important for irrigators, because the success of their crops depends heavily on this service. Once State Water is established as a corporation that is properly separated from its regulators, its board can focus on delivering water to its customers on a commercial and financially transparent basis, with due regard to corporate governance and business performance. The improved accountability and transparency in terms of the functions and costs of the business will benefit State Water's customers and the environment alike.

In response to the comments of Mr Ian Cohen and the Hon. Dr Arthur Chesterfield-Evans, I advise that the corporation will have environmental objectives. The bill confers a specific objective on State Water to conduct its operations in compliance with the principles of ecologically sustainable development, as defined in the Protection of the Environment Administration Act 1991. State Water's environmental functions will be clearly codified in various instruments, including the operating licences, which will be administered by the Minister for Energy and Utilities; the water management works approvals, which will be administered by the Minister for Natural Resources; and memoranda of understanding with other agencies, including the Department of Environment and Conservation and the Department of Primary Industries.

Mr Ian Cohen's call for specific environmental reporting indicators is not necessary. This is because State Water's operating licences will require the corporation to develop and report against a set of clear environmental performance indicators. The water management works approvals will ensure that State Water provides environmental water of sufficient quantity, quality and timing, including the requirements of the new water sharing plans.

Mr Ian Cohen would be interested to know that the water management works approvals will also specify State Water's regulatory requirements in relation to cold water releases. Cold water mitigation measures such as investigations, works, and improved operating protocols at certain dams, have already been scheduled and nationally budgeted for in State Water's capital works program. Mr Ian Cohen also asked how the new corporation will improve fish passage. State Water is already reconstructing several fishways as a result of the co-operative approach between State Water and NSW Fisheries. Sydney Water's operating licence will require the corporation to enter into a memorandum of understanding with NSW Fisheries to formalise specific environmental outcomes. Arrangements entered into under this memorandum will ensure that State Water's dams and weirs do not unduly restrict fish passage and breeding patterns.

The Hon. Rick Colless, Mr Ian Cohen and the Hon. Dr Arthur Chesterfield-Evans raised concerns of the Local Government and Shires Associations that under the bill the Minister could take over the assets, rights and liabilities of a council's water supply operations. Let me put those concerns to rest. The Government has been clear right from the start that corporatising State Water does not include any plans to change the ownership, governance or regulatory arrangements for council-owned water utilities.

Under clause 10 of the bill the portfolio Minister may transfer assets, rights and liabilities to and from the corporation, but only with the agreement of the affected party and the voting shareholders. The main intention of clause 10 is to allow for the necessary assets, rights and liabilities to be transferred from the

Department of Energy, Utilities and Sustainability to the new State-owned corporation. The Minister could not transfer the assets, rights and liabilities of a local authority under clause 10 unless the council agrees to do so. The purpose of this provision is to allow for flexibility if the corporation and a council agreed to transfer responsibility, say, for a particular weir that had previously been overlooked. The key point is that a transfer would only occur with the council's consent. The Government would not force councils to transfer their assets to State Water. If a council did not voluntarily agree, the transfer would not proceed.

The Hon. Dr Arthur Chesterfield-Evans also called for the bill to specify the necessary skills of the directors on the State Water Board. It is great to see that there is strong support for a State Water Board with an appropriate mix of commercial, financial, environmental, legal and water management skills. I bring to the honourable member's attention an amendment moved in the other place. The amendment makes it clear in the bill that the persons appointed as directors are, between them, to have the necessary skills and knowledge that will enable the corporation to meet its objectives.

The Hon. Rick Colless raised the question of the transfer of debt. State Water is currently part of the Department of Energy, Utilities and Sustainability, which is a general government public service entity. There is no debt to transfer from the department into the new corporation. However, when State Water is a State-owned corporation it will be able to source funding for its capital expenditure from its own internal sources or by borrowing, just like any normal business. But let me emphasise that new borrowings would not have any effect on prices. State Water's prices are set by the Independent Pricing and Regulatory Tribunal [IPART] using a methodology that is independent of how much State Water borrows. Allowing government businesses to borrow is simply a means of replicating the discipline and incentives that apply to businesses in the private sector.

The issue of dividend payments was also raised. Let me make it clear that dividends are determined on the basis of a corporation's overall financial strength. Dividends are paid out of profits and do not form part of a State-owned corporation's operating or capital budgets. Dividends also make the business take account of the cost of the equity that the Government has invested in the business. The discipline of paying dividends provides a strong incentive for boards and managers to focus on enhancing the value of the business. I stress that dividends have no impact on prices. The IPART sets prices without regard for dividend policy.

Mr Ian Cohen called for consultation on the development of the first operating licence. As has been said before, the bill provides for an interim operating licence to be in place to provide adequate time for a thorough consultation on the initial licence. The portfolio Minister will request that the IPART review State Water's interim licence under clearly defined terms of reference. Reverend the Hon. Fred Nile is concerned about operating licence audits and public consultation. Let me add that the tribunal will be required to invite submissions from the public as part of the audit process. This will be codified in the operating licence. The IPART will also be able to undertake any other public consultation it considers appropriate for the audit.

In response to Ms Sylvia Hale's concern that this corporatisation is just a backdoor way of privatising State Water, I remind the member that corporatisation is not the same as privatisation. As a State-owned corporation State Water will remain in government ownership, but it would operate as a separate legal entity at arm's length from the Government. This would enable it to focus on commercial objectives, while operating in a framework that replicates the disciplines and incentives that lead non-government businesses towards efficient commercial practices. There is no intention to privatise State Water. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 4 agreed to.

Mr IAN COHEN [12.28 p.m.]: I move Greens amendment No. 1:

No. 1 Page 5, clause 5 (3), lines 8 and 9. Omit "of equal importance, but are not".

The objects of the State-owned corporation [SOC] in clause 5 relegate the key social and environmental objectives to an inferior and likely irrelevant status. The financial objective is made paramount. This is unlike other SOC's that have a number of equal objectives reflecting their real complex duties and impacts. The State's

rural water structures are not just economic outlets to make maximum returns; this amendment makes the objectives equally important. I commend the amendment to the Committee.

The Hon. HENRY TSANG [Parliamentary Secretary] [12.29 p.m.]: The Government opposes the amendment. The main reason for corporatising State Water is to give it clear commercial objectives and to reduce the inherent conflict of interest from having regulatory and service provision objectives within the same organisation. Under clause 5, State Water's principal objectives are to capture, store and release water in an efficient, effective, safe and financially responsible manner. Clause 5 also gives State Water other objectives in relation to social responsibility, environmentally sustainable development and regional development.

It is appropriate for State Water's principal objective to have a higher level of importance than its other objectives in order to maintain a clear separation of commercial and regulatory functions. Defining and regulating environmental and social outcomes are primarily the responsibility of State Water's regulators, mainly the Department of Infrastructure, Planning and Natural Resources and the Department of Energy, Utilities and Sustainability. State Water will not be expected to create its own environmental and social standards, but it will be required to comply with the standards that are set by its regulators. The Government expects State Water to become a commercially successful business. However, the new corporation will be subject to a more rigorous and transparent regulatory regime to ensure that environmental outcomes will not be compromised. State Water will not be allowed to walk away from its environmental responsibilities.

Progress reported and leave granted to sit again.

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Orders of the Day Nos 2 to 5 postponed on motion by the Hon. Henry Tsang.

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL

Second Reading

The Hon. HENRY TSANG [Parliamentary Secretary] [12.33 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The Statute Law (Miscellaneous Provisions) Bill continues the well-established statute law revision program that is recognised by all members as a cost effective and efficient method for dealing with amendments of the kind included in the bill.

The form of the bill is similar to that of previous bills in the Statute Law Revision Program. Schedule 1 contains policy changes of a minor and non-controversial nature that the Minister responsible for the legislation to be amended considers to be too inconsequential to warrant the introduction of a separate amending bill. The schedule contains amendments to 40 Acts and 5 statutory rules. I will mention some of the amendments to give honourable members an indication of the kind of amendments that are included in the schedule.

Schedule 1 amends the *Real Property Act 1900* so as to require a person appealing against a determination of a boundary dispute to join all owners of the land adjoining the disputed boundary as parties to the appeal. Any adjoining owner who does not wish to take an active part in the appeal may, under current court procedure, file what is called a "submitting appearance" in the appeal or apply to the court to be removed as a party from the proceedings.

Another amendment made by schedule 1 is an amendment to the *Parliamentary Electorates and Elections Act 1912*. That Act currently imposes a penalty on a police officer who takes part in any election otherwise than by casting a vote, or who tries to influence the vote of any other elector. The amendment makes it clear that the provision does not prevent a police officer from standing as a candidate in an election or from canvassing votes as a candidate.

Schedule 1 also amends the *Optometrists Act 2002*. The amendment will permit the regulations under that Act to prescribe, as drugs that optometrists may use in the practice of optometry, all drugs that were prescribed for that purpose under the Optometrists Act 1930. This means that the Optometrists Drug Authority Committee (which is established under section 17b of the *Poisons and Therapeutic Goods Act 1966*) will not be obliged to evaluate and approve the use of drugs that optometrists have been using for many years. However, any other drugs, including any new drugs that may be developed, will require approval by that committee before they may be used in the practice of optometry.

Two private Acts are amended by schedule 1. The first is the *Anglican Clergy Provident Fund (Sydney) Act 1908*. That Act is amended to permit the Anglican Church of Australia Synod of the diocese of Sydney to delegate to the standing committee of that synod any one or more of the synod's powers under specified sections of the Act. Those powers include the power to provide for admission to the membership of the fund established by the Act of teachers in Anglican schools, officials of the Anglican diocesan registries and certain other lay persons.

The second private Act amended by schedule 1 is the *Country Women's Association of New South Wales Incorporation Act 1931*. That Act currently requires copies of the rules of the Country Women's Association, and of new rules, alterations and repeals, to be registered in the Companies Office. That office no longer exists. Accordingly, the amendment provides for another repository for those documents and makes minor consequential amendments.

Schedule 1 also makes a number of amendments relating to the repeal of the *Native Vegetation Conservation Act 1997* and its replacement by the *Native Vegetation Act 2003*. Various references in other Acts to the 1997 Act are translated.

Schedule 1 also amends various Acts and statutory rules relating to road transport to reflect the fact that the Commonwealth has repealed the *National Road Transport Commission Act 1991* of that jurisdiction and replaced it with the *National Transport Commission Act 2003*. The amendments to the road transport legislation also deal with the consequential renaming of certain bodies and termination of certain agreements.

The last schedule 1 amendment that I will mention is the amendment to the *Valuation of Land Act 1916*. This amendment reinstates the appeal rights of all persons who have the right to object to a land valuation. Any such person will be entitled to appeal to the land and environment court against the Valuer-General's determination of an objection to the valuation, whether or not the person was the objector. At present, only the owner of the land concerned may appeal, and only if the objection was made by the owner.

Schedule 2 deals with matters of pure statute law revision consisting of minor technical changes to legislation that the Parliamentary Counsel considers are appropriate for inclusion in the bill. Examples of amendments in schedule 2 are those arising out of the enactment or repeal of other legislation, those correcting duplicated numbering and those updating terminology.

Schedule 3 repeals a number of Acts and provisions of Acts and a regulation.

The Acts and instruments that were amended by the Acts or provisions being repealed are up-to-date on the legislation database maintained by the Parliamentary Counsel's office and are available electronically.

Schedule 4 contains provisions dealing with the effect of amendments on amending provisions, savings clauses for the repealed Acts and a power to make regulations for savings and transitional matters, if necessary.

The various amendments are explained in detail in explanatory notes set out beneath the amendments to each of the Acts concerned. Rather than repeat the information contained in those notes, I invite honourable members to examine the various amendments and accompanying explanatory material and, if any concern or need for, clarification arises, to approach me regarding the matter. If necessary, I will arrange for government officers to provide additional information on the matters raised. If any particular matter of concern cannot be resolved and is likely to delay the passage of the bill, the Government is prepared to consider withdrawing the matter from the bill.

I commend the bill to the House.

The Hon. DON HARWIN [12.33 p.m.]: It is traditional that a Statute Law (Miscellaneous Provisions) Bill is introduced on a semi-regular basis every year. As this has been the case for such a long time most honourable members would be familiar with the purpose of the bill, which is to repeal certain Acts and provisions of Acts or to amend certain Acts to make minor changes to facilitate the more efficient administration of the legislative workload. Certainly, the Opposition has never opposed this type of bill unless there has been a specific provision contained within it that is inappropriate for statute law revision.

The bill contains four schedules. Schedule 1 contains policy changes of a minor nature that the responsible Minister considers do not warrant the introduction of a separate amending bill. Schedule 1 amends 48 Acts and 5 statutory rules. Schedule 2 refers to statute law revision consisting of minor technical changes to legislation that Parliamentary Counsel considers appropriate for inclusion in the bill. Examples of these amendments are those that arise out of the enactment or repeal of other legislation, those correcting duplicated numbering and those updating terminology. Schedule 3 repeals a number of Acts and provisions of Acts and a regulation. The schedule repeals amending Acts amended in 2003 or earlier that contain no substantive provisions that need to be retained. It also repeals certain provisions that merely affect amendments to other legislation. Schedule 3 also repeals Acts that are no longer of practical utility. Schedule 4 contains savings, transitional and other provisions of a more general effect than those set out in schedule 1. The purpose of each provision is explained in detail in the explanatory notes.

[Interruption]

Yes Minister, is one of my favourite television programs. Having given a somewhat technical explanation, I feel as though I have just been playing a scene in which I have addressed the House in the manner

of Sir Humphrey Appleby or Bernard Woolley, but statute law revision legislation is mainly technical in nature. One of the Acts to be amended by statute law revision is the Anglican Clergy Provident Fund (Sydney) Act 1908. As a person of Anglican faith I have read that provision carefully and ascertained that it is typical of the matters normally dealt with by way of statute law revision. The amendment simply takes a power from the Synod of the Diocese of Sydney and allows its power over the Anglican Clergy Provident Fund to be delegated to the diocese standing committee.

The Opposition refers these bills to all shadow Ministers, who then examine their fairly lengthy contents. In this case the shadow Ministers are happy with the contents of the bill; they do not believe that it contains any inappropriate measures. The Opposition therefore does not oppose it. I note that a number of my colleagues have an interest in some small changes of minor, technical and non-controversial nature and they may wish to contribute to the debate in more detail. I look forward to hearing their contributions.

The Hon. MELINDA PAVEY [12.38 p.m.]: I support the comments of my Coalition colleague the Hon. Don Harwin. The Statute Law (Miscellaneous Provisions) Bill tidies up statute law in New South Wales. I draw the attention of honourable members to the implications of the minor amendments in the bill for the Country Women's Association [CWA]. The CWA was incorporated in 1931. At present, section 11 of the Country Women's Association of New South Wales Incorporation Act 1931 requires copies of the rules of the CWA, and of any alteration or repeal of any rule and of every new rule, to be registered in the Companies Office established under the Companies Act 1961. The Companies Office no longer exists, and the Companies Act 1961 has been effectively superseded by the Corporations Act 2001 of the Commonwealth.

As the CWA is an incorporated association rather than a company, schedule 1.7 [1] amends section 11 of the Country Women's Association of New South Wales Incorporation Act 1931 to require the copies of the rules, and of the alteration or repeal of a rule, and of any new rule, to be lodged in the same way as a notice setting out particulars of an alteration of the rules of an association incorporated under the Associations Act is required by section 20 of that Act to be lodged. As a member of the Country Women's Association, it is appropriate for me to point out that the new President of the CWA is Judy Richardson from the Grafton area, who was originally from Dorrigo. She has taken over from Ruth Shanks from Dubbo. As President of the CWA Ruth Shanks has done an amazing job over the past couple of years in bringing the CWA into the twenty-first century with some exciting initiatives. The CWA continues to have an input into policy and decision making in regional areas, with a particular emphasis and proactive role in relation to women's issues. I welcome the fact that the Statute Law (Miscellaneous Provisions) Bill updates some rules of association.

The Hon. CATHERINE CUSACK [12.41 p.m.]: I join with my colleague the Hon. Melinda Pavey in drawing the attention of honourable members to the provisions of the bill affecting the Country Women's Association, which was formed 82 years ago as a not-for-profit association. With a current membership of more than 13,000 women in 500 local branches, it is an integral part of the largest women's organisation in Australia. I can only imagine what the world was like for rural Australian women when the CWA was founded in 1922. That generation of Australian women suffered the greatest loss of menfolk during the First World War, and tens of thousands of these young men—husbands and sons—came from throughout country New South Wales.

My local CWA branch in Lennox Head is one of 23 branches in the North Coast group of branches. Lennox Head is full of people like me who have migrated to the coast from country New South Wales. The urban seachangers often head further north to Byron Bay or south to Ballina, although I hasten to add that these two towns also have strong CWA branches. The CWA branch in Lennox Head has been a touchstone for women new to the community. Having attended a meeting, I am convinced that there is little that happens in Lennox Head that these women did not play a role in or at least know about. The CWA is a fabulous means for communicating and supporting each other in the community. In Lennox Head, as in hundreds of towns in country New South Wales, the CWA is a large part of the glue that holds us together.

It is notable that since 1938 the CWA has participated in the Association of Country Women of the World, which is the largest rural women's organisation, boasting a membership of 5,000 women's societies in 70 countries representing seven million members. In New South Wales the CWA works at branch, group and State levels to achieve a range of advocacy, educational and charitable goals. Its current activities at the State level include supporting SIDS and Kids, National Heart Foundation initiatives for women and initiatives to promote child safety on farms. At the branch level its initiatives are too numerous to document. Thousands of donations are made annually to support local community groups. These donations are mostly funded from the proceeds of handiwork, small fundraisers and the operation of shops manned by volunteers.

It is not easy for voluntary organisations in need of legislative change to get their amendments to this point in the Parliament, and I imagine that a great deal of perseverance has led to these changes. The Companies Office has not existed for some time, and it is timely that these provisions be updated. I congratulate the Country Women's Association on getting the provisions to this point. I place on record the Liberal Party's appreciation of the fine work of the CWA, which makes a vital contribution to communities, especially during tough times, and supports its own members and their families. I hope that the organisation continues to flourish as its good works are needed more today than ever before.

The Hon. Dr PETER WONG [12.44 p.m.]: We were told that we would be excited about the contents of this bill. Also, according to Mr Stewart's second reading speech in the Legislative Assembly, we would be in awe of it. Those were his words—"excited" and "awe". I have read through the bill and all 40 Acts and the five statutory rules to which the bill makes amendments, and I am waiting for the awe and excitement to begin. But I will not hold my breath. Perhaps Mr Stewart means shock and awe, as President Bush promised the Iraqis. But I digress. Seldom has a bill before this House not had me brimming over with joy and pleasure as I engage with each and every morsel of its contents. So it is with some disappointment that I am still waiting for the moment when I glean the promised excitement and awe with which Mr Stewart teased us so generously. This is a housekeeping bill, and I support it.

The Hon. HENRY TSANG [Parliamentary Secretary] [12.45 p.m.], in reply: I thank the Hon. Don Harwin and the Hon. Dr Peter Wong for their support. I join with the Hon. Melinda Pavey and the Hon. Catherine Cusack in congratulating the Country Women's Association on the wonderful work it has done since Australia was pioneered by the Country Women's Association and its members. Recently I have noticed with great admiration the association's latest focus in terms of taking the Country Women's Association into the twenty-first century and modern Australia. It has focused its interests on Australia and recognises that it is not necessary to pay respects to King and country every time it meets. Indeed, focusing on Australia is a wonderful thing, and the Government appreciates the modern progress of the Country Women's Association. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Orders of the Day Nos 7 to 10 postponed on motion by the Hon. Ian Macdonald.

AGRICULTURAL LIVESTOCK (DISEASE CONTROL FUNDING) AMENDMENT BILL

Second Reading

The Hon. IAN MACDONALD (Minister for Primary Industries) [12.49 p.m.]: I move:

That this bill be now read a second time.

This bill will make important amendments to the Agricultural Livestock (Disease Control Funding) Act 1998, which provides for the collection of funds from industry for the benefit of livestock disease control programs in this State. Honourable members would be aware that agricultural livestock production in New South Wales is valued at over \$4.5 billion per annum at the farm gate. The current provisions of the Agricultural Livestock (Disease Control Funding) Act 1998 have been used to provide industry funds to support the National Ovine Johne's Disease Control and Evaluation Program. Most people know this disease as OJD. Since first being detected on the central tablelands in 1980, OJD has become a major issue in the sheep industry, particularly in New South Wales, which has been the most affected.

Unfortunately, OJD has been a very divisive issue for farmers whose sheep have contracted the disease and for those who wish to guard against it. A six-year, \$40-million national program was set up to provide a co-ordinated approach to dealing with OJD. Honourable members may know that the National Ovine Johne's Disease Control and Evaluation Program is set to conclude at the end of June 2004, which is next week. There is now an urgent need for a more practical and effective mechanism for the New South Wales sheep industry to

collect industry funds to support the new national approach to OJD for the future management of the disease. The State's sheep industry, through the OJD Industry Advisory Committee, has long called for a transaction-based collection scheme to fund the OJD program to make the collection of funds far more equitable. It has also asked for a greater say in both the direction and operation of the disease control program.

The bill provides the mechanism for the collection of these funds and for greater industry consultation on how the funds are utilised. In doing so, it largely reflects suggestions and recommendations from reviews of the current OJD program by the Hon. Richard Bull and others. Nevertheless, the changes will provide a more efficient, equitable and acceptable fund-raising mechanism for all agricultural livestock industries that collectively wish to fund significant livestock disease control programs. Before establishing a disease control program the Minister will need to be satisfied that the program is soundly based and that its objectives are reasonably achievable, financially viable, and likely to benefit livestock producers in the industry affected by the disease. The industry advisory committee, established to advise on the operation of the disease control program, will need to consult with the relevant industry to ensure that producers' views are properly reflected in advice to the Minister.

A central plank of this bill is the capacity to collect voluntary contributions from producers when livestock or products are sold—that is, a transaction-based contribution scheme. The automatic collection of funds at the point of sale provides a fairer and simpler system with reduced administration costs. This has proved to be a highly successful method of collecting funds in other States. Authorised collection agents will collect the contributions from designated livestock producers. The rate of contribution will be set on advice from the industry advisory committee. Funds raised through transaction-based contributions will be paid into an industry fund and administered by a fund administrator, who can either be the director-general, the Rural Assistance Authority, an independent corporate or statutory body, or a board of trustees. The fund administrator will be subject to the same auditing and reporting requirements as apply to the director-general under the Act.

I seek leave to incorporate the remainder of my speech in *Hansard*.

Leave not granted.

I indicated that the proposed amendments allow for voluntary transaction-based contributions. The proposed changes give producers the right to claim back contributions made, if they want, by applying for a refund within a specified period. However, producers claiming a refund will lose their entitlements to services provided by the fund. Producers who seek a service from a program will be required to comply with the rules of the fund. They also have the right to apply to the Administrative Decisions Tribunal if they are unhappy about the decisions made under the scheme. On advice from the industry, the bill retains the current power to impose an industry levy, the amount of which is based on the carrying capacity of a producer's land. For some diseases this may be the most efficient and equitable way to fund the disease control program.

I note that there have been ongoing discussions with the industry about its liabilities under the current scheme for the collection of funds for the OJD program. In particular, there are ongoing discussions with the industry about the need to repay the loan provided by the Government. The raising of funds to repay the loan will be the subject of further negotiations with the New South Wales Farmers Association. The industry has agreed that these negotiations will not impede the progress of the bill, which will introduce a far more effective industry funding mechanism for the future.

I assure honourable members that this legislation establishes a framework to provide direct support to producers. Its primary aim is to enable the collective funding by the livestock industry of services to assist producers in controlling disease, and that is how it will be used. The move to a transaction-based contribution scheme and its supporting features simplifies the collection of industry funds and provides greater transparency and accountability in how the funds are distributed. I commend the bill to the House.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [12.54 p.m.]: I lead for the Opposition on the Agricultural Livestock (Disease Control Funding) Amendment Bill. In the current international environment of emerging animal diseases and biosecurity scares, both Federal and State governments have a responsibility to be ever vigilant and to constantly improve preparedness for and ability to react to an animal disease outbreak. The New South Wales Coalition is entirely supportive of any measure that will increase New South Wales' ability to react to and eradicate any kind of animal disease outbreak. For some time now the New South Wales Labor Government has failed to meet its responsibility to properly fund and support animal disease preparedness and control. This is evident in a number of areas—from the failure of the Minister for Primary

Industries, the Hon. Ian Macdonald, to provide any kind of funding support to farmers in the introduction of the National livestock identification scheme, unlike his colleagues in Victoria—

The Hon. Ian Macdonald: I have set aside half a million dollars.

The Hon. DUNCAN GAY: The Minister has not given anything to help the farmers specifically; he put it into the industry.

The Hon. Ian Macdonald: No, half a million dollars has been set aside to help with the purchase of tags. That has been announced.

The Hon. DUNCAN GAY: Minister, last week there was a very good program in the State to determine how prepared we are for a disease outbreak. The Minister's department co-ordinated it and the results were quite outstanding. The great concern I have is that the staff who were involved in the trial last week will not be there when the real thing happens. As of today, 325 staff are going. There will be fewer staff, fewer facilities and less backup in the real areas of need. While this bill will not rectify the New South Wales Government's current unwillingness to take animal disease control as seriously as it should, it has the potential to play an important role in preparing industry to react swiftly and effectively to disease outbreaks by implementing a transaction-based levy instigated and presided over by representative industry committees.

It is generally accepted within the livestock industry that producers and other stakeholders must bear some degree of the financial responsibility for disease control. This has been the case for some time now, with funds being collected through various levy systems. I do not believe that individual farmers will have a problem with this premise. However, I believe they have a problem with paying a number of levies to the State Government for disease control through a number of different outlets and receiving little or no assistance or benefits under any control program for their efforts.

Unfortunately, that was exactly the situation for hundreds of New South Wales sheep farmers during the outbreak of ovine Johne's disease [OJD]. The New South Wales Government's disastrous OJD levy collection system was introduced a few years ago and involved an unworkable voluntary/compulsory levy. All producers in New South Wales were asked to pay a voluntary levy up front. If they decided not to, the compulsory levy kicked in. The majority of producers refused to pay the voluntary levy, only to receive a hefty bill in the mail further down the track.

Herein lies the problem: the voluntary levy was calculated not on per head of sheep but according to the carrying capacity of producers' land and was added onto their rates. That meant that a producer who had 300 head on land with a carrying capacity of 7,000 would pay for the full capacity, not his actual stock count. Not surprisingly, producers were not too excited about this system. Compounding producers' problems at the time was the ongoing drought. The Government decided to stop the levy, which we appreciated, but this left a shortfall that meant financial assistance under this scheme was frozen and hundreds of producers were left totally high and dry. Unbelievably, having put in place the various measures they were required to do, they are still waiting for around \$3 million to be paid to them. I will talk more about that later.

The Opposition supports the central premise of this bill—that is, the creation of a voluntary transaction-based levy scheme for disease control programs. Such schemes are already in operation in South Australia and Victoria and, to the best of my knowledge, they are working well and equitably. Under the new system there will be a voluntary transaction fee, but farmers will be able to claim the money back if they want to. It is like an insurance scheme, although if they claim the money back they will be unable to access the services provided by the fund. Perhaps it is like the M5 East toll collection set-up.

The Hon. Ian Macdonald: Cash-back.

The Hon. DUNCAN GAY: Cash-back. Not to be trite, I congratulate the Minister, his staff and his department for putting together a sensible plan to overcome a situation that was not working. Farmers in New South Wales are understandably sick and tired of revenue-raising initiatives by the Government. As we know, it is the highest taxing government in Australia. If it is not raising stamp duty, it is increasing electricity bills or collecting Rural Lands Protection Board rates, a host of other levies, rates and government taxes. According to a paper I read last night and this morning, perhaps there will be innovative charges out of NSW Agriculture. The last thing farmers want right now is yet another levy system, particularly when financial pressures are worse than ever in many areas on account of our worst drought, which is ongoing in nearly 80 per cent of the State.

As I said earlier, there is a general acceptance that industry must chip in for disease control programs so long as they are industry-focussed and not just another excuse for the Government to whip up a tax. The Opposition is supportive of the industry focus of the new levy system as proposed by the bill only because the necessary checks and balances will be in place to ensure that the Minister—or me when I become Minister after the next election—cannot collect levies and spend them at will. I point out at this stage, however, that I suspect only because of pressure applied by the Opposition and the New South Wales Farmers Association did the Government agree to make both committees statutory committees. They were not statutory committees in the drafting stages of the bill. Although I said we applied pressure on the Government, once again it would be trite of me not to thank the Minister for accepting our good advice.

Pursuant to part 2 of the amended Act two committees will provide advice to the Minister on disease control measures: the Standing Disease Control Advisory Committee and an industry advisory committee for each designated disease control service. The role of the standing committee is to advise the Minister that there is a prevalent disease that must be addressed with a specific control program. This will eventually trigger the voluntary transaction levy. The Industry Advisory Committee then makes its decisions on the amount of money that needs to be collected, the breadth of the control program and its time frame. The Opposition believes both committees will play an essential role in ensuring the adequate checks and balances are in place to ensure that funds collected through the levy are spent wisely and in accordance with the best interests of individual farmers.

During preliminary discussions on this bill it appeared that the Minister was to be under no obligation to establish the specific industry advisory committee for each disease control service. I am pleased to note that the final bill has reflected, as I indicated earlier, the Opposition and the New South Wales Farmers Association's concerns. Part 2 section 8 of the Act provides that both committees are to be established for any disease control program. The Government must realise that this new system will only work if it is an industry-driven initiative. The committees are absolutely vital in ensuring this.

I now move to another area of concern the Opposition had with the bill—that is, the Government's intended use of funds raised under the new system, specifically in regard to the ovine Johne's disease [OJD] control program. If the main purpose of the transaction-based levy is to provide for an effective way to raise funds for disease control mechanisms, the Opposition cannot see why it should be used to raise money for past industry liabilities. New section 12D—Entitlements to services under designated disease control program—provides that a transaction-based contributor to an industry fund is entitled to receive services under a designated disease control program. That is how it should be. But if funds raised by the transaction-based levy in the instance of an OJD program are spent paying off a loan by industry to Government, there will be no incentive whatsoever for producers to pay up. They would think, "Hang on, I am paying this levy for a disease control program, not to pay off an old industry liability."

Following discussions between my office and the Minister's office, I have sought and received confirmation that the Minister will give a commitment in Parliament on this bill that as soon as funds are available in the pool those producers still owed financial assistance under the old system will receive it as a priority. I have also sought and received confirmation that the new levy system will not be used to recover the \$4.2 million loan, which I mentioned earlier. That loan was a drought support measure, and the drought is still very much ongoing in New South Wales. Further, the Minister's office has since indicated that the \$4.2 million will be recovered via a separate compulsory levy once the "drought is over". Once again that is as we requested and once again I thank the Minister and I look forward to his acknowledgement in his reply to the second reading debate.

The Opposition will support the delayed collection of this debt, as I indicated to the Minister's staff, only if the Government abandons its current program of selling front-line services, and research and education facilities. As I wrote this speech before yesterday, I indicated that if the fire sale continues the support will not be forthcoming. If the Government is stealing resources from the primary industry of New South Wales through the sale of assets, it can use those funds to pay back the loan. As far as I am concerned, they can whistle Dixie before they get my support to collect the compulsory levy when they are flogging off the farm. Given what has come about over the past two days, unless there is a major change, I suspect my support will not be forthcoming for the delayed collection of that debt. But if the Minister becomes enlightened, I will support it. Everyone agrees that the debt exists and it must be repaid. But it was made during drought to alleviate problems faced by producers. Perhaps the Treasury had not noticed that the drought is ongoing. In fact, the Minister said in a press release dated 6 June:

Our farmers are now staring down the barrel of a third winter in drought, unless a miracle happens in the next couple of months.

