LEGISLATIVE COUNCIL

Wednesday 10 November 2004

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

The Clerk of the Parliaments offered the Prayers.

CRIMES (ADMINISTRATION OF SENTENCES) AMENDMENT (PAROLE) BILL

JURY AMENDMENT BILL

HEALTH LEGISLATION AMENDMENT (COMPLAINTS) BILL

HEALTH REGISTRATION LEGISLATION AMENDMENT BILL

NURSES AND MIDWIVES AMENDMENT (PERFORMANCE ASSESSMENT) BILL

Bills received.

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

Motion by the Hon. Michael Egan 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 a later hour of the sitting.

Bills read a first time and ordered to be printed.

COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

Membership

Motion by the Hon. Tony Kelly agreed to:

That Reverend Mr Nile be reappointed to the Committee on the Independent Commission Against Corruption.

Message forwarded to the Legislative Assembly advising it of the resolution.

BURMA POLITICAL SITUATION

Motion by Ms Lee Rhiannon agreed to:

That this House:

(a) notes its concern about the political situation in Burma,

(b) calls for political reform and national reconciliation,

(c) calls on Burma to fully engage with the United Nations Secretary General Kofi Annan and the United Nations Special Envoy Tan Sri Razali Ismail in their work to find a political solution to Burma's problems,

(d) notes its strong concern about the continued detention of Aung San Suu Kyi and calls for her immediate and unconditional release, and

(e) urges the Burmese government to release the NLD Vice-Chairman, U Tin Oo, and all the remaining political prisoners.

BUSINESS OF THE HOUSE

Withdrawal of Business

Contingent Notice of Motion No. 11 withdrawn by Ms Lee Rhiannon.

Postponement of Business

Government Business Notices of Motions Nos 1 and 2 postponed on motion by the Hon. Tony Kelly.

THREATENED SPECIES LEGISLATION AMENDMENT BILL

In Committee

Consideration resumed from 9 November.

The Hon. IAN MACDONALD (Minister for Primary Industries) [11.11 a.m.]: I move Government amendment No. 5:

No. 5 Page 20, schedule 1 [67] (proposed section 126E), lines 7-12. Omit all words on those lines.

This amendment is linked with Government amendments Nos 1 to 9, about which I have spoken. The comments I made in relation to Government amendment No. 1 are appropriate and consequential to this amendment.

Mr IAN COHEN [11.12 a.m.]: The Greens do not support Government amendment No. 5. Greens amendment No. 25 seeks to replace "may" with "must" so that if the native vegetation package causes, or is likely to cause, the failure to conserve threatened species, removal of certification should be mandatory. If the package is failing, it needs a shock to the system to fix it. This power, of course, will have a precautionary impact and reduce the likelihood of the package failing in the first place. I believe it is important that Greens amendment No. 25 be supported, but in this case the Greens do not support Government amendment No. 5. I move Greens amendment No. 25:

No. 25 Page 20, schedule 1 [67], proposed section 126E, line 7. Omit "may". Insert instead "must".

This amendment addresses the suspension or revocation of certification. Rather than having the discretion to suspend or revoke the certification of the native reform package if it causes, or is likely to cause, the failure to conserve threatened species, for example, the Minister must suspend or revoke. It also provides a role for public submission on proposed suspension or revocation. I commend amendment No. 25 to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries) [11.13 a.m.]: The Government opposes Greens amendment No. 25.

Amendment agreed to.

The Hon. IAN MACDONALD (Minister for Primary Industries) [11.15 a.m.], by leave: I move Government amendments Nos 6 and 7 in globo:

No. 6 Page 20, schedule 1 [67], line 14. Omit "or revoke".

No. 7 Page 20, schedule 1 [67], line 23. Omit "or following the revocation".

These amendments link in with amendments Nos 1 to 9, and as I have spoken in detail about them, I will leave it to the judgment of the Committee.

Mr IAN COHEN [11.15 a.m.]: Government amendments Nos 6 and 7 remove the word "revoke" from the Minister's power to decertify the native vegetation package, and the Minister is left with the option to suspend. While revocation may be necessary only very rarely, the Minister should have that option where significant improvements are necessary to the package. The Greens do not support Government amendments Nos 6 and 7.

The Hon. RICK COLLESS [11.16 a.m.]: These amendments, as I understand, remove the power of the Minister to revoke the biodiversity certification, but allow him to retain the right to suspend it if an audit by the Natural Resources Commission or an investigation by the director-general recommends the suspension or any other circumstances that the regulations allow for. The Opposition is concerned about the regulation provisions as there is very little parliamentary scrutiny of some regulations. As such, the Opposition will oppose these two amendments and a number of other amendments that flow from them.

Amendments agreed to.

Mr IAN COHEN [11.17 a.m.]: I move Greens amendment No. 26:

No. 26 Page 20, schedule 1 [67], proposed section 126E. Insert after line 37:

(5) The Minister is to give due consideration to any public submissions received by the Minister before forming an opinion for the purposes of this section.

I have already spoken to Greens amendment No 25, and the same applies to Greens amendment No. 26, particularly with the role for public submission on proposed suspension or revocation. I commend Greens amendment No. 26 to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries) [11.17 a.m.]: The Government does not support this amendment. It is preferable for the existing provisions to remain in place and for suspension of the certification of an environmental planning instrument to occur only after the circumstances listed in proposed section 126E (4) have been met. It should be noted that there is a regulation-making power in subsection (4), which would allow other circumstances to be prescribed in the future, if that were deemed appropriate.

Amendment negatived.

The Hon. IAN MACDONALD (Minister for Primary Industries) [11.18 a.m.]: I move Government No. 8:

No. 8 Page 21, schedule 1 [67] (proposed section 126F), line 4. Omit "or revocation".

This amendment links in with Government amendment No. 1, about which I have spoken extensively, and the same comments are relevant to this amendment.

Mr IAN COHEN [11.18 a.m.]: The Greens do not support Government amendment No. 8.

The Hon. RICK COLLESS [11.19 a.m.]: The Opposition does not support Government amendment No. 8, for the same reasons I outlined in Government amendments Nos 6 and 7.

Amendment agreed to.

Mr IAN COHEN [11.19 a.m.]: I move Greens amendment No. 27:

No. 27 Page 21, schedule 1 [67], proposed section 126F, line 5. Insert "within 14 days" after "given".

This amendment deals with notices of the grant, or suspension or revocation, that must be given within 14 days. I commend the amendment.

The Hon. IAN MACDONALD (Minister for Primary Industries) [11.19 a.m.]: The Government supports this amendment. It requires notification of certification of the native vegetation reform package to be made in a timely fashion, rather than be open-ended.

The Hon. RICK COLLESS [11.29 a.m.]: The Opposition will not oppose the amendment.

Amendment agreed to.

Mr IAN COHEN [11.20 a.m.]: I move Greens amendment No. 28:

No. 28 Page 21, schedule 1 [67], proposed section 126F. Insert after line 9:

(2) The Minister is to keep a register containing copies of each notice of the grant of biodiversity certification under this Division and of any suspension or revocation of that certification.

(3) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Minister.

This amendment creates a register of certifications for public access. This is a basic transparency provision. I commend the amendment.

The Hon. IAN MACDONALD (Minister for Primary Industries) [11.20 a.m.]: The Government supports this amendment. It establishes a public register of notices granting biodiversity certification.

The Hon. RICK COLLESS [11.20 a.m.]: The Opposition will not oppose the amendment.

Amendment agreed to.

Mr IAN COHEN [11.21 a.m.]: I move Greens amendment No. 29:

No. 29 Page 21, schedule 1 [67], proposed section 126G, lines 13-16. Omit all words on those lines. Insert instead:

(1) The Minister may by order published in the Gazette confer biodiversity certification on an EPI if satisfied that the EPI, in addition to any other relevant measures to be taken, will lead to the overall improvement or maintenance of biodiversity values. Biodiversity values include threatened species, populations and ecological communities, and their habitats.

The bill creates a biodiversity certification process for environmental planning instruments. There should be an environmental test by which to test the EPI, not just complete ministerial discretion. This test is proposed to bring about overall improvement or maintenance of biodiversity values. Biodiversity values are defined to include listed species, populations or ecological communities, and their habitats. That could include all native species. It is the intention to focus, as a priority, on species, communities and populations listed in the Threatened Species Act. This applies a similar test to that used in the Native Vegetation Act, passed last year, which seeks the maintenance or improvement of environmental outcomes. I commend the amendment.