In that same press release, the Minister went on to say that the full range of drought assistance measures would continue as long as farmers needed them. I consider a special drought loan for OJD levies to be a drought measure. Therefore, I ask the Minister to stay true to his word by not calling in this loan while 80 per cent of the State remains drought declared. Of course, the right thing to do would be to wipe the slate clean and for the Government to swallow that \$4.2 million as part of its drought expenditure. I suspect that there is not much chance of that happening. The Nationals continue to argue that the recovery of that debt must be postponed until the drought is over. As discussed previously, to do otherwise would be contrary to the Government's promise that it would make the full range of drought assistance available for as long as the drought lasts. That loan was a drought assistance measure.

As the New South Wales Farmers Association said in a recent policy statement, liability of individual producers for past unpaid levies should not be a liability of the industry generally. As mentioned previously, I have been informed by the Minister's office that he is prepared to make a commitment that any funds collected by the new levy system will go in the first instance to pay producers who are still owed money after the shortfall in the old system. In addition, the \$4.2 million loan will not be recovered until the drought breaks. I understand that the New South Wales Farmers Association has sought similar commitment from the Minister. A recent letter to the Minister for Primary Industries from the association's President, Mal Peters, states:

The Association is in principle supportive of a transaction-based system for the collection of state industry funds for an agreed disease control service. The Association seeks your assurance that any funds raised will be used to meet the commitment to affected producers under the currently suspended financial assistance program, and will not be used for repayment of the Treasury loan previously made available to industry by the New South Wales Government. Raising the funds for this purpose will only be considered following agreement between the industry and the government on the amount of industry's legitimate debt. The Association will however, support the raising of funds from the New South Wales sheep industry to repay the agreed government debt at a later stage, subject to discussions regarding the breaking of drought and other hardship considerations.

Therefore, the Opposition does not oppose this bill. However, it will oppose the Government's making any attempt to use it to call in a loan made to drought-affected farmers while the drought is ongoing and against the central premise of the bill, which is to provide funding for disease control programs as advised by an industry committee. If these commitments are forthcoming, the legislation will be supported.

Mr IAN COHEN [1.14 p.m.]: I have learnt a great deal about ovine Johne's disease over the years I have been in this House. I remember the Hon. Ron Dyer's consistent efforts to raise the matter in this place. These measures have been a long time coming. The Greens support a scheme that will allow transaction-based collection of fees. I acknowledge the success of the concept. I have listened with interest to the debate between the Government and the Opposition. Both parties obviously have a great deal of interest in and have put a lot of work into finding a strategic and effective way to establish a disease prevention program. Of course, the Greens support these measures and that the committees—

The Hon. Duncan Gay: I forgot to mention the Hon. Richard Bull.

Mr IAN COHEN: The Minister mentioned him.

The Hon. Duncan Gay: No, I said that I forgot to mention him.

Mr IAN COHEN: The Minister mentioned the active role the Hon. Richard Bull played in this area. From a Greens' perspective this seems to be a fair and effective method. The scheme has been successful in other States and the contribution rate is voluntary. That type of voluntary, transaction-based contribution allows farmers and landowners to stay in the scheme if they wish to use that support system. Given that it will be maintained as a voluntary levy, the Greens support the scheme to give access to these very important services.

I acknowledge that the Deputy Leader of the Opposition referred to its being similar to a cash-back scheme. The Greens support that. The honourable member raised concerns about the axing of 320 jobs in the Department of Primary Industries. I also have concerns about 300 on-the-ground jobs axed from the Department of Environment and Conservation. If the honourable member would like to mention the more than 600 job cuts from various departments that are very much involved in the health and wellbeing of rural and conservation areas across the State he will be enthusiastically supported by the Greens to maintain those vital jobs. That is a fair call if we are going to work together against these job cuts. The Greens support the bill.

The Hon. IAN MACDONALD (Minister for Primary Industries) [1.16 p.m.], in reply: I thank honourable members for their contributions to this debate. In particular, I thank the Deputy Leader of the

Opposition for his positive contribution. This bill will make important amendments to the Agricultural Livestock (Disease Control Funding) Act 1998, which provides for the collection of funds from industry for the benefit of livestock disease control programs in this State. Members of the House would be aware that the State's agricultural livestock industries contribute significant financial and social benefits to the community of New South Wales. Livestock production is worth about \$4.5 billion per annum at the farm gate. The State's livestock industries have called for a transaction-based scheme to collect industry funds to contribute to the operation of effective disease control programs. Producers have also asked for a greater say in how the direction of disease control programs is set and how they operate.

The approach presented in this bill has been driven largely by these suggestions and the recommendations coming from reviews of the current ovine Johne's disease [OJD] program by the Hon. Richard Bull and others. Unfortunately, OJD has been a very divisive issue for farmers whose sheep have contracted the disease and for those who wish to guard against it. A six-year, \$40 million national program was set up to provide a co-ordinated approach to dealing with OJD. As honourable members may know, the National Ovine Johne's Disease Control and Evaluation Program is set to conclude at the end of June 2004, which is next week. There is now an urgent need for a more practical and effective mechanism for the New South Wales sheep industry to collect industry funds to support the new national approach to ovine Johne's disease for the future management of the disease. The State's sheep industry, through the OJD Industry Advisory Committee, has long called for a transaction-based collection scheme to fund the OJD program to make the collection of funds far more equitable. Nevertheless, the changes delivered by this bill will provide a more efficient, equitable and acceptable fundraising mechanism for all agricultural livestock industries that wish to collectively fund significant livestock disease control programs.

I will outline to the House the key amendments in this bill. The bill amends the Agricultural Livestock (Disease Control Funding) Act 1998 to make further provisions with respect to the funding of disease control services regarding livestock and livestock products. Before establishing a disease control program, the Minister will need to be satisfied that the program is soundly based and that its objectives are reasonably achievable, financially viable and likely to benefit livestock producers in the industry affected by the disease. The industry advisory committee, established to advise on the operation of the disease control program, will need to consult with the relevant industry to ensure that producers' views are properly reflected in advice to the Minister. A central plank of the bill is the capacity to collect voluntary contributions from producers when livestock or products are sold—that is, a transaction-based contribution scheme.

Authorised collection agents will collect contributions from designated livestock producers, with the rate of contribution being set on advice from an industry advisory committee. Money raised from the transaction-based contributions will be paid by a collection agent into an industry fund, administered by a fund administrator. In practice, collection agents are most likely to be stock and station agents and meat processors. The automatic collection of funds at the point of sale provides a fairer and simpler system with reduced administration costs. The approach established by this bill will help minimise any additional administrative impost. This has proven to be highly successful in collecting funds in other States.

I indicated earlier that the proposed amendments allow for voluntary transaction-based contributions. Central to the proposed changes is the provision for producers to have a right to claim back contributions made if they so wish. The proposed changes give producers the right to claim back contributions made, if they choose, by applying for a refund within a specified period. The mechanism for refunding contributions will be set by policy and priority guidelines taking account of advice from the industry advisory committee. However, producers receiving a refund will lose their entitlement to services provided by the fund. The services provided under a disease control program will be determined on the advice of the relevant industry advisory committee for that program. Producers who seek a service from a program will be required to comply with the rules of the fund. Producers will also have the right to apply to the Administrative Decisions Tribunal if they are unhappy about the decisions made under a scheme.

On advice from industry, the bill retains the current power to impose an industry levy, the amount of which is based on the carrying capacity of a producer's land. For some diseases, this may be the most efficient and equitable way to fund the disease control program. As I have said, as part of the amended bill, a fund administrator will be appointed to manage the funds of the scheme. The fund administrator is to be either the director-general, the Rural Assistance Authority, an independent corporate or statutory body or a board of trustees. This provides greater flexibility and accountability in the administration of industry funds. The fund administrator will not be able to operate the fund in deficit without prior approval. The fund administrator will also be subject to the same auditing and reporting requirements as apply to the director-general under the Act.

This bill will require the director-general to review the activities of the administrator and make regular reports on the administration of the fund. It will provide appropriate checks and balances to ensure that financial aspects of the scheme are monitored and reported according to Government requirements. I note that there have been ongoing discussions with the industry about its liabilities under the current scheme for the collection of funds for the OJD program. In particular, discussions with industry are ongoing concerning the need to repay the loan provided by the Government. The raising of funds to repay the loan will be the subject of further negotiations with the New South Wales Farmers Association.

The industry has agreed that these negotiations will not impede the progress of this bill, which will introduce a far more effective industry funding mechanism for the future. I can assure honourable members that the amendments establish a framework to provide direct support to producers. The primary aim of the bill is to enable the collective funding by a livestock industry of services to assist producers in controlling disease, and that is how it will be used. The amendments outlined in the bill provide an efficient and equitable mechanism for industry to collect funds for disease control programs.

I wish to respond to issues raised by the Deputy Leader of the Opposition. The honourable member asked why the Government does not accept its responsibilities and write off the industry debt for OJD. The New South Wales Government has contributed approximately \$10 million to the OJD program over the past six years. In addition, the Government has recognised the impact of the worst drought in 100 years by providing a \$4.2 million loan to the industry fund, which is in addition to \$125 million allocated for drought assistance measures. The management of animal diseases in New South Wales has always been based on a partnership between Government and industry. That is why the New South Wales livestock industries have been able to maintain their "clean" status, and access trading opportunities into other States and overseas.

The livestock industries have taken ownership and responsibility for past disease control programs, and that has been an important factor in their success. Sheep industry leaders in New South Wales have accepted that they have responsibility for repaying the debt under the current OJD scheme. However, we have made it clear that this levy will not be used to recover those funds. How that debt will be repaid, and the exact quantum payable, will be determined separately. Obviously, the point at which the drought breaks will have a lot to do with that. I point out that the funds raised will be directly applied to producers who have incurred costs in trying to do the right thing regarding OJD management. I have given such an undertaking to the New South Wales Farmers Association and the Opposition, and I do so again.

This bill has been drafted in direct response to industry demands. The Government has steadfastly pointed out the need to have only one fundraising mechanism. However, farmers and the Opposition have asked that the variety of issues—including past debt, existing claims and future programs—be handled separately. We have listened to those claims. The advisory committee was always statutory, as it is now, following consultation with the farmers and the Opposition. A provision that allowed the Government to dispense with the advisory committee under very specific circumstances was deleted. Yet again we have listened to what farmers have had to say. These amendments provide for greater transparency and accountability in the way industry funds are distributed. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

[The Deputy-President (The Hon. Kayee Griffin) left the chair at 1.26 p.m. The House resumed at 3.00 p.m.]

POLICE AMENDMENT (SENIOR EXECUTIVE TRANSFERS) BILL

COMMERCIAL AGENTS AND PRIVATE INQUIRY AGENTS BILL

Bills received.

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

Motion by the Hon. John Hatzistergos agreed to:

That these bills be read a first time and printed, standing orders be suspended on contingent notice for remaining stages, and the second readings of the bills be set down as orders of the day for the first sitting day after the winter recess.

Bills read a first time and ordered to be printed.

LEGISLATION REVIEW COMMITTEE**Report**

The Hon. Peter Primrose, on behalf of the Chair, tabled report No. 1, entitled "Operation, Issues and Future Directions: September 2003-June 2004", dated June 2004.

Ordered to be printed.

STATE WATER CORPORATION BILL**In Committee**

Consideration resumed from an earlier hour.

The CHAIRMAN: Order! When progress was reported the Committee was considering Greens amendment No. 1.

Amendment negatived.

Clause 5 agreed to.

Clause 6 agreed to.

The Hon. RICK COLLESS [3.04 p.m.]: I move:

No. 1 Page 6, clause 7. Lines 10-18. Omit all words on those lines.

This amendment is proposed because we see absolutely no need at all for a member of the Labor Council of New South Wales to be on the selection committee for the board of directors of the corporation. The wording of the clause is interesting. The Labor Council is the only organisation guaranteed a nominee on the board. What about the irrigators council? What about all the other organisations that have an interest in the management and allocation of water in New South Wales?

This is yet another example of the Government finding a job for one of its Labor cronies on a board of directors and for that person to recoup the appropriate compensation from that position. The Coalition is absolutely opposed to such a practice. As no other organisation has a nominee on the board of directors, it is only appropriate that a provision giving the Labor Council a nominee on the board should be removed from the bill.

Mr IAN COHEN [3.05 p.m.]: The Greens certainly support the Opposition's contention that other organisations have a place on the board. A peak conservation group nomination would be most worthwhile. However, under the circumstances, unless the Opposition comes up with something more comprehensive with regard to board representation, the Greens will not support the removal of the Labor Council representative from the board.

The Hon. Dr PETER WONG [3.06 p.m.]: I share the sentiment of the Hon. Ian Cohen. If the Opposition were to suggest other representatives, we would be happy to support the amendment. However, as it has not, I do not support the amendment.

The Hon. Rick Colless: Are you happy to let that provision stand so that the Labor Council has a representative but no other organisation—

The Hon. Dr PETER WONG: No, I am not happy with it. However, if the amendment sought to appoint representatives from the Shires Association and the irrigation industry, I would support it. You should move such an amendment accordingly.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [3.07 p.m.]: I have considered this amendment. I must admit I am concerned about the practice of the Government putting Labor Council representatives on the boards of corporations. I think a conflict of interest could arise for Labor Council people with political aspirations; their concentration is on getting a ladder up into this House—perish the thought—rather than on the

welfare of workers. However, I do take the point made by the Government, that there are at least five unions involved in this proposal, spread over a very large geographical area, and that, therefore, it seems logical that there be representation from a peak union body. That is a valid point.

It would be very difficult to find an employee representative of a body as confused as State Water, which has employees all over the State. It was important that employees had representation on the board of Sydney Water, an organisation with which I have worked and which was downsizing from 17,500 to 3,000 employees. Obviously, I am concerned that someone in the Labor Council would be more concerned about a political career than about the interests of employees. On the other hand, if we leave the makeup of the entire board to the discretion of the Minister, I am not sure that we have actually achieved anything. I was tempted to support the amendment, but I cannot.

The Hon. JON JENKINS [3.09 p.m.]: I agree with the comments made by the Hon. Dr Arthur Chesterfield-Evans. Included on the membership of the board should be a union representative or an employee representative at the very least. In the short time that I have been a member of this Parliament I have said many times that governments get themselves into trouble by making political appointments to top jobs. This Government has not learnt the lesson and it is creating problems by making these appointments.

The Hon. Dr Arthur Chesterfield-Evans: It is a reward.

The Hon. JON JENKINS: It is a reward scheme. I am sure that both sides of politics follow this practice, but I express my concern at the practice and urge the Government to find an alternative method for employee representation rather than by politicisation through the Labor Council.

The Hon. HENRY TSANG [Parliamentary Secretary] [3.10 p.m.]: The Government opposes the amendment and appreciates the support for its position of the Hon. Dr Arthur Chesterfield-Evans, the Hon. Dr Peter Wong and the Greens. It is the policy of the Government for the boards of State-owned corporations to have included in their membership either a staff director or a nominee from the New South Wales Labor Council. The reason for this is to provide a focus on industrial relations issues within the board. I am aware that at least one of the privatised irrigation corporations has a staff representative on its board. I am advised that this has been highly beneficial in ensuring that the practicalities of human resource management are properly considered at the strategic level of the organisation.

For State Water the Government has preferred to be not so prescriptive as to require that a staff member be included on the board. Instead, the bill provides for a nominee from the State's peak labour organisation, the New South Wales Labor Council. The board will be appointed by the shareholders, which, in State Water's case, will be the Treasurer and Assistant Treasurer. The persons appointed to the board will have the necessary expertise, skills and knowledge to enable the corporation to meet its objectives. I am sure that the shareholders will seek to have a range of skills on the board, including environmental, financial, economic, engineering, legal and community consultation skills. The Government opposes the amendment.

The Hon. RICK COLLESS [3.11 p.m.]: I cannot believe the comments I have heard today. Crossbench members have said that they oppose the provision for a Labor Council nominee yet they have said they will vote against an amendment that seeks to remove that provision. It is hypocritical for them to say that they oppose a Labor Council nominee and yet will vote for the bill as it stands. One must wonder why.

The Hon. Jon Jenkins: Give us an alternative.

The Hon. RICK COLLESS: It is all very well to ask for an alternative, but I remind members that this is the Government's bill, and it provides that only the Labor Council will have a legislative position on the board of directors of the corporation. If such a guarantee is good enough for one stakeholder, it should be good enough for all stakeholders. It is not a matter for the Opposition to include other stakeholders; it is a matter for the Government. An Opposition bill would have been much more prescriptive and better defined. It is unbelievable that crossbench members who do not agree with the provision for a Labor Council nominee will not support an amendment to remove it.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 16

Mr Clarke	Mr Lynn	Mr Ryan
Ms Cusack	Reverend Dr Moyes	Mr Tingle
Mrs Forsythe	Reverend Nile	
Mr Gallacher	Mr Oldfield	<i>Tellers,</i>
Mr Gay	Ms Parker	Mr Colless
Mr Jenkins	Mr Pearce	Mr Harwin

Noes, 20

Mr Breen	Mr Egan	Ms Robertson
Dr Burgmann	Ms Griffin	Ms Tebbutt
Ms Burnswoods	Ms Hale	Mr Tsang
Mr Catanzariti	Mr Kelly	Dr Wong
Dr Chesterfield-Evans	Mr Macdonald	<i>Tellers,</i>
Mr Cohen	Mr Obeid	Mr Primrose
Mr Costa	Ms Rhiannon	Mr West

Pairs

Miss Gardiner	Mr Della Bosca
Ms Pavey	Mr Hatzistergos

Question resolved in the negative.

Amendment negatived.

Clause 7 agreed to.

Clauses 8 to 10 agreed to.

Mr IAN COHEN [3.21 p.m.], by leave: I move Greens amendments Nos 3 and 4 in globo:

No. 3 Page 8, clause 11. Insert after line 33:

- (2) The portfolio Minister is to consult with the public before making a recommendation to the Governor under subsection (1).

No. 4 Page 10, clause 13 (2), lines 5 and 6. Omit all words on those lines. Insert instead:

- (2) The portfolio Minister is to consult with the public, the Corporation and the Tribunal before making a recommendation to the Governor under subsection (1), other than a recommendation for an amendment or substitution that is classified by the regulations as being of a minor nature.

The Minister in the lower House said that he anticipated that only minor amendments will be made to the terms and conditions of operating licences. This may be the case most of the time. However, an operating licence is a viable instrument governing the operations of a State-owned corporation. In the future there may be a desire to make other than minor amendments, which would require the Minister to seek the advice of the Independent Pricing and Regulatory Tribunal and to undertake public consultation. Both the granting of an operating licence and a major amendment should be fully scrutinised. Minor amendments as classified by the regulations can occur without this scrutiny being required. Greens amendments Nos 3 and 4 would substantially remedy this situation. I commend the amendments to the Committee.

The Hon. HENRY TSANG [Parliamentary Secretary] [3.22 p.m.]: The Government does not support these amendments. There will be thorough public consultation before the portfolio Minister makes any recommendation to the Governor about granting an operating licence under clause 11 of the bill. The Independent Pricing and Regulatory Tribunal will be required to consult with the public as part of its audit and review functions before a licence is issued or renewed under clause 11. It is more appropriate for the consultative process to be undertaken by an independent body rather than by the portfolio Minister.

If at any stage State Water's operating licence requires amending, the Government intends that the corporation and the tribunal will be consulted. The Government wants a focused approach on any amendments

to the operating licence, and believes that it is important that public consultation is only carried out when relevant to the amendment. Rather than specifying a highly prescriptive consultative process, consultations can be tailored to suit the specific situation. The provision in the bill allowing for amendments to the operating licence gives the Government an option if circumstances change and it is necessary to amend the licence in a minor way during its term. The Government does not support a legislative provision for a consultation process to amend the operating licence, because the intention is simply to use it on rare occasions and only to an incremental extent.

Amendments negatived.

Clause 11 agreed to.

Clause 12 agreed to.

Clause 13 agreed to.

Clauses 14 to 20 agreed to.

Mr IAN COHEN [3.25 p.m.]: I move Greens amendment No. 5:

No. 5 Page 15, clause 21. Insert after line 13:

- (3) Before selling any of its works, the Corporation must take into consideration the social, economic and environmental impact of the sale on the region in which the works are situated.

This amendment requires the corporation to consider the economic, social and environmental impacts of the sale of any asset before such a sale can occur. Given that the corporation owns several major dams and thousands of kilometres of pipeline, as well as buildings and plant, it is important that the sale of any of these assets be considered in the social and environmental context. I commend the amendment to the Committee.

The Hon. HENRY TSANG [Parliamentary Secretary] [3.26 p.m.]: The Government does not support this amendment, which is unnecessary as clause 5 of the bill already gives the corporation specific objectives that require it to take social, environmental and regional development issues into consideration. Let me clarify that at this point the Government does not have any plans for State Water to sell any of its works. However, if an asset sale were to be considered at some point in the future, then clearly the directors would need to take the social, economic, environmental and regional implications into consideration because these are specific objectives of the corporation. For significant divestments, the corporation is required to obtain prior written approval from the voting shareholders under the State Owned Corporations Act 1989. This provides a safety net for the Government to ensure that the social, economic and environmental impacts have been properly considered. The Government opposes this amendment.

Amendment negatived.

Mr IAN COHEN [3.27 p.m.]: I move:

Page 15, clause 21. Insert before line 14:

- (3) Before selling any of its major works (being works prescribed by the regulations), the Corporation is to carry out a public consultation process in relation to the proposed sale.

After considerable consultation I put forward my original amendment, which provided for a particular value to be placed on the sale of any corporation assets. Originally I approached the Opposition with the suggestion that it should be more than \$1 million, which was not acceptable. I then suggested that we could describe it as a sale of major works over \$10 million, but that was still not acceptable. I then attempted to describe it as a sale of major corporation assets that would require public consultation. Again, the concept of "major" was not acceptable.

In an attempt to encompass the situation but still achieve the aim of taking care of the sale of major works—which is acknowledged by certain members of this place as necessary—they were described in the final draft of the amendment as works prescribed by the regulations. My advice was that this could be placed clearly in the regulations and would establish an appropriate level of public consultation on the sale of any public assets. So the provision will read, "any such corporation assets being works prescribed by the regulations."

I felt that it would not be a problem—and would be supported by the majority—if it was defined in the planning process, and not open to challenge, that the public should be consulted if assets of this magnitude are to be disposed of. I had hoped I could count on the agrarian socialist principles of members of the Opposition who are putting forward this position, in particular The Nationals, given that they have had a significant amount to say about the Government's proposed privatisation of the pine forests. They have an opportunity to ensure that a proposition to privatise dams and pipelines must go through a public consultation process. One must ask if this is not hypocrisy on the part of the Opposition. It makes a significant song and dance about the sale of our pine forests, yet we hear little more than a whimper about the potential privatisation of such significant public infrastructure. I will remind the public and the media of that at every opportunity. I conclude by referring to something the Hon. Rick Colless said earlier today. He said that it is absolutely hypocritical that people opposed to something are going to vote for it when it comes to a vote. I commend the Greens amendment to the Committee.

The Hon. RICK COLLESS [3.32 p.m.]: Given the cut and thrust of parliamentary debate, at times we are bound to have disagreements with our colleagues in the Greens. There are a few things on which we agree with them. We have had a difference of opinion today. The Hon. Ian Cohen says that I have been hypocritical on this, but he was the one who showed the extraordinary hypocrisy on the last amendment I moved in this place. However, that is all over, and once we walk out of the Chamber it will be forgotten. The Opposition cannot support this amendment, although we do support the general principle of public consultation, as the Hon. Ian Cohen acknowledges. In this case it is not clearly defined as to what would be sold and what would not be sold. The problem with leaving that definition too broad is that it could become the subject of a legal dispute if some aggrieved party wants to challenge a sale by saying it was or was not a major asset or major work. Leaving such things in the regulations also causes me some consternation, so the Coalition will not support this amendment.

Mr IAN COHEN [3.34 p.m.]: Much has gone through this Chamber by way of regulation, and on many occasions has been accepted by the Opposition. We had quite extensive consultation in an attempt to convince the Opposition, particularly having regard to its position on pine plantations, which I supported. The word "major" may be too vague, and perhaps the amount of \$1 million or \$10 million may be too vague to be appropriate, but it makes one wonder when a major party that has supported regulations time and again says it is not appropriate. It is a shame the Opposition cannot support this amendment. As I have been told on many occasions, surely being prescribed by the regulations is just one step away from it going through this place as legislation.

The Hon. HENRY TSANG [Parliamentary Secretary] [2.35 p.m.]: The Government does not support this amendment. I reiterate the point made in the second reading speech that there are no plans to privatise State Water. Furthermore, there are no plans for State Water to sell off its major works. If at some point in the future the corporation wanted to sell major works, section 28 of the State Owned Corporations Act already provides the necessary checks and controls. Under section 28 the shareholders' written approval is required if the corporation intends to dispose of assets with a value greater than 10 per cent of total assets. Shareholders may request the corporation to consult with the public in order to satisfy themselves that the proposed sale is in the best interests of the State. However, legislating for public consultation on asset disposal is highly prescriptive. The Government would prefer a more flexible process where the need to consult could be determined on a case-by-case basis. The Government opposes this amendment.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 5

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

Noes, 21

Ms Burnswoods	Mr Jenkins	Mr Tingle
Mr Catanzariti	Mr Lynn	Mr Tsang
Mr Clarke	Reverend Dr Moyes	Dr Wong
Mr Colless	Reverend Nile	
Ms Cusack	Mr Oldfield	
Mrs Forsythe	Ms Parker	<i>Tellers,</i>
Mr Gay	Mr Pearce	Mr Harwin
Ms Griffin	Ms Robertson	Mr Primrose

Question resolved in the negative.

Amendment negatived.

Clause 21 agreed to.

Clauses 22 to 30 agreed to.

Mr IAN COHEN [3.45 p.m.]: I move Greens amendment No. 7:

No. 7 Page 20, clause 31, lines 31 and 32. Omit all words on those lines. Insert instead:

- (1) The Tribunal is to prepare an operational audit of the Corporation no later than 2 years after the initial grant of the operating licence and, after that audit, operational audits are to be prepared in the third year and the final year of each term of the operating licence.
- (2) The Tribunal is to prepare operational audits of the Corporation at such other times as may be directed by the portfolio Minister.

This amendment requires regular audits of the operational licence against its terms and conditions. It is the practice of the Independent Pricing and Regulatory Tribunal to undertake audits of the performance of State-owned corporations under their operating licences. It is good practice to undertake an audit mid-term and at the end of a term. The bill currently makes such audits a discretionary act. The Greens will tighten up this discretionary activity and require the audits to be undertaken on regular terms. I commend Greens amendment No. 7.

The Hon. HENRY TSANG [Parliamentary Secretary] [3.46 p.m.]: The Government opposes Greens amendment No. 7. State Water's operating licence will have the same level of transparency and accountability as those of other government-owned water delivery businesses, that is, Sydney Water, Hunter Water and the Sydney Catchment Authority. It is not necessary to amend the bill to specify when the Independent Pricing and Regulatory Tribunal [IPART] is to prepare operational audits. While the bill has allowed for a flexible approach in the timing of audits, IPART will be required to complete its first operational audit of the corporation in time to inform its end-of-term review of the initial operating licence to be issued under clause 11.

As the initial licence will have a maximum term of three years, the first operational audit would be expected to commence by July 2006, once the initial licence has been in place for 12 months. The Government intends that IPART will be required to undertake an audit every two years thereafter. The bill allows for IPART to carry out supplementary audits, which may focus on specific aspects of State Water's operations on a needs basis. This will allow for audits to be carried out in response to emerging issues as they are identified. IPART will also be required to conduct an end-of-term review to determine the terms of renewal of the licence, which under clause 14 of the bill may be renewed for a maximum of five years. The Government opposes the amendment.

Amendment negatived.

Mr IAN COHEN [3.48 p.m.]: I move Greens amendment No. 8:

No. 8 Page 20, clause 31. Insert after line 34:

- (3) The Tribunal is to consult with the public during the preparation of an operational audit of the Corporation.

This amendment requires public consultation on operational audits. I commend Greens amendment No. 8.

The Hon. HENRY TSANG [Parliamentary Secretary] [3.48 p.m.]: The Government opposes this amendment. The Independent Pricing and Regulatory Tribunal [IPART] will be required to consult with the public as part of its audit and review functions before a licence is issued under clause 11. IPART may also undertake any other public consultation it considers suitable when it is conducting operational audits of State Water. The Government believes these procedures should be codified in the corporation's operating licence rather than in legislation, as this will provide IPART with the necessary flexibility to determine the level and type of consultation based on the audit's scope. The Government does not support this amendment.

Amendment negatived.

Clause 31 agreed to.

Clause 34 agreed to.

Mr IAN COHEN [3.50 p.m.]: I move Greens amendment No. 9:

No. 9 Page 23. Insert after line 6:

35 Environmental reporting indicators

- (1) The portfolio Minister is from time to time to adopt environmental reporting indicators, including environmentally sustainable development indicators, for use by the Corporation.
- (2) The indicators must include a methodology for making comparisons to international best practice in relation to the capture, storage and release of water in an environmentally sustainable manner.
- (3) Before adopting any proposed environmental reporting indicators, the portfolio Minister is to consult with the public.
- (4) The Corporation must monitor its activities against the environmental reporting indicators and must compile data on those indicators.
- (5) The Corporation is to publish the results of the monitoring referred to in subsection (4) in its annual report.

It is becoming common practice for triple bottom line and sustainability reporting to be undertaken. This amendment allows the Minister to adopt environmental reporting indicators and for the corporation to monitor its activities and report against those indicators. When this issue was raised with the Minister's office it was claimed that the Department of Infrastructure, Planning and Natural Resources [DIPNR] is the environmental regulator of State Water, so this amendment is unnecessary. Apart from our lack of confidence in DIPNR as an environmental regulator, the issue is one of striving for environmental excellence—something it would appear no-one else in this Chamber, except for a handful of crossbenchers, is concerned about. This amendment would promote what should be part of general practice in triple bottom line assessment and acknowledge sustainability reporting. I commend the amendment to the Committee.

The Hon. HENRY TSANG [Parliamentary Secretary] [3.51 p.m.]: The Government does not support this amendment. It is not necessary to include a provision requiring the Minister to develop environmental reporting indicators for State Water. The proposed regulatory framework is already rigorous and transparent enough to ensure that environmental outcomes will not be compromised. State Water will be required to conduct its operations in compliance with the Water Management Act 2000, the water-sharing plan established under that Act, the State Water Management Outcomes Plan and, of course, the State Water Corporation Act. On the recommendation of the Minister for Energy and Utilities, the Government will issue State Water with an operating licence that will include a requirement for the corporation to develop an environment management plan. Amendments will be made to the plan only following public consultation and the approval of the Minister.

The Hon. RICK COLLESS [3.52 p.m.]: The Opposition does not support this amendment. The statement of the environment reporting requirements that apply to most government bodies, corporations, organisations and so on will apply to State Water. This amendment would overload the corporation with extra environmental reporting requirements that are not warranted.

Amendment negatived.

Mr IAN COHEN [3.52 p.m.]: I move Greens amendment No. 10:

No. 10 Page 23. Insert before line 7:

35 Public consultation

Any requirement in this Act that a person or body is to consult with the public in relation to any matter is a requirement that the person or body:

- (a) is to cause notice of the matter to be published in a daily newspaper circulating throughout the State, and
- (b) is to cause information about the matter, including any proposals or recommendations, to be made available for public inspection on the Corporation's website and at each of the offices of the Corporation, and
- (c) is to allow a period of at least 30 days for members of the public to send written comments to the person or body in relation to the matter, and
- (d) is to take any such comments into consideration.

This amendment legislates a public consultation mechanism. Too often consultation is left to some non-binding rules or informal decision making. Public consultation and its effective implementation is a basic statutory right and must be legislated for, particularly when dealing with State-owned corporations. I commend the amendment.

The Hon. HENRY TSANG [Parliamentary Secretary] [3.53 p.m.]: The Government does not support this amendment. It would impose a highly prescriptive consultative process. The Government is committed to consulting and providing interested stakeholders and the broader community with the opportunity to have a direct input into State Water's regulatory obligations.

Mr Ian Cohen: You don't really believe that.

The Hon. HENRY TSANG: We do believe that.

Mr Ian Cohen: It was said with such sincerity.

The Hon. HENRY TSANG: We said with sincerity that we support a more flexible approach that will allow consultation to be tailored to suit specific situations rather than place onerous obligations on both IPART and the corporation.

The Hon. RICK COLLESS [3.54 p.m.]: The Opposition will not support this amendment. It would create a highly prescriptive situation. It would be a one-size-fits-all scenario. It is more appropriate that the consultation relate to the individual activity that the corporation is undertaking.

Amendment negatived.

Clause 35 agreed to.

Clauses 36 to 40 agreed to.

Mr IAN COHEN [3.55 p.m.]: In recognition of the spirit of co-operation with The Nationals, the Greens will not move amendment No. 11.

The Hon. RICK COLLESS [3.55 p.m.]: I offer my thanks to the honourable member. That is an entirely honourable tactic. I move The Nationals amendment No. 1 :

Page 26, schedule 1. Insert after line 18:

- (2) Despite subclause (1), if the transferor or transferee is a local authority, compensation may be paid in relation to any asset or right the subject of the transfer.
- (3) Despite clause 6, the amount of any compensation payable under subclause (2) in relation to any such asset or right is to be determined by the Valuer-General.

The Hon. HENRY TSANG [Parliamentary Secretary] [3.56 p.m.]: The Government supports this amendment. It is not necessary to include a provision to allow for compensation to be payable if assets, rights or liabilities are transferred from a local authority to State Water. Transfers will occur only if State Water and the local authority agree. Clause 10 clearly states that the Minister is not to transfer assets, rights or liabilities unless the relevant body has consented to the transfer. The existing provision for transfers between local authorities and State Water exists purely for flexibility reasons in case State Water and a council agree to transfer the ownership of a particular asset. However, in view of the concern expressed by the Local Government and Shires Associations, the Government is prepared to support an amendment setting out the methods by which compensation can be determined in the event that that clause is invoked.

Mr IAN COHEN [3.57 p.m.]: The Greens are happy to support this amendment. To a certain extent it covers the issues raised in the Greens amendment. It is food for thought that perhaps the Greens should give The Nationals their amendments and we might enjoy greater success with this Minister.

Amendment agreed to.

Schedule 1 as amended agreed to.

Schedules 2 and 3 agreed to.

Mr IAN COHEN [3.58 p.m.]: I move Greens amendment No. 12:

No. 12 Page 43, schedule 4, clause 12. Insert after line 23:

- (3) The interim operating licence may be granted for a maximum period of 6 months and may not be renewed or extended.

The bill sets no deadline by which an interim operating licence should expire. We could be left with the situation of having an interim licence for a long period. In the lower House the Minister did not seem to know how long that would be. There should be an expiry point and then a full operating licence that has undergone public consultation should be issued as soon as possible. The amendment sets a deadline of six months. I commend the amendment to the Committee.

The Hon. HENRY TSANG [Parliamentary Secretary] [3.59 p.m.]: The Government does not support Greens amendment No. 12. Schedule 4 makes provision for the corporation to have an interim operating licence in place for a period of up to one year. This provision was included to allow adequate time for public consultation on the development of State Water's initial licences to be issued under clause 11. The portfolio Minister will request the Independent Pricing and Regulatory Tribunal [IPART] to review the corporation's interim licences under clearly defined terms of reference. The Independent Pricing and Regulatory Tribunal will conduct a public consultation, including a call for submissions and a public hearing with interested stakeholders. Based on the findings of this consultation, IPART will make recommendations to the portfolio Minister on the terms of the initial licences. To make sure there is adequate time to conduct a thorough public consultation on the development of State Water's initial operating licences, the Government supports the interim licences being in place for a period of up to one year.

Amendment negatived.

Schedule 4 agreed to.

Title agreed to.

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

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Orders of the Day Nos 12 to 14 postponed on motion by the Hon. John Hatzistergos.

COURTS LEGISLATION AMENDMENT BILL

Second Reading

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [4.03 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

This Bill provides for miscellaneous amendments to legislation affecting the operation of the courts of New South Wales.

Schedule 1

Schedule 1 amends the *Children (Criminal Proceedings) Act 1987* to remove the requirement for a child under bond to notify the court of a change of address. A similar amendment was made in 2001 for adult bonds, as the provision was thought to be superfluous and of no practical utility.

This amendment arises from work that is being carried out by the CourtLink project, the new case management system for the Supreme, District and Local Courts, including the Children's and the Coroner's Court.

The CourtLink project has presented the opportunity to review and streamline processes in each of the jurisdictions and to build commonality in how business is conducted across the jurisdictions. Having common, streamlined processes will make it easier for court staff and external users to operate the CourtLink system.

When staff examined the requirements applying to adult and children's bonds, it became apparent that there was no benefit in retaining the additional requirement in relation to children's bonds.

Schedule 2

Schedule 2 amends the *Commercial Arbitration Act 1984* by way of statute law revision following 45 of Schedule 8 of the *Legal Profession Act 1987*. That clause provides that a reference in any Act to the taxation of costs is taken to be a reference to the assessment of costs under the *Legal Profession Act*. The clause did not, however, actually amend the Acts that refer to taxation of costs.

Sections 34 and 35 of the *Commercial Arbitration Act* still refer to taxation of costs and this has been confusing for some people who are unaware of clause 45 of Schedule 8 of the *Legal Profession Act*.

Schedule 2 will amend sections 34 and 35 to actually remove the references to taxation of costs and replace them with references to assessment of costs. It will also introduce a new section 35 to make it clear that the provisions in the *Legal Profession Act* relating to costs assessment with any necessary modifications apply to sections 34 and 35.

Schedule 3

Schedule 3 amends the *Crimes (Local Courts Appeal and Review) Act 2001* to allow an appeal to the District Court where a matter is heard in the defendant's absence, and allow the District Court to order that the case be heard in the Local Court.

Currently, when a person charged with a criminal offence in the Local Court does not appear, the matter can be dealt with in their absence. When this occurs, a right to seek a rehearing of the matter exists under section 4 of the *Crimes (Local Courts Appeal and Review Act) 2001*. However, if this application for rehearing is refused, the only recourse for the defendant is to appeal to the District Court. This current process uses the District Court's valuable time and resources, and deprives the defendant of any right to appeal from the finding.

If this subsequent application to the District Court is granted, there must be a complete hearing of all evidence in the District Court. To overcome this, the proposed amendment clarifies in section 11A that a right of appeal from the decision of the magistrate to refuse a rehearing be allowed to the District Court, and that the District Court be granted the ability to order a full hearing in the Local Court. The amendment allows only 1 appeal to the District Court from the Local Court.

Schedule 4

Schedule 4 amends the *Crimes (Sentencing Procedure) Act 1999* to remove references to forms being prescribed by the regulations. Instead, the regulation-making power under the Act will be amended so that the regulations can make provision for the information that is to be contained in any document under the Act; and require documents to be in a form that is approved by the Minister. The regulations will also make provision for how a document is to be served. The transitional arrangements will allow existing forms or forms to the effect of the existing forms to be used until the new forms are approved.

These amendments arise as a result of other work that was carried on the CourtLink project. Last year, a working party of judicial officers, representatives from the court registries and the Department designed new, simpler forms to replace the large number of forms currently being produced by the courts in criminal cases. The new forms will be progressively approved for use in the Supreme, District and Local Courts as CourtLink is rolled out to these courts.

Schedule 4 also amends section 86 of the Act. Section 86 currently provides that a community service order may not be made with respect to an offender unless the court is satisfied that the offender has signed an undertaking, in the form prescribed by the regulations, to comply with the offender's obligations under the community service order.

Requiring the offender to sign the undertaking before the court has made the order is problematic as it requires the offender to undertake to comply with the community service order's conditions, even before the offender is aware of those conditions. In practice, the offender does not sign the undertaking before the order is made but instead signs it in the registry after the court has made the order.

The amendment will require the offender to sign the undertaking to comply with his or her obligations under the community service order after the court has made the order. If the offender refuses to sign the undertaking, the matter will be remitted back to the judicial officer who will be able to vacate the order and re-sentence the offender.

Schedule 5

Schedule 5 amends the *Criminal Appeal Act 1912* to enable documents relating to an appeal to also be lodged either the registrar of the Court of Criminal Appeal, or the registrar of the trial court. Appellants who are in custody still can lodge their appeal documentation with the person in charge of the place where the person is in custody. Appeal documentation from the Drug Court and Land and Environment Court will continue to be lodged only with the registrar of the Court of Criminal Appeal.

These changes are being made as a result of the CourtLink project and are designed to build commonality in how business is conducted across the jurisdictions. Appellants from decisions of the District and Supreme Courts will be able to lodge appeal documentation in the trial court in the same way that appellants from Local Court decisions lodge appeals in the trial court. However, they will also be able to lodge appeal documentation in the Court of Criminal Appeal if they so wish.

All other procedures in relation to criminal appeals will remain unchanged although with the introduction of electronic services through CourtLink, parties and their representatives will be able to electronically manage their matters.

The changes to the lodgement process are not intended to cut down the important roles of the current court registries in managing cases through to hearing. Registries responsible for appellate work will receive early notice of the lodgment of an appeal and will be able to manage a case immediately thereafter.

The existing arrangements for lodging appeals from the Drug Court and Land and Environment Court will be retained, as these courts will not be part of the CourtLink system.

Schedule 6

Schedule 6 amends the *Criminal Procedure (Justices and Local Courts) Act 1986* to clarify that a Registrar can grant an extension for lodgement of a Court Attendance Notice, and that both a Magistrate and a Registrar can grant an extension outside of the initial 7-day period.

Currently, sections 52 and 117 of the *Criminal Procedure (Justices and Local Courts) Act 1986* require that Court Attendance Notices be filed at the registry within seven days after service on the defendant. The section was originally inserted to ensure that documents were filed in court sufficiently ahead of the hearing date.

Under the legislation, a Registrar is unable to grant an extension to this seven-day period. The proposed amendment to section 52 allows a Registrar to grant an extension. In addition, that Bill proposes to amend section 177(5) so that both a Magistrate and a Registrar can grant an extension after the seven-day period has expired.

Schedule 6 further amends the *Criminal Procedure Act 1986* to remove any ambiguity that a Police Officer cannot issue a subpoena under the *Criminal Procedure Act*. The Crown Solicitors Office recently noted some conflicting legal argument that suggested that a Police Officer might not be able to issue a subpoena. To put this beyond doubt, this suggested amendment changes sections 222 and 224 to clarify that a Police Officer can issue a subpoena. Additionally, section 218 will be amended so that Police Officers will not be personally liable for any costs incurred.

Schedule 7

Schedule 7 amends the *District Court Act 1973* to create the position of Judicial Registrar. The Judicial Registrar will have the power to hear and determine notices of motion to finality, and will exercise the following functions and powers:

- Preside as a Master of the District Court to facilitate orderly and expeditious discharge of cases;
- Maintain close, confidential liaison with the Judiciary in providing and seeking specialist legal procedural advice and assistance;
- Conduct call overs, status conferences, pre-trial conferences, show cause hearings and directions hearings (both in person and by telephone);
- Consider applications for adjournment from hearing and arbitration listings;
- Allocate cases to judges for case management;
- Assist as required with the case management of the specialist lists;
- Hear and determine notices of motion;
- Provide advice and assistance on case management; and
- Refer appropriate matters to arbitration and mediation.

The position will be a statutory appointment for a term not exceeding five years. Proposed section 18FA states that the Judicial Registrar must be admitted as a legal practitioner to any Court of a State or Territory or of the High Court. The Judicial Registrar must also devote their whole time to the office, and is to be an officer of the District Court.

In addition, Section 18G changes the current name of the Registrar for Sydney to 'The Principal Registrar.' Under proposed 18J the Principal Registrar may exercise all of the functions of the Principal Registrar. This will bring the District Court in line with a similar provision in the Supreme Court.

It is proposed that schedule 7 further amend the *District Court Act* to complete the transition of compensation jurisdiction to that court. The proposed amendment gives the District Court the same powers as the Compensation Court through proposed section 142I. The residual jurisdiction is that which was exercised by the Compensation Court under a range of NSW legislation.

When exercising the residual jurisdiction the District Court does not need to follow strict legal precedent, but must decide cases on their merits as provided by section 142J. Additionally, a residual jurisdiction decision can be appealed from the District Court to the Court of Appeal only in limited circumstances under proposed section 124N, but the District Court is able to reconsider its own decisions.

Additionally, proposed section 124K provides that section 112 of the *Workplace Injury Management and Workers Compensation Act 1998* (Costs) applies to all proceedings of the residual jurisdiction in the District Court. Under proposed section 142P the District Court can also refer a matter to WorkCover for an inquiry or report.

Schedule 8

Schedule 8 amends the *Jury Act 1977* to remove references to forms being prescribed by the regulations. Instead, the regulation-making power under the Act will be amended so that regulations can make provision for the information that is to be contained in any document under the Act and to require documents to be in a form that is approved by the Minister. The regulations will also

be able to make provision for how a document is to be served. The transitional arrangements will allow existing forms to be used until the new forms are approved.

These amendments reflect the changes that are being made to the *Crimes (Sentencing Procedure) Act 1999* in Schedule 4 of this Bill.

Schedule 9

Schedule 9 amends the *Protected Estates Act 1983* to allow the Protective Commissioner to direct third party managers. Prior to the introduction of the *Guardianship and Protected Estates Legislation Amendment Act 2002* the Protective Commissioner was able to make orders for third party managers regarding all functions necessary for management and care of property, and:

- Order that property be sold to satisfy debts;
- Make orders for the management and administration of protected persons' property.

The Protective Commissioner is currently only able to exercise these powers in relation to estates directly administered. However, these functions cannot be exercised over third party managers without a court order. This arrangement has increased the workload for both the Commissioner and the Court.

The proposed amendment to section 30 will allow the Manager to exercise all functions necessary and incidental to the management of an estate, and such other functions as the Protective Commissioner may direct. However, the Commissioner in proposed section 30(b) is given the power to make directions on management of an estate. The exercise of these powers will be reviewable by the Administrative Decisions Tribunal.

All schedules will commence on assent except for schedule 5, which is expected to commence in mid-2004 when CourtLink is implemented a number of District Court registries.

These amendments improve the efficiency of the courts, and provide an improved and more accessible service for legal practitioners and the public.

I commend this Bill to the House.

The Hon. GREG PEARCE [4.03 p.m.]: The Courts Legislation Amendment Bill amends various Acts relating to court procedures and proceedings. The amendments are designed to improve the operation of the courts and the judicial system. The Opposition is concerned about one aspect. The bill amends the Jury Act 1977 to remove the requirement that all documents be in the form prescribed by regulations. The Opposition believes that the Parliament should have the oversight power in relation to such provisions. I understand that the Government will move amendments in Committee to delete that provision. If the Government does so, the Opposition will support the bill.

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [4.04 p.m.], in reply: I thank the Hon. Greg Pearce for his contribution. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 3 agreed to.

Schedules 1 to 7 agreed to.

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [4.06 p.m.], by leave: I move Government amendments Nos 1 to 3 in globo:

No. 1 Page 23, schedule 8. Insert after line 5:

[2] **Section 26 Persons selected to be summoned**

Omit "at the court or coronial inquest at the time specified".

Insert instead "at the court or coronial inquest, at the place and at the time specified".

No. 2 Page 23, schedule 8 [2], lines 13 and 14. Omit all words on those lines.

No. 3 Page 23, schedule 8 [3]. lines 16-27. Omit all words on those lines.

The Government amendments, which relate to schedule 8, will transfer to the Jury Act information required by the regulation to be included in the jury summons. This will ensure that the Parliament continues to oversight what information must be included in the jury summons form. The amendments will also remove the requirement for regulations to prescribe the actual format of the summons, thereby giving the Sheriff's Office more flexibility when designing the layout of the summons.

The Hon. GREG PEARCE [4.06 p.m.]: The Opposition supports Government amendments Nos 1 to 3. They appear to achieve the parliamentary oversight that the Opposition believed was extremely important in relation to the bill as originally drafted. We thank the Attorney General and his staff for their support in addressing this aspect of the bill.

Amendments agreed to.

Schedule 8 as amended agreed to.

Schedule 9 agreed to.

Title agreed to.

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

CRIMES (ADMINISTRATION OF SENTENCES) AMENDMENT BILL

Second Reading

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [4.09 p.m.]: I move

That this bill be now read a second time.

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

Leave granted.

The object of the *Crimes (Administration of Sentences) Amendment Bill 2004* is to make various amendments to the *Crimes (Administration of Sentences) Act 1999* which is the principal Act that governs the administration of certain sentences. The Act is to be amended to provide for a more severe penalty to be imposed on a correctional centre inmate found with a mobile phone. In addition, the amendments will provide for further improvements to the correctional centre discipline system. The amendments will also make other miscellaneous changes to the principal Act and will clarify certain aspects of the operation of the Act.

I shall now outline some of the more significant changes proposed to the Act.

The bill proposes to make it a correctional centre offence for an inmate to possess a mobile phone.

The bill provides for a range of penalties to be imposed on a correctional centre inmate found with a mobile phone, any part of a mobile phone, a SIM card for a mobile phone or a charger for a mobile phone.

Mobile phones represent a serious threat to the security, good order and discipline of a correctional centre. An inmate can use a mobile telephone to contact and intimidate correctional centre staff and their families, to contact and intimidate prosecution witnesses or to organise an escape from custody. In addition to correctional centre-related concerns, an inmate can use a mobile phone to organise or otherwise engage in criminal activity outside a correctional centre. Regrettably, in the current international climate, the activity outside of a correctional centre can include terrorist activity.

On 21 April 2004, the Premier announced a range of measures to combat the threat of terrorism. Included in those measures was the proposal for new penalties for possessing a mobile phone in a correctional centre. This bill introduces the new penalties as outlined by the Premier. It is foreseeable that, over the course of time, the State's correctional centres may be required to accommodate a growing number of alleged terrorist inmates.

In this era of uncertainty about terrorism, the welfare of those in and outside the correctional system must be protected. A mobile phone that is smuggled into a correctional centre is a possible threat not only to those people in and associated with the correctional system but also to those in the broader community.

The proposed new penalties for possessing a mobile phone in a correctional centre are intended to reduce the risk of a correctional centre inmate accessing a mobile phone while in a place of detention. I assure the House that correctional authorities are continually improving their search practices in respect of mobile phones and other contraband. The reality is, however, that the compact size of mobile phones and the increasingly sophisticated methods used by inmates and their outside associates to introduce mobile phones into correctional centres renders it unlikely that correctional authorities will ever be able to prevent completely the introduction of mobile phones into correctional centres.

The security threat presented by mobile phones is of such significance that I have asked the Department of Corrective Services to investigate other measures to counter this threat. The other measures being investigated include the use of mobile phone jamming equipment. In fact, I have been urging the Commonwealth Government since July last year to permit the trialling of jamming equipment to block mobile phone use in correctional centres. At present the use of jamming equipment is prohibited by Commonwealth legislation.

The *Summary Offences Act 1988* provides a disincentive to persons bringing or attempting to bring anything into a place of detention. A person found guilty of attempting to smuggle a mobile phone into a place of detention could conceivably receive a maximum penalty of 2 years imprisonment, or 20 penalty units, or both. Paradoxically, a similar sanction cannot be imposed on an inmate who receives and uses a mobile phone. This legislation amends this anomaly.

The Government is of the view that the appropriate authorities should be able to impose a more severe penalty on any inmate found in the possession of a mobile phone. The bill will provide for a range of such penalties. Due to the array of offenders and sentences, there is to be a range of penalties in respect of mobile phones. The bill makes it a correctional centre offence for an inmate to be in possession of a mobile phone, and provides for the imposition of a penalty within the range of penalties available to a governor or visiting magistrate in respect of a correctional centre offence. New section 56A will provide for an inmate to be deprived for up to six months of such withdrawable privileges as the governor of a correctional centre or visiting magistrate determines.

Significantly, the bill also makes it a criminal offence under the *Summary Offences Act 1988* for an inmate to have a mobile phone in his or her possession in a place of detention. The bill provides for a maximum penalty for this offence of a term of imprisonment of up to two years or 50 penalty units or both to be imposed by a court.

The categorisation of a mobile phone offence as both a correctional centre offence and criminal offence—combined with the range of penalties proposed—provides for flexibility in the manner in which mobile phone related offences will be able to be dealt with. The circumstances surrounding the possession of a mobile phone will determine the manner in which such an offence is pursued. Under the proposals contained in the bill, the Department of Corrective Services will make a judgement on the seriousness of a mobile phone related offence and act accordingly in bringing proceedings against the inmate concerned.

In addition to penalties for mobile phones, the bill provides for various improvements to the inmate discipline system. The bill creates a single category of correctional centre offence by removing the distinction between a major offence and a minor offence. The bill also amends some of the penalties that may be imposed on an inmate in respect of a correctional centre offence.

It is imperative that the correctional system is equipped with a quick and effective internal disciplinary system. The bill proposes to introduce greater flexibility into the inmate discipline system. The current division of offences into 'major' and 'minor' offences does not provide the Department of Corrective Services with the flexibility necessary to deal with each correctional centre offence on its merits. There are occasions on which there are minor versions of major correctional centre offences and vice versa. The inmate discipline system therefore needs to be flexible as perceptions and circumstances surrounding offences can vary.

At present, under section 54 of the Act the governor of a correctional centre must refer an offence with which an inmate is charged to a Visiting Magistrate for hearing and determination if the offence is a major offence or the offence is a minor offence but the governor considers that because of the serious nature of the offence it should be referred to a Visiting Magistrate.

The failure of an inmate to comply with the requirements of any of 6 particular clauses in the *Crimes (Administration of Sentences) Regulation 2001* constitutes a major offence. The major offence clauses cover such things as: conceal for the purpose of escape; possess drug; and bribery. Members will no doubt appreciate that there is considerable scope in terms of the seriousness of such offences.

The mandatory referral of all so-called major offences to a Visiting Magistrate cannot be justified. The circumstances surrounding a so-called major offence may not warrant the referral of the matter to a Visiting Magistrate, with all the associated costs and administrative requirements. In some cases the referral of a matter will be a poor use of limited resources.

What is more is that, in some cases the referral of a matter to a Visiting Magistrate may be inefficient in terms of inmate discipline. For instance, it generally takes longer for a correctional centre offence matter to be finalised through the Visiting Magistrate process than it does if the governor of a correctional centre hears the matter. Under the current system, it is possible that an inmate who is on remand or an inmate who is serving a short sentence may be released from custody prior to the finalisation of the Visiting Magistrate hearing process. An occurrence such as this is clearly not in the public interest.

The bill strengthens the inmate discipline system by amending some of the penalties that the governor of a correctional centre or a Visiting Magistrate may impose on an inmate for the commission of a correctional centre offence. The bill amends section 53 to increase the maximum number of days that a governor may deprive an inmate of withdrawable privileges. The maximum number of days will be increased from 28 days to 56 days. The bill also amends section 53 to increase from 3 days to 7 days the number of days which a governor may confine an inmate to his or her cell.

The bill amends section 55 to make provision for a Visiting Magistrate to hear a charge on a correctional centre offence by way of audio-visual link. The Department of Corrective Services currently has audio-visual links at 9 correctional centres. Inmates at those 9 correctional centres already appear before courts, the Parole Board and the Serious Offenders Review Council by way of audio-visual link.

The penalties that a Visiting Magistrate may impose for a correctional centre offence are to be increased to reinforce the position of the Visiting Magistrate within the correctional centre inmate discipline system. The bill amends section 56 to increase the maximum number of days that a Visiting Magistrate may deprive an inmate of withdrawable privileges. The maximum number of days will be increased from 56 days to 90 days.

Significantly, up until now a Visiting Magistrate has been able to extend by up to 28 days the term of an inmate's sentence. This period is increased to up to 6 months. Importantly, a Visiting Magistrate will be able to impose a sentence on an inmate of up to 6 months. This amendment will give Visiting Magistrates the power to deal with troublesome inmates who commit offences while on remand.

The bill introduces a further improvement to the inmate discipline process in relation to damage to property by inmates. Of course, the majority of inmates do not damage the Department of Corrective Services' property. But, on some occasions some inmates cause considerable damage. From time to time, for whatever reason, inmates will smash items such as television sets, light fittings, and toilets. The Government is of the view that inmates who damage the Department's property should be made to feel the consequences of their actions.

Under section 59 inmates can be ordered to pay compensation for property damage. At present the amount of compensation that a governor can order an inmate to pay is limited to \$100. The amount that a Visiting Magistrate can order an inmate to pay is at the discretion of the Visiting Magistrate. To recover amounts of more than \$100 currently requires the activation of the Visiting Magistrate process.

The bill therefore amends section 59 to increase the maximum amount of compensation that a governor may require an inmate to pay for loss or damage to property as a result of the inmate committing a correctional centre offence from \$100 to \$500. This increase in limit will bring many property damage matters to a speedier conclusion and will also eliminate the need for the Department to activate the Visiting Magistrate process in respect of relatively low-level matters.

The Government has been progressively tightening the periodic detention scheme for a number of years. In particular, the provisions in respect of non-attendance have been closely scrutinised. The Government's position is that offenders who flout their periodic detention orders and fail to attend for detention should reap the consequences of their behaviour swiftly and surely.

However, the Government also takes the position that an offender who suffers the consequences of failing to attend periodic detention by having his or her periodic detention order revoked should be able to learn a lesson from that experience and have a second chance to comply with the periodic detention order. Accordingly, in the past, the Government has inserted provisions into the Act to give offenders who have had their orders revoked a second chance after serving at least 3 months of their sentence by way of full-time imprisonment.

The intention of the proposed amendments in respect of section 163 (2) and (2A) is to provide clarification in relation to the second chance provided to such offenders. The amendments to section 163 make it clear that the Parole Board is to revoke a periodic detention order that has been reinstated, after being earlier revoked following an offender's failure to report without leave or exemption on 3 or more occasions, if the offender fails to report for detention on one more occasion without leave.

The amendments also make it clear that, in the case of a periodic detention order that was earlier revoked for some reason other than failure to report, any previous failure to report for periodic detention is carried over on the reinstated order.

Offenders sentenced to full-time imprisonment, periodic detention, home detention and community service can be tested to determine whether the offender has used alcohol or prohibited drugs.

The testing technology that the Department of Corrective Services currently utilises to test for prohibited drugs is urine testing.

An amendment to Section 3 inserts a definition of 'non-invasive sample'. A 'non-invasive sample' is defined to mean samples of specified types of human biological material such as hair and urine (but not blood) that may be utilised to detect prohibited substances.

The bill makes an amendment to section 255 of the Act to provide that on the extension of the non-parole period of a sentence, the date of commencement of a consecutive sentence (that would otherwise commence before the end of the non-parole period of the extended sentence) is extended by the period that the non-parole period is extended. Similarly, a consecutive sentence (that would otherwise commence after the end of the non-parole period of an extended sentence) is extended by the period for which the term is extended. Partly consecutive sentences are possible under section 47(2) of the *Crimes (Sentencing Procedure) Act 1999*.

Amendments to clause 3 of Schedule 2 provides for minor amendments to the nomination of the deputy of an official member of the Serious Offenders Review Council.

Schedule 3.2 of the bill amends the *Criminal Appeal Act 1912*. Sections 18(2) and 25A of the *Criminal Appeal Act 1912* state that time spent on bail pending an appeal is not to count as any part of any term of imprisonment. These sections create an implied power allowing the court to restart a person's sentence in circumstances where their appeal has been dismissed. This is to ensure that the person serves the entirety of their sentence. A recent case in the Court of Criminal Appeal raised the issue of this implied power. There is no doubt that people on bail should not have this time count as part of their sentence.

The Government is therefore amending the *Criminal Appeal Act 1912* to make it clear that the Court of Criminal Appeal has the power to commence or recommence sentences in all circumstances. These amendments will relate to appeals to the High Court of Australia as well.

I commend the bill to the House.

The Hon. DAVID CLARKE [4.09 p.m.]: The Opposition does not oppose the Crimes (Administration of Sentences) Amendment Bill, which seeks to strengthen the Crimes (Administration of Sentences) Act 1999 by providing heavy penalties for correctional centre inmates found in possession of a mobile phone or items associated with mobile phones. The bill also deals with a number of miscellaneous matters, including the types of samples that may be taken for the purpose of testing for the presence of prohibited drugs, the conduct of correctional centre discipline proceedings, the revocation of periodic detention orders and the extension of

sentences. The bill is certainly needed, and it is none too soon, because the possession of mobile phones by prison inmates has been proliferating for some time now. It has been a major problem, as shown by the fact that in recent years several hundred mobile phones have been confiscated from prison inmates.

Clearly, there needs to be greater deterrence to inmates possessing smuggled mobile phones, and sanctions need to be severe enough to make those engaged in this practice think twice. It is a practice that needs to be stopped for a multitude of reasons, including reasons of discipline: it places the safety of many people at risk, it endangers the safety of prison staff and officials, it presents a risk to victims of crime, and it allows the harassment of witnesses and potential witnesses in court proceedings. This legislation will make it a correctional centre offence and a criminal offence for inmates to possess a mobile phone, to have a subscriber identity module card or to have any item operating in a manner similar to a mobile.

The purpose of these amendments is, indeed, a worthy one and the amendments are supported by the Opposition. But there is more that the Government can do in combating this serious problem. In order to stop mobile phones being smuggled into correctional institutions the Government needs to introduce further search precautions to intercept mobile phones before they enter the prison system and into the waiting hands of prison inmates. Such an overhaul of search procedures would also assist to slow down and stop the continuing smuggling into prisons not only of mobile phones but also drugs and contraband items generally. However, insofar as the bill deals with mobile phones, it is certainly heading in the right direction. However, the Opposition stresses that it is only part of the solution.

Another problem that the bill seeks to confront is that of wilful loss or damage to property caused by prison inmates committing a correctional centre offence. In 2000 the Government increased the level of compensation from \$50 to \$100—what a big deal that proved to be! At that time the Opposition called for the amount of compensation that any inmate could be required to pay to be increased to \$1,000. What did the Government say? It said no and voted against the Opposition's amendment. At least the Government's failure to act appropriately on that occasion is being partially remedied now with this bill, which increases the compensation level from \$100 to \$500. The increase, such as it is, represents a move in the right direction. Although, reality suggests that the limit should be raised even further.