The Hon. IAN MACDONALD (Minister for Primary Industries) [11.22 a.m.]: The Government will support the amendment because it codifies in the Act the Government's stated intention. Our aim is to be able to certify an environmental planning instrument if the instrument and any other relevant measures will lead to an overall improvement or maintenance of biodiversity. It maintains the flexibility for issues to be resolved on a landscape-wide scale. Ministers will need to have regard to the issues listed in proposed section 126G (2) which—and I must emphasise this point—includes a requirement to consider the likely social and economic consequences of implementing the planning instrument. This is very much a key part of the bill, and it is how the Government will ensure that balanced planning outcomes are achieved, ensuring that jobs and housing can continue to be provided and biodiversity can be better served.

The Hon. RICK COLLESS [11.22 a.m.]: The Opposition will not oppose this amendment.

Amendment agreed to.

Mr IAN COHEN [11.23 a.m.]: I move Greens amendment No. 30:

No. 30 Page 21, schedule 1 [67], proposed section 126G. Insert after line 16:

(2) For the purposes of this section, ***relevant measures*** include, but are not limited to, the following:

(a) the reservation of land under Part 4 of the NPW Act or the entering into of a permanent conservation agreement relating to the land under that Act,

(b) the entering into of a permanent trust agreement in relation to land under the *Nature Conservation Trust Act 2001*,

(c) long-term measures to rehabilitate or restore biodiversity values on land.

This amendment outlines relevant additional measures that may provide an environmental benefit beyond the environmental planning instrument that is certified under amendment No. 29. This allows other matters, such as a new national park or permanent voluntary conservation agreement, to be undertaken. I commend the amendment.

The Hon. IAN MACDONALD (Minister for Primary Industries) [11.24 a.m.]: The Government does not support this amendment. It is unnecessary and is already covered in proposed section 126G (2).

The Hon. RICK COLLESS [11.24 a.m.]: The Opposition will oppose the amendment.

Amendment negatived.

Mr IAN COHEN [11.25 a.m.]: I move Greens amendment No. 31:

No. 31 Page 21, schedule 1 [67], proposed section 126G. Insert after line 16:

(2) Biodiversity certification must not be granted by the Minister unless the Minister is satisfied the EPI meets the following criteria for certification:

(a) the EPI includes a list of threatened species, populations and ecological communities likely to occur in the area to which the EPI relates,

(b) the EPI includes an assessment of the likely impact of the EPI on threatened species, populations and ecological communities, and their habitats, including (where known) the factors threatening or benefiting survival and recovery and an assessment of their existing conservation status and viability,

(c) the EPI includes an assessment that takes account of the principles of ecologically sustainable development,

(d) the EPI includes a description of any conservation outcomes proposed in the EPI and how the conservation outcomes will promote the conservation of threatened species, populations and ecological communities.

This amendment sets out the minimum information needed in a certified plan. It includes the need for a list of the threatened species in an area, an assessment of the impact of the EPI on those species, and an assessment against the principles of ecologically sustainable development and how the conservation outcome in the EPI will benefit the threatened species. Without this being specified, there will be no minimum benchmark on what an EPI contains before it is certified. I commend the amendment.

The Hon. IAN MACDONALD (Minister for Primary Industries) [11.26 a.m.]: The Government is not prepared to support this amendment. It would set the bar so high that it would be most unlikely that an environmental planning instrument could ever be certified for the purposes of this Act. As such, the amendment would undermine a key feature of this legislation, and it will be opposed.

The Hon. RICK COLLESS [11.25 a.m.]: The Opposition opposes the amendment.

Amendment negatived.

Mr IAN COHEN [11.26 a.m.]: I move Greens supplementary amendment No. 2:

No. 2 Page 21, schedule 1 [67], proposed section 126G. Insert after line 35:

(3) If any part of the area to which an EPI relates is subject to a recovery plan, biodiversity certification in respect of the EPI must not be granted or extended unless the EPI makes provision, consistent with the objects of this Act, for at least the same level of protection and conservation in relation to threatened species, populations and ecological communities, and their habitats, as the recovery plan.

(4) If any part of the area to which an EPI relates is subject to another environmental planning instrument (the ***other EPI***), biodiversity certification in respect of the first-mentioned EPI must not be granted or extended unless the EPI makes provision, consistent with the objects of this Act, for at least the same level of protection and conservation in relation to threatened species, populations and ecological communities, and their habitats, as the other EPI.

This amendment ensures that when biodiversity certification is offered to an EPI, the EPI provides at least the same level of protection as existing protection measures. It mirrors existing provisions in the Native Vegetation Conservation Act. I commend the amendment.

The Hon. IAN MACDONALD (Minister for Primary Industries) [11.27 a.m.]: The Government opposes Greens amendment No. 2. This amendment would seriously undermine the ability of the Minister to certify an environmental planning instrument. Indeed, it is no exaggeration to suggest that, if the amendments were adopted, it would be virtually impossible for an EPI to be certified. That would prevent threatened species issues from being resolved through strategic planning, and so a fundamental aim of the bill would be undermined. Greens amendment No. 29, which the Government supported and has been carried, is a preferable method of ensuring that certification of an EPI occurs in circumstances where threatened species will be adequately protected.

The Hon. RICK COLLESS [11.28 a.m.]: The Opposition will not support this Greens amendment.

Mr IAN COHEN [11.29 a.m.]: Madam Chair, there seems to have been a procedural blunder. I seek leave to withdraw Greens supplementary amendment No. 2.

Leave granted.

Amendment withdrawn.

Mr IAN COHEN [11.29 a.m.]: I move Greens amendment No. 32:

No. 32 Page 21, schedule 1 [67], proposed section 126G. Insert after line 35:

(3) In deciding any matter under this section the Minister is to have regard to the objects of this Act.

In deciding on certification the Minister is to have regard to the objects of the Act. I commend Greens amendment No. 32. I understand that the Minister is likely to support it.

The Hon. IAN MACDONALD (Minister for Primary Industries) [11.29 a.m.]: I am carefully evaluating this issue. The amendment is acceptable to the Government. Having regard to the objects of the Act when deciding whether to certify an environmental planning instrument is something that would happen in any event.

The Hon. RICK COLLESS [11.30 a.m.]: It is my view that when the Minister is deciding any matter under any section of the Act he must have regard to the objects of the Act. In computer language it seems to me a bit like a circular reference: we are going round and round in circles. I cannot see any point to the amendment and, as such, we will oppose it.

Amendment agreed to.

Mr IAN COHEN [11.30 a.m.], by leave: I move Greens amendments Nos 33 to 43 in globo and ask that questions be put in relation to them seriatim:

No. 33 Page 23, schedule 1 [67], proposed section 126J. Insert after line 17:

(3) The Minister must not extend the period of biodiversity certification of an EPI unless, prior to granting the extension, the Minister:

(a) by notice published in a newspaper circulating generally throughout the State, invites persons to make written submissions to the Minister on the proposed extension, and

(b) considers any written submissions received before the closing date specified in the notice for the making of submissions (being a date that is not less than 30 days after the date the notice is first published under this subsection).

No. 34 Page 23, schedule 1 [67], proposed section 126J, line 19. Insert ", subject to the completion of a further survey with respect to the land (as required to satisfy the criteria for certification)" after "Division".

No. 35 Page 23, schedule 1 [67]. Insert after line 19:

126K Reassessment of biodiversity certification

(1) The Minister is to reassess the grant of biodiversity certification in respect of an EPI following any review of the EPI under the *Environmental Planning and Assessment Act 1979*, or any rezoning of land to which the EPI applies, to determine whether biodiversity certification should be maintained or modified.

(2) If a local council undertakes a review of a biodiversity certified EPI that applies to land in its area, the council is to notify the Minister of the commencement of that review, and the outcome of that review, as soon as practicable.

No. 36 Page 23, schedule 1 [67], proposed section 126K. Insert after line 27:

(b) the EPI, and any other relevant measures, will fail or has failed to lead to the overall improvement or maintenance of biodiversity values on the area of land to which the EPI applies, or

No. 37 Page 23, schedule 1 [67], proposed section 126K. Insert after line 27:

(b) the EPI has ceased to meet the criteria for certification, or

No. 38 Page 23, schedule 1 [67], proposed section 126K. Insert after line 27:

(b) the EPI is not consistent with the achievement of the objects of this Act, or

No. 39 Page 23, schedule 1 [67], proposed section 126L, line 37. Insert "within 21 days" after "given".