Other amendments proposed by this bill are also welcomed. The proposed use of new non-invasive technology for the detection of illicit drugs used by inmates should prove to be a positive move. Legislation relating to the overly lax periodic detention system will likewise be tightened up. If an offender fails to report for periodic detention after already earlier having his or her periodic detention revoked for failing to report on three or more occasions, the Parole Board is required to revoke his or her periodic detention order again. I hope that the days when offenders flagrantly rort the periodic detention system will now come to an end. It has been a long time coming, but at least, hopefully, finally, it is here. The distinction between major and minor correctional centre offences will be removed and replaced by a single category of offences. Overall, the bill is moving in the right direction. Accordingly, the Opposition does not oppose it.

Ms LEE RHIANNON [4.13 p.m.]: The Greens oppose the Crimes (Administration of Sentences) Amendment Bill.

The Hon. Michael Gallacher: What a shock!

Ms LEE RHIANNON: It looks as though we will have a number of acknowledgements during my speech—and there is our first one. This is another bill that does nothing for public safety. This is another bill from the law and order squad. This is another bill from Minister Debus and Minister Hatzistergos, under directions from Chief Constable Carr. The main aim of the bill seems to be to prevent prisoners from using mobile phones. The Greens understand that technology has become available, and is being tested in the United States of America, that will simply jam mobile phone signals within a prison's walls. This would render a large part of the bill redundant.

Other aspects of the bill constitute a substantial new assault on the rights of prisoners. This is when we usually get the howls from members of the Opposition and some of the Government members, who seem to think that once a person is in prison there is an entitlement to take away every right from that person. Some of the problems with this bill were acknowledged by the Legislation Review Committee, but the committee's view seemed to be that since this was happening within a prison's four walls it was not "an undue trespass on personal rights and liberties". Just because people are already deprived of their liberty should not mean that they have no rights at all.

The Hon. Michael Gallacher: They are there by their own actions.

Ms LEE RHIANNON: Yes, and they are deprived of their liberty.

The Hon. Michael Gallacher: No-one forced them to go in there, did they?

Ms LEE RHIANNON: Yes, I know. We are not disputing that fact. But once they are in there surely the Leader of the Opposition, as a former police officer, would not say that they should not have any rights at all? Is the Leader of the Opposition going to go that far? Is he really that far back in the dark ages?

The Hon. John Hatzistergos: What rights have been infringed?

Ms LEE RHIANNON: Rights are infringed in a whole lot of ways. I hope the Minister will listen so he will hear how this bill is another piece of legislation that is just abusive of prisoners' rights—and they do have rights. This bill gives visiting magistrates the right to extend a prisoner's sentence by up to six months. Visiting magistrates already have the power to sanction internal disciplinary measures, such as solitary confinement and withdrawal of privileges.

The Hon. John Hatzistergos: You do not have solitary confinement; that is wrong.

Ms LEE RHIANNON: I do not know what you call it when there is a prisoner—

The Hon. John Hatzistergos: It is segregation; it is not solitary confinement.

Ms LEE RHIANNON: Again, this is the spin—we have a new language.

The Hon. Michael Gallacher: It's prisoners who are on their own.

Ms LEE RHIANNON: Totally. Thank you. I have got an ally over here. This is a huge new dose of power and authority. The Greens do not see why this is necessary. The courtroom is the place for determining any extension to a prisoner's sentence. The bill also gives the commissioner—

The Hon. John Hatzistergos: It's the visiting magistrate.

Ms LEE RHIANNON: The visiting magistrate already has this enormous power. Again, this bill was not necessary. It is again the Government's window-dressing, the Government's spin to try to show it is tough on crime. The bill also gives the commissioner the power to revoke periodic detention and return a prisoner to full-time detention. Rather than having to go to the Parole Board after a prisoner fails to show up for three spells of periodic detention, the commissioner can now make up his mind after a single no-show.

The Hon. John Hatzistergos: What a load of rubbish! That is just not right. You haven't read the bill.

Ms LEE RHIANNON: I have read the bill, and I look forward to the Minister correcting that and pointing out where that is wrong. One of our concerns about this single no-show is that there are obviously many reasons why a prisoner may not turn up—he or she may be sick or incapacitated. It does not matter—the commissioner has full and arbitrary power under this new bill. Again this is a major step away from a system that is working well. It seems every time that a commissioner wants a new power the Government simply gives it to him or her—and I would not be surprised if it is no questions asked either. A third problem with this bill is the dangerous new expansion of the ability of the Government to take DNA samples.

The Hon. John Hatzistergos: This is terrible, isn't it?

Ms LEE RHIANNON: The Minister is still on the DNA kick. The Government seems hell-bent on creating a statewide database of DNA. All full-time long-term prisoners can have DNA samples taken from them. The Greens understand that all newborn babies are being entered into that DNA database. It is *X-Files* stuff—maybe it is not just Constable Carr.

The Hon. Catherine Cusack: Are you talking about health screening for newborn babies?

Ms LEE RHIANNON: Yes, that is what we have been told.

The Hon. Catherine Cusack: Health screening?

Ms LEE RHIANNON: Yes.

The Hon. Catherine Cusack: I think that is different to what has been proposed.

The Hon. John Hatzistergos: Drug and alcohol actually.

Ms LEE RHIANNON: I am not saying that; I am just making the link as to where this is going. The lack of vigilance about what is happening with DNA testing in this State is appalling. Prisoners on periodic detention or doing community service can also have DNA samples, and they will receive no assurances as to how these samples will be used, stored or distributed. The Greens remain concerned about the privacy and civil liberties implications of what is going on here. We hear a great deal about the war on terrorism these days, and once again it is being used to justify many laws and regulations that are against the spirit of our society's rights and freedoms. The Greens want to retain the civil liberties that currently exist. We oppose moves that water down rights and freedoms. We would welcome any move to expand civil liberties, but that is something we rarely see from this Government.

It is about time that the Government introduced legislation along those lines to provide a balance. The Leader of the Government is a former journalist and both the Attorney General and the Minister for Justice are lawyers. Therefore, this disregard for civil liberties is disturbing. The Greens urge Labor members to stand up for this attack, which is amplified by every so-called anti-terror, anti-crime bill that comes before Parliament. Unfortunately, but not surprisingly, the Liberal Party is even more strident on law and order than the Government. Therefore, it falls to progressive Labor members, hopefully, and crossbench members to stand up and be counted. I call on Labor to abandon its ill-conceived attacks on prisoners. They have already been sentenced; they are already in gaol. We do not need another piece of legislation that will not make our society any safer.

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [4.20 p.m.], in reply: I think Ms Lee Rhiannon was debating a different bill. Nevertheless, in a generic sense, I thank honourable members for their contributions to this debate. I congratulate and thank the Hon. Jon Jenkins, who sought clarification during the crossbench meeting as to the definition of "mobile phone" in the bill and its coverage of other communication devices, such as hand-held devices capable of sending and receiving emails and voice data. The Government amended the bill in the other place to make it clear that those devices are covered under the bill. The Government takes the view that possession of a mobile phone in a place of detention is an extremely serious matter. The Government takes the position of zero tolerance. Persons who choose not to respect this position should be punished accordingly.

The bill provides for significant sanctions to be imposed on inmates who use mobile phones, SIM cards or mobile phone chargers in places of detention. The bill seeks to rectify the anomaly that it is a criminal offence to smuggle one of those items into a correctional facility but it is not an offence to possess them. Funnily enough, I do agree with Ms Lee Rhiannon about the need to explore technology that will allow the jamming of signals into correctional centres. I have been a strident advocate of that position, as have other States and Territories. However, regrettably, to this point the Federal Government has not been prepared to even amend legislation to allow us to make an application to the Australian Communications Authority [ACA] for that to be done. The Act allows for defence personnel and police to make applications to the ACA, but Corrections is not allowed to even make an application, let alone be granted permission to do so.

The Government must consider all strategies to address this problem, including those that the bill encompasses. Nevertheless, we will remain relentless in our efforts to detect and eliminate contraband in correctional centres. Regrettably, the problem with mobile phones is that they are not only getting smaller, the metal component is becoming less and less. The resources being devoted to this problem are considerable, yet we will remain relentless because of the threat it poses to the correctional system. The tough new penalties aim to reduce the risk of offenders accessing illegal phones in the prison system by providing for appropriate punishment and effective deterrence. It will put us in a better position if and when our prisons are called upon to house convicted terrorists. Honourable members would be aware that we have already been called upon to house suspected terrorists.

Mobile phones represent a serious threat to correctional security. An inmate can use a mobile phone to organise or otherwise engage in criminal activity outside a correctional centre, and in the current international

climate, activity outside a correctional centre can include terrorist activity. Nevertheless, we acknowledge that tough penalties will not deter all inmates, which is the reason for stronger search procedures and amendments sought to appropriate Federal legislation to allow us at least to trial the installation of jamming equipment. I will take that matter to the ministerial council meeting to be held in Tasmania next week.

I shall deal first with the matter raised by the shadow Minister and the Hon. David Clarke, who indicated that the Government failed to increase the amount of compensation on an earlier occasion from \$100 to \$500. That is incorrect. He is referring to the limit on the Governor's capacity to order an inmate to pay compensation. That had been limited to \$100. The Governor always had the power, if he thought appropriate, to request that a matter be dealt with by a visiting justice, who has the power to order compensation in an amount greater than \$100. This bill will increase that amount from \$100 to \$500, obviating the need for the Governor to refer the matter to a visiting magistrate if the compensation claim is in excess of \$100. The limit will now be \$500. It is appropriate that a visiting magistrate should deal with any amount in excess of \$500.

With respect to periodic detention, I am not sure what bill Ms Lee Rhiannon was referring to, but I shall clarify the situation. The Government has significantly tightened the periodic detention system from the system under the former Coalition Government. Previously there were enormous delays because revocations had to be made by the court. One would have to make an application to the court for a revocation order. It would take time for the matter to get to court and then for the order to be issued in the event of an argument about whether the court should exercise discretion. The Government has amended the law so that if an inmate is absent three times without the leave of the commissioner an application can be made to the Parole Board to revoke the periodic detention order and require an inmate to serve that periodic detention as a full-time custodial sentence.

That has led to compliance rates now being approximately 80 per cent, whereas previously they were 60 per cent. The system is now more effective and decisive because the board is required to revoke an order and, also, revocations occur much earlier. As a safety net the Government indicated that after a person, who has been serving a periodic detention order, had served three months in full-time custody following the revocation, the person could apply to the Parole Board to seek to serve the balance of the sentence by way of periodic detention. That is a matter for the board's discretion, and it has exercised that discretion from time to time.

Unfortunately, some inmates feel that after their periodic detention has been revoked and they are reinstated back into periodic detention after three months, they can be absent on another three occasions without the periodic detention order being revoked. The bill stipulates that an inmate need only be absent once and the order will be revoked. The suggestion by Ms Lee Rhiannon that the commissioner makes those decisions is ludicrous. The commissioner does not make those decisions; the commissioner makes application to the Parole Board, which determines whether the order will be revoked. Ms Lee Rhiannon specifically referred to the case of an individual who might be sick. The Act provides that a person who is ill has the power to seek leave. The commissioner can refuse to grant leave if he or she is not satisfied that leave should be granted. However, in the event that the commissioner does that, the inmate can ventilate the matter with the board and seek reversal of the commissioner's decision.

The bill provides the protection that if a person is sick and the board is satisfied that the illness is genuine the inmate can be granted leave for that one occasion. This bill states that if an inmate is not granted leave and the Parole Board does not accept the explanation, merely one absence after being reinstated will result in revocation of the periodic detention order. That is how it should be. Unfortunately, some people do not seem to get the message that if they have been given another opportunity by the Parole Board to fulfil their obligations under the periodic detention order after an order has been previously revoked, they should comply with those obligations. For that reason it is necessary to take the step I have indicated. Ms Lee Rhiannon stated that the penalty for potential imprisonment should not be increased from one month to six months. The discipline system exists because a number of offences are potentially criminal offences and, although a matter may be reported to the police, the police would prefer the matter be dealt with as a disciplinary measure. Sometimes it is more effective to be able to deal with a particular transgression by way of discipline.

We have had to amend the legislation so that it provides a discretion of up to six months simply because some inmates have abused the system that has existed up until now. For example, some inmates think that they will not be punished if they commit a correctional offence while on remand. In one instance I recall a visiting magistrate felt that a particular action was so abhorrent that the inmate needed to have his sentence extended but he was unable to do so because the inmate was on remand. Subsequently, the inmate was acquitted of the original offences for which he was in custody and was discharged. There was no capacity for the magistrate to add to the sentence because there was no sentence on which to add another sentence.

This amendment will allow visiting magistrates to add a sentence for correctional conduct, irrespective of whether there is a base sentence to be served. It also means that, instead of the status quo remaining—that is, a visiting magistrate may think it is necessary to refer a matter to a court because he does not have sufficient sanctions to deal with it in a correctional environment—matters will be able to be dealt with quickly and effectively as opposed to having to delay them further by referring them to a court. I looked to the other States—I think I was quite reasonable, which might surprise Ms Rhiannon—to see what sanctions exist in their correctional environments. I found that some States had a six months provision, for example. The State with the greatest capacity for visiting magistrates was Western Australia, which I think had 12 months. I thought it was reasonable to go halfway and provide for six months. That is where the six months came from.

As I said, it did not come out of the box; it is a reflection of what exists elsewhere. It is also a reflection of the fact that some people who commit correctional offences seem to think, particularly if they are serving long sentences, that they can commit correctional offences and not be punished. Effectively, they think they will be able to escape punishment by delaying procedures. In this bill we are trying to grant governors greater authority to handle these matters but at the same time seeking to provide that more serious offences should be dealt with by the courts and by visiting magistrates. All up, the bill is reasonable. In the debate Ms Rhiannon raised a point about DNA. I do not know where she got DNA from.

Ms Lee Rhiannon: I'll tell you where I got it from—the reference to section 3, non-invasive samples. Why are you taking all these samples?

The Hon. JOHN HATZISTERGOS: If the member read the bill, she would realise that that is being done in addition to urine testing.

Ms Lee Rhiannon: There are all these other things. Why are you taking bits of nails and hair, and saliva?

The Hon. JOHN HATZISTERGOS: Until now we have used urine testing to determine whether people have been using drugs. The point is that technology is moving on to other non-invasive forms of detecting whether people have used these substances. I know that the member will not accept this but we have an interest in finding out whether people are meeting their obligations in the correctional system. For example, if a person has had the privilege of being allowed out on work release it is not unreasonable that we have a system in place to ensure that the person is not abusing that work release by indulging in drugs and alcohol, and that there is an opportunity to test them. Frankly, some people—this might surprise the honourable member—might prefer to give a swab of saliva rather than a urine sample. That is what we are doing here. This has nothing to do with DNA.

Ms Lee Rhiannon: It does, because there is no protection under your system.

The Hon. JOHN HATZISTERGOS: There is a lot of protection. The Department of Corrective Service is oversighted by more than a dozen mechanisms. The references to DNA and wanting to find out about people's babies, and the other matters referred to by the member, are off the planet. I do not know who her speech writer is. I always find it useful to read speeches before I deliver them in this place lest I fall into the same trap the member has fallen into. It is obvious that someone in her office—I know she is very busy—has prepared material into which she has had no input. I think it would be useful if, from time to time, the member did a little more than just read a speech; she should read the bill as well. I have looked through the bill and I cannot see "DNA" anywhere.

Ms Lee Rhiannon: That is where it is. There are no safeguards in place under your system with regard to DNA testing of prisoners.

The Hon. JOHN HATZISTERGOS: I suppose the honourable member must justify her position somehow. If that is the best she can do, I am not particularly worried by it. Subject to that, and as I said, I thank honourable members for their contributions.

Motion agreed to.

Bill read a second time and passed through remaining stages.

LEGAL PROFESSION AMENDMENT BILL

Second Reading

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [4.36 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

This bill provides for a number of amendments to the *Legal Profession Act 1987*. These amendments relate to the discipline of the legal profession and are designed to improve the ease with which disciplinary matters may be prosecuted by the regulatory authorities.

These amendments are a very small part of a bigger picture. The Attorney General will be introducing a new legal profession bill for New South Wales in the spring session of Parliament.

To this end, Parliamentary Counsel and officers of the Attorney General's Department are presently working on a complete revision of the *Legal Profession Act 1987*. This rewrite will incorporate the National Legal Profession Model Laws, recently released by the Standing Committee of Attorneys General. It will also amend the complaints and discipline provisions to reflect the recommendations of the NSW Law Reform Commission's Report No 99, "Complaints against Lawyers: an interim report" and the recommendations contained in the Attorney General's Department's "Further Review of Complaints Against Lawyers".

In the meantime, the regulatory authorities have alerted the Attorney to a number of minor amendments that will provide immediate benefits by improving the ease with which disciplinary matters against misbehaving lawyers may be prosecuted. These should not be delayed just because more time is needed for the larger project.

I draw your attention in particular to provisions of this bill, which will reduce the ability of practitioners to delay or thwart disciplinary proceedings against them. Unfortunately, some practitioners will resort to every trick in the book when a complaint has been made against them.

Amendments to section 152 of the Act will provide that a notice requiring the co-operation by a practitioner with an investigation has been served on a practitioner if it has been posted to the address of the legal practitioner last notified to the Council. These amendments substantially implement Recommendation 13 of the Law Reform Commission Report No 99, which considered that the service requirements should be relaxed.

Recommendation 17 of the Law Reform Commission Report No 99 is addressed by amendments to sections 155 and 160 of the Act. These remove the requirement that a Council or the Commissioner can only reprimand a legal practitioner *with the practitioner's consent*. A new section (171N) is inserted to provide for appeals from the decision to reprimand, but, if the reprimand is upheld by the Tribunal, it becomes a public reprimand.

Amendments to section 171C ensure that whenever the Tribunal orders a public reprimand of a practitioner, both the order and the reasons for the reprimand will need to be published. A recent decision in the Administrative Decisions Tribunal decided that, where a disciplinary hearing had been held in private, it was not appropriate to publish the Tribunal's decision. The Attorney's firmly held view is that proceedings are held in private to protect the practitioner if the allegations against them are not upheld. Once the Tribunal has made a finding against a practitioner, there is no further justification for keeping the matter private.

A new section 167AA will provide that the Commissioner or Council may institute proceedings in the Tribunal at any time within 6 months after a decision to institute proceedings is made. The Bar Council has been finding that some of its prosecutions are complicated by parallel proceedings in other forums. The more generous time frame, and a power for the Tribunal to extend time, will ensure that defaulting practitioners do not "get off" on a technicality.

Similarly, new section 171, taken from the National Model Laws, will allow the Tribunal to order that a failure to observe a procedural requirement may be disregarded, if the parties have not been prejudiced by the failure. Giving the Tribunal power to rectify technical errors made by the regulatory authorities is sensible and pragmatic, particularly where the only consequence has been that the practitioner has been able to practice for longer than they would have otherwise.

New section 171U ensures that a breach of an undertaking made to the regulatory authorities by a practitioner is capable of being unsatisfactory professional conduct or professional misconduct. This amendment implements Recommendation 20 in Law Reform Commission Report 99.

Three other amendments in this package are more in the nature of tidying up.

- Amendments to sections 3, 30 and 37 permit a Council, when issuing or renewing a practising certificate, to take into account evidence of an act of bankruptcy or a finding of guilt for an indictable or taxation offence which occurred prior to the practitioner's admission as a legal practitioner.
- New section 171F completes the implementation of Recommendation 36 in Law Reform Commission Report 99 by providing that *all* appeals from the Tribunal at first instance will lie to the Supreme Court only (and not the Appeal Panel of the Tribunal). This saves the parties going through one extra step on their way to the Supreme Court.

- Amendments to definitions in section 198L clarify that practitioners must not file *any* documents during proceedings relating to a claim for damages, unless the practitioner certifies that the claims or defences made have reasonable prospects of success. The new definitions will ensure that all filings, including further and amended pleadings, are caught by this requirement.

These amendments will facilitate successful prosecutions by the regulatory authorities, and play their part in maintaining the standards of conduct which the community expects of legal practitioners.

I commend the bill to the House.

The Hon. GREG PEARCE [4.36 p.m.]: The Opposition does not oppose this bill, the object of which is to make a number of amendments to the Legal Profession Act 1987 principally in relation to the discipline of the legal profession. The Attorney is in the process of preparing a revision of the Legal Profession Act, which will be introduced in the spring parliamentary session. That will incorporate the national legal profession model rules, which were released recently by the Standing Committee of Attorneys-General. In the meantime, this bill is described as making a number of urgent amendments to prevent practitioners from getting off on technicalities. I will not go through all the amendments; they have been adequately covered in the other place and in the Minister's second reading speech. However, I note the amendment to schedule 1, which amends section 198L.

That amendment provides that a solicitor or barrister cannot file an originating process or a defence on a claim for damages unless the solicitor or barrister certifies that there are reasonable grounds for believing, on the basis of provable facts and a reasonably arguable view of the law, that the claim or the defence has a reasonable prospect of success. Similar provisions have been introduced in other legislation. Initially, the provisions were treated with some concern by members of the legal profession, but most members of the legal profession are keen to embrace a proper process in the courts.

The amendments in this bill widen the definition of "court documents" so that the same requirements apply as have previously applied to a defence or originating process. As the shadow Attorney in the other place said, much of the work of members of the legal profession is important, and that most members of the legal profession do their job with diligence, honesty and concern to satisfy the public's requirement for a properly functioning legal profession. The commitment of associations and most members of the profession ensures that proper standards apply. The fact that the profession supports such amendments is another indication of the contribution the profession makes to ensuring its own proper regulation. With those few words, I indicate that the Opposition does not oppose the bill.

Debate adjourned on motion by the Hon. Peter Primrose.

LEGISLATIVE COUNCIL VACANCY

Joint Sitting

The DEPUTY-PRESIDENT (The Hon. Kayee Griffin: I shall now leave the chair. The business of the House will be suspended during the joint sitting. The House will resume at the conclusion of the joint sitting following the ringing of the bells.

[The Deputy-President (The Hon. Kayee Griffin) left the chair at 4.40 p.m. The House resumed at 5.17 p.m.]

The PRESIDENT: I report that at a joint sitting this day Eric Michael Roozendaal was chosen to fill the vacant seat in the Legislative Council caused by the resignation of Anthony Stephen Burke. I table the minutes of proceedings of the joint sitting.

Ordered to be printed.

LEGAL PROFESSION AMENDMENT BILL

Second Reading

Debate resumed from an earlier hour.

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [5.19 p.m.], in reply: I thank honourable members for their contributions, and I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

CRIMES LEGISLATION AMENDMENT (TERRORISM) BILL
SYDNEY OPERA HOUSE TRUST AMENDMENT BILL

Second Reading

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [5.20 p.m.]: I move:

That these bills be now read a second time.

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

Leave granted.

The Crimes Legislation Amendment (Terrorism) Bill is the second bill implementing the counter-terrorist reform package announced by the Government on 14 May. Counter-terrorism is a co-ordinated effort involving each jurisdiction in Australia. In 2002 Australian States and Territories including New South Wales referred power to the Commonwealth for terrorist matters and, as a result, the Commonwealth enacted broad-ranging terrorist offences in the Commonwealth Criminal Code Act 1995. These offences deal with every aspect of terrorist activity, including planning, training, membership, financing and organisation. Since that time the Government has not rested. New South Wales has participated in counter-terrorist planning and training exercises under the banner of the national anti-terrorism plan. Our police have developed their tactical hostage rescue and bomb disposal skills, and developed their ability to respond to a terrorist situation in order to protect the citizens of New South Wales.

In 2002 the Government enacted the Terrorism (Police Powers) Act, which gives police extraordinary powers to stop and search persons and vehicles, or to search areas and buildings, in order to prevent a terrorist attack, or after an attack to assist in catching the terrorists red-handed. We have established the Counter-Terrorism Co-ordination Command within NSW Police, which conducts investigations with other State and Commonwealth agencies into terrorist activity in New South Wales. The Government has boosted the NSW Police budget by \$2.1 million per annum to fund the Counter Terrorism Co-ordination Command, thus ensuring that police have all the necessary equipment and training needed to respond to a terrorist attack. In addition, the Government is spending a further \$9.1 million on new equipment for counter-terrorist response, including new bomb disposal equipment such as bomb disposal robots and bomb containment vessels.

The Counter Terrorism Co-ordination Command's counter-terrorist skills and equipment are regularly tested in exercises. The latest of these exercises has been Exercise Explorer, which was conducted in May and which culminated in a mock explosion at the Holsworthy Barracks on 31 May. On 6 May the Premier announced the establishment of the counter-terrorism laws task force, which includes officials from my department and the police and emergency services portfolios. The task force will monitor and review the laws of New South Wales and make recommendations for legislative amendments. In early June the first of these legislative amendments was made—the creation of a presumption against bail for persons charged with terrorist offences under the Commonwealth Criminal Code. This bill makes a range of other amendments to New South Wales legislation.

When it comes to prosecuting persons accused of terrorist activity under the law the first line of defence will be the terrorist offences created by the Commonwealth Criminal Code. Indeed, all persons arrested and charged in New South Wales to date have been charged with Commonwealth terrorist offences. There are limited circumstances, however, where New South Wales criminal offences will be relevant in a prosecution of terrorist activity, for instance, when there is incidental criminal activity discovered during an investigation or when there is no clear evidence that the incident was motivated by terrorism, as defined by the Commonwealth legislation, but the actions are clearly criminal under New South Wales law.

In light of the referral of power to the Commonwealth for terrorism matters, New South Wales law will not create any specific terrorist offences, but will focus on ensuring that offences of the type committed by terrorists, namely offences against the person and offences against property, are relevant and comprehensive. The bill will also clarify the trigger for the use of the powers provided to police under the Terrorism (Police Powers) Act 2002 and will augment the existing powers by introducing a power for the Commissioner of Police to set up cordons and give reasonable directions to Government bodies and agencies to facilitate the exercise of the powers. I will now outline the various elements of the bill.

Schedule 1 relates to amendments to the Crimes Act 1900. Item [1] inserts a definition into section 4 of the Crimes Act in respect of the use of poisons and other destructive or noxious things. Currently, there are a number of offences relating to poisoning another person, with increasing penalties relative to the intention of the offender and the harm caused to the victim. The definition makes clear that the offences in the Crimes Act are not limited to merely placing a poison in someone's drink but extends to modern terrorist tactics such as introducing a poison gas into an airconditioning system—or on a train, as happened in Tokyo—or the use of forms of radiation. Items [2] to [6] of schedule 1 deal with explosives offences. While we must be alert to the sophisticated forms of terrorism that may involve nerve gas, viruses or other toxins, it is clear the most common terrorist weapon remains the bomb.

These offences also have a more general policy application, as regardless of whether a person has terrorist motives or not they should not be possessing or using explosives or bombs unless they have a lawful or legitimate reason to be doing so. New South Wales has a range of explosives offences in several pieces of legislation. These amendments deal with the criminal offences in the Crimes Act rather than the regulatory offences contained in the Dangerous Goods Act. Item [2] amends section 48 of the Crimes Act, which currently uses quite anachronistic terminology. The new section 48 will cover placing explosives in buildings, public places as well as in forms of transport.

Item [3] amends section 55 to create an offence of possessing or making explosives with intent to injure another person. The amendments will increase the maximum penalty from 5 years to 10 years imprisonment. The mental element of "intent to cause injury" justifies such an increase. It is also important that such preparatory offences carry appropriate penalties, so that when police investigations intercept terrorist preparations at an early stage significant sentences are available.

Item [4] amends the heading of part 3B of the Crimes Act to include "explosives". Item [5] creates a new offence under section 93FA of possessing or making of explosives. The new offence under section 93FA has two limbs: the unlawful making or possession of an explosive, formerly section 545D, and the possession of an explosive in a public place, formerly covered under section 545E. As well as relocating the offence in the newly renamed part 3B of the Crimes Act, the bill increases the maximum penalties for making or possessing an explosive from one year to two years and possessing an explosive in a public place from two years to five years imprisonment. One of the difficulties with framing explosives offences is that many everyday common items, such as household cleaning products, can be explosive. Subsection (4), therefore, creates a defence in relation to both of these offences of reasonable excuse or lawful purpose.

Item [8] deletes section 545D. Item [6] amends section 200 of the Crimes Act and creates an offence of possession, custody or control of an article with intent to destroy or damage property. The amendment differentiates between possession of an ordinary item, which will continue to carry a maximum penalty of three years imprisonment, and possession of explosives, which will now carry a maximum penalty of seven years. Item [7] of the schedule amends section 203A of the Crimes Act, which defines "public facility" for the purposes of sabotage offences. The amendment includes a public computer system in the definition of "public facility". This will ensure that attacks, including computer virus attacks, on such important facilities as the Australian Stock Exchange come within the scope of the sabotage offence. The maximum penalty for this offence is 25 years.

Schedule 2 contains amendments to the Criminal Procedure Act 1986. Schedule 2 inserts the newly created offences under section 93FA into table 2 of the Criminal Procedure Act 1986. This will enable the prosecution to choose to have a matter dealt with either summarily or on indictment. That, in turn, allows less serious offences to be dealt with more efficiently in the Local Court. Schedule 3 contains amendments to the Terrorism (Police Powers) Act 2002. The Government enacted the Police Powers (Terrorism) Act 2002 following the Bali bombings to give police extraordinary powers to act in emergency situations when there were grounds to believe a terrorist act might be about to occur or had just occurred. Where the Act is triggered, by a very senior police officer, a range of powers of stop and search are available to police to attempt to frustrate a terrorist attack or rapidly close the net on terrorists who may be leaving the scene of an attack. While this Act has not been used, it has been tested in counter-terrorism exercises. Experience in working with the Act in exercises has shown that clarification is required to the trigger to activate the powers and also that some additional powers are needed.

Item [1] of schedule 3 amends the trigger at section 5 of the Act. This is the trigger for activating the powers in advance of a terrorist act. The Government's intention with this legislation is to give NSW Police the capacity to act when a senior and experienced officer, on the basis of the information available, and in light of that officer's experience, feels it is necessary to do so, in order to forestall a possible terrorist attack. In the real world of terrorist investigations, the information available may come from a number of different sources and may not be clear or precise. Police may be gathering surveillance information by watching suspects. Intelligence may be received from overseas agencies about international activities or connections. Information may be shared between other Australian security organisations. In the light of this combination of information, the activities of suspects may raise concerns amongst officers knowledgeable in terrorist methods that the suspects may be going to mount an attack of some kind in the near future. The timing of this activity may also be significant. It may be occurring just before the visit of a foreign VIP or a major public event.

The type of information may not be exact, for example police may not necessarily have an understanding of the form the terrorist threat might take whether it is a car bomb, a suicide bombing or a shooting. The concern the police have must be based on evidence. The trigger does create a genuine test. But that test must have a relatively low threshold given the consequences if police do not act. The bill amends the test to read that the senior police officer is "satisfied there are reasonable grounds to believe there is the threat that a terrorist act may occur in the near future". The second limb of the existing test remains and must also be satisfied. It is that the senior police officer is "satisfied that the exercise of the powers will substantially assist in preventing the terrorist act". There must be a concern of an act occurring in the near future. This prevents the legislation from being triggered merely by reference to the general background threat that exists against this country. There must be some combination of factors suggesting that an act may be about to occur. The use of the term "threat", with its connotations of risk and uncertainty, makes it clear that the reasonable belief that there is the threat that a terrorist act may occur in the near future can be based on information that is itself uncertain or vague.

These powers are extreme, but so are the consequences of not acting when, as it were, the terrorists are in the home straight. The existing safeguards under the Act remain. The decision of senior police to activate the powers must be ratified by the Minister for Police. Similarly, when the powers are used, a report must be made by NSW Police to the Attorney General and the Minister for Police. The Act also has a built-in requirement that it be reviewed annually. The ongoing review of terrorism powers, and the experience gained from counter-terrorism exercises, also indicate that these additional amendments to the Act are needed.