No. 40 Page 24, schedule 1 [67], proposed section 126L. Insert after line 6:

(2) The Minister is to keep a register containing copies of each notice of the grant of biodiversity certification under this Division and of any extension, suspension or revocation of that certification.

(3) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Minister.

No. 41 Page 24, schedule 1 [67], proposed section 126M, line 37. Insert "but only if the majority of those conservation benefits are of a permanent nature" after "EPI)".

No. 42 Page 25, schedule 1 [67], proposed section 126M, lines 5-7. Omit all words on those lines. Insert instead:

(5) The annual report of the Department is to include an assessment of how any voluntary action taken pursuant to a condition imposed under this section has benefited or is likely to benefit the adversely affected threatened species, including details of how any land or money contributed pursuant to such a condition has benefited or is likely to benefit threatened species.

No. 43 Page 25, schedule 1 [67], proposed section 126N, line 24. Insert "(not exceeding 3 years)" after "period".

Biodiversity certification of an EPI may be extended. Amendment No. 33 provides an opportunity for the public to comment on a proposed extension. Amendment No. 34 makes it necessary to undertake a further biodiversity survey if certification is extended, which may be 10 years after the original certification. In relation to amendment No. 35, if an EPI is reviewed with the intention of changing its provisions the Minister must determine whether certification should be maintained or modified. In regard to amendments Nos 36 to 38, with the addition of extra tests for biodiversity certification of EPI we must close the loop by making them a matter to be considered for decertification. Amendment No. 39 provides 21 days for notification of the grant for certification, revocation or suspension.

Amendment No. 40 creates a register of certification for public access. Amendment No. 41 provides that the majority of benefits—biodiversity certification of an EPI anticipates a number of conservation benefits—should be of a permanent nature. The bill provides for the voluntary contribution of land or money as a condition of certification. Amendment No. 42 states that such things should benefit the parties affected adversely. The accreditation of consultants is a good move. Amendment No. 43 brings the accreditation into line with the Contaminated Land Management Act, which provides for no more than three years accreditation. This will improve the integrity of the consultant industry. I commend Greens amendments Nos 33 to 43 to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries) [11.33 a.m.]: The Government supports Greens amendment No. 33. Allowing the public to comment before a decision is made to extend the period of biodiversity certification for an environmental planning instrument is not unreasonable. The Government does not support Greens amendment No. 34 because it would create a potentially unnecessary and certainly an extremely costly process. The Minister retains a right to take into account new information as it comes to hand. It is unnecessary to mandate that further surveys always be undertaken. The Government supports Greens amendment No. 35. In cases where the certified environmental planning instrument is to be reviewed or amended it is the Government's intention that the continued need for certification is considered part of the process. The Government does not support Greens amendments Nos 36 to 38. Provisions in the bill already deal with the issues covered by the amendments and, therefore, they are unnecessary.

The Government supports Greens amendment No. 39, which merely requires notification of certification of environmental planning instruments to be made in a timely fashion rather than be open-ended. The Government supports Greens amendment No. 40, which establishes a public register of the notices granting biodiversity certification to environmental planning instruments. The Government does not support Greens amendment No. 41, which sets an unreasonably high barrier for certification as such and undermines a key feature of the bill. The Government supports Greens amendment No. 42. It is not unreasonable for this information to be included in the department's annual reports. The Government supports Greens amendment No. 43. A three-year accreditation period for suitably qualified and experienced persons to undertake and prepare surveys and assessment on threatened species is not unreasonable.

The Hon. RICK COLLESS [11.35 a.m.]: The Opposition does not oppose Greens amendments Nos 33, 35 39, 40, 42 and 43. However, we oppose Greens amendments Nos 34, 36, 37, 38 and 41.

Amendment No. 33 agreed to.

Amendment No. 34 negatived.

Amendment No. 35 agreed to.

Amendments Nos 36 to 38 negatived.

Amendments Nos 39 to 40 agreed to.

Amendment No. 41 negatived.

Amendments Nos. 42 to 43 agreed to.

The Hon. RICK COLLESS [11.37 a.m.]: I seek leave to move Opposition amendments Nos 16 and 33 in globo. Division 6 in the main part of the bill and division 12 in the Fisheries Management Act, which is exactly the same—

The CHAIRMAN: Order! No, we will not be able to do that because amendment No. 33 is in conflict with another amendment that has been lodged by the Australian Democrats. We need to deal with them separately.

The Hon. RICK COLLESS [11.38 a.m.]: I move Opposition amendment No. 16:

No. 16 Page 25, schedule 1 [67]. Insert after line 36:

Division 6 Biodiversity certification of catchment action plans

126O Biodiversity certification

(1) The Minister may by order published in the Gazette confer biodiversity certification on a catchment action plan for the purposes of this Act.

(2) In this Division, ***catchment action plan*** means a catchment action plan under the *Catchment Management Authorities Act 2003*.

126P Effect of biodiversity certification

While biodiversity certification of a catchment action plan is in force, all land within the area of operations of the catchment management authority responsible for the plan has the benefit of biodiversity certification.

Note. If a catchment action plan is certified under this Division:

(a) the clearing of native vegetation as authorised by a property vegetation plan that is approved for land while the land has the benefit of biodiversity certification is not an offence under Part 8A of the NPW Act, and

(b) development consent to clearing of native vegetation does not require the preparation of a species impact statement or consultation between Ministers (see section 14 (4) of the *Native Vegetation Act 2003*).

126Q Period of certification

(1) Biodiversity certification remains in force for such period as the Minister determines and specifies in the certification. If no period is specified, biodiversity certification remains in force for 10 years.

(2) Prior to the expiration of biodiversity certification of a catchment action plan, the Minister may by order published in the Gazette extend by a period of up to 10 years the period for which that certification remains in force, but only if the Minister has reviewed the catchment action plan to take account of any new listing of a species, population or ecological community or the discovery of a species, population or ecological community not previously known in an area.

(3) This section does not prevent further biodiversity certification of a catchment action plan under this Division.

126R Suspension and revocation of certification

(1) The Minister may by order published in the Gazette suspend or revoke biodiversity certification of a catchment action plan if:

(a) the plan or its current or likely future implementation will result in a failure to conserve threatened species, populations and ecological communities, or

(b) the catchment management authority responsible for the plan has failed to properly exercise its functions under the plan, or

(c) the catchment management authority responsible for the plan has otherwise failed to exercise its functions in a manner that promotes the conservation of threatened species, populations and ecological communities.

(2) During the suspension or following the revocation of biodiversity certification of a catchment action plan, land within the area of operations of the catchment management authority responsible for the plan does not have the benefit of the biodiversity certification of the catchment action plan.

(3) The Minister is only entitled to form an opinion for the purposes of this section:

(a) based on the outcome of any audit undertaken by the NRC, or

(b) based on the results of an investigation conducted by the Director-General, or

(c) in such other circumstances as may be prescribed by the regulations.

126S Notification of certification, suspension or revocation

Notice of the grant of biodiversity certification under this Division or of any suspension or revocation of that certification under this Division is to be given:

(a) to the relevant catchment management authority, and

(b) to the Director-General of the Department of Infrastructure, Planning and Natural Resources, and

(c) on the website of the Department of Environment and Conservation.

The amendment installs a division 6 into the bill, providing for biodiversity certification of catchment action plans. It is an important inclusion because it further justifies the strengthening of the property vegetation planning component of the Native Vegetation Act. If the whole concept of biodiversity certification has any meaning at all, it is absolutely vital that catchment action plans are certified. To my mind the proposed division 6 is far more meaningful than division 4, which seems to me to be a meaningless statement. Imagine what a farmer would say to the good little bureaucrat when he knocks on the farmer's door and says, "Hello, I'm from the Government. I'm here to biodiversity certify you." At least division 6 will enhance the need for the farmer to have his property vegetation plan completed under the Native Vegetation Act, which will allow him to get on with the job he has to do: produce the food, fibre and building materials upon which this State is built. I commend the inclusion of division 6 to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries) [11.39 a.m.]: The Government opposes this amendment. It is unnecessary because the Government already intends to move amendments to allow Ministers to certify the native vegetation reform package prior to finalisation of catchment management plans. It is also unnecessary because of the standards and targets that are being developed by the Natural Resources Commission. In that way, the commencement of the threatened species and native vegetation reforms will not be delayed in the event that catchment action plans, or other elements of the native vegetation reform package, are delayed or prepared progressively over time.