Item [2] of schedule 3 creates a new section 14A, making clear that the Commissioner of Police or a senior delegate has the power to give reasonable directions to government bodies and agencies to facilitate the use of the counter-terrorism powers. Such a power may be used, for example, if there is a terrorist threat against Sydney's rail transport system. The size of this system and its complexity mean that if the powers under the Act to stop and search are activated, NSW Police will need assistance from the agencies controlling this infrastructure in order to effectively utilise the powers. In this situation, NSW Police may wish to shut down a part of the rail system. The bill will give the commissioner or a senior delegate the power to give reasonable directions to facilitate this kind of operation. Government agencies are authorised and required to comply.

Item [3] of schedule 3 creates new section 19A, which provides that where the powers are activated NSW Police may also cordon the designated targeted area or establish a cordon around or within a part of such an area. This would facilitate the exercise of the stop-and-search powers that exist, in particular by allowing police to set up roadblocks. It will help police control movement into and out of an area where it is suspected that terrorist acts may occur or have occurred. Schedule 4 to the bill contains an amendment to the State Emergency and Rescue Management Act 1989, clarifying in section 4—"Definitions"—that an actual or

imminent terrorist act may be classed as an emergency under this Act, permitting a range of emergency powers to be activated in consequence.

I refer, finally, to the cognate bill, the Sydney Opera House Trust Amendment Bill. I am pleased to introduce that bill today as a cognate bill. It contains a series of tough new laws to protect the security of the Opera House. The Opera House has a unique place in our cultural life and history of Sydney. The iconic stature of the Opera House makes it particularly vulnerable as a target of potential terrorist and other criminal conduct. It is, therefore, necessary to take special steps to protect it. The Government has already allocated \$13.6 million since April 2003 to be spent on improving security at the Opera House site. The new laws introduced today support these measures by ensuring that real deterrents put in place. Many of the prohibited acts are dangerous, and can put the lives of front-line workers, such as Opera House staff and police, at risk.

Many people have been concerned about the damage done to the Opera House sails last year. The new provisions will ensure that such damaging acts are punished appropriately. It will be a criminal offence to trespass on the Opera House, with a maximum penalty of two years imprisonment. Trespass on the Opera House with intent to cause damage or to commit certain offences, or to seriously disrupt the operations of the Opera House, will be punishable by a maximum of seven years imprisonment. Intentional or reckless damage to the Opera House will attract a maximum penalty of five years imprisonment. In addition, the bill makes minor amendments of an administrative nature. The availability of these offences will not prevent a court from requiring offenders to compensate the Opera House for criminal damage. Furthermore, NSW Police will not be prevented from charging a person with another offence that incurs a greater penalty. In summary, these proposed new offences are vital to the ongoing protection of what is almost certainly arguably these days Australia's most enduring symbol. I commend the bills to the House.

The Hon. GREG PEARCE [5.20 p.m.]: The Opposition supports necessary measures to combat terrorism, and therefore does not oppose these bills. We are concerned about the need for urgency and the rather botched way in which the legislation was introduced in the other place. The shadow Attorney General in the other place raised questions about some of the provisions in the bills. The Opposition does not disagree with the urgent need to introduce legislation of this type, but we are surprised that the bills were introduced on the day the budget was handed down. One might speculate that the Government thought the budget would go down like a lead balloon, particularly following the fiasco of the mini-budget and the legislation to introduce the Treasurer's new taxes on property. That legislation was policy on the run and required amendments to it because of the haste in which it was prepared.

As I said, the shadow Attorney General in the other place raised a number of specific issues, in particular, the discrepancy in the Sydney Opera House Trust Amendment Bill between the penalties for threatening to cause damage and actually causing damage to the Opera House. I will not go over all of that debate again. Other matters raised by the shadow Attorney General have not been adequately answered by the Government. These matters reflect the rushed manner in which the legislation was introduced. In his second reading speech the Attorney General gave a brief history of counter-terrorism reform. The States have joined with the Commonwealth in this endeavour, which has led the reform. The majority of matters relating to terrorism are now covered by Commonwealth terrorism legislation—I refer in particular to the Commonwealth criminal code.

The Attorney General referred to the Premier's announcement on 6 May that a counter-terrorism laws task force would be established comprising officials from the Attorney General's Department, NSW Police and emergency services agencies. That task force will monitor and review New South Wales laws and make recommendations for legislative amendments. As we know, amendments were made in early June, with the creation of a presumption against bail for persons charged with terrorism offences under the Commonwealth Criminal Code. The Opposition supported that legislation.

The Attorney General went on to say that a number of the amendments in this bill arose from that review. As far as that goes, that is fine. However, when faced with the shadow Attorney General's criticisms, the Attorney General in reply acknowledged some of the concerns raised. Of particular concern was the case of the offender who exploded a 97-kilogram fertiliser bomb in a paddock and the perceived inadequacy of the penalty imposed; that is, a fine, a suspended sentence and community service. The Attorney General then stated:

... it is that circumstance that led the Government to review existing provisions under the Crimes Act, and it introduced the kind of legislation we have before us.

Obviously the Attorney General was rattled by some of the problems with this legislation and did not have an adequate explanation for rushing it through on budget day. We suspect that it was a filler in case the budget was the damp wimp it became. It is unfortunate that this bill was introduced in that way and that it was not properly considered to avoid glaring drafting problems, such as those in the provisions dealing with the Opera House penalties. The Opposition supports bills of this nature dealing with terrorism issues and commends the bills to the House.

Reverend the Hon. FRED NILE [5.26 p.m.]: The Christian Democrats are pleased to support the Crimes Legislation Amendment (Terrorism) Bill and the cognate bill, the Sydney Opera House Trust

Amendment Bill. The main purpose of the legislation is to amend the Crimes Act 1900 and other legislation in respect of powers, offences and penalties that may relate to terrorist activity. The Sydney Opera House Trust Amendment Bill is designed to provide better protection of the Opera House and will be debated cognately. Similar legislation has been introduced over the past few years.

The Christian Democrats are pleased that the Government has authorised simulated terrorist attacks involving emergency service agencies and NSW Police. It is important that those organisations learn how to work together and iron out any problems that might arise in the event of a real attack. We pray to God that does not happen. This legislation reflects a realistic view of the world. Because militant Islamic terrorist groups have made threats against Australia, and continue to do so, we must be prepared. Obviously, the best preparation is to deter attack through the work of efficient intelligence services that monitor the situation and through strong community support. The public should be encouraged to co-operate with law enforcement agencies and to provide information.

I will not go through the provisions in the legislation, which primarily increase or clarify penalties to make them better reflect the seriousness of the relevant offences. For example, section 200 is amended to increase the maximum penalty for the possession of explosives with the intention of maliciously destroying or damaging property from imprisonment for three years to imprisonment for seven years. As we have seen with regard to other legislation, the outcome depends on whether judges apply the maximum or minimum penalty. It is one thing for us to impose higher penalties, but it is another for the judicial system to apply them. We hope that through this legislation the judicial system will take the lead and do so.

I have raised in this House on at least two occasions the concern that fertiliser could be used as an explosive. I am aware that discussions have been held with the Commonwealth to try to develop a system to prevent that occurring. I made the suggestion that primary producers be the only people allowed to purchase fertiliser, and that they should be required to hold a permit. Of course, terrorist groups can always forge documents and make false claims, but the permit requirement might reduce the use of fertiliser as an explosive. Recently I read a report that a Russian company has developed a new process of separating the explosive component from fertilisers to make them completely explosion-proof. I understand that the company will now promote the sale of the new fertiliser around the world. I assume that because the company discovered the technique, it will probably charge more for the fertiliser. I hope that is not the case, and that the fertiliser will be able to be used by our farmers.

We also support the Sydney Opera House Trust Amendment Bill. I almost feel that it is a Fred Nile bill, because I was the first person to raise in the Parliament the possibility of a terrorist attack on the Opera House. My suggestion, regrettably, was greeted with ridicule by some members of this House. At that time I said that I hoped those members would not come to rue their ridicule at some future date. I asked what would happen if—as has happened in the Middle East—six people, either male or female, wearing the black chador, approached the Opera House. I asked how security officers or police would handle such a situation involving cultural issues. I believed, and still believe, that it was a genuine concern to be considered by the authorities. I assume there is now a protocol in place to deal with such a situation.

A similar thing happened with respect to banks. Bank robberies were carried out by people wearing motorcycle helmets to conceal their identity. The wearing of motorcycle helmets into banks and other places where robberies often take place has now been banned. I believe people are not permitted to wear them into petrol stations; indeed, there are signs on the door to that effect. In the past that might have appeared to be an overreaction, but these days it seems to be a sensible precaution.

I believe that the authorities need to take similar precautions with regard to potential terrorist attacks on the Opera House. It is an icon of Australia, and we know that terrorist groups focus on targets that can cause the greatest damage—not just economic damage but cultural damage—to the prestige of that nation. That is the reason the twin towers were attacked. After those attacks it was found that large colour posters showing the twin towers were displayed in many places where terrorists carry out their day-to-day activities, such as coffee shops and other social places. The twin towers were displayed in that fashion not as something to be admired, but as something that annoyed the terrorists: a sign of American economic might and power. That is why the twin towers were selected for a terrorist attack.

I hope and pray, as I am sure everyone does, that no-one will see the Opera House as a potential terrorist target in future. This is necessary legislation. Since April 2003 the Government has allocated \$13.6 million to improve security at the Opera House site. As others have said, particularly in the media, one

wonders what the unarmed security personnel who patrol the Opera House and the Sydney Harbour Bridge would do if they were confronted by a terrorist. I do not believe they could do anything, except run, and, if they have a mobile phone, try to issue a warning. Unlike their counterparts in other countries, those security personnel are not equipped to deal with such a situation. Regrettably, it means that people who are intended to stop an armed terrorist must be armed. One can hardly raise one's finger and tell them to stop. I believe that the use of unarmed security personnel gives us false security; I do not think it will work. I urge the Government to give more thought to upgrading security on the Sydney Harbour Bridge and the Opera House. We support the bills.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.35 p.m.]: The reason we have such a fear of terrorism is that we have a very bad foreign policy. We have basically gone across the world and hit people who have never hit us, and thus they are retaliating in the form in which they are able to retaliate, that is, terrorism. We are therefore rearranging our society, at vast cost, to cope with the threat that I believe John Howard has created. If, and when, there is terrorism in this country, I believe it will be John Howard's fault. It is better that I say it now, because afterwards it will seem crass and unpatriotic to say what I think is blindingly obvious. The bill provides brief definitions of explosions, noxious substances, and so on, and increases the penalties for the possession and use of those substances. Presumably, without such provisions a person who tried to commit a nasty act, but did not succeed, would not be put away for very long.

I note that the Opera House has been recognised. Reverend the Hon. Fred Nile waxed lyrical about its iconic status, comparing it to the twin towers in New York's World Trade Center. Of course, a terrorist attack on the Opera House would be most unfortunate. The Opera House spent a fortune on redundancy packages for its security guards, and it subsequently replaced them all. I do not know why it did that. The Opera House has pop-up bollards. I believe it has popped up a bollard underneath a fire engine. Because the building has a touch-screen system, it does not have the ability to pop up the bollards.

Under the bill, a person who enters or remains in any part of the Opera House as a trespasser will be guilty of an offence and face a maximum penalty of 200 penalty units or imprisonment for two years, or both. Many years ago when I attempted to hand out leaflets at the Opera House in a demonstration against Benson and Hedges, I was told to move on. Understandably, I wanted to continue to hand out the leaflets until the evening session. I delayed moving on, in order to get the leaflets out before the police arrived. It was a successful protest against Benson and Hedges, which was trying to sponsor ballet to draw attention away from the fact that it was killing everybody with its cigarettes. I was defined as a criminal because I was pointing out that fact to patrons who were about to attend the Opera House. Under the bill, if the magistrate had a rush of blood to his or her head I would go to gaol for two years.

The people who wrote "No War" on the Opera House—a message that was designed to bring Australians to their senses and draw attention to how easy it is to get to the Opera House sails—had to pay a huge amount of money to have the message removed and were placed on periodic detention for a very long time. Under the bill, the maximum penalty on indictment for such an offence is five years imprisonment. In other words, those people would now receive an even heavier penalty. I acknowledge that people who commit acts of war against our country because of its bad foreign policy must be dealt with appropriately, but I am concerned about some of the ridiculous offences that are applied to those who make perfectly valid statements. People's civil liberties are placed at risk when a country needlessly goes into war mode.

Ms LEE RHIANNON [5.39 p.m.]: The Greens oppose this bill. We do not oppose constructive measures to address terrorism, but this bill is not such a measure. Unfortunately, this bill is typical Carr Government window-dressing. It plays to the talkback crowd, but really adds nothing substantial to the fight against terrorism. It simply jacks up penalties and attacks civil liberties, as though this will make any difference to a determined terrorist. Instead of countering terrorism, this bill merely threatens to punish innocent people, or to crack down on legitimate protest and dissent. Does the Government seriously believe that increasing the length of a prison sentence will deter a terrorist? That is why I say this bill is about cracking down on legitimate protest and dissent and innocent people.

If terrorists plan to attack the Opera House, they will not read the statute book first to figure out how long they might spend in gaol afterwards. Does the Government think that terrorists care whether a sentence is six months or 60 years? These gaol terms are random, they are meaningless, and they do not act as a deterrent. They do not make our society safer. This is a bill by a Government that is bereft of ideas as to how to fight terrorism.

The Hon. John Hatzistergos: What do you say it should do?

Ms LEE RHIANNON: I hope the Minister will listen. Sadly, this is symptomatic of governments that use excessive force and misplaced laws to fight terrorism. Sending in the troops does not work; we are seeing that at the moment. Building missile shields does not work. All the conventional techniques do not work. The arms race, proxy wars and spy games of the twentieth century are not the solution. The Carr Government's old law and order drum is also not the solution. Terrorism, like all crimes, can be fought only by engaging with its root causes. Instead of an arms race, Australia should be supporting social and economic development in countries such as Indonesia and the Philippines. Instead of reining in civil liberties and jacking up gaol terms, the Carr Government should be promoting social and economic progress and cohesion within our community.

[Interruption]

I acknowledge the interjection from the member Catherine Cusack that we do. Tragically, our budget under successive Federal governments—but particularly under the Federal Coalition Government—is becoming more and more skewed to military aid, and more and more development aid is going to commercial interests. So it is a way to give Australian companies a boost in those countries, not to provide jobs, education and the programs that many of those countries need assistance with. Increasing prison sentences is old politics. It is an outdated response to a new problem. Curtailing civil liberties is becoming increasingly popular with governments that attempt to play the populist game.

We fought hard over the past century to entrench rights and freedoms in this country. Many Labor members have been part of those campaigns. This bill fits into the pattern of recent government activity that has been introduced under the cloak of fighting terrorism. Across the Western world too many governments are curbing the right to protest, the right to silence, the presumption of innocence, the right to privacy and the right to free thought. They are the themes of so much of the legislation that comes before this House and, I say again, they are not about making our society safer. To go down this path is to undo a pillar of democratic society; it is to hand a victory to those who would oppose Western democracy.

These abuses of rights and freedoms further alienate those who may be tempted by the terrorists' doctrines. That is what the terrorists want, and governments are playing into their hands. When people in our society are demonised it allows terrorists to, in turn, demonise our society. In addition to being dangerous and irrelevant, this bill is sometimes silly in some of its formulations. But maybe, rather than silly, there is a clear intent. I am referring to the words "imminent threat". Those words have now been altered to read "threats in the near future". What does that mean? What will it achieve? Our concern is that it is a way to extend the time period over which these measures can be used. So again, in what seems to be just an odd word change, there is a clear intent to throw a wider net.

The Greens oppose this bill because we oppose these pointless legislative stunts. Bills such as this are rushed through Parliament to give people the idea that something is being done. There will be chats by the Minister and the Premier with some of the shock jocks, and they will all go away feeling very good about themselves. But we do not want the community to be fooled: nothing constructive is being done.

Before I finish I again congratulate Dave Burgess and Will Saunders, the two courageous young men who took the "No War" message to the world via the Opera House. They have paid dearly for undertaking a legitimate act of political protest. Under this new bill they would have paid even more dearly. Gaol is not an appropriate punishment for political activism. There are members in this House who in the past have taken part in Vietnam war protests, in green bans, and even these days they sometimes take part in pickets. Do those members think that these actions warrant gaol terms? Should protesters be gaoled for up to seven years simply for committing acts of civil disobedience? The Greens would like to hear from some of those people from the Labor left.

[Interruption]

The vandalism is the war that this Government supported; that is a huge crime. How do they feel about this silencing of activism?

The Hon. John Hatzistergos: Would you be happy if they painted it on all the public schools?

Ms LEE RHIANNON: They did not paint it on a public school.

The Hon. John Hatzistergos: What if they did?

Ms LEE RHIANNON: That is not where you have protests.

The Hon. John Hatzistergos: It is public property.

Ms LEE RHIANNON: The Minister knows how it works, so it is a very silly interjection. How does the Labor left feel about this constant banging of the law and order drum? They have the opportunity with this bill to get up and say how ridiculous it is, and we know that it will not damage them in caucus. It is a long time since we have seen Labor members stand up in this House and criticise their own Government's legislation. Ann Symonds, a former member of this place, did this courageously years ago, and I congratulate the member Jan Burnswoods on her decision last night to speak out in favour of the call for corporate manslaughter legislation and on her criticism of the Minister for Industrial Relations for the way he is handling this matter. So there have been examples in recent times. It is a pity there are not more.

There is a long history of activism and civil disobedience in this country. It goes back to the Eureka Stockade and to those Sydneysiders who occupied houses that were threatened with demolition or the occupants with eviction during the Depression. It runs through the green bans, the Vietnam protests and the anti-nuclear marches of the 1980s, the paddlers for peace and the Peace Squadron, and the student demonstrations of the 1990s. This tradition of protest and dissent lives on, and Dave Burgess and Will Saunders are now a proud part of that tradition. This tradition, and the social progress it delivers, is celebrated and lauded by later generations. Although this legislation is about to pass, I am confident that the courage of protesters and the tradition of protest will continue.

But the government of the day always stands in its way. Labor or Liberal, those in power will always seek to denigrate and deny protest as a legitimate form of political expression. It is a pity that they do not recognise that protests are the driver of social change, much more than any of the clever ideas that come out of this place once in a blue moon. The Greens celebrate that tradition, and we are proud to be part of it. We believe it is possible to engage in the parliamentary process, yet at the same time continue to express ourselves through campaigns and protests outside this place. To vote against this bill is not to condone or allow terrorism, because this bill is more about pleasing the *Daily Telegraph* than it is about deterring terrorists.

To vote against the Crimes Legislation Amendment (Terrorism) Bill is to reject the Carr Government's spin and its knee-jerk and reactionary response to terrorism. And to vote against the Sydney Opera House Trust Amendment Bill is to take a stand in support of civil liberties. It is a vote in support of the right to use civil disobedience as a form of protest when governments have stopped listening. That is what the Greens support and will continue to support.

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [5.50 p.m.], in reply: I thank honourable members for their contributions to this debate. I commend the bills to the House.

Motion agreed to.

Bills read a second time and passed through remaining stages.

WORKERS COMPENSATION LEGISLATION 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) [5.51 p.m.]: I move:

That this bill be now read a second time.

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

Leave not granted.

The Workers Compensation Legislation Amendment Bill introduces a number of further reforms to workers compensation legislation. I will first list the major amendments made by the bill and then explain the purpose of

the amendments in more detail. Schedule 1 gives effect to miscellaneous amendments to the Workers Compensation Act 1987, including to reverse an aspect of the decision of the Court of Appeal in *Orica Limited v CGU Insurance Limited* [2003] NSWCA 331, to ensure that the relevant employer is indemnified under statutory workers compensation policies for common law claims despite damage being suffered by the relevant worker many years after the initial injury was sustained; to ensure that WorkCover can make guidelines regarding payment for both gratuitous and non-gratuitous domestic assistance; and to include the Treasury Corporation among the entities that can provide guarantees to State-owned corporations to enable compliance with provision regarding securities for self-insurers.

Schedule 2 contains amendments to the Workplace Injury Management and Workers Compensation Act 1998 to provide new powers to presidential members of the Workers Compensation Commission and establish the Workers Compensation Insurance Fund Investment Board to determine the investment policies of the new Workers Compensation Insurance Fund. The amendment to the Sporting Injuries Insurance Act 1978 proposed in schedule 3 will provide that if a person unreasonably refuses medical treatment, the medical panel or referee may assess that person's permanent injury on the assumption that the person's injury would have been improved by such treatment. Before I turn to outline the amendments in the bill in more detail, I wish to acknowledge the assistance received in the course of settling the bill from the many stakeholders who commented on the bill. The bill was circulated to members of WorkCover's Advisory Council, which includes representatives of the Labor Council and employer bodies, on 11 May. As the second reading speech is lengthy, I seek leave to incorporate the balance of my second reading speech in *Hansard*.

Leave granted.

Comments made by stakeholders have been carefully considered and taken into account in settling the final terms of the Bill.

I will now outline the amendments in more detail.

Firstly, this Bill will address one of the findings of the Court of Appeal in *Orica Limited v CGU Insurance Limited* [2003] NSWCA 331.

In *Orica*, the Court held that common law liability would arise only at the time a worker has suffered damage. However, in the case of dust diseases, damage may occur many years after the injury was initially sustained.

The *Orica* decision means that, under certain statutory workers compensation policies, an employer would only be indemnified by an insurer for liabilities arising during the period of the insurance policy.

Given liability for a dust disease claim arises many years after these policies of insurance have expired, these claims for damages would not be covered by insurance and the employer would be solely liable for the claim.

The amendments ensure that insurers are required to indemnify employers where an insurance policy covered a relevant period when a worker was at risk of sustaining injury.

The amendments ensure that statutory workers compensation policies respond to claims for disease and injury with long latency periods, such as dust diseases.

The changes will ensure that employers are appropriately indemnified by insurers for these liabilities.

I wish to assure Honourable Members that no other terms of the insurance policies will be altered by the amendments, such as the caps applying to some older policies. The amendments merely address an anomaly in statutory workers compensation policies and legislation that led to the decision in *Orica*.

Secondly, it is proposed that this Act be amended to ensure that licensed self-insurers who are state owned corporations are not disadvantaged because they use Treasury Corporation, also known as T-Corp, for financial services.

Generally, licensed self-insurers are required to deposit an amount of money with WorkCover as security. As an alternative, self-insurers can provide a guarantee from a bank, building society or credit union.

However, because T-Corp is not a bank, building society or credit union, they cannot provide such a guarantee.

This means that state owned corporations are required to obtain a guarantee from another institution and they lose the cost-benefit of the pre-existing relationship with T-Corp.

In order to rectify this inconsistency, T-Corp will be one of the entities that can provide guarantees to state owned corporations.

Thirdly, a further amendment to the Workers Compensation Act ensures that WorkCover can make guidelines for the payment of non-gratuitous domestic services as well as gratuitous domestic services.

The 2001 reforms introduced a new entitlement to statutory compensation for domestic assistance considered reasonably necessary to be provided to a worker as a direct result of an injury. The entitlement applies where the permanent impairment of

the worker is 15% or more, with exceptions for short term special needs. The provision of this benefit was intended to ensure that the long term care needs of the most seriously injured workers were met by the statutory scheme.

The Act allows WorkCover to make guidelines, requiring gratuitous domestic assistance to be provided in accordance with a care plan set out in WorkCover Guidelines.

However, the Act does not make similar provision in relation to domestic assistance provided by professional carers, even though the criteria and prerequisites for the provision of all domestic services to workers are the same. This appears to be an oversight, which is remedied by the Bill before the House.

The fourth significant aspect of this Bill amends the *Workplace Injury Management and Workers Compensation Act 1988* to give Presidential members of the Workers Compensation Commission an additional power on appeal to remit the matter to the Arbitrator for determination, in accordance with any directions or recommendations of the Presidential member.

The powers of Presidential members on hearing reviews of Arbitrators are currently limited to confirming the decision, or revoking it and substituting a new decision.

However, in some cases—such as when a Presidential member hears an appeal on a preliminary decision—it is more appropriate for members to remit the matter back to the original decision maker. This procedure will save time and costs for the parties.

This proposal is consistent with powers in other tribunals, such as the Administrative Decisions Tribunal.

The new procedure might be used, for example, if the parties submit documents shortly before the hearing and the arbitrator does not receive them in time.

The fifth matter dealt with in the Bill is the establishment of the Workers Compensation Insurance Fund Investment Board.

Honourable Members will recall that the *Workers Compensation Amendment (Insurance Reform) Act 2003* reforms the arrangements for the provision of workers compensation insurance, to support the implementation of the report prepared by McKinsey & Company, *Partnerships for Recovery*.

That Act provides for the transfer of the six separate managed funds currently held by each of the licensed insurers into a single fund, to be known as the Workers Compensation Insurance Fund.

The Bill before the House provides for the establishment of a specialist board, to determine the investment policies of the Insurance Fund and to advise the Minister on the investment performance of the Insurance Fund.

The Board will comprise WorkCover's Chief Executive Officer and five other members, specifically chosen for their business, investment or other relevant qualifications. Members of the Board will be jointly appointed by the Minister and the Treasurer.

Finally, the Bill includes an amendment to the *Sporting Injuries Insurance Act 1978* to provide that if a person unreasonably refuses medical treatment, the medical panel or referee may assess that person's permanent injury on the assumption that the person's injury was improved by such treatment.

The Scheme provides insurance cover for the members of any sporting organisation which has elected to join. The scheme is administered by the Sporting Injuries Committee, which comprises seven members, most of whom are involved in sport.

Over \$10 million has been paid from the Sporting Injuries Fund to applicants from a range of sports, including rugby league, rugby union, cricket, touch football, soccer, cycling and pony clubs. Any injury resulting in the permanent loss of a prescribed faculty or use of some prescribed part of the body is covered by the Scheme.

The Sporting Injuries Scheme is only intended to compensate for serious permanent injury or death. The proposed amendment is required to deter applicants from attempting to be assessed for permanent loss before corrective surgery has been undertaken.

This is particularly relevant for anterior cruciate ligament damage, which is a very common knee injury in sport. For example, there are more than 1,200 anterior cruciate ligament injuries each season in rugby league alone.

Corrective surgery can reduce the damage from between 35% and 45% to between 5% and 15%. This is below the threshold required to receive payment for permanent loss of the use of a leg.

Clearly, delaying surgery until after an assessment is conducted undermines the Scheme and will render the Scheme unviable in its current form, because it does not have sufficient resources to compensate for injuries where it is unnecessary.

The proposed amendment will ensure that the contributions made by sporting organisations to the Scheme are applied to compensate sportspeople who suffer permanent loss, consistent with the objectives of the Scheme.

In conclusion, the Bill continues the program of reform and improvement to the workers compensation scheme, in the interests of workers, employers, and the broader community.

I commend the Bill to the House.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [5.54 p.m.]: The Opposition does not oppose the Workers Compensation Legislation Amendment Bill. However, it will come as no surprise that the Opposition has no confidence in the Government's ability to handle the workers compensation system and

WorkCover. The Government has had control of the reins for almost 10 years. During that time we have seen not a steady decline but an expedited decline, particularly in recent years. I note that in the other place the Parliamentary Secretary referred to this bill as providing a number of further reforms to workers compensation legislation. One wonders how many more "further reforms" the Government will introduce. Under this Government and this Minister workers compensation in New South Wales is a source of endless financial haemorrhaging that has not delivered results for injured workers or for employers, who are paying exorbitant premiums.

No doubt the Minister is hoping that the situation will not become as heated as the time he had to bunk down overnight in Parliament House to avoid the wrath of the union movement. That, of course, was the occasion when Labor members of this House and the other place crossed the picket line. The unions have not been happy with the Government's agenda. If an employer were to ask, "Will my premium be reduced as a result of this legislation?" the answer would be—as it has always been in recent years—"No." Unlike the Government, the Coalition believes, without question, that workers compensation premiums in this State are too high.

I pay tribute to my Coalition colleagues in the other place—the honourable member for Gosford, the honourable member for Cronulla, the honourable member for Lismore, the honourable member for Hawkesbury and the honourable member for Albury. They know that the Government's mismanagement of WorkCover has adversely affected their constituents, whether injured workers or employers. I point out also that not one Australian Labor Party member in the other place spoke on the bill on behalf of their constituents. There was merely the contribution of the Parliamentary Secretary. Unlike the Government, the Coalition does not gag its members when they wish to speak on legislation that will impact on their constituents. They are not just numbers in a factional battle; they are vocal and effective representatives for their communities.

This bill will make a number of changes to workers compensation legislation. It amends the Workers Compensation Act 1987, the Workplace Injury Management and Workers Compensation Act 1998 and the Sporting Injuries Insurance Act 1978. In particular, the bill specifically provides for amendments to the 1987 Act to reverse an aspect of the Court of Appeal decision in *Orica Ltd v CGU Insurance Ltd*. This will deal with damages that occur many years after an injury was sustained, for example, in dust disease cases. At present the problem, as evidenced by the Orica decision, is that an employer would be indemnified only for liabilities that arose during that period of the insurance policy. If a claim for damages eventuated many years after the injury was sustained—as they certainly can in dust disease matters—and when the relevant insurance period has expired, the employer is not covered by insurance. In those instances insurance companies would not be liable for these claims and thousands of people suffering from dust diseases such as mesothelioma would suffer as a result.

Schedule 1 will rectify that situation and require insurers to indemnify employers when the insurance policy covered the period when the worker was at risk of injury, particularly in the case of long latency periods, such as with dust diseases. In addition, the legislation will provide for the establishment of the Workers Compensation Insurance Fund Investment Board. The Workers Compensation Amendment (Insurance Reform) Act 2003 provided for the transfer of the six separately managed funds into a single fund called the Workers Compensation Insurance Fund. The current bill provides for a board to manage that fund. However, I fear that like the WorkCover scheme more generally this board will be nothing more than a financially mismanaged disaster that is used to provide a sinecure for loyal Labor mates who have rendered faithful service.

My concern is based on a very sound foundation. WorkCover, as revealed by a Federal Department of Employment and Workplace Relations investigation, spends 17 per cent of its total premium and investment income on administrative costs. The dollar figure for that is in the order of \$391 million. Yet the premiums keep going up and injured workers do not receive the help that they need. The bill also contains various miscellaneous amendments, which will provide that the public sector financial service provider, Treasury Corporation—known as T-Corp—can be an entity that can provide workers compensation related guarantees for State-owned corporations that are self-insurers.

Provision will be made for WorkCover to issue guidelines that are applicable to the provision of both paid and gratuitous domestic assistance. Guidelines already exist for gratuitous domestic assistance, but the amendment will ensure that payments made to professional carers are in line with those made to family members and others. Miscellaneous amendments will also expand the appeal provisions for the Workers Compensation Commission. Presidential members of the commission will gain an additional power on appeal to remit the matter to the arbitrator for determination, in accordance with any directions or recommendations of the presidential member.

At present the powers of presidential members in hearing reviews of arbitrators are limited to confirming the decision or to revoking it and substituting a new decision. However, in some cases, such as when an appeal is heard on a preliminary decision, it may be more appropriate to refer the matter back to the original arbitrator, which can save time and cost for the parties involved. The Coalition does not dispute these amendments to the current legislation. Amendments will also be made to the Sporting Injuries Insurance Act 1978 to ensure that the assessment of degree of permanent loss suffered as a result of a sporting injury is permitted by the amendment. This assessment would be made on the assumption that any improvement likely to result from further treatment has occurred if that treatment is unreasonably refused.