The Government's amendments have the support of the New South Wales Farmers Association. However, the Government is prepared to support an amendment to new section 126F of the bill to ensure that relevant catchment management authorities are notified of any changes to certification affecting their areas. The Department of Environment and Conservation and the Department of Primary Industries will be establishing a notification process in any case. I have no objection to this being codified in the Threatened Species Conservation Act.

Mr IAN COHEN [11.40 a.m.]: The Greens do not support the Opposition's amendment No. 16. This amendment provides for biodiversity through the catchment action plans and treats the plans the same as environmental planning instruments. However, catchment management plans are not regulatory instruments. Even if they have received certification, they do not impose legal obligations on landowners. They are basically a framework for investment in catchment improvement. The Greens oppose the Opposition's amendment.

Amendment negatived.

Mr IAN COHEN [11.41 a.m.]: I move Greens amendment No. 44:

No. 44 Page 27, schedule 1 [71], proposed section 141B. Insert after line 11:

(d) community involvement in biodiversity conservation.

This amendment adds the next area of expertise: community involvement in biodiversity conservation. I commend Greens amendment No. 44 to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries) [11.41 a.m.]: The Government opposes the amendment. The skills outlined in the amendment will be more than adequately represented on the proposed Biological Diversity Advisory Council.

The Hon. RICK COLLESS [11.41 a.m.]: The Opposition is opposed to this amendment.

Amendment negatived.

The CHAIRMAN: Order! Greens amendment No. 45, Opposition amendment No. 17, Greens supplementary amendment No. 3 and Australian Democrats amendment No. 1 are in conflict. They will be moved concurrently. If any amendments are successful, the others will lapse. I ask Mr Ian Cohen to clarify whether he wishes to proceed with both Greens amendments.

Mr IAN COHEN [11.43 a.m.]: I will not move Greens amendment No. 3, which I understand is not supported. I move Greens amendment No. 45:

No. 45 Page 28, schedule 1. Insert after line 30:

[74] Section 157

Omit the section. Insert instead:

157 Review of Act

(1) The Minister is to undertake a review of this Act. The review is to include an assessment of the following:

(a) whether the terms of this Act are appropriate for achievement of the objects of this Act,

(b) the performance of measures associated with the biodiversity certification of the native vegetation reform package and environmental planning instruments,

(c) the adequacy of resources allocated to the implementation of this Act.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the *Threatened Species Legislation Amendment Act 2004*.

(3) The Minister is to make arrangements for public consultation in respect of the review.

(4) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

The legislation should be reviewed after five years. The review should include whether the Act has satisfied its objects, the performance of EPIs and the native vegetation reform package, and the adequacy of resources allocated to its implementation. The amendment also provides for public consultation. I commend Greens amendment No. 45 to the Committee.

The Hon. RICK COLLESS [11.44 a.m.]: I move Opposition amendment No. 17:

No. 17 Page 28, schedule 1. Insert after line 30:

[74] Section 157

Omit the section. Insert instead:

157 Review of Act

(1) The Minister is to review this Act to determine whether the policy objectives of the Act are being fulfilled and whether the terms of the Act, and any environmental planning instruments granted biodiversity certification under Part 7, remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the *Threatened Species Legislation Amendment Act 2004*.

(3) The Minister is to make arrangements for public consultation with respect to the review.

(4) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Amendment No. 17 allows for a review of the Act five years from the date of assent, with a report to be tabled in both Houses of Parliament within 12 months of that five-year period. This is a very important amendment because the concept of threatened species conservation should be accountable. As I pointed out during the second reading debate, the Act in its current form is simply not working. That is obvious from the number of species that are continually added to the list and the non-removal of species from the list because of recovery. I hope that this amendment will allow the position to be monitored. The process should be accountable. We need to know whether the Act is working and whether it is saving threatened species. This amendment will substantially contribute toward achieving that end. I commend amendment No. 17 to the Committee.

Mr IAN COHEN [11.45 a.m.]: I am wondering whether my amendment No. 45 is exactly the same as the Opposition's amendment. I am worried that if my amendment No. 45 is rejected, that may have an effect on the Opposition moving amendment No. 17.

The CHAIRMAN: Order! We are going through them now.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.46 a.m.]: They are not identical.

Mr IAN COHEN [11.46 a.m.]: At this point I understand that my amendment is not supported, so I will withdraw it. I will be supporting the Opposition's amendment No. 17.

Greens amendment No. 45, by leave, withdrawn.

The CHAIRMAN: Order! The Australian Democrats amendment refers to the same section of the Act, but addresses a different matter.

The Hon. IAN MACDONALD (Minister for Primary Industries) [11.47 a.m.]: The Government is prepared to support the Opposition's amendment. A review of the Threatened Species Conservation Act in five years time will ensure that the legislation remains up to date and relevant.

Mr IAN COHEN [11.47 a.m.]: I support the Opposition's amendment, rather than not oppose it. It is a good amendment. The Greens support the Opposition's amendment in relation to the five yearly reviews of the Act. We support the amendment which refers to a review of the allocation of resources for the implementation of the Act. I congratulate the Opposition on its amendment.

Reverend the Hon. FRED NILE [11.48 a.m.]: The Christian Democratic Party is pleased to support amendment No. 17. It is important that there be a review at the end of the five-year period.

Opposition amendment No. 17 agreed to.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.48 a.m.]: I seek leave to move Australian Democrats amendment Nos 1, 2 and 3 in globo.

The CHAIRMAN: Order! It is not possible for the Hon. Dr Arthur Chesterfield-Evans to move his amendments in globo. Some of the Australian Democrat amendments are in conflict with amendments lodged by other parties.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.49 a.m.]: Are they in conflict merely in sequence or in concept?

The CHAIRMAN: They are in conflict in concept. I ask the Hon. Dr Arthur Chesterfield-Evans to move only Australian Democrats amendment No. 1 at this stage.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.49 a.m.]: I move Australian Democrats amendment No. 1:

No. 1 Page 28, schedule 1. Insert after line 30:

[74] Section 147A

Insert after section 147:

147A Appeals against biodiversity certification of EPI

(1) An interested person may, within 28 days after notice of a biodiversity certification decision is first published on the website of the Department of Environment and Conservation, appeal to the Land and Environment Court against that decision.

(2) The Land and Environment Court may hear and determine an appeal made under this section.

(3) In determining such an appeal, the Court may, by order:

(a) confirm the decision, or

(b) revoke the decision, or

(c) revoke the decision and substitute any decision that could have been made by the Minister under Division 5 of Part 7.

(4) An order made by the Court under this section:

(a) takes effect on and from a date specified by the Court, and

(b) operates as if it were a decision made by the Minister under this Act.

(5) If an appeal is made under this section, the Minister is to be given notice of that appeal, in accordance with rules of court, and is entitled to be heard at the hearing of the appeal as a party to the appeal.

(6) In this section:

biodiversity certification decision means a decision of the Minister to grant biodiversity certification of an EPI under Division 5 of Part 7.

interested person means a person who made a submission in respect of a biodiversity certification decision under section 126G (3).

Third party appeal rights are a fundamental principle that should be part of all good environmental legislation. Third party appeal rights will allow the public to challenge a failure to follow due process, and also give the public an opportunity to undertake a review of the merits of a decision. While appeals are possible to change the procedures for decision there is limited opportunity to challenge the merits of a decision under the Threatened Species Conservation Act. A third party merits appeal is allowed only when a threatened species licence is being issued, so it is somewhat limited. The Australian Democrats amendment allows third parties to review a decision by the Minister for the Environment to issue biodiversity certification or to extend that certification.

Appeals must be lodged within 28 days of the certification and the Land and Environment Court rules on the appeal. Only people who have made a submission to the public exhibition of the environmental planning instrument can be certified to initiate an appeal—not everyone can appeal. Third party appeal rights are limited to who can appeal and the time in which they can appeal. This is a moderate amendment and I commend it to the Committee.