In conclusion, I note briefly that employers throughout the State will certainly not be looking forward to receiving their latest premiums in the near future. Injured workers will not be seeing any improvement in the Government's management of the scheme either. However, we will not try to get Minister Della Bosca out of the mire; he has made and remade his bed many times, and now he can lie in it. Honourable members know exactly what the Government promised on workers compensation. The Parliament and the people of New South Wales were told what those involved in the workers compensation scheme could expect over a period and the benefits that both employers and employees would receive as a result of the reforms.

Not long ago the schemes were wound back. Of course, that was based on the premise that if the Government could control that side of the scheme, obviously we would see significant reforms to the tail and benefits would start to flow through to employers in terms of premium reductions. What have we got? Despite all the pain and hardship, premiums are at record levels and workers are screaming out for justice and assistance. The Government has made a complete mess of workers compensation, despite all the promises. It had an opportunity, but it is rapidly approaching the time when the Parliament says "enough is enough". The Government has not delivered on its promises in any way.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [6.02 p.m.]: Overall, I think the Workers Compensation Legislation Amendment Bill has some good provisions, but there is one problem I flag. The need for home support is great, often for people who are injured. Interestingly, this is just a one-off case in which a technicality is being corrected. It needs to be reinforced that some injured workers have difficulty getting home support when they need it. I note that the Treasury Corporation needs to have the advantage of size in terms of its funding guarantees, and this is an administrative step in the right direction. My view is that the Government should establish a government insurance office because insurance companies seem to have gone crazy since September 11, even when they are not insuring high-risk situations.

Whether it is home building insurance or workers compensation, the Government needs to manage things more accurately and astutely. Previously I have said that the key problem with workers compensation is the management of claims, and that self-insurers need to have expertise, rather than have WorkCover manage the scheme with private insurers simply doing functions and not managing the overall claims optimally. One aspect I am concerned about is the amendment to the Sporting Injuries Insurance Act to provide that if a person unreasonably refuses medical treatment the medical panel or referee may assess that person's permanent injury on the assumption that the person's injury was improved by such treatment.

I have not treated many sports injuries but I have treated many workers' injuries, and I presume that the attitude to them is the same. Several workers compensation cases that are relevant to this legislation come to mind immediately. In one case a hardworking Turkish man aged about 21 injured himself while lifting a bucket of concrete from the bottom of a trench. The bucket was stuck to the concrete by surface tension. As he tried to pick up the bucket he was not simply picking up the bucket, because it was stuck to the concrete. He got a nasty spinal disc injury that needed disc surgery. He was in extreme pain and could not work. When I saw him he was only 22 or 23. Being a religious man, he said, "Allah say I be like this." He would not have the operation, which I believe would have cured him.

If this man were being assessed under this legislation, is refusing to have an operation unreasonably refusing medical treatment? If he had stuck to the view he had at the time, he would be totally and permanently disabled today—I saw him about 20 years ago. That should not mean that he would be assessed on the assumption that if he had the treatment he would get better, because I think he would have got better. If one were to assume his treatment one would say that he was an able-bodied man who had disc surgery. Although he was not educated for anything other than labouring, he was not a silly man and could have been educated. Thus, the assessment would be much cheaper from the insurance company's point of view, and that is a worry.

In another case a woman who was working as a cleaner for two companies for 20 hours per week each came to me with a very painful wrist. She was accompanied by her husband. She said, "I cannot work any

more." She was aged in her late 40s or early 50s. I assumed that she had a repetitive strain injury but I did an X-ray because her wrist seemed a little odd. I found a congenital abnormality of the wrist that had caused gross arthritis. In fact, my diagnosis was incorrect. I sent her to a hand surgeon who recommended surgery. Initially she was scared to have surgery but then had the operation. She certainly did not improve after the surgery; her wrist remained tender and weak, and she still could not work. In a sense, if the woman had refused medical treatment she would not have been worse off. The doctor's confidence was not justified. If the woman had refused the treatment and the doctor had assumed that the treatment would make her better, under this legislation he would have perhaps assessed her injury as if she had got better when—with the proof of the pudding being in the eating—she did not.

I remember a man aged 56 who worked for a company that made train brakes. He injured his back while doing some unsafe lifting for a company that sadly had many injured workers as a result of poor work practices. This Middle Eastern man was frightened of surgery. It took me a great deal of trouble to persuade him to have an operation. I organised morning teas with a number of patients who had had similar surgery and who were much better, and I eventually persuaded him to have surgery. But it took me about two years from when I realised he needed surgery to when I persuaded him to have the surgery. I regarded working on persuading him to have the surgery as part of the treatment, but I do not think many doctors see it like that. Certainly, the ones who do one-off assessments do not see it like that.

When such a provision is put into a bill I think the Minister must be very careful. I ask the Minister in his reply to the second reading debate to define what he means by "unreasonably refusing medical treatment", because in some cultures the possibility of dying while having an operation in hospital is very high. People are frightened in hospital; their general dictum is "Do not let anybody touch me with a knife" and they take that to extremes. To say that they are unreasonably refusing medical treatment and therefore should not get compensation would be a very rough view. As I said, I have seen this only in relation to workers compensation injuries, but I think the same cultural people engaging in sporting injuries in New South Wales might be in the same situation. I have not had an amendment drafted at this short notice, but I ask the Minister to clarify that point in his reply to the second reading debate.

Ms LEE RHIANNON [6.10 p.m.]: The Workers Compensation Legislation Amendment Bill is in part a response to the decision in *Orica Limited and Anor v CGU Insurance Limited* in the New South Wales Court of Appeal. That decision came after a typically cynical bid by insurance companies to avoid meeting their obligations. It is outrageous that year after year laws are changed to help insurance companies, with the promise that this will prevent premiums from rising. We have all heard that argument time and again. Probably the first time the Minister for Industrial Relations spoke to me was when he argued that the famous workers compensation bill that went through in 2001 was all about premiums. Yet premiums continue to rise. Insurance companies are more worried about pleasing their shareholders than delivering justice to those who have taken out policies.

In the *Orica* case the insurers used a technicality to try to duck out of their liabilities. It is not surprising, but it is certainly not moral. The old Act had provided that insurers would be liable under common law for any disease contracted while the insurance policy was in force, even if a person who contracted the disease did not suffer significant damage until years later. This is the case for asbestos-related diseases such as benign related pleural disease, lung cancer, mesothelioma and asbestosis. Many people contracted these diseases in the 1950s, 1960s and 1970s, and their employers were insured at the time. For many of these people it is only in more recent decades that the suffering has begun.

The 1987 Act repealed the old Act, and in doing so created a loophole under which insurers were only liable for damage suffered at the time of contracting the disease—that is, in the 1950s or 1960s. The New South Wales Court of Appeal agreed that this loophole existed, so it is now up to the Government to close it and restore arrangements to the former status quo. The Greens congratulate the Government on moving quickly to reverse the effect of the *Orica v CGU Insurance* decision. However, the Greens believe the Government could have gone further and done the right thing by injured workers in a much more thorough way. The decision represents an important opportunity to revisit this whole area and to make worthwhile reforms. Again, the Labor Government has let an opportunity pass. Merely reverting to the pre-*Orica* status quo is a cop-out. Work has to be done in this area to ensure justice and fair compensation for workers suffering from dust diseases.

One major issue is that many insurance policies signed in the 1950s and 1960s put a cap on common law damages—usually \$50,000 or \$100,000. This is now pitifully small compensation to those suffering the horror of diseases such as asbestosis and mesothelioma. The Greens are persuaded by legal arguments that these

contracts should not be interpreted to mean the victim is limited to just \$50,000 in common law damages. Instead, this cap should be interpreted as the amount that a policyholder can claim for each year that the policy is held, and this is cumulative. The number of years that a worker was covered by a policy reflects the number of years of exposure to asbestos. The effect of exposure is cumulative, so the cap should be cumulative too. Thus, if a worker's employer held a policy for five years, the cap for common law damages should be five times \$50,000. If it is 10 years, it should be 10 times \$50,000. The Greens intend moving an amendment to achieve this.

I understand—and it is important for honourable members to consider this carefully—that the Government's original draft of the bill also delivered this outcome, but, as we now know, it has backtracked. The deletion of this clause from the final version of the bill reflects how the Government is prepared to support the insurance industry's interests above those of ordinary injured workers. Why settle for the status quo, Minister? Why not use this opportunity to make things better and fairer? I would appreciate it if the Minister, in his reply to the second reading debate, outlined why this change occurred.

The Government argues that a contract is a contract. If a worker agreed to that policy in 1964, we cannot be retrospective about that. I argue that this is not retrospective. The Greens are arguing for a fair and just interpretation of what those contracts meant. It is all very well to listen to the insurers, as the Government has done, but look at the track record when a government allows itself to climb into the insurance industry's pocket. Federally, the insurance industry's lobbying produced the private health insurance rebate—a massive waste of public money that had no effect on premiums or on the take-up rate for private health cover. At State level we got the new rules on public liability insurance. Claims have been limited but premiums have continued to rise. Community events and school fetes have suffered, as we all know.

It is happening again. This is not about legal issues such as retrospectivity or contractual integrity. The Government's miserly approach to this bill is really about the James Hardie issue. Imagine that Parliament accepts the Greens amendment for a more generous cap and at the same time James Hardie successfully—and scandalously—evades its responsibility to compensate asbestos-related disease sufferers in Australia. In that case the employers—and their insurers—will have to foot the bill. If there was ever a time when insurers want to limit caps on common law liability it is now. The Greens are also unhappy that the Government did not use the opportunity presented by this legislation to tackle James Hardie's conduct. There is no reason the Government cannot legislate to make the Dutch company James Hardie liable for all the asbestos claims against it. It is an open question of whether New South Wales would be able to enforce such a law, but we should take action.

The Minister should take the lead on this. He could have a direct impact on so many people's lives. Introducing a bill to crack down on James Hardie would send a clear message that the Government does not accept Hardie's attempts to dodge its responsibilities. The Greens cannot understand how the Government can sit by and watch this happen. A judicial inquiry into James Hardie is a nice way of deflecting the heat from the Government onto the company, but the company is not the only culpable party. Why is the Government not giving legal aid to asbestos victims? Why is the Government not working on legislation to ensure Hardie must pay compensation for the damage it has done, the suffering it is causing? Governments can do many things.

The Minister has clear power to act and the responsibility to do so. The Government is sitting on its hands. It is taking visits from old mates such as Stephen Loosely when it comes to James Hardie. This Labor Government is listening to the big corporate players. James Hardie donated \$40,000 to the Federal ALP a few years ago, and the insurance industry has donated tens of thousands of dollars to Labor in the past few years. It has obviously assisted Labor many times. Who is looking out for the victims? Who is making sure they get a fair deal? The Greens concern lies with them, and that is why we are disappointed with this bill. It is a major missed opportunity to right some wrongs. As I said, we will not oppose the bill because even a return to the status quo is better than letting the Orica case stand. However, we put on record our determination to see those liability caps lifted and to see James Hardie brought to account.

Reverend the Hon. FRED NILE [6.19 p.m.]: The Christian Democratic Party supports the Workers Compensation Legislation Amendment Bill, which amends the Workers Compensation Act 1987, the Workplace Injury Management and Workers Compensation Act 1998 and the Sporting Injuries Insurance Act 1978. Many of the amendments are minor, but a major amendment to the 1987 Act addresses concerns arising from the Court of Appeal decision in *Orica Limited and Anor v CGU Insurance Limited* to the effect that a common law liability for an injury—in this case a dust disease—that accrued after the period for which a policy of insurance was in force was not covered by the terms of the policy. This limited the policy to liability arising during the currency of the policy.

I congratulate the Government on this amendment, which provides that insurance policies affected by the decision, that is, those issued prior to the adoption of the new form of policy in 1995, operate in respect of a common law liability of the employer for an injury to a worker as if the liability arose when the injury was received—that is, during the term of the policy concerned. We also support another important provision, which amends an existing special provision dealing with insurer liability for damages for occupational disease to take account of the decision in the Orica case and to correct an anomaly that prevented the provision applying in a case where a single insurer was at risk for the period in question. These amendments will remove any doubts that were caused by the court decision and will be of valuable benefit to injured workers.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [6.21 p.m.], in reply: I will be very brief and foreshadow some remarks I will make in Committee, as the Greens have foreshadowed an amendment. Ms Lee Rhiannon has to understand that the insurance industry is not particularly happy about the Government's decision with regard to the Orica matter. She is turning logic on its head when she says that we are stooges of the insurance companies. We are introducing legislation that insurance companies do not want. It is a stunning example of the Greens capacity for political acrobatics. The House has to consider many important matters tonight and I will leave further remarks on this matter until later.

Ms Lee Rhiannon referred to the Jackson inquiry. The reason we are not legislating on the James Hardie issue tonight—apart from the fact the Government does not have reports on matters it can legislate about—is that the Jackson inquiry is under way. Again, I point out the obvious point: the reason the Jackson inquiry exists is that the Government put it in place, and we put it in place in order to determine the facts about James Hardie's true liabilities. As a sensible Government and Parliament—hopefully with the support of the Opposition and crossbenchers—we will wait and consider those facts when they are available to us as legislators. That is our job. Our job is not to make rash decisions based on our gut instincts or prejudice. The Jackson process exists in order for us to determine the facts and what we should responsibly do about them.

As to the amendment foreshadowed by Ms Lee Rhiannon, the basic framework of this legislation is to reinstate the rights that all victims had prior to the Orica decision. We are striking down the effect of the judges' decision in Orica. To remove the liability caps that existed in the old insurance policies goes well beyond the scope of the Orica decision. That would not be an appropriate step for this Parliament to take; that is a separate debate. We are seeking to make sure that the victims in the queue waiting before the courts are not disadvantaged by the appeal decision in Orica. By way of brief explanation, because it is important the House understands, before 1980 employers paid workers compensation premiums on the basis that their policies were capped. It would totally disturb longstanding arrangements between employers and insurers, and indeed the victims themselves, if these caps were removed. The Orica decision did not overturn the existing statutory caps that were in place until 1980, and nor does this bill. To retrospectively remove the statutory caps would go well beyond the scope of the Orica decision and would possibly be outside the leave of this bill.

As to the dark conspiracy suggested by Ms Lee Rhiannon about the way the Government put out the exposure bill, the Government was concerned that the words the member referred to inadvertently could lead to an incorrect interpretation—namely, the one she is making—that the Government's intention was to override the statutory caps that were in place. The change is made to clarify the effect of the provision, and nothing more than that. I thank the House for its support and commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 3 agreed to.

Ms LEE RHIANNON [6.27 p.m.], by leave: I move Greens amendments Nos 1 and 2 in globo:

No. 1 Page 4, schedule 1 [4], line 21. Omit "commencement.". Insert instead:

commencement,

- (c) any limitation on the amount for which the insurer under the policy is liable to indemnify the employer (or pay damages to the worker) in respect of the claim is increased to an amount that is the sum of the maximum insured amounts under each policy of insurance obtained by the employer from the insurer

during the period for which the worker was employed by the employer in employment to the nature of which the disease was due.

No. 2 Page 5. Insert after line 10:

[5] **Section 151AB (6)**

Insert in alphabetical order:

maximum insured amount, in relation to a policy of insurance, means the maximum amount for which the insurer under the policy is liable to indemnify the employer (or pay damages to the worker) in respect of a claim for damages of the kind referred to in subsection (1) liability for which arises during the period of the insurance.

These amendments address the concerns that have arisen from the second limb of the Orica decision. I touched on some of these matters in my contribution to the second reading debate on the bill. The decision had the effect of reducing employers' rights to indemnity from the insurer to the value of cover provided for a single year, even though the insurer may have been on risk for a number of years during which the negligent acts or omissions occurred and received from the employer a separate premium for each of those years. The effect of the second limb of Orica is to leave some employers without sufficient cover for their common law liabilities, even though they may have paid premiums during each year in which asbestos exposure was attributable to them. If the employer does not have that cover and becomes insolvent, the worker likewise would be restricted to only one year's worth of insurance cover. These amendments ensure justice and fairness to workers exposed to asbestos who are now suffering dreadfully in their later years.

The Greens understand that the Government originally included a similar amendment in the bill but later removed it. I have listened to the Minister's comments. He appears to be arguing that the Government never intended for this to happen. If that is the case, I am curious as to why the amendment was there in the first place. I appeal to the Minister's conscience and that of other members to support just compensation for these workers. Members will not suffer from asbestosis or mesothelioma or the other terrible dust and lung diseases suffered by workers in so many jobs.

I appeal to members' humanity. We are not talking about a huge amount of money. These insurance companies can afford to pay. I ask members to have some humanity and to do the right thing. The harshness displayed in this place is detrimental to us all. In the wash-up of life there are times when we should do the right thing by people who have suffered from simply doing their job. They have suffered at work and they should be compensated, and compensated fairly. I commend these amendments.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [6.31 p.m.]: The Government does not support or accept these amendments. They would provide that the caps on insurance policies held by employers over each of the years of cover for a worker could be added together to provide a cumulative cover. That is contrary to the reasoning of a majority of the judges of the Court of Appeal in the Orica case and to the position generally accepted by employers and the industry. The Chief Justice found in the Orica case that liability under the Act for an injury flows from the last injury and occurs at the time of that injury. The employer becomes liable to pay on a single injury and liability occurs only once. There is only one occasion on which the employer is liable to pay in any given claim.

I have provided extensive reasons for the Government's approach. The intention is to reinstate the rights and entitlements of workers prior to the Orica decision. That is the appropriate action for the Government to take and for the Parliament to support. We should reinstate the legislative entitlements and rights to compensation that workers had at that time. The Greens amendments go well outside the scope of Orica and would have a number of adverse effects. I will not go into them in detail, but the member should rest assured that the majority of members are aware of their responsibilities in relation to victims of asbestos-related illnesses. I am getting a little irritated by the level of self-righteousness displayed.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [6.33 p.m.]: The Opposition will not support these amendments. I need to put an observation on the record given the passionate plea from the Hon. Lee Rhiannon. I cast my mind back to the debate on workers compensation when the Opposition put forward what it believed to be a reasonable amendment relating to larger employers, such as Orica, that qualified as self-insurers. The Minister is trying to ascertain whether Orica is a self-insurer. The Opposition proposed that self-insurers and injured workers—the very same injured workers to whom the honourable member referred—should have the right to re-instate lump sum payments. Employers and injured workers would have been able to

negotiate an outcome. It is worthwhile noting that members of the crossbench, including the Hon. Lee Rhiannon and her Greens colleagues, voted against that very reasonable amendment. When she talks about doing the right thing by workers, she should remember that. The Opposition's amendment would have given injured workers an option that both they and their employers wanted to be available.

Amendments negatived.

Schedule 1 agreed to.

Schedules 2 to 4 agreed to.

Title agreed to.

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

CRIMINAL PROCEDURE AMENDMENT (SEXUAL OFFENCE EVIDENCE) 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) [6.35 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The Criminal Procedure Amendment (Sexual Offence Evidence) Bill proposes amendments to the Criminal Procedure Act 1986 to ensure that victims of sexual assault are automatically allowed to use closed-circuit television and other alternative arrangements when giving evidence in court. A number of high-profile cases have highlighted the distress experienced by complainants giving evidence in sexual assault proceedings. It is extremely harrowing for a person to be in the same room as the accused, and to recount to the court details of what may be the most traumatic, distressing and degrading experience of their life. There is currently some discretion to allow adult complainants in sexual assault matters to give evidence by alternative means, including closed-circuit television. However, this discretion is only exercised occasionally and provides no assurance to the complainant that he or she will be in a position to rely on alternative arrangements at trial.

Providing alternative facilities for giving evidence will help reduce the potential for intimidation of the complainant by shielding him or her from direct contact with the accused, reduce the level of distress complainants experience in relating the circumstances surrounding an alleged assault, and reduce the embarrassment experienced by many complainants in having to be questioned about sexual matters in a public forum. Minimising the trauma for complainants in sexual offence proceedings will also assist in ensuring that they are able to give evidence more confidently and more effectively, allowing courts to hear the best possible evidence available. In some cases the option for a complainant to give evidence by closed-circuit television—or CCTV, as it is commonly known—may mean the difference between proceeding to trial and having to withdraw a prosecution because the complainant is not prepared to give evidence. It is also hoped that the legislation will encourage greater reporting by victims of sexual assault to the authorities, and ensure that more sex offenders are brought to justice.

These reforms deliver on the Government's election commitments to improve support for victims of sexual assault in court and prevent further victimisation of sexual assault complainants by the criminal justice system. They are also consistent with recommendations made by the New South Wales Law Reform Commission in its recent report on questioning of complainants by unrepresented accused in sexual assault trials, and a number of previous inquiries conducted by the New South Wales Bureau of Crime Statistics and Research, the New South Wales Sexual Assault Committee, the New South Wales Legislative Council Standing Committee on Social Issues, and the Australian Law Reform Commission.

Extending the availability of alternative arrangements to sexual assault complainants is also consistent with the approach taken in many other common law jurisdictions, including other States and Territories in Australia. These reforms will complement a wide range of measures the Government has already put in place to support victims of sexual assault, including significantly increasing the number of witness assistance officers available to support victims of crime, restricting cross-examination of sexual assault victims in committal proceedings, piloting a new child sexual assault jurisdiction in Sydney's west and in Dubbo and prohibiting cross-examination of victims of sexual assault by unrepresented accused persons.

The amendments proposed in this bill amend the Criminal Procedure Act 1986 to provide adult victims of sexual assault with similar protections to those already accorded to certain child witnesses under part 4 of the Evidence (Children) Act 1997. The bill amends the Criminal Procedure Act 1986 by inserting a new section 294B into part 5 of chapter 6 of the Act, which applies to evidence in sexual offence proceedings. Proposed section 294B will create a presumption that a complainant who gives evidence in sexual assault proceedings can use alternative arrangements to give evidence unless the court orders otherwise. A sexual offence is defined broadly in proposed section 294B (11) to ensure that complainants in sexual offence proceedings are afforded the protections provided by the legislation wherever possible.

The options available to the complainant under these reforms will include, as a first preference, the option to give evidence from a place outside the courtroom, which is deemed by the legislation to be a part of the court, using CCTV or other similar technology. CCTV and other similar technology such as video conferencing will allow a witness to give evidence from a remote location, usually a room within the court precincts, which is equipped with the appropriate technology. The evidence is transmitted to the courtroom from the remote site, so the court can see and hear the witness. Alternatively, where the relevant technology is not available, the complainant will have the option to use screens or planned seating arrangements to restrict contact, including visual contact, with the accused and any other person or persons who might, for example, intimidate the complainant in giving his or her evidence.

The complainant will also have the option of choosing a person to sit nearby while he or she is giving evidence for the purpose of providing emotional support. The option of having a support person will be available to the complainant regardless of whether he or she gives evidence using other alternative measures. The process of empowering complainants is about choice and it is important to recognise that some complainants may prefer to give evidence and face their attackers in court. Accordingly, these reforms give complainants the choice to access a variety of alternative measures as well as the option to give their evidence in open court. Under proposed section 294B (5) the court retains a discretion to order that alternative arrangements such as CCTV not be used in a particular case.

However, subsection (6) makes it clear that the court can only make such an order when it is satisfied that there are special reasons in the interests of justice why the complainant should not have access to CCTV facilities. This limitation on the court's discretion will ensure that a defence argument of disadvantage to the accused will not generally be sufficient to overturn the presumption that the victim is entitled to choose to use alternative means to give evidence. This limitation is similar to the limitation imposed by section 93 of the Criminal Procedure Act 1986 on the discretion of a magistrate to require a victim of an offence involving violence to give evidence at committal.

The bill will commence on assent, with the provisions extending to evidence given in proceedings that may have commenced before implementation of the new provisions. This will ensure that complainants who are currently scheduled to give evidence in a retrial will still be able to benefit from these reforms. These new provisions will give sexual assault victims more options. They will have the choice to give evidence by a variety of means, in whichever way they feel is most likely to empower them as individuals. That may well be by giving evidence through a CCTV link to the court, but a victim could equally decide to give evidence in court with the support of a close family friend.

We want to ensure that victims of sexual assault are given every opportunity to present their evidence clearly and calmly. This legislation is a significant step forward in achieving that aim. I commend the bill to the House.

The Hon. GREG PEARCE [6.37 p.m.]: This bill is intended to further protect complainants in sexual offence proceedings, and the Opposition supports it. The common law generally requires that a witness be physically present in the courtroom and be in the presence of the accused at the time of giving testimony, although the court also has the power to make alternative arrangements for the giving of evidence. This bill will insert a new provision in the Criminal Procedure Act that will apply to evidence given in sexual offence proceedings. The proposed section will ensure that victims of sexual assault are given access to closed-circuit television [CCTV] and other alternative arrangements, such as the use of screens and seating arrangements to restrict contact when a complainant in sexual offence proceedings gives evidence. A complainant will also be entitled to choose a person to be nearby to provide emotional support while he or she is giving evidence. The complainant will also retain the option of giving evidence in open court.

The bill retains the court's discretion to order that CCTV or alternative arrangements not be used if there are special reasons in the interests of justice that the complainant should not have access to such facilities. When CCTV or other arrangements are used, a judge must inform the jury that it is standard procedure and must warn the jury not to draw any inferences adverse to the accused or give the evidence any greater or lesser weight because it is being given in that way. The new provisions contained in the bill will extend to evidence given in proceedings instituted before their commencement, including proceedings that have been partly heard or if a retrial has been ordered. For instance, these new arrangements will be available to the victim in the retrial of the gang rape leader, Bilal Skaf. Obviously that case was one of the catalysts for the introduction of this bill.

The bill gives effect to recommendation No. 10 of the New South Wales Law Reform Commission report entitled "Questioning of Complainants by Unrepresented Accused in Sexual Offence Trials", dated June 2003. Similar arrangements are already available to child witnesses in sexual assault proceedings under the Evidence (Children) Act. When the Bilal Skaf retrial was announced on 6 May 2004 the Leader of the Opposition and the shadow Attorney General announced that "the Coalition will give bipartisan support to any legislation that will help minimise trauma [to the victim] in this case". At that time the Leader of the Opposition and the shadow Attorney General also made genuine suggestions that the review should go further.

The shadow Attorney General indicated in the other place that the Opposition believed what should be tested was the proposition that when the evidence of a victim is found by the appeal court not to be in question, the trial evidence should be accepted at a retrial. The shadow Attorney General went on to suggest, in good faith, that legislation should be introduced to give effect to that. It was unfortunate that the Director of Public Prosecutions intervened in the matter in a way that I believe to be inappropriate.

I ask the Minister to address in his reply the fact that the Legislative Review Committee did not have an opportunity to review the legislation. The Attorney General in his second reading speech, which was delivered some time ago, indicated that the committee would not have the opportunity to review the bill because of the need to expedite it to ensure its timely commencement. As we know, the bill has not been expedited very much. Perhaps the Minister will address that issue in his reply. With the exception of the concerns I have raised, the Opposition supports the bill, as it supports any measures that are sensibly drafted to protect complainants in sexual offences proceedings.

The Hon. CATHERINE CUSACK [6.41 p.m.]: The Criminal Procedure Amendment (Sexual Offence Evidence) Bill provides for the giving of evidence by closed-circuit television, or the use of screens or other means, to victims giving evidence in sexual offences proceedings. As the shadow Minister for Women, I welcome these changes. It is impossible for those of us who have not been victims to comprehend the courage of victims who participate in court proceedings and whose evidence is vital to secure convictions in sexual assault cases.

For many of these brave women, nothing can undo the humiliation and damage perpetrated against them. They give evidence because our society asks for their help, to secure justice, to prevent further offending, to show that our justice system is credible, and to thus deter other offenders. I therefore welcome this initiative as a small recognition of the discomfort and fear that many victims suffer when required to confront their attacker in court. In addition to providing some small relief, these measures will hopefully make it easier for women to come forward, and thus strengthen the hand of justice in fighting this horrific and degrading form of crime.

I wish to speak briefly on two issues. The first is the need to ensure that courts, including country courts, are equipped not only with the power but also the means to give effect to these provisions. Even though we have laws to allow videoconferencing of court appearances, very few country courts—that is, the courts that would benefit most—have the necessary equipment. I realise there are reasons why many initiatives to improve our court system are piloted in Sydney, but country courts are too often left out of the whizzbang announcements. Closed-circuit televisions should be installed in all country courts. In country areas communities are relatively smaller and, therefore, victims may be even more challenged by the giving of evidence.

Secondly, I raise the additional needs of victims outside the courtroom, but inside the courthouse—an issue drawn to my attention by Zonta in Lismore. Lismore court staff contacted Zonta to seek its help in providing a women's room in the waiting area of the courthouse to ensure privacy for female victims when waiting, often with small children, to give evidence. The purpose of the women's room was to ensure that female victims did not have to sit for hours in the general waiting room while being eyed off, or even verbally abused, by their alleged offenders.

Zonta in Lismore assisted by refurbishing a room in the courthouse that had been identified by staff as suitable. Female victims using the room have a vastly increased sense of safety and security, and I congratulate Zonta and Lismore court staff on achieving this initiative. I understand that Zonta branches around New South Wales, including at Hornsby, have undertaken similar projects. All Zonta branches deserve our thanks, but it should not all be left to charity. I call on the Attorney General to take up this local initiative in the following three ways. First, the Government should update standards and specifications for the design of courthouses so that all new or refurbished buildings will be required to have a built-in, secure waiting area that will be accessible for women and children who are witnesses against alleged perpetrators of violence or other assault. Ideally, these rooms would have separate access to lavatory facilities, and running water for tea and coffee amenities. Second, the Government should undertake a review of all existing courthouses to identify the potential to create a separate waiting area at little or no cost. Where this is possible, the Government should move to immediately create the new rooms. Third, where courthouses lack the potential for simple conversion of a separate waiting room area, this should be noted and considered as a priority for future capital works programs. I urge the Government to adopt these initiatives.

Reverend the Hon. FRED NILE [6.45 p.m.]: The Christian Democratic Party is pleased to support the Criminal Procedure Amendment (Sexual Offence Evidence) Bill. We thank the Government for being so prompt in taking action with the legislation in view of the matters that have been in the public arena. The bill amends the Criminal Procedure Act 1986 to make specific provisions similar to those available to children under part 4 of the Evidence of Children Act 1997 for alternative arrangements for the giving of evidence via closed-circuit television and the use of screens and other means to be available to complainants giving evidence in sexual offence proceedings.

In controversial cases the alleged rapist wants to question the victim. In some of these situations, alleged rapists have not only shown a belligerent attitude towards the victim but have even made strong signs and remarks in the court concerning the victim. In other words, there was a lot of aggression. A victim of sexual assault should not be subjected to verbal rape, so to speak, by the alleged rapist. Even though, as we know, there has always been a very powerful right of cross-examination as a basic right of the accused, my interpretation of that is cross-examination by a lawyer, not by the alleged rapist. We therefore support this change. In its report the Law Reform Commission said that "the first and overwhelming element of the public interest in the administration of justice is that the accused is fairly tried". However, the commission went on to say that that is not the only factor to be considered. The Law Reform Commission also said:

Without these protections for witnesses, the court would be an instrument of injustice rather than an instrument of justice.

The bill is designed to ensure that the court is the court of justice rather than injustice, and we are pleased to support it.

The Hon. ROBYN PARKER [6.48 p.m.]: I support the Criminal Procedure Amendment (Sexual Offence Evidence) Bill, which is well overdue. We must take measures to support victims of alleged sexual assault. We really do not know how many women in Australia are sexually assaulted because as many as 90 per cent of such women fail to report the offence. Many women cannot bring themselves to tell even close friends, lovers, husbands or mothers, let alone the police.

On behalf of the women who do report these crimes, as legislators we have a responsibility to ensure that the process at least attempts to recognise their considerable bravery, and attempts to protect their dignity—dignity that has already been violated. That is what this legislation seeks, in part, to do. It does not go far enough but it is one small step to assist victims of sexual assault, and I hold some hope that these changes to the presentation of evidence will encourage more women to come forward. I note also at the outset that sexual assault is not a crime perpetrated only against women, but for the purposes of my discussion today I will refer to women in the main. I suspect the numbers of unreported cases of sexual assault against men would be quite high, but I do not have access to any sorts of figures or estimations on the number of those cases.

From the outset, the suspicion and hostility confronting a victim of sexual assault is unparalleled among other victims of violent crimes. We encourage people to report sexual assault but all too often the victims come back saying, "I feel like I've been raped again". After the trauma of being denied control during the assault, they are once again rendered powerless in the lengthy and highly stressful process, which culminates when and if they go to court. After all, it is not their decision: the State decides whether there is a case fit for trial.

The laws on sexual assault are restricted by the attitudes of those who enforce them, by the police, by the judicial system and by every member of the community. Until women can be assured of compassionate and competent representation during every step of the legal process, no matter where they may take place, we cannot expect women in large numbers to come forward. Sexual violence against women is one of the most underreported crimes, and is also a crime with the lowest conviction rates. According to the Australian Bureau of Statistics, 17,850 sexual assaults were reported in Australia during 2002. Yet this reveals only part of the picture. A 2003 Australian Bureau of Statistics information paper, "Sexual Assault Information Development Framework", noted:

Many incidents of sexual assault are not reported to the Police so neither the total number of victims nor the total number of perpetrators are captured in crime statistics.

The Centre Against Sexual Assault, a national organisation supporting victims, suggests that often victims do not report to the police due to a perceived unlevel playing field of the legal system. The charge of sexual assault essentially requires that the victim prove sexual intercourse occurred and that the alleged rapist knew that the victim, or survivor, did not consent to this. These requirements are highly dubious, as there are many reasons why they may be difficult to fulfil when a rape has occurred. It must also be proved that the accused was aware that it was non-consensual at the time. The onus is on the victim to demonstrate that the accused did not genuinely believe that they had consented.

In my view, sexual assault law is weighted against the victim. Victims can be classified as unreliable if they delay in making a complaint, or if there is a lack of corroborative evidence, such as forensic evidence, which must be collected within 48 hours of the attack. Such evidence may not be present if the victim has bathed, gone to the toilet or washed her clothing after the attack. A victim may also have her sexual history

pored over by the jury. This assumes that a victim's history can encourage the assault. But nothing excuses sexual assault, and no woman is to blame for her attack. If an assailant held someone at knife point, asked them for their wallet, and they complied, there is no question that a crime was committed. They would not be asked if they consented. They would not be asked if they had tried to resist. Only survivors of sexual assault are asked these questions.

These are the wrong questions but they are persistently posed to rape survivors by the criminal justice system. After a sexual assault, too many women will still stay silent and when they do tell, too often the system breaks down and fails to find them justice. As a 19-year-old victim of sexual assault I was one of those silent majority of women who failed to report. Violated in the worst kind of way I remember many thoughts randomly circling my panicked mind as I tried to make some sense of what had happened. Should I go to the police? Of course I should have. Would I be believed if I had? I doubted it. Did I have the courage to go to court? Certainly not. Had I brought this upon myself? Had I encouraged the perpetrator? Who should I tell? How would my parents cope with this knowledge?

All of those thoughts occurred to me, but as a 19-year-old girl living in a student town a long way from family and friends, I was ashamed to talk with anyone. If I had been the woman I am today I would have certainly reported to the police. I may not be the woman I am today if this crime had not occurred. Why did I not report the crime? There was plenty of evidence. There were scratches, bruises and all sorts of other evidence. There were no doubt fingerprints, and maybe someone had heard my screams, although no-one came forward. Cowards choose their opportunities. Instead of reporting, of taking the courageous step, I took other steps to try to take control. I took the steps that women classically take. They take these steps because the thought of going through a judicial process is far more frightening; it is like being raped over again.

In my mind I was taking control, convincing myself that this would not get the better of me. I threw my clothes and bedclothes in the bin. I showered for hours. I did not eat properly for months to follow. I wore clothes that covered me from neck to toe, even on hot days, and I cried myself to sleep night after night after night after night. I went to the hardware store and bought a hammer and nails and nailed my bedroom windows closed. Every time I hammered a nail in I thought I was taking control, because that is how the perpetrator took control of me. I was taking these steps for my own sanity. From time to time my path would cross with that of the perpetrator, who lived nearby. He would taunt me, he would laugh at me, and he would threaten me.

This is a familiar story to lots of women out there. The horror still revisits me from time to time, but what also revisits me is that I did not report this crime, that I did not have the courage. Now as someone who has an influence over legislation, I have an opportunity to ensure that conditions are better for those victims of sexual abuse who do report. I have the ability to influence others to support this legislation, and to go further than legislation—to encourage women to come forward in an environment that gives them some dignity, that gives them some protection. In this society, although change is occurring slowly, the mass media and advertising machine still create a social climate of sexual violence and harassment by portraying women as sex objects.

I applaud the current campaign by the Howard Federal Government to highlight violence against women because, without massive educational campaigns, sexual assault against women will continue at an alarmingly high rate. A crucial part of changing this situation will be giving a voice to those victims of sexual assault who remain silent. There have been some very high profile cases recently where women have been brave enough to come forward and appropriate charges have been brought against the perpetrators. I applaud the courage of those women. I am horrified that in some cases a subsequent retrial means that, under our current system, they have to suffer through the ordeal again.

Those women who do take the steps required to bring the perpetrators of sexual assault to face the justice system need to be supported in every way. We need to put in place measures so that those who report sexual assault do not feel they have been raped all over again. Quotes such as this from one victim should never occur. She said:

The court process made me feel raped all over again. It took me longer to get over the court experience than the actual rape. I was treated as a criminal. There is no difference between being raped and giving evidence as a key witness at the trial of your alleged rapist, except that this time it happens in front of a crowd.

In a court case currently the victim must relate the explicit and detailed minutiae of sexual acts. There is even greater stress and embarrassment attached when the acts being described are associated with revulsion, humiliation and shame.

In court the trial amounts to a gruelling test of the victim's credibility where the honesty and integrity of the parties are pitted in a legal struggle. The victim is compelled to answer all manner of questions, and in front of the alleged perpetrator. However, the accused has the opportunity to remain silent and many do not even testify in court at all. They have the opportunity to have family and friends present to support them. In contrast, the victim has very few rights because she is merely a witness for the prosecution. She has no choice but to testify and submit to cross-examination. She cannot instruct legal counsel and will have had little, if any, preparation for giving evidence. She may not have any knowledge of defence claims or even the prosecution evidence. She will have waited outside the courtroom until she is finally called. As she walks into the courtroom all eyes will be on her. She will see the accused again and will have to speak with him watching her.

She will probably have been told to leave the court as soon as she has given her testimony. She will go home, try to put the experience behind her and get on with her life, all the while coping with the fear of what might happen in the future if the accused is not found guilty or, if the accused goes to gaol, what might happen upon release. It is time that the law and the community recognise the nature and true repercussions of sexual assault on victims. It is time that they both respond appropriately to women who have endured a horrific violation of their very being and to ensure that the legal process is accessible and as least traumatic as possible.

We are reminded of this ordeal for victims, and it is encouraging that this legislation will introduce measures to make testifying somewhat easier for victims. Having a screen to separate the victim from the alleged perpetrator and the ability to present evidence on closed-circuit television—not having to be in a room with people possibly laughing and jeering—without having to face the ordeal again is a huge step forward and one we should support wholeheartedly. As the Hon. Catherine Cusack said, it should be available at every opportunity, at every court, not just some select courthouses.

However, I am disappointed that the Government recently dismissed a proposal by the shadow Attorney General, Andrew Tink, in the other place to have evidence videotaped and used in a retrial. We should consider that option. In my view, all evidence should be videotaped to lessen the ordeal. I understand the need to also allow procedural fairness to alleged perpetrators, but surely with today's technology we can gain outcomes whilst affording victims the same protection. This bill is about providing a way for victims to present evidence in a dignified way, and which treats victims with sensitivity and respect so that more victims might come forward, more voices might be heard and their experiences are believed. Only then will more perpetrators realise that they cannot get away with committing these sorts of crimes. There is no doubt that law does inform community attitudes. It is vital with sexual offences that the law also educates police, judges and juries and makes it dramatically and emphatically clear to men what sexual behaviour will be tolerated and what will not. Until this happens, we will continue to hear haunting accounts of the consequences of being sexually assaulted. In conclusion, I quote excerpts from a poem by Marge Piercy, 1990, as follows.

There is no difference between being raped
And being pushed down a flight of stairs.
Except that the wounds also bleed inside.

There is no difference between being raped
And going head first through a windshield
Except that afterward you are not afraid of cars
But of half of the human race.

I support the bill and look forward to further improvements to this legislation.

The Hon. Dr PETER WONG [7.04 p.m.]: This bill is welcomed, and I congratulate the Government on its introduction. As a general practitioner I have seen patients in an extreme state of distress as a result of sexual assault. Sexual assault is not without its ongoing trauma and, indeed, it is very difficult for these patients to discuss the assault even with me, their doctor, in a non-adversarial setting such as my surgery. It goes without saying that giving evidence in court, an adversarial setting by its nature with the accused present, causes such undue pressure and distress that many victims will avoid going to court as a way of avoiding the severe hardship caused by giving evidence in public. Indeed, victims are made to feel as if they are at fault and on trial. They need to be protected from further harm at all times. Direct exposure to the alleged perpetrator can only induce further trauma.

Our court system is slow for a variety of reasons, and victims of sexual assault who have the courage and can attract legal aid or afford to engage expert legal counsel to press charges against their attacker have to wait a great deal of time before their cases are brought before the court. Both the waiting for justice to occur—and sometimes there can be some doubt about whether the accused will be convicted—and then the pressure of

reliving the event in a public courtroom can lead to ongoing anxiety and depression. Victims of sexual assault suffer a great deal and often their lives are ruined by the event. There is no merit in making victims suffer any more than they already have. It will not assist them in any capacity to be assailed with threatening looks and bullying gestures by the defendant or members of his family and friends who may be present at the court for the hearing.

The Minister's second reading speech recognises the fact that restricting contact, including eye contact, can limit intimidation of the victim by the alleged perpetrator. Anything we can do to make the justice process more just and compassionate for the victim is, indeed, good in law. It is very important to bring the perpetrator to justice. It goes without saying that we should support the introduction of closed-circuit television as a measure that provides victims with a way of presenting their evidence—without them having to undergo further humiliation in a public court—in order that the perpetrator may be brought to justice. The provision of closed-circuit television affords victims at least some measure of privacy and protection—some distance from the alleged perpetrator. It provides some measure of control in a situation where control is lacking and their lives are now chaotic. The experience impinges on their freedom, safety and innocence; it invades them physically, mentally and emotionally.

Although we acknowledge that no law will ever restore victims to their previous mental, emotional and physical state, we must also acknowledge that victims are changed forever by the assault. Although the conviction of a perpetrator will not diminish the mental and emotional anguish experienced by victims, we can at least make the courtroom more sensitive to their needs and provide a setting whereby women and victims of sexual assault feel that they can come to court and press charges without having to face their attacker, thus experiencing further humiliation and distress. Victims with matters awaiting retrial will be able to avail themselves of the benefits of this legislation on assent. The bill includes provisions that extend to evidence given in proceedings that commenced before implementation of the new provisions. It provides victims with options for support and ultimately empowers them in a way that they have not been empowered in the past.

Ms LEE RHIANNON [7.08 p.m.]: The Greens support this bill because any move that reduces the trauma and stress for victims of sexual assault is clearly positive. The Greens will move amendments in Committee because of concerns that some aspects of the bill may weaken the current legislation. Many victims of sexual assault have said that having to face their attacker once again in court is like having to relive the abuse. The Greens support the Government's move to legislate to ease the trauma experienced by victims of sexual assault during the court process, and this bill is a step in the right direction.

Both the rate and the reporting of sexual assault upon women have increased in the past 10 years. It is impossible to know whether that is because of an increased willingness to report to police or because of an overall increase in the rate of sexual violence towards women. Either way, the alarmingly high rates of sexual violence towards women is totally unacceptable and a blight on communities everywhere, as is the appallingly low rates of conviction for perpetrators of sexual violence. An analysis of data collected by the Australian Bureau of Statistics has revealed that within 30 days of an investigation being launched, 42.2 per cent of assault cases and 62.7 per cent of sexual assault cases remained unfinalised. Action was taken against 45 per cent of offenders in assault cases, and only 19.2 per cent of offenders in sexual assault cases. Yet statistics prove that much intimate sexual violence remains invisible and unreported.

The 1996 Women's Safety Survey found that: only one out of 10 victims of sexual assault ever reported the assault to the police; less than a quarter of women are sexually assaulted by strangers; three-quarters of women are assaulted by someone known to them, often a family member; and only approximately 5 per cent of women who are sexually assaulted by their current partner report it to police. That would suggest that what is needed is a vast shift in the way we are educating our young boys and girls, and a government that is brave enough to be critical of some of the role models that our media and broader society are providing them. This issue has recently been the subject of considerable debate. Unfortunately, one of the main messages to come out of the allegations of gang-rape against the Canterbury Bulldogs was for women not to bother reporting sexual assault. I hate to think what some of the messages were for boys and men, from not only this incident, but from the many incidents of alleged sexual assault that are plaguing some of the sporting role models in this country.

This bill does nothing to educate boys and girls and men and women about the complexities of sexual relationships and of sex and gender roles. Many may argue that that is not the purpose of this bill, but surely the Government must bear some responsibility for the fact that sexual assault rates are not declining. It must do more to ensure that the education systems in New South Wales prioritise teaching young boys to respect women and girls. Sadly, this Government's commitment to women and girls is anything but encouraging. This

Government has taken the axe to many programs and services as well as policy and research into areas that impact heavily on women and girls. The Government has abolished the Department of Women entirely, yet the reaction from most circles will no doubt be barely a whimper. This cut has come on top of a litany of Government attacks on government bodies and agencies whose roles were to provide support and programs as well as policy advice and research into issues affecting women and girls.

The Anti-Discrimination Board has had more than half of its staffing and budget cut. The Women's Equity Bureau of the Office of Industrial Relations has lost half its staff and budget, which means the effective dissolution of the Government's Work and Family Task Force. The Department of Education and Training Gender Equity Unit has lost staff. It would be wonderful if all those cuts were happening because things were finally equal between men and women and boys and girls, yet that could not be further from the truth. I strongly suggest that inequality be relevant to our debate on sexual assault. For the third consecutive year now the pay gap between men and women in the public sector has increased. This means that women are earning less than 70 per cent of the average weekly earnings of men. Inequality leads to low self-esteem and disrespect between the sexes.

A recent Amnesty International report reveals that one in four women will be the victim of domestic violence. The rate and number of reported sexual assaults upon women have been steadily rising in Australia since 1997. One would think that all the statistics on the rate of violence against women would send an urgent message to both State and Federal governments to drastically boost funding to services and programs that assist women and children and aim to combat violence. Yet we continue to see budget cuts that will have direct impacts on the lives of many women and their children. This Government must reverse this trend and boost funding for programs and agencies that work to improve the status of women. This bill is a small step that may see a few more women take the brave step of taking their attacker to court. It is a small step that may go a little way towards relieving some of the enormous emotional stress that is placed upon victims of sexual violence in the courts.

However, until the rates of conviction increase and victims of sexual violence can see the point of going through the trauma of court, the majority of victims will still refuse to come forward. That is why we need to ensure that the law is the very best that we can have. The Greens will move an amendment to the legislation because we understand that an aspect of the bill before us could weaken the present legislation. In the Evidence (Children) Act 1997 the use of technology or other means to avoid direct contact between an accused and victim can be waived "in the interests of justice"—a key phrase. In this bill the Government proposes that this protection for women and children can also be waived for special reasons. The Greens believe that is a weakening of the bill, and I hope that in his reply the Minister explains why that wording has been used. The advice to the Greens is that it is a weakening of the legislation when we should be strengthening it.

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [7.17 p.m.], in reply: I thank honourable members for their contributions to the debate. I am pleased to note the general support for the bill. The Criminal Procedure Amendment (Sexual Offence Evidence) Bill contains amendments to the Criminal Procedure Act 1986 to ensure that victims of sexual assault are automatically allowed to use closed-circuit television under alternative arrangements when giving evidence in court. As honourable members would be aware, and as a number of speakers have mentioned in their contributions, there have been recent high-profile cases that have highlighted the distress experienced by complainants giving evidence in sexual assault proceedings.

Sexual assault complainants already face significant hurdles in reporting abuse, and the process of participating in a prosecution can often add to traumatising. Implementing practical measures to alleviate the distress of giving evidence in court proceedings will assist in ensuring complainants in sexual assault proceedings are able to give evidence more confidently and effectively, allowing the courts to have the best possible evidence that is available. A number of points made by contributors to the debate have invited a response on my behalf. The Hon. Greg Pearce indicated that the Legislation Review Committee did not have an opportunity to consider this bill, but that does not appear to be the fact from the Legislation Review Digest. In fact, the committee made a number of comments under the title "Issues Considered by the Committee", made contributions and indicated general support for the bill.

The Hon. Greg Pearce: The point was that the Attorney General introduced it and said that because it had to be expedited the committee would not have had an opportunity, and it was not expedited.

The Hon. JOHN HATZISTERGOS: The reality is that it has now taken place and the contribution is there. I am a bit surprised that the honourable member did not have the opportunity to read it and contribute to

it. The honourable member raised another point that was also made by the Hon. Robyn Parker, and reiterated by the shadow Attorney General, Andrew Tink, about the use of alternative methods of relaying evidence. As I understand it, the point made by Andrew Tink originally, when he conceded the concept of alleviating distress to victims, was that evidence that had been used at an original trial should be tendered in a subsequent trial in the event that the grounds upon which the retrial is ordered by the courts is, as in the Skaf case, something relating to misconduct on behalf of one of the jurors.

It is important to remember that when juries determine verdicts, whether it is guilt or innocence, they do not give reasons. When the matter goes to the Court of Criminal Appeal, that court focuses on the conduct of the trial and sees whether there is an aspect of the trial that could determine that the accused did not get a fair trial. However, that does not necessarily indicate the basis upon which the jury formed its view. For example, in the Skaf case the Court of Criminal Appeal determined that there was misconduct by the jury that potentially affected the conduct of that trial. To then say there was nothing that occurred in the remainder of the evidence so that the original transcripts could be tendered uncontaminated by that issue is difficult.

These are difficult concepts, but there are dynamics in trials, and we never know ultimately which factors persuade juries to convict or acquit. That is part of the criminal law. We simply accept that jurors listen to all the evidence, are guided by the judge in terms of the application of law, and come to views as to which evidence they wish to accept and which evidence they want to reject. And they are not accountable in terms of explaining exactly the basis upon which they make those decisions.

The original proposal put forward by Andrew Tink was misconceived and impractical. In reality, it would not assist in prosecuting sexual assault cases or in lessening the trauma of sexual assault complainants when they are giving evidence in court. Far from assisting complainants, many of the options proposed by Mr Tink would make it more difficult to convict offenders. Subsequently, I understand that he had a proposal to allow the videotaping of evidence and the use of video, and I will come to that in a moment. By contrast, the amendments in this bill deliver on the Government's election commitments to improve support for victims of sexual assault in court and prevent further victimisation of sexual assault complainants by the criminal justice system. They are also consistent with recommendations made by the Law Reform Commission and a number of other relevant inquiries, and with legislative provisions in other common law jurisdictions, including the States and Territories of Australia. Unlike Mr Tink's proposals, the reforms in the bill are workable and will provide relief to complainants involved in sexual assault proceedings.

I turn now to videotaping, which was raised more directly by the Hon. Robyn Parker than by the Hon. Greg Pearce. In recognition of the benefits of allowing witnesses, particularly child witnesses, to give evidence using alternative arrangements, closed-circuit television and video conferencing facilities have been made available in about 65 courthouse locations serving some 100 courtrooms throughout the State. There are many reasons to reject the proposal to video the evidence of all complainants in sexual assault trials in case there is a retrial. First, a retrial may need to canvass issues that were not addressed at first instance. For example, if a retrial is granted on the basis of evidence that was not available at the original trial, the complainant may need to be examined by the Crown in relation to the new evidence, and then be cross-examined by the defence about it.

The Hon. Greg Pearce: All of this is obvious. That is not the point.

The Hon. JOHN HATZISTERGOS: This is the point: If video recordings are to be tendered uncontaminated or without any consideration of the dynamics of the trial, these problems arise. If members opposite listen, they will see the folly of their point. Similarly, if a defendant has established that their legal representative at the original trial was incompetent, at the retrial the defendant's new representative will be entitled to cross-examine the complainant. Apart from the issues of practicalities, there is also the issue of the interests of the complainant. We should not lose sight of the fact that complainants in sexual assault cases are required to give evidence about extremely distressing and degrading experiences.

The Hon. Robyn Parker: Once is enough, surely.

The Hon. JOHN HATZISTERGOS: That is right. Giving evidence is traumatic enough for complainants without the added burden of being required to face the context of being filmed while giving that evidence. Once a video recording of evidence is in existence it opens up all kinds of possibilities as to how that evidence will be subsequently used and interpreted. For example, the use of prerecorded video evidence in a retrial will allow the defence to emphasise to the jury the complainant's body language and the negative connotations that can potentially be drawn from that. The body language of sexual assault complainants, who

are often fearful, ashamed and embarrassed, could easily be open to misconstruction. If a jury is allowed to view prerecorded video evidence in the privacy of the jury room there will be nothing to stop the jurors from repeatedly reviewing the tape and re-running certain parts of it in isolation. Factors such as body language will assume an importance far beyond what they do at present.

The evidence of complainants would be scrutinised differently to the evidence of other witnesses, including the defendant. In this way the judicial process would be contributing to the revictimisation of the complainant. It is highly likely that routine video recording of a complainant's evidence would simply lead to more appeal points, more chances for convictions to be overturned, and the likelihood that prosecutions will ultimately be abandoned. Having said that, let me now deal with something that Ms Rhiannon said, which I think she invited me to respond to now, rather than in Committee.

As honourable members would be aware, Ms Rhiannon has taken objection to use of the words "special reasons, in the interests of justice". She claims that the words "special reasons" somehow weaken the bill and cannot be allowed to stand. In fact, there is a significant body of case law on the judicial interpretation of "special reasons, in the interests of justice". It suggests that a test requiring the court to reconsider special reasons will ensure that the defence arguments of disadvantage to the accused will generally not be sufficient to overturn the presumption in favour of the alternative arrangements for the victim. In other words, the test proposed in the Government's bill is stronger than the simple "interests of justice" formula, and will ensure that access to alternative arrangements will be denied by the courts in only a minority of cases. The Hon. Catherine Cusack advocated for newer and refurbished court facilities to provide specifically for the needs of victims of sexual assault. I understand that these facilities exist in a number of courts around the State.

The Hon. Catherine Cusack: Yes. I suggested a way in which it could be expanded to all courts.

The Hon. JOHN HATZISTERGOS: I accept that in some courtrooms, particularly older ones that have heritage requirements, there are difficulties in terms of space requirements and heritage values that make it difficult to incorporate some of these facilities. But the reforms in this bill are complemented by a wide range of measures that the Government has already put in place to support victims of sexual assault, including increasing the number of assistance officers available to support victims of crime, restricting cross-examination in committal proceedings, limiting cross-examination regarding prior sexual experience, trialling a new child sexual assault jurisdiction in Sydney's west and Dubbo, and prohibiting the cross-examination of victims by unrepresented accused persons. So it is not as if the Government has sat on its hands on this issue. I know that there are such facilities, particularly for the victims of domestic violence, in a number of courthouses.

The Hon. Catherine Cusack: I congratulated the courthouses where it has happened. I would be happy if the Minister could look at it.

The Hon. JOHN HATZISTERGOS: It is something the Government constantly has in mind when it is looking at these matters. I thank honourable members for their contributions. It is not an easy issue. The Government has attempted to meet the challenges set by the outcome of recent cases, which have attracted some publicity, through this response in a measured way that properly addresses the concerns that victims rightly have. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 3 agreed to.

Ms LEE RHIANNON [7.31 p.m.]: The Greens propose that clause 4 not be agreed to. The clause amends section 18 of the Evidence (Children) Act 1997, as set out in schedule 2. As I said in my second reading speech, and as the Minister also said, the key words in new subsection (4) of section 18 are "special reasons, in the interests of justice". The words "special reasons" are being inserted. The Minister referred to case law and argued that the addition of those two words will make the provision stronger than having just the phrase "in the interests of justice". The advice given to the Greens is that the addition of those two words weakens the protection to victims given by the current provision. Case law on this point is quite weak, and that adds to the concerns of the Greens about the insertion of the words "special reasons". It is for that reason the Greens oppose

clause 4. When the Committee is dealing with Green amendments 1 and following, I will go into detail because I have some examples of case law on this point.

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [7.32 p.m.]: For the reasons that I have given, the Government will oppose all three Greens amendments.

Clause 4 agreed to.

Ms LEE RHIANNON [7.33 p.m.]: I move Greens amendment No. 1:

Page 4, schedule 1, proposed section 294B (6), lines 12 and 13. Omit "there are special reasons, in the interests of justice,". Insert instead "it is in the interests of justice".

The Greens amendment has a simple purpose. In the Evidence (Children) Act 1997 the use of technology, or other means, to avoid direct contact between accused and victim can be waived "in the interests of justice". The key phrase here is "in the interests of justice". The Greens understand from people who work in that field that the existing provision is working quite well. By this bill the Government proposes that this protection for women and children can also be waived "for special reasons". We are given no indication as to what those special reasons might be, or why this new phrase is needed.

I am mindful of the arguments that the Minister put in his second reading speech. However, those arguments were not strong. The current wording in the Evidence (Children) Act—that is, the phrase "in the interests of justice"—is working well, and we therefore argue there is no need to amplify it. Indeed, we say the phrase "special reasons" is so vague and ill-defined that it could actually be used by defence counsel to deny protection to victims, forcing them into court with the accused. That is the concern of the Greens about this new provision. Any use of the term "special reasons" can only be the source of confusion for parties in criminal proceedings and for the court.

The bill's explanatory notes suggest that confusion can be avoided by reference to section 93 of the Criminal Procedure Act. Section 93 provides that complainants need not give oral evidence in committal proceedings unless there are "special reasons" why that witness should give oral evidence. There is some case law on this section—and its predecessor, section 48E—where judges have attempted to set out the meaning of "special reasons". This case law is not instructive, and serves only to illustrate that the term has not been defined and that each case will be different. In *O'Hare v The Director of Public Prosecutions* (2000) NSWSC 430, it was said:

Special reasons should not be confined by precise legal definition, are not a closed category, and should not be approached in an unduly restricted way.

This case law on the meaning of "special reasons", in addition to not being instructive, cannot be transplanted into this bill. The phrase was intended to operate in the context of reasons why a complainant may be required to provide oral evidence at committal, as opposed to whether a complainant is not allowed to give evidence by closed-circuit television or alternative arrangements at a trial. I would argue that that is not relevant. To attempt to use the phrase "special reasons" as proposed by the bill is to translate it into a context for which it was not intended. The Greens amendments will simply ensure that the bill is consistent with the Evidence (Children) Act by deleting the phrase "special reasons" wherever it appears. Given the previous vote and the comments made by the Minister, as well as the position that I understand will be adopted by the Opposition, it seems that the amendment will be defeated. However, I urge the Minister, who has a habit of not taking comments that we make very seriously—

The Hon. John Hatzistergos: That is not true.

Ms LEE RHIANNON: I acknowledge the Minister's interjection as it indicates at least a positive attitude to taking these comments seriously. I ask the Minister to take into account the comments that we have made. They have been carefully considered by my office, and they result from information supplied to us by people working in this field who are worried about the phraseology that will be contained in the provision when the bill becomes law. We know that many bills that go through this Chamber have to be tweaked here and there at some later stage. This may be one such provision that will require review at some future date. I ask the Minister to consider this amendment carefully.

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [7.37 p.m.]: I accept that Ms Lee Rhiannon is well intentioned in moving this amendment, but I believe there is a misconception on the part of the honourable member about what the phrase actually means. It is not a disjunctive phrase; it is all part of the one phrase "special reasons, in the interests of justice". I think the Greens are labouring under the misconception that "special reasons" is an alternative to "interests of justice". It is not. They are part of one phrase. There have to be "special reasons, in the interests of justice".

This is not an ill-defined phrase that could be used by defence counsel to deny protection for victims, forcing them into court with the accused. In fact, it provides a stricter test. The phrase "interests of justice" provides a weaker test than "special reasons, in the interests of justice". So, contrary to what the honourable member seeks to do by moving the amendment, her amendment would weaken the protection that the bill will give to victims of sexual assault.

As I have said, I freely recognise that Ms Lee Rhiannon is well intentioned in moving the amendment, but I think the honourable member, or her advisers, is misdirected because it would weaken the safeguard. What the Government is trying to do by this bill is say: We recognise that there may be some impact in the interests of justice by the fact that an accused person will not be in the same courtroom as a victim of sexual assault who is giving evidence by closed-circuit television. We recognise that there are differences in approach. Defence counsel might argue that it is in the interests of justice that the victim be in the courtroom. We are saying that is not enough. We say to justify that protection being taken away there has to be a special reason in the interests of justice, something over and above whatever disadvantage may flow from the simple fact that a person is in a separate facility. If honourable members consider it in that context they will see what the Government has put forward is a reasonable measure.

The Hon. Dr PETER WONG [7.40 p.m.]: I am also uncomfortable after reading the Greens amendment. I thank my adviser, Margherita Tracanelli, for seeking independent legal advice on this matter. I believe the interpretation of legislation goes to the purposive approach, and one must look to the purpose of the Act to define its meaning, and one must give it the ordinary general meaning of the words. The advice is that "special reasons" is a harder and higher test. That phrase appears in section 19 of the Crimes (Local Courts Appeals and Review) Act 2001 and in section 93 of the Crimes (Procedure) Act, and comes from the Justices Act of 1902. Magistrates will adopt a purposive approach and look to extrinsic materials such as the second reading speech and other relevant materials when interpreting the Act. As it is a higher and harder test, it closes the loophole, as mentioned by the Minister.

Amendment negatived.

Schedule 1 agreed to.

Ms LEE RHIANNON [7.42 p.m.]: I move the Greens amendment No. 2:

No. 2 Page 6, schedule 2, lines 1-9. Omit all words on those lines.

The reasons for this amendment are the same as I have outlined previously.

Amendment negatived.

Schedule 2 agreed to.

Title agreed to.

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

CHILD PROTECTION (OFFENDERS PROHIBITION ORDERS) BILL

Second Reading

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [7.44 p.m.]: I move:

That this bill be now read a second time.

I refer honourable members to the second reading speech on the Child Protection (Offenders Prohibition Orders) Bill delivered in the Legislative Assembly on 3 June and recorded on page 9637 of *Hansard*.

The Hon. GREG PEARCE [7.44 p.m.]: The Opposition supports the Child Protection (Offenders Prohibition Orders) Bill, which provides for child protection prohibition orders to be made against certain offenders who pose a risk to the lives or sexual safety of children, to provide for the enforcement of such orders, and to enact other consequential provisions, including amendments to other legislation. I also refer to the debate in the other place and reiterate that the Opposition has proposed that child protection measures be extended beyond what is in this bill. It has even proposed that there be further extensions, with the creation of exclusion zones. Having said those few words and referring to the comprehensive debate in the other place, I reiterate that the Opposition supports the bill.