Mr IAN COHEN [11.50 a.m.]: I clarify for the Committee that the Greens support the amendment; it is not one that the Greens reject.

The Hon. Duncan Gay: You have given Ace a promise.

Mr IAN COHEN: To be honest, in the process of dealing with a vast number of amendments there was a sequential problem that Dr Arthur Chesterfield-Evans very generously supported. I feel very strongly about this and I commend Dr Arthur Chesterfield-Evans for moving the amendment, which the Greens certainly support.

The Hon. IAN MACDONALD (Minister for Primary Industries) [11.52 a.m.]: It is good to hear that Mr Ian Cohen has kindly dobbed in the Hon. Dr Arthur Chesterfield-Evans on the comments that we have thrown at him. The Government opposes all three Australian Democrat amendments.

The CHAIRMAN: The Committee is dealing only with Australian Democrats amendment No. 1.

The Hon. IAN MACDONALD: Yes. As with the Greens amendments, the Australian Democrats amendments were provided to the Government just seconds before debate on this bill resumed. To allow proper consideration of these kinds of amendments they should be circulated far earlier in the process. The amendments are opposed because they create an immediate inconsistency with the Environmental Planning and Assessment Act. Merit appeals for an environmental planning instrument [EPI] are not presently allowed under that Act. Australian Democrats amendment No. 1 would, in effect, allow merit appeals for an EPI at least insofar as biodiversity certification was concerned.

It is worth recollecting that when the Government was amending the Land and Environment Court Act 2002 numerous crossbench members, including the Hon. Dr Arthur Chesterfield-Evans as I recall, objected to the ability of the court to hear merit appeals. Yet, this amendment would create a new merit appeal for the court to hear. Obviously the Hon. Dr Arthur Chesterfield-Evans has forgotten his speech on that occasion.

The Hon. RICK COLLESS [11.53 a.m.]: The Nationals are completely opposed to third party appeals, philosophically and with good reason. Following the enactment of the original native vegetation legislation, State Environmental Planning Policy 46, a farmer could knock down a tree in his paddock. Someone driving along a nearby road could report that farmer without any comeback, whereas the farmer, in most cases, had obtained the appropriate approvals. Reporting of that incident has done nothing more than take up the time of bureaucrats in checking out the situation, or taking the matter to court in some cases. Quite frankly, I am opposed to anyone having the right to come onto my farm and question what I am doing when I have the correct approvals in place. The Coalition will not support any amendments moved by the Hon. Dr Arthur Chesterfield-Evans.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.54 a.m.]: To pick up the point raised by the Hon. Rick Colless, the idea that the correct approvals may be in place assumes that the system works perfectly. However, justice has to be done and has to be seen to be done. It cannot be assumed that the existing processes will work perfectly. I do not believe that the Democrats emphasis on open process is inconsistent. We have taken a consistent line about open process; I do not know what inconsistencies the Minister for Primary Industries is talking about. This is an important point and given the Government's record of not following the right process—whether it is closing Beacon Hill High School or approving other developments—it does not necessarily always do the right thing. Third party appeal rights are important in keeping the Government honest. I commend the amendment to the Committee.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 6

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

Noes, 32

Ms Burnswoods	Mr Gay	Mrs Pavey
Mr Catanzariti	Ms Griffin	Mr Pearce
Mr Clarke	Mr Hatzistergos	Ms Robertson
Mr Colless	Mr Jenkins	Mr Roozendaal
Mr Costa	Mr Kelly	Mr Ryan
Ms Cusack	Mr Lynn	Ms Tebbutt
Mr Della Bosca	Mr Macdonald	Mr Tsang
Mr Egan	Reverend Nile	Mr West
Mrs Forsythe	Mr Obeid	*Tellers,*
Mr Gallacher	Mr Oldfield	Mr Harwin
Miss Gardiner	Ms Parker	Mr Primrose

Question resolved in the negative.

Amendment negatived.

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

QUESTIONS WITHOUT NOTICE

———

CITYRAIL TRAIN CANCELLATIONS

The Hon. MICHAEL GALLACHER: My question without notice is directed to the Minister for Transport Services. The Minister has consistently said that the main reason he cut more than 1,600 train services

in July was so that drivers were freed up for weekday peaks, ending hundreds of train cancellations. Now that commuters have 1,600 fewer services on which to run late because the Minister freed up drivers for weekday peaks, can he explain why the number of cancelled services in the 15 weeks since the cuts has increased dramatically compared to the 15 weeks before the cuts? Cancellation rates are so bad that last week 4.9 per cent of trains were cancelled.

The Hon. MICHAEL COSTA: It gives me great pleasure to answer this question as it points to the success of the strategy put in place by the Government earlier in the year to deal with an unacceptable situation, that is, hundreds of pre-planned daily cancellations. Members would be aware that we were having problems with driver numbers and we were cancelling hundreds of trains on a daily basis. They were pre-planned cancellations because we knew the day before that we did not have enough drivers to fill the next day's schedule. We took a decision—which in retrospect was a sensible decision—to reallocate drivers from underutilised weekend services to peak periods on weekdays. The Government adopted that strategy, that is, the reallocation of drivers from underutilised weekend services to weekday services, to deal with current rail problems.

The Hon. Michael Gallacher: You just cancelled services.

The Hon. MICHAEL COSTA: The Leader of the Opposition knows that I am talking about pre-planned cancellations—services that were cancelled as we did not have enough drivers to meet the next day's program. I refer to some of the problems that have been experienced recently which have been minimal in relation to the cancellation of services. We have experienced sick leave levels above the average planned for in our timetable framework and that led to some minor cancellations of services, but certainly not the hundreds of services that were cancelled on a pre-planned basis in February.

No matter what the Leader of the Opposition says, that situation is clear and verifiable. He might attempt to distort the facts but that will not lead to anybody believing that the situation today is as bad as it was in February. As I said earlier, that statement can be verified. As a result of the question that was asked by the Leader of the Opposition I am able to indicate that at the moment we have record numbers of drivers—over 300 drivers are in training. We are also close to completing a new timetable that will resolve issues that have frustrated the travelling public for some time—the problem relating to running times between platforms, the measures associated with the Glenbrook and Waterfall inquiries, and the problems associated with the implementation of new data loggers, vigilance control and greater dwell times at platforms. I am confident that this timetable will meet the concerns of the travelling public.

The Hon. Michael Gallacher: You are confident?

The Hon. MICHAEL COSTA: I look forward to Opposition members congratulating me when that new timetable is introduced.

The Hon. Michael Gallacher: When will we see it?

The Hon. MICHAEL COSTA: The Leader of the Opposition will see the timetable when we have enough drivers to meet it, and not before. Because unfortunately we run a rail system with insufficient train drivers and we need to have a rail system that has an adequate—

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

The Hon. MICHAEL COSTA: We need a rail system that employs an adequate number of train drivers. As I said earlier, it is unfortunate that we do not have an adequate number of train drivers at the moment to meet the timetable. [*Time expired.*]

PRISONER CLASSIFICATION SYSTEM

The Hon. AMANDA FAZIO: My question is addressed to the Minister for Justice. In light of the two recent escapes from Berrima Correctional Centre, can the Minister advise the House whether the prisoner assessment process and classification system require modification?

The Hon. JOHN HATZISTERGOS: The appropriateness with which the Department of Corrective Services classifies offenders is evidenced by the very low escape rate in New South Wales. The Productivity

Commission's "Report on Government Services 2004" identified New South Wales as having the lowest escape rate of any Australian jurisdiction. Indeed, in 2003-04 the department managed approximately 8,536 inmates and there were close to 140,000 movements of inmates between police cells, courts, hospitals, the Parole Board, the Serious Offenders Review Council and correctional centres. Yet there were only 22 escapes in the 2003-04 financial year, which represents an escape rate of 0.3 per 100 inmates per year—the lowest rate for New South Wales since record keeping began in 1974.

As at 21 October the escape rate for the 2004-05 financial year was 0.3 per 100 inmates. That is a 25 per cent reduction in the figure for the same period last year, which was then the lowest on record. In addition, there have been no escapes from medium- or maximum-security facilities. I have a most instructive graph that will help Opposition members to understand the situation. It shows the escape rate when the Coalition was in office and the reduced escape rate under this Government. I seek leave to table the graph.

Leave granted.

Document tabled.