Reverend the Hon. FRED NILE [7.45 p.m.]: The Christian Democratic Party supports the Child Protection (Offenders Prohibition Orders) Bill. The bill has been prepared by collaboration between the Attorney General and Police portfolios and will be jointly administered by the Minister for Police and the Attorney General. The bill will enable police to apply to a Local Court to prohibit a registrable person under the Child Protection (Offenders Registration) Act from engaging in specific behaviour when, on the balance of probabilities, there is a reasonable cause to believe that the person poses a risk to the sexual safety or the life of a child, or to children generally. Over the years many of us have been involved in inquiries into paedophilia, into individuals who sexually abuse children. It appears to be almost impossible to reform these persons, so they continue to be a threat to children. Under the bill, prohibitions can be imposed on where these persons can go, and so on, particularly where they may have access to children or put children at risk. We are pleased to support this bill.

The Hon. CATHERINE CUSACK [7.47 p.m.]: I comment on aspects of the Child Protection (Offenders Prohibition Orders) Bill in relation to juvenile offenders. The bill makes several provisions in relation to what is called a young registrable person, who is defined as being a registrable person under the age of 18 years. In such cases, two-year prohibition orders can be applied for as opposed to five years for an adult registrable person. Several other safeguards are in place, including limits on who can apply—at this time the bill envisages only the commander of the Child Protection and Sex Crimes Squad will be delegated this power. The court must be satisfied that all other appropriate methods of managing behaviour have been considered prior to the order being sought, and the court must consider the educational needs of the young registrable person in determining whether to make an order.

Because sex charges are indictable offences, a very large section of the juvenile detention centre population is on remand for sex offences. For example, Reiby Detention Centre for children aged from 10 to 15 years is understood at times to have up to half its population on remand or on control orders for sex offences. Many but not all of these boys have personal histories of sex abuse. Anecdotally, it seems to me that younger boys are more likely to have offended opportunistically against younger siblings, neighbours, et cetera. Older boys, who are generally held at Kariong, are more likely to have progressed to more predatory crimes of rape with assault and gang-rape. I note that Reiby Detention Centre adjoins a school, albeit separated by a high security fence. Sex offenders are notorious for denying their crimes and cleverly evading responsibility, and are thus less likely to be caught and convicted. Juveniles are no different, they are simply at an earlier stage of offending. Their families are often the first to see such behaviour but are unable to access assistance unless the young person is convicted. On this basis, they are reluctant to come forward.

As a result, I believe a high percentage of juvenile sex offenders are escaping conviction, but on the other hand they are equally unable to receive help. Their offending becomes more serious and in some cases more sadistic. For example, if a child is notified to the Department of Community Services [DOCS] as being abused by a sibling, DOCS will arrange for the removal and counselling of the child victim, but it has no mandate or resources for the child perpetrator, often an older brother. No agency works with the perpetrator unless and until he is convicted, at which point Juvenile Justice will step in.

By this late stage, one or two years down the track, the family has been destroyed and the perpetrator is usually suicidal and at increased risk of re-offending. I have spoken several times about a lack of resources for juveniles who clearly need help to prevent them from re-offending, whose families beg for help but who are unable to access support until after serious crimes have been committed. It is blindingly stupid that the Government's inability to commit resources at a timely stage of offending is generating more serious crime that hurts our community and the budget, bottom line. It makes no sense at all, and it is something I will continue to complain about at every opportunity.

Second, there is the problem of alleged sex offenders on remand in juvenile justice detention centres and the protection of other detainees. Because a person is innocent until proven guilty, the Department of

Juvenile Justice is prohibited from dealing with a person's offending behaviour until after that person has been convicted. This means that sex offenders are able to access other potential victims in detention, for example Reiby Detention Centre where stroking, which is the term used for seducing young victims, is a significant issue for management. Authorities have far too limited power to address this problem. I understand about not contaminating court cases, but prohibiting certain types of activities—for example, interacting with younger or more vulnerable detainees—could protect our people in detention centres who are highly at risk. It would be consistent with a court being allowed to set bail conditions, which I would describe as a form of remand conditions.

Third, the bill provides for prohibition orders limited to two years for young registrable persons when the persons are aged under 18. However, it is not clear if this means they are under 18 at the time the order is sought, at the time the offence was committed or at the time the person was released from custody. Nor is it clear if the time for these orders can be varied by the court. Is the maximum of two years mandatory? Given that these orders are designed to protect victims, potential victims of juvenile sex offenders deserve the same protection as potential victims of adult sex offenders. I question whether, in some cases, two years is too short a time and whether this could undermine the efforts of authorities to negotiate other behaviour management plans referred to in the bill. However, it is not clear in the bill how these alternative management plans will be negotiated with the young person and whether other agencies such as the Department of Community Services are to be involved. I ask: "What does this mean in the bill?"

The fourth point is that children who have been convicted of sex offences and who are subject to these prohibition orders, particularly children in the country, have limited options. Obviously, quite young people are unable to leave the country community. There may be only one school in the community and previous victims may attend that school. To prohibit a young person from attending school, particularly an Aboriginal young person in a rural location, could undermine any prospect of rehabilitation.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [7.54 p.m.]: The Australian Democrats believe that the Child Protection (Offenders Prohibition Orders) Bill is a good preventive measure. We totally support it. It seems very sound.

The Hon. Dr PETER WONG [7.54 p.m.]: I would also like to make a brief comment. The Child Protection (Offenders Prohibition Orders) Bill is a good bill. I fully support it.

Ms LEE RHIANNON [7.54 p.m.]: The Greens do not oppose the Child Protection (Offenders Prohibition Orders) Bill, although we approach it with caution. The bill creates an instrument called a child protection prohibition order [CPPO], which will prevent certain offenders from going to certain places or associating with certain people. It is certainly a major restriction on the ordinary liberty that most people enjoy. Even the Legislation Review Committee, which is Government dominated, raised this concern. The committee said:

[The bill] differs significantly from the usual regulation of behaviour by the State in a liberal democracy, as it deprives a particular individual of certain rights and liberties on the basis of an assessment of risk of harm that that individual may perpetrate.

In other words, the bill does not punish the crime. It sets up a punishment based on the suspicion that crime may be committed. Having said that, the Legislation Review Committee noted that there were precedents for this.

The committee cited the Mental Health Act 1990 and the use of apprehended violence orders. It also noted that an offender's rights and liberties have to be weighed against the risk to children, who also have rights and liberties. It is difficult to get the balance right. The bill tries hard: it builds careful safeguards to prevent abuse of these powers. Taking out a child protection prohibition order involves an elaborate court procedure. Moreover, the onus of proof remains on the Commissioner of Police to demonstrate that the desirability of avoiding a crime outweighs the negative restriction on the person's liberty. The authority of the Commissioner of Police to seek a CPPO can be delegated only to very senior inspectors. There is a right of appeal and restrictions on the publication of the names of offenders, or potential or previous victims. That only leaves the problem of interim protection orders, which can be made without an offender's knowledge. The Greens are guided by the Legislation Review Committee's conclusion, which is as follows:

Given that the Court must arrange further hearing of the matter as soon as practicable after an IPO is made in the absence of the registrable person, the Committee does not consider that this provision trespasses unduly on personal rights and liberties.

The bill follows on from bills debated in this House in 2000 and 2001 in which both my colleague Mr Ian Cohen and I participated. At that time we said that we would like to see evidence that preventive justice actually works. We expressed our concern about the assumption in these bills that paedophiles tend to be recidivists.

The Greens are concerned that the legislation is premised on an expectation of re-offending, which can in itself cause people to commit repeat offences. We have suggested that there is a better chance of rehabilitation if the offender participates freely and fully in the community. In an earlier debate in this place both Mr Ian Cohen and I asked for the Government to provide hard evidence for its claim that fewer crimes have occurred in countries that have introduced these schemes. We have asked exactly what it is about these bills that makes children safer or rehabilitates offenders. Despite these concerns, the Greens are prepared to continue our cautious support for this scheme. But the Greens would very much like to hear from the Minister in reply to the second reading debate. We ask: Has the Government undertaken any reviews of the effectiveness of this regime? Is it working? We believe he has now had time to do that. We hope that we can get a positive, informed response. We await that response with interest.

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [7.58 p.m.], in reply: I thank honourable members for their contributions to the debate. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

SPECIAL ADJOURNMENT

Motion by the Hon. John Hatzistergos agreed to:

That this House at its rising today do adjourn until Monday 28 June 2004 at 11.00 a.m.

ADJOURNMENT

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [7.59 p.m.]: I move:

That this House do now adjourn.

GOVERNMENT ENVIRONMENTAL COMMITMENTS

Mr IAN COHEN [7.59 p.m.]: I would like to undertake a performance review of the green Premier's delivery on his green commitments. In an article in the *Sun Herald* newspaper of 23 February 2003 the Premier was in full election campaign mode. He sought to make clear his priorities for a third term in Government in a special report called "Why I should get your vote". When asked about the most pressing issues facing New South Wales today the Premier said, "Delivering jobs and a better environment." Much has been made of the self-styled green Premier and his commitments to a better environment. It is appropriate then that we take a look at his success in this quest.

In 1995 the Premier made a commitment to end broadscale land clearing. However, clearing of native vegetation continued at a staggering rate of approximately 100,000 hectares a year until last year when a week before the 2003 State election the Premier committed the Government again to a plan to end broadscale land clearing. The Native Vegetation Act 2003 is still not in force and even when it applies there will still be a whole raft of exemptions that will enable more than 70,000 hectares of land to be cleared each year. That is the equivalent of 81 suburban blocks cleared every hour. Meanwhile the clearing approval register is not public and the department is not pursuing illegal clearing. As to renewable energy and greenhouse gas abatement, the mission statement of the Sustainable Energy Development Authority [SEDA] states:

SEDA is an agency created by the New South Wales Government to reduce the level of greenhouse gas emissions in this state. SEDA accomplishes this by promoting investment in the commercialisation and use of sustainable energy technologies.

The Premier has committed his Government to reducing greenhouse gas emissions and achieving the targets set out in the Kyoto protocols. But last year he slashed SEDA's ability to achieve this goal by almost 25 per cent in the 2003-04 budget. We now find that in 2004 SEDA is no more. Legislation is now before the Parliament to dissolve SEDA. The Premier has formed the New South Wales Greenhouse Office, but it has few of the responsibilities SEDA had. The Carr Government has also failed to ensure that New South Wales is no longer a major greenhouse gas producer. New coalmines and major coal-fired power stations, such as the proposed 1,000 megawatt plant north of Mudgee, remain at the top of the Government's wish list for electricity generation in New South Wales.

The Premier, in his 2001 Action on the Environment statement, committed the Government to new national parks in the Brigalow belt south bioregion by the end of 2002. Eighteen months later we are still waiting. As to the south-east forests of New South Wales, again I draw the House's attention to the *Sun Herald* of 23 February 2003 and the special election report entitled "Why I should get your vote". When asked to name the one single achievement he would wish to be remembered for if re-elected, the Premier said, "Saving the south-east forests." The Premier wrote to me in 1995 saying he would end export woodchipping in New South Wales by the year 2000. Since 2000 more than 1.5 million tonnes of woodchips have been exported from the south-east forests. That is not sawmill waste; it is whole logs.

As to water reforms, the Carr Government's key challenge last term was to ensure that rivers received enough water to allow their survival. Despite receiving millions of dollars from the Federal Government, New South Wales rivers receive only 3 per cent of allocations for environmental flows. The Carr Government has set a dangerous precedent on water reform, ahead of a crucial meeting of State and Federal governments in Canberra tomorrow, by passing legislation late last night to entrench unsustainable extraction levels and condemning our rivers to becoming little more than drains. The Carr Government has chosen to ignore a sensible plan put forward by Victoria to establish legal water rights for the environment and redirect 20 per cent of current water allocations back to the rivers.

As to the protection of threatened species, the Threatened Species Act is all that stands between hundreds of rare species of plants and animals in New South Wales and extinction. The Carr Government has given notice that it will make far-reaching changes to this crucial piece of legislation in the spring session of Parliament. There is absolutely no doubt that its changes will increase the threats and decrease the protection afforded to the State's numerous threatened species and it is no exaggeration to say that further extinctions will occur. Among the many changes proposed, the public will lose the right to legally challenge a development approval or clearing approval. This is not only undemocratic but also a direct contradiction of Bob Carr's election commitment in 1995 to protect these third party rights. Bob the bushwalker has morphed into Bob the bush basher. The voters who trusted him will not forget his backflips on key environmental pledges.

I congratulate the Victorian Premier, Steve Bracks, on his brave and concise stand on a balanced water result. He can go with pride to the Council of Australian Governments meeting and set an example for the future in water conservation in Australia. Premier Bracks, in conjunction with the farmers and conservationists of Victoria, has done a brilliant job.

INTERNATIONAL CLEANERS DAY

The Hon. IAN WEST [8.04 p.m.]: It is easy to forget, or in many cases be ignorant of, the hard work that goes into keeping buildings such as this Parliament, schools, office towers and shopping malls presentable. Every day in the early hours cleaners toil away, mainly invisible. They get little recognition for their work in decent pay and conditions or even appreciation. I would like to thank Theresa, the woman who cleans my office every day, and all the other cleaners and maintenance staff who make this Parliament respectable. International Cleaners Day was held on 16 June. On that day the trade union that represents the majority of cleaners in the private sector—the Liquor, Hospitality and Miscellaneous Workers Union [LHMU], of which I am a proud life member—held an important peaceful protest.

The protest was against large retailers, such as Woolworths and Coles-Myer, who permit subcontracting of cleaning services to often dodgy operators that break the law by paying cash-in-hand wages well under the award rates of pay, fail to ensure a safe workplace, and do not pay employee award entitlements. Last year's International Cleaners Day in Australia focused on the poor practices of Westfield shopping malls, many of which house retail outlets such as Woolworths and Coles-Myer. All these companies deny any wrongdoing, even though they engage subcontractors that break the law. Woolworths is an Australian company with an 80-year history. However, it appears to have adopted a strategy of increasing profits by engaging the cheapest tenderers, who in turn make their profits on the backs of underpaid subbies and the non-payment of tax.

The LHMU handed out "dirty money" leaflets on International Cleaners Day and called on employers to uphold the five-point plan for making the cleaning industry a fair market. The five points are: ensure cleaners are paid award rates and conditions; protect cleaners' job security and entitlements on change of contract; support cleaners' right to join a union and bargain collectively; ban subcontracting, except for defined specialist work; and make clients take responsibility for ensuring that contractors comply with all laws and regulations, including industrial and tax laws. These are basic demands that should be part of any cleaning contract, whether it is for government offices, schools, shopping centres or any other commercial outlet.

It is a damning indictment on Woolworths that cleaners should have to make such demands for working conditions that are required under law. As a result, the LHMU is also campaigning to ensure the prosecution of contractors who pay cash in hand, fail to provide a safe and healthy workplace and fail to adhere to award wages and conditions. To give members an idea of the legal rates of pay for cleaners, part-time cleaners are paid \$15.81 per hour. To put that into perspective, 65 per cent of cleaners work part time with one-third working less than 15 hours per week between midnight and 6.00 a.m. There are more than 90,000 contract cleaners in Australia. Many are being paid as little as \$8 to \$10 per hour cash in hand by subcontractors who are engaged by large companies such as Woolworths, Westfield and Coles-Myer. Often the cleaners are women from non-English speaking backgrounds. Many are recent migrants who do not have the literacy or industrial skills to understand how inferior their conditions are within Australia's legal framework.

Companies such as Woolworths are directly benefiting from this immoral and often illegal behaviour, and they know exactly what they are doing. The reality is that these contract cleaning companies that win tenders by underquoting for major clients are unwilling or unable to regularly pay wages on time or provide the simple conditions required by law to their workers. At least in New South Wales workers have some industrial rights left and get protection from their unions through freedom of association and collective bargaining. One of the most hypocritical factors in the use of such contracts is that Woolworths and the like shift the blame for poor treatment of cleaners onto the contract companies, even though it is Woolworths that engages the contractors. I congratulate all the cleaners and the LHMU on organising and celebrating International Cleaners Day in Australia. I also trust that in New South Wales the procurement memorandum of understanding between the Labor Council and the Government is fully adhered to, especially in relation to cleaning in schools and government departments.

DEATH OF RONALD WILLSON REAGAN, A FORMER PRESIDENT OF THE UNITED STATES OF AMERICA

The Hon. DAVID CLARKE [8.09 p.m.]: The passing only a few days ago of a former President of the United States, Ronald Reagan, is an event of deep sadness to all people who truly value freedom and democracy and who oppose tyranny, the most virulent form of which in the past few decades has been international communism. I believe that the life lived by former President Reagan and his great achievements are worthy of remembrance and positive note in the *Hansard* of this Parliament. The election of Ronald Reagan as President of the United States in 1980 occurred at a time when morale in the West had reached a low watermark. The advance of communism, which by necessity could be accomplished only by violence and terror—certainly never by democratic means—appeared to be relentless, ongoing and, to many, inevitable. South Vietnam had fallen to invasion from the communist north, Fidel Castro was spreading revolution through Latin and South America, and the Soviet Union was fomenting terrorism and disruption wherever it could while maintaining its own citizens in a state of economic and social serfdom. There appeared to be a lack of effective leadership in the West, with no will to resist that state of affairs.

Certainly no resistance came from the feeble and weak presidency of Jimmy Carter, who was clearly overwhelmed by the aura of the office of president. He was incapable of providing the inspiration, determination, policies and leadership that the times required. Ronald Reagan's election as president filled that vacuum. He was the turning point. He was a pivotal and inspirational force that led a conservative renaissance within the United States and a positive change in direction for the Free World. He refused to accept that the repressive communist ideological system could permanently coexist side by side with free nations. As *Time* magazine records:

Reagan will mostly be remembered for his unyielding opposition to the Soviet Union, for his willingness to call a regime that murdered at least 40 million of its own citizens "evil".

And he set out to do something about it. Firstly, he restored the United States economically. He energised the United States economy into the greatest and longest revival in its history. He pursued the Strategic Defence Initiative, or Star Wars, the purpose of which was to render all Soviet nuclear weaponry obsolete. He actively encouraged peoples suppressed by communist regimes or threatened by such a fate to resist. And, above all, he inspired the confidence, the enthusiasm and the will not only to resist but to go on the offensive. He believed that it was a struggle that could be won, and he set out to do just that.

It was also providential that these dark times produced other leaders of courage and resolve. There was Great Britain's strong-willed Prime Minister, Margaret Thatcher, with her steely determination. There was Pope John Paul II and his strong moral leadership which inspired Christians in Soviet-controlled Europe to keep faith that their repression could, and would, be overcome. There were many others such as Lech Walesa, Vaclav

Havel, and the peoples of Poland, the Baltic States and elsewhere—people who gained inspiration from each other and all of whom in turn were inspired and took heart from the steadfastness, resolve and leadership provided to the Free World by President Ronald Reagan. He is now widely recognised as the unifying catalyst who encouraged, inspired and initiated the atmosphere and chain of events that led to the collapse of the Soviet Communist empire.

As the headline "Reagan Won the Cold War" in the *Australian* stated and as the *Economist* magazine designated him, former President Reagan was "The man who defeated Communism". What about Ronald Reagan's contemporary critics of that time? What about the smarmy, left Establishment experts who ridiculed Ronald Reagan and his views? What did they have to say? The distinguished author Dinesh D'Souza has collated some of their comments. For example, in 1982 the widely touted left liberal historian Arthur Schlesinger Jr wrote:

Those who think the Soviet Union is on the verge of economic and social collapse are wishful thinkers who are only kidding themselves.

In 1984 Harvard economist John Galbraith wrote:

That the Soviet system has made great material progress in recent years is evident both from statistics and from the general urban scene.

One sees it in the appearance of solid well-being of the people on the streets.

Partly the Russian system succeeds because, in contrast with the Western industrial economies, it makes full use of its manpower.

What planet were these academic, so-called experts living on? What geniuses for prediction this lot turned out to be! Ronald Reagan did not buy any of their drivel. He was proved right, and these gravediggers of the West were proved wrong. Tonight I believe I speak for all people who value freedom and democratic principles when I express gratitude for the life lived by Ronald Reagan, for his devotion to freedom, for his pivotal contribution to the end of the communist system, and for his leadership of the Free World at a time when circumstances needed such a man of strength.

HUTCHISON TELECOMMUNICATIONS HURSTVILLE MOBILE TELEPHONE FACILITIES

Ms SYLVIA HALE [8.13 p.m.]: Hutchison 3G plans to install mobile phone antennas at 11 Forest Road, Hurstville, which is within 300 metres of Bethany College. Members of the school community are rightly alarmed by the proposal and are doing what they can to prevent the tower from being built. It should be noted that at least 78 other schools in Sydney are adjacent to 3G phone towers. 3G technology is being introduced for wireless transmission of digital video images. 3G phone towers must be 1.5 kilometres apart, rather than 3 to 5 kilometres apart, which is the separation required by conventional phone technology. When the roll-out of 3G equipment is complete, all Sydney residents will be no further than 750 metres from a phone tower.

Australia's Telecommunications Act is skewed heavily in favour of big business. The Act allows telecommunications carriers to bypass normal planning requirements and ignore the wishes of local residents if a phone tower is deemed to be of low visual impact. In 1997, when the Howard Government drafted these laws, there were only three telecommunications carriers, but now there are approximately 80. The telecommunications companies might consider these towers to be low impact and therefore not requiring local council approval, but communities across Sydney and the world do not. Campaigns to challenge the proliferation of these towers have sprung up all over Sydney.

Community groups are not opposed to mobile phones, but they object to the reckless way in which the Federal Government has allowed the carriers to steamroll their way into local communities without adequate consultation, and in total disregard of planning laws. This is new technology. Very little research has been undertaken into its impacts on human health, particularly children's health. Mobile phone towers emit high-powered electromagnetic radiation [EMR]. As yet, there have been no comprehensive studies into the health effects of EMR although anecdotal evidence has linked it to cancer, depression, infertility, immune disorders, headaches and nausea. In the meantime, in the absence of definitive research, the precautionary principle should apply.

Until it can be proved that there are no detrimental effects of EMR, caution must be exercised in the siting of phone towers. Phone towers should not be built near schools, sports fields, workplaces or houses, or wherever the peak intensity of the emissions falls on locations where people congregate for long periods.

Children are at particular risk from long periods of exposure to telecommunications radiation because of the thickness of their skulls and rapidly growing cells. In January 2004 the British advisory group on non-ionising radiation concluded that there is a risk of negative health effects from continued exposure to radiofrequency transmissions. Further research is clearly needed before a widespread roll-out of this technology occurs. In 2001 the Howard Government auctioned off the 3G spectrum, reaping \$196 million from Hutchison, \$300 million from Telstra, \$250 million each from Optus and Vodafone, \$159 million from 3G Investments (Australia), and \$9 million from CKW Wireless Pty Ltd, totalling \$1.168 billion.

In 2002 the Australian Radiation Protection and Nuclear Safety Agency [ARPANSA], which is the Commonwealth agency charged with providing information on radiation protection, announced that it had approved and published a new standard, updating what it considered to be the acceptable limits on human exposure to radiofrequency radiation. The new limit for the frequencies used by 3G is almost five times greater than is the previous limit of 200 microwatts per square centimetre. In 2003 the Australian Communications Authority [ACA] adopted this new standard with its raised limits just six weeks before the Australian launch of Hutchison's 3G campaign on 15 April 2003. Australian consumers are well aware that 3G is not an indispensable component of modern communications. Australians have shown little interest in buying videophones; when they have shown interest, it has largely been because the call costs have been cheaper than those of conventional mobiles.

Both the Federal and State governments have ignored the precautionary principle and have bowed to the interests of an international corporation. They have actively promoted the roll-out of 3G technology in Australia before the full health risks have been examined. In contrast to that, the Greens propose a three-tiered approach. First, the schedule 3 loophole in the Federal Telecommunications Act 1997 and its low impacts facilities determination, which exempts telcos from planning laws, must be repealed. Second, the State Government must introduce legislation to ban the installation of 3G mobile phone towers within 300 metres of any school ground. Third, local councils must introduce development control plans that require development consent for all mobile phone tower installations.

AUSTRALIAN YOUTH ORCHESTRA

The Hon. GREG PEARCE [8.18 p.m.]: I draw to the attention of the House the incredible talent and ambassadorship for Australia possessed by the Australian Youth Orchestra [AYO]. Recently I was privileged to hear the orchestra perform Mahler's *Resurrection* Symphony No. 2 at the Sydney Opera House Concert Hall. The guest conductor was the world renowned Ben Zander of the Boston Philharmonic Orchestra, who later stated, "It was as near to perfect as it could be." In April the *Sydney Morning Herald* correspondent Harriet Cunningham stated:

... the Australian Youth Orchestra... can play pretty much anything it chooses, with a conviction and skill to rival many a professional band.

The Australian Youth Orchestra is Australia's pre-eminent training and performance organisation for the nation's elite young musicians. It is among the foremost youth symphony orchestras performing in the world today. Akin to the National Institute of Dramatic Arts for actors and the Australian Institute of Sport for elite sports men and women, the AYO provides a launching pad for professional music careers of Australia's most talented young musicians aged between 12 and 25. Entry to AYO programs is highly competitive through rigorous annual live auditions held in six capital cities. These auditions are fierce and positions are hotly contested.

The Australian Youth Orchestra is Australia's only national youth orchestra and has two seasons in each year lasting from two to five weeks. The orchestra attracts world-class conductors and soloists, and performances are scheduled in capital cities of Australia and pre-eminent concert stages around the world. The young musicians are exceptionally talented, they come from all over Australia, from both capital cities and regional areas, and they are the best of the best, wherever they are.

Established in 1948, the AYO provides young Australians with a comprehensive approach to excellence in music training and performance. It is Australia's peak training body for young classical musicians. The AYO's programs have been acclaimed by audiences and educators from around the world. The *Australian* hailed the AYO's flagship ensemble as a national treasure. The AYO's other premier event, the annual national music camp, is an essential part of the Australian musical calendar and a place where knowledge and skill are passed from one generation of brilliant musicians to the next.

The AYO runs nine programs annually and about 40 weeks of activities around Australia. Camerata Australia is AYO's chamber orchestra comprising an ensemble of young virtuosos whose focus is contemporary

music. Young Australian Concert Artists sends smaller chamber ensembles to regional centres, bridging the gap in musical education programs in remote parts of the country. The AYO's many fellowships provide opportunities for young instrumentalists, arts administrators, composers and music journalists, many of whom find work in the industry as a result of their participation. More than 12,000 Australians have benefited from the work of the AYO. In its fifty-sixth year, the AYO continues to inspire and empower young Australians and enrich Australia's cultural life.

I was recently privileged to hear a recital by the AYO in preparation for its international tour. The AYO will embark on its nineteenth international and sixth tour of Europe in August. The tour includes concerts at prestigious festivals in The Netherlands, Switzerland, France, Italy and Germany, and concludes at the prestigious BBC Proms in Royal Albert Hall, London. The AYO is the only youth orchestra, apart from the British Youth Orchestra, to be invited to perform at the BBC Proms. Some 94 of Australia's best young musicians have the chance to play with the world's best soloists and conductors at prestigious venues and festivals.

Of course, it is not only the musicians who play a part in this wonderful organisation. Its existence is made possible by a great many benefactors, supporters and workers who donate their time and money to ensure that the orchestra is a success. Among them is the founding donor, Sheldon Trainor. Some donors support entire sections of the AYO. They include the Ambac Financial Group, Nancy Fox, Bruce Arnold, Bradley Trevor Greive, BTG Studio, and Dr Barry and Mrs Karen Landa. Other supporters have donated a chair to the orchestra. They include Nancy Fox and a friend of mine, Virginia Gordon, who hosted one of the functions. I make special mention of Virginia because of her long history of selfless commitment to the arts in Australia. She should be supported in her work and commended for her contribution.

XENOTRANSPLANTATION

Ms LEE RHIANNON [8.23 p.m.]: The Greens are concerned that the transplantation of organs, tissues or cells from one species to another, known as xenotransplantation, is advancing on a commercial scale with virtually no effective regulation or informed public debate. Biotechnology and pharmaceutical companies are making enormous investments in xenotransplantation. They appear to be able to exert tremendous financial influence over Federal health authorities. Such collusions often result in private corporate interests prevailing over public health concerns. Xenotransplantation is extremely costly and has the potential to drive up health care costs for the majority of Australians, placing an unacceptable financial burden on ordinary citizens, both in terms of financing procedures and post-operative care, and in dealing with the consequences of a potential viral epidemic. It is a risky new science and will be difficult or impossible to regulate. The Greens urge State and Federal governments to legislate to stop this scientific adventurism.

The Greens also oppose xenotransplantation on the grounds that it is cruel to animals. Animals used in experiments are subject to invasive operations, genetic modification and housing in sterile environments. Transgenic animals, in particular, are destined to spend their lives confined in sterile, unnatural environments and are often unable to fulfil their basic behavioural needs. The process of creating human organs from animal material involves injecting human genes into animal embryos. Animals that have been thus modified often suffer severe side effects such as deformities, enlarged or missing organs, brain defects, and so on. There is a 90 per cent failure rate, and those that survive but do not produce the desired outcome are immediately killed. The history of xenotransplantation has been marred by repeated failure.

Animal-to-animal xenotransplants involving rats to hamsters, pigs to primates, and cats to dogs, have had poor survival rates that do not correlate with human allotransplant survival patterns. There have been 55 documented animal-to-human whole organ transplants since 1906, none of which have succeeded. Of them, 54 proved to be deadly and the remaining one was ineffective. Because of the vast differences between animal and human physiology, vast amounts of immunosuppressive drugs are required to ensure that transplanted animal organs are not rejected by their human hosts. Pumping such massive doses of immunosuppressive drugs into human beings is likely to cause toxicity, increase the patient's chances of developing cancer and facilitate the transmission of xenogenic viruses from animals to human beings.

Xenotransplants increase the risk of known animal viruses jumping the species barrier to infect human beings. An animal virus residing in a xenograft recipient could become airborne, infecting scores of people, and causing a potentially deadly viral epidemic. The guidelines issued by the National Health and Medical Research Council [NHMRC] outline detailed animal breeding, husbandry and screening procedures designed to minimise the risk of transmitting infectious animal diseases to human beings. However, it is impossible to breed a

completely germ-free sample of animals from which to harvest organs. In fact, genetically engineered animals are likely to be more susceptible to disease because they have weaker immune systems. In addition, animals living in barren, sterile environments are far more likely to have weak immune systems, making them more susceptible to a host of other diseases such as cancer.

Endogenous retroviruses are stored in the genetic memory of transplanted cells. These are dormant retroviruses that have the potential to be activated months or even years down the road, leading to an outbreak of diseases or infections. The Greens are therefore concerned about the current guidelines. Pigs, which are the current donor animal of choice, have retroviruses that have already been shown to infect human kidney cells in vitro. In addition, there are approximately 25 known diseases that can be acquired from pigs, all of which could easily be passed on to human beings whose immune systems have been weakened by immunosuppressive drugs.

Rather than indulging in scientific adventurism such as xenotransplantation, the Greens argue that we should be investing in alternatives such as the development of synthetic organs and other surgical techniques to repair malformed or poorly functioning organs. Clearly this is not a desirable procedure for animals or humans and the NHMRC's guidelines should be drastically revised.

Motion agreed to.

The House adjourned at 8.27 p.m. until Monday 28 June 2004 at 11.00 a.m.