This escape rate contrasts markedly with the Coalition's performance. In 1994-95, 136 inmates escaped from custody—including some from secure facilities—when the inmate population was considerably less than it is now. When the Coalition was in office Michael Yabsley said that the classification process should be such as to ensure the lowest possible level of security for inmates so that they could progress to minimum security facilities as quickly as possible. He said that of course because there were not enough facilities to accommodate prisoners in maximum security, they were downgraded to medium security wherever possible. Following the recent publicised escapes from Berrima Correctional Centre by two inmates, who were working in the screen-print shop—which is located outside the main perimeter of the centre—

The Hon. Melinda Pavey: Is that where Rex worked?

The Hon. JOHN HATZISTERGOS: No, it is a facility that those opposite ordered the construction of when they were in office. It is the besser brick block that Hon. Charlie Lynn talked about on 19 October. Following those escapes, Peta Seaton—I know she is a shadow Minister but I do not know what for—made certain claims in the *Southern Highland News*. She said that the escapes represented a "reckless approach" to prisoner classification. She said that the prisoners should not have been at Berrima—listen to this—because:

> … allocation to Berrima Jail and its drug and alcohol program is usually regarded as a privilege for the best behaved prisoners.

She said that this privileged treatment should not be handed out to dangerous criminals who could make their escape so easily. She then said that the assessment process was obviously flawed and that the Carr Government could not recognise the difference between dangerous prisoners and those who were clearly on the path to rehabilitation. There was no change to the classification process. [*Time expired.*]

The Hon. AMANDA FAZIO: I ask a supplementary question. Will the Minister for Justice please elucidate his answer?

The Hon. JOHN HATZISTERGOS: The fact is that there was no change in the classification process that led to the placement of those two persons at Berrima. Berrima gaol was a medium- and minimum-security facility when it was a male correctional facility and that classification has continued now that it is a female correctional facility. These persons were classified appropriately even though the circumstances of their escape are the subject of investigation. They have of course been returned to custody. However, last week when two more inmates were transferred to Berrima Correctional Centre the shadow Minister for Justice said:

> The prisoner classifications are being ignored and manipulated and the wrong prisoners are being moved to the wrong jails for the wrong reasons. The community and prison officers are being placed at risk.

The shadow Minister said that two high-security inmates had been placed at Berrima and that they were escape risks but had been transferred to a low-security institution, "completely ignoring" the risk that this poses to the community and to prison officers. I investigated the two prisoners—the high-risk, dangerous criminals—about whom the honourable member complained and I found that they were incarcerated for shoplifting. According to the Coalition, Berrima gaol is so insecure that shoplifters cannot be held there. I assure the House that the classification process has not been manipulated, as claimed by the Opposition. I also clarify the assertion made by Ms Seaton that other prisoners have been "hastily removed" from Berrima to other centres, showing that "the assessment process is obviously flawed". Everyone knows that the Government has opened a new women's correctional facility at Dillwynia and a new facility at Kempsey. [*Time expired.*]

SHEEP INDUSTRY PRACTICES

The Hon. DUNCAN GAY: My question is directed to the Minister for Primary Industries. Following the wool industry's decision to end the practice of mulesing by 2010, what action will the Minister take to research and develop affordable, practical alternatives to this practice—or is there no capacity left in his gutted Department of Primary Industries to do important research such as this?

The Hon. Michael Egan: Point of order: That question clearly contained argument and if any part of a question is out of order the whole question is out of order.

The Hon. Duncan Gay: To the point of order: I am happy to assume that the Government does not want to answer this important question. It has dragged out the Leader of the Government to cover up for the inept Minister for Primary Industries.

The PRESIDENT: Order! I remind members that questions must not contain argument. The question asked by the Deputy Leader of the Opposition clearly contained argument and is out of order. He may rephrase the question when he is next given the call.

TWEED SHIRE COUNCIL INQUIRY

The Hon. JON JENKINS: My question is directed to the Minister for Local Government. Why did the Minister take the step this morning to investigate Tweed Shire Council? Will he give the community the opportunity to make submissions and appear before the inquiry? Is the Minister aware of the situation regarding Tweed shire's dealings with Cabarita Surf Life Saving Club, and will this matter fall within the guidelines of the investigation?

The Hon. TONY KELLY: Today the Government appointed emeritus Professor Maurie Daly as the commissioner of a public inquiry into Tweed Shire Council. This follows press reports and community concern about the manner in which a number of council planning decisions were made. This gentleman also chaired the commission of inquiry into Liverpool City Council. I share the concerns of the local community—

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

The Hon. TONY KELLY: So today I initiated an investigation under section 740 of the Local Government Act to examine the allegations that have been made. This inquiry has the powers of a royal commission. I am concerned about a number of decisions made by the council, particularly the processes used by the council to make planning decisions. I am determined to ensure that the council avoids at all times conflicts of interest and the appearance of them. The investigation will also consider the council's processes with regard to its environmental planning responsibilities. It will also examine the relationship between elected representatives and developers and whether all decisions made were in accordance with the Local Government Act. The investigation will be able to make recommendations about how to fix any problems and whether the council should or should not be dismissed.

Advertisements for written submissions and appearances for public hearings will appear in the newspapers shortly, and in the local press. With regard to Cabarita, I have received a number of complaints expressing concern about proposals for development at Pandanus Parade, Cabarita Beach. I understand that Tweed Shire Council is considering the sale of council-owned land to developers associated with a councillor. It is up to the commissioner to decide what matters are relevant to the inquiry within the framework of its terms of reference.

The Hon. JON JENKINS: I ask a supplementary question. If the council is dismissed after this inquiry, will the Minister guarantee to this House that fair elections will take place as soon as possible after that event?

The Hon. TONY KELLY: I do not want to pre-empt the decision and the recommendations of the commissioner. The commissioner can make a number of recommendations. He can make referrals to the ICAC and the police, and recommendations for the operation of the council. One recommendation he can make is to declare all offices of the council vacant, which means that the council is dismissed. If he makes that recommendation, I will abide by the recommendations of the department as to the duration of the dismissal and the period of the administrator. Normally the department makes recommendations based on problems that are

found. For example, if endemic problems in planning are found in the council, the administrator may need some time to sort them out. I will take advice. It will be done as quickly as practicable, bearing in mind the problems that need to be rectified. I reiterate that I do not want to pre-empt the decision or recommendations of the commissioner.

HUNTER VALLEY BIOTECHNOLOGY INDUSTRY

The Hon. HENRY TSANG: My question is addressed to the Treasurer. Will the Treasurer inform the House of the burgeoning biotechnology capacity of the Hunter Valley?

The Hon. MICHAEL EGAN: I am delighted to do that. The Hunter, as many honourable members would appreciate, is carving a reputation for itself as a region of excellence in the field of biotechnology and medical research. The Government has assisted a range of Hunter-based biotechnology companies and research groups such as Hunter Immunology Pty Ltd, a spin-off company from the University of Newcastle, formed in September 2003. Earlier this year Hunter Immunology received a $100,000 Proof of Concept grant from the Government to develop, formulate and test an oral vaccine for what is commonly known as golden staph, which is staphylococcus aureus.

The Hon. Charlie Lynn: Stick with golden staph!

The Hon. MICHAEL EGAN: I will stick with golden staph. Professor Robert Clancy developed the vaccine after working in the field of mucosal immunology for 30 years. This vaccine has been shown to work in animal tests and human plasma cells in test tube tests by generating an immune response. This vaccine is actually collected by isolating bacteria that is taken from patients using nasal swabs. The vaccine is then created from the surface structure of killed bacteria. I am informed that golden staph is normally carried by about 20 per cent of the population without any problem. About 70 per cent of people will carry it over a three to four month period before it disappears.

Hunter Immunology is looking to conduct proper clinical tests next year and hopes to have its vaccine in the marketplace in two to four years. Hunter Immunology hopes to make its vaccine very affordable and target it at hospital staff that could be immunised once a year, helping prevent the transmission of golden staph infections to patients. The company is also aiming its vaccine at patients entering hospital who could take it between two to eight weeks prior to admission so that the immune response could take effect. Hunter Immunology says the cost of hospital-acquired infections worldwide is about $28 billion, of which golden staph infections account for a quarter, about $7 billion, and if the amount of infection can be reduced by 20 or 30 per cent it would still provide a major benefit. I congratulate this innovative company on its work, and wish it all the best for its clinical tests during the next year.

ABORTION

Reverend the Hon. FRED NILE: I ask the Treasurer, representing the Premier, a question without notice. Has the Federal Minister for Health and Ageing expressed concern about the estimated 100,000 abortions per year in Australia? Has the Governor-General of Australia also expressed his concern about the number of abortions and the need for education? In view of those concerns, will the Government support a joint national-State inquiry into the causes of the high level of abortions, particularly late-term abortions, and alternatives to abortion, as well as counselling and financial support for women considering an abortion?

The Hon. MICHAEL EGAN: I will refer the honourable member's questions to the Premier.

GROUP HOME RESIDENTS ANTISOCIAL BEHAVIOUR

The Hon. JOHN RYAN: My question is directed to the Minister for Disability Services. What responsibility does the Department of Ageing, Disability and Home Care [DADAHC] take when residents of departmental group homes display antisocial behaviour in public? Is there a protocol or memorandum of understanding between DADAHC and the Department of Health regarding clients who display antisocial behaviour, when the source of the behaviour is in dispute as to whether it is a mental health issue or a developmental disability? What action will the Minister's department take to assist a 35-year-old group home client from Revesby who has been arrested by police numerous times for antisocial behaviour, including exposing himself to children, and who is currently at large in the community because no-one in either the Department of Health or her department will take responsibility for his care?

The Hon. CARMEL TEBBUTT: The Hon. John Ryan has raised an important and complex issue, that is, the interface between disability and mental health issues. Often it can be very difficult to disentangle and work out appropriate support and services needed for people with an intellectual disability or some other form of disability and mental health issues. It is also difficult to work out how to deal with the challenging behaviour that often manifests when someone has both an intellectual disability and mental health issues. Nonetheless, the department has done a lot to try to ensure that it has the appropriate resources and support in order to work with people with challenging behaviour. The behavioural intervention service is part of a range of options provided by the Department of Ageing, Disability and Home Care [DADAHC] to respond to people with challenging behaviour.

The behaviour intervention service can work with clients in a group home, in a day program setting, in an Adult Training, Learning and Support program or in a community participation type setting. Essentially it works with staff providing day-to-day care for the individual to try to uncover the issues that sit behind the challenging behaviour and the ways to respond to it. Obviously, interaction with the criminal justice system for people who have challenging behaviour is well known to occur and is complex. We need to find better ways to respond to the needs of such individuals. I am not aware of the specific circumstances of the individual referred to by the Hon. John Ryan, but I will follow it up and provide him with more information.

The issues that confront people on how to deal with people who have challenging behaviours are complex and go beyond antisocial behaviours, as described by the honourable member. There are no easy answers. It requires people with professional skills to put in place strategies that respond to what sits behind those challenging behaviours.

The Hon. John Ryan: The police have arrested him a number of times.

The Hon. CARMEL TEBBUTT: I do not know the individual case to which the honourable member refers, but I am sure that from the level of detail he has provided I can follow it up and provide more information in due course.

REDFERN-WATERLOO HUMAN SERVICES REVIEW

The Hon. JAN BURNSWOODS: My question is addressed to the Minister for Community Services. Will the Minister inform the House of government initiatives in Redfern-Waterloo?

The Hon. CARMEL TEBBUTT: As honourable members are aware, Redfern-Waterloo is an area of considerable disadvantage. Many challenges face both the communities that live in that area and the service providers who seek to support and assist those communities. In the face of increasing gentrification many residents, both Aboriginal and non-Aboriginal, are doing it tough. Of course one of the features of the Redfern-Waterloo area is that quite significant wealth sits alongside quite significant disadvantage. Waterloo is the fifth poorest suburb in Sydney, and Redfern is in the bottom third of Sydney's poorest suburbs. A large number of people are living in public housing, there is high unemployment, and significant numbers of people have a disability and/or mental illness. The Government has recognised these issues through the $7 million Redfern-Waterloo partnership project, which was announced in March 2002, followed by a further $5 million, which was announced in May 2004. Today the Government released the report of the review of human services in Redfern and Waterloo. That review was undertaken by Morgan Disney and Associates. It is a comprehensive review that was conducted in the first half of this year in response to widespread concerns about the adequacy of services available to the communities of Redfern and Waterloo.

The review identified that 102 organisations are providing 192 services in the Redfern-Waterloo area. It estimates that in excess of $35 million to $40 million currently is allocated to services for residents in Redfern and Waterloo, either through locally based services or services delivered out of the area. The review identified that Redfern and Waterloo are facing many challenges but that there are also many strengths. The review makes it clear there are adequate resources in the area, but services are unco-ordinated, lack community engagement and are not focused on outcomes. The recommendations from the review will now be used to help design a plan to ensure the right services are delivered to the people who need them, and that services—and I make it clear that I am referring to both government and non-government services, because government services need to change as well—need to work together to meet the needs of the community. The review calls for a human services plan to be developed to improve integration across both government and non-government services.

This plan will be presented to Cabinet by May 2005. The plan will develop agreed community outcomes and will address ways of working with the community, capacity building for government and non-

government organisations, and community leadership development. The delivery of targeted and effective human services in the Redfern-Waterloo area is imperative in making sure the needs of residents are met and that problems in the area can be combated. This will include making some choices about the way resources are invested in the area to ensure services are reaching the people that need them. The Government will work with the communities and service providers in Redfern-Waterloo. However, improving service delivery to the people who need those services is not negotiable.

The first priority for the plan will be services for families, children and young people, and Aboriginal people, and to deal with domestic violence and drug and alcohol and mental health issues. The plan will be developed by an implementation working group. It will comprise government and non-government representatives, including representation of Aboriginal organisations. This work will be supported by the Premier's Department. The Government will also make sure the community and all government and non-government organisations understand the report and its recommendations by facilitating workshops in the area. Significant challenges confront the delivery of human services in Redfern and Waterloo. It is very easy for Opposition members to laugh and joke and pretend that these issues are not serious. But these matters will not be resolved overnight. They require a significant commitment and a long-term response to the needs of the people in Redfern and Waterloo. [*Time expired.*]

NEAL WINTER GRANT OF BAIL

The Hon. DAVID OLDFIELD: My question is directed to the Minister for Justice, representing the Attorney General. What effective protection is provided to victims of alleged pederasts who walk the streets on bail while awaiting further court hearings? Is the Minister concerned that alleged serial pederast Neal Winter has successfully overturned a decision to deny him bail? Is the Minister aware that Winter, who has been charged with 22 offences against boys as young as 12, has allegedly threatened the lives of victims who give evidence against him? What message does Winter's freedom send to victims of child sexual abuse who have worked up the courage to report the offences they have suffered? What action will the Minister take to get Winter off the streets, so as to ensure the safety of his alleged victims and those who may yet become his victims?

The Hon. JOHN HATZISTERGOS: I will refer the matter to the Attorney General.

PARRAMATTA RIVERCAT SERVICE

The Hon. DAVID CLARKE: My question is directed to the Minister for Transport Services. Is the Minister aware of comments from the Parramatta Chamber of Commerce President, Paul Ogilvy, that the New South Wales Government is "sinking the Parramatta RiverCat service"? Given recent speculation and concerns amongst local Parramatta residents regarding the future of the Parramatta RiverCat service, can the Minister assure local residents that the RiverCat will remain a commuter service and that a further increase in fares and decrease in the frequency of the service is not being contemplated?

The Hon. MICHAEL COSTA: Fares, of course, are a matter for the Independent Pricing and Regulatory Tribunal [IPART], so I cannot give that assurance. It is a matter for IPART to make such determinations. It has before it at the moment a submission in relation to ferry fares, and that process will determine the outcome. I will deal with that afterwards. Services are a matter for the board of Sydney Ferries. In relation to the ferry service itself, I have been stating for months that there is no plan to cancel the RiverCat services. The Liberal Party local branches have been running this as an election issue. I have consistently put the position—and there is no change to it—that there is no threat to the RiverCat services.

LOCUST CONTROL

The Hon. ERIC ROOZENDAAL: My question is addressed to the Minister for Primary Industries. How is the locust situation developing now in New South Wales, and how are control efforts progressing on the ground?

The Hon. IAN MACDONALD: I thank the honourable member for his question and commend him for his genuine interest in the locust problem. I begin my answer by commending front-line staff and farmers for their achievements so far in our locust control program. There is no doubt that their efforts over the past couple of months have already helped to reduce the risk of crop damage this spring. I can inform honourable members that new reports of locust hatchings have fallen for the third week in a row—down to 845 new hatchings this week. This is nearly half the number reported two weeks ago and brings the total number of hatchings around

New South Wales to more than 10,208. It includes 174 new reports in Coonabarabran followed by 137 in Dubbo, 111 in Mudgee-Merriwa, 104 in Forbes and 90 in Molong.

While we welcome the news that the hatchings appear to be slowing down, it does not mean that the fight has been won. In fact, as we have been reminding farmers this week, we are just now approaching the most unpredictable and challenging part of our locust control campaign. Over the next few weeks we will see more reports of adult locusts starting to take wing, as is to be expected with the warmer weather. I must say that I saw a few on Sunday when I was driving from Warren to Dubbo and also at Narromine, where the citrus program was launched.

The Hon. Duncan Gay: What did you back at the races?

The Hon. IAN MACDONALD: I went to the races. I love the little quips of the Deputy Leader of the Opposition because they give me the opportunity to explain to the House some of my activities at Warren. For instance, at 5 o'clock on the Friday I met with representatives of the management of Auscot. We spent two hours going through their modelling of the Macquarie River valley and findings over the last 120 years on flows in the Macquarie River.

The Hon. John Della Bosca: I would bet Duncan had his feet up then!

The Hon. IAN MACDONALD: The Deputy Leader of the Opposition would well and truly have had his feet up at Crookwell. Then on Sunday, to show how active I am, we visited the new fish ladders that have been put in place.

The Hon. Duncan Gay: What did you do on Saturday?

The Hon. IAN MACDONALD: On Saturday I attended the Warren races, as a guest of—

The Hon. John Ryan: Point of order: I do not know what races and fish ladders have to do with locusts. Perhaps the Minister might be more relevant in his answer.

The PRESIDENT: Order! I remind the Minister that interjections are disorderly and that he should ignore them.

The Hon. IAN MACDONALD: Yes, I did attend the races, at the invitation of the mayor, Rex Wilson.

The Hon. John Ryan: Point of order: My point of order relates, once again, to relevance. The Minister continues to stray from the question. I am sure he will readily entertain a supplementary question and waste yet more time of the House.

The PRESIDENT: Order! I remind the Minister that he must be relevant.

The Hon. Duncan Gay: He can't be relevant.

The Hon. IAN MACDONALD: I am relevant—totally! We know from every single locust outbreak that the campaign moves inevitably from the land to the air as the locusts mature. Our best chance of limiting the damage is to launch an all-out assault while locusts are still banding on the ground. We have issued enough locust control chemicals to treat a total of 426,000 hectares—around 100,000 hectares were treated last week. The majority of chemicals has been used for critical ground control.

The Hon. Duncan Gay: What are you doing with the national parks?

The Hon. IAN MACDONALD: We have been spraying.

The Hon. ERIC ROOZENDAAL: I wish to ask a supplementary question. Will the Minister elucidate his answer?

The Hon. IAN MACDONALD: Aerial spraying by the New South Wales Department of Primary Industries is planned this week for the Tamworth, Mudgee, Coonabarabran, Dubbo, Forbes, Molong and Narrandera areas. Last Thursday I had the opportunity of watching such operations in Mudgee.

The Hon. Michael Gallacher: Was there a race meeting planned?

The Hon. IAN MACDONALD: No, it was not a race meeting. Is the honourable member antagonistic toward a member who is invited to a regional country race meeting? Is he suggesting that I should not have attended a country race meeting to which a regional mayor invited me? Is that what he is saying? If I get another invite or invites from other excellent mayors around this State to attend race meetings, I will consider them and if I have time I will attend those meetings. I do not care for the interjections of the Opposition. The next time I attend a country race course and am given some good tips I will be good natured enough to call the Deputy Leader of the Opposition so that he can put a bet on at the Crookwell TAB.

We have planned to carry out aerial surveillance for the Tamworth and Northern Slopes boards. The Australian Plague Locust Commission also plans to carry out aerial surveying control in the Coonamble, Condobolin, Hay, Hillston and Narrandera districts. So far response teams have used aerial control to treat 740 targets, covering more than 132,000 hectares. I watched a fair bit of it last week. We are seeing low-density swarms developing across New South Wales. On the weekend the New South Wales Department of Primary Industries treated swarm targets near Gunnedah covering about 800 hectares. Swarms have been treated also in the Dubbo district, with 1,000 hectares sprayed yesterday west of Gilgandra. The Australian Plague Locust Commission is spraying swarms in its control territory.

WORKCOVER ATMOSPHERIC MONITORING EQUIPMENT

Ms LEE RHIANNON: I direct my question without notice to the Minister for Industrial Relations. How long has WorkCover's atmospheric monitoring equipment for detecting the presence of asbestos been locked up and left unused at the WorkCover facility in Londonderry? Would this equipment require maintenance, recalibration and testing before it could be used again? Does WorkCover currently employ any staff who could carry out these procedures, or even use the equipment when fully functional? If so, how many staff can undertake this work? Do any of the allegedly specialist asbestos inspectors employed by WorkCover have any relevant experience with asbestos? Is he confident that WorkCover has the expertise and capacity to detect and prevent airborne exposure to asbestos?

The Hon. JOHN DELLA BOSCA: I thank the honourable member for doing me the courtesy of letting me know that she was going to ask a question about this general subject matter.

The Hon. Duncan Gay: The question is out of order. It is not without notice.

The Hon. JOHN DELLA BOSCA: If I cannot be allowed to express courtesy, I do not know what I can do except to answer the interjection of the Deputy Leader of the Opposition.

The Hon. Michael Egan: Maintain the fiction.

The Hon. JOHN DELLA BOSCA: No, there is no fiction involved. I do not need to maintain the fiction because what I was saying is that Ms Lee Rhiannon raised the general issue with me outside the House. I inform the House that WorkCover has some atmospheric testing equipment stored on the site of its National Association of Testing Authorities accredited laboratory, TestSafe, at Londonderry. Equipment was used during the mid 1990s when WorkCover ran a fee-for-service commercial venture, Tech Source. This consulting business no longer operates, and the equipment has not been used for several years. WorkCover can call on the service of three occupational hygienists. Recently a fourth experienced occupational hygienist retired after providing long and outstanding service to WorkCover. Recruitment action is under way to secure the employment of a new hygienist with asbestos and inhalable particulates experience. It is not common for WorkCover to undertake a significant amount of such testing because employers are required under the terms and regulations of the Occupational Health and Safety Act to conduct atmospheric testing where risk assessments identify such a need.

Most testing undertaken by WorkCover involves identification or otherwise of asbestos in material samples. The taking of samples is undertaken regularly by WorkCover inspectors in the course of their investigations. Analysis is conducted using equipment located at WorkCover's laboratory services unit at Thornleigh. Equipment stored at Londonderry is not appropriate for that task. It is designed for noise monitoring, chemical fume monitoring and dust particulate monitoring. WorkCover is currently reviewing the need for, and suitability of, the stored instruments. Currently it has equipment that meets its needs. WorkCover is the only body in this State with the full range of asbestos-handling experience. Its experts have extensive

industry experience, and they deal with asbestos matters every day of their professional lives. WorkCover is the source of asbestos knowledge in New South Wales. Members of the House would be aware that in June I announced the reestablishment of WorkCover's asbestos and demolition unit, which has been assigned seven dedicated inspectors, who visit identified demolition sites to monitor legislative compliance and to ensure that training, supervision and safe work practices are in place. Each of these inspectors has industry experience in demolition and asbestos work practices.

Inspectors assigned to the unit undertake additional training in asbestos and demolition. The unit performs a support role and provides expert assistance to WorkCover's 301-strong inspectorate. Every inspector can deal with asbestos matters, and many have just completed a refresher course on asbestos and demolition matters. WorkCover has the largest and most active inspectorate in Australia. It launches more than double the prosecutions of all the other States and Territories combined. I am satisfied that WorkCover and its inspectorate have all the skills and resources required to fulfil their compliance activities, especially those related to asbestos and occupational hygiene.

CENTRAL COAST TO SYDNEY TRAIN SERVICES

The Hon. CHARLIE LYNN: My question without notice is directed to the Minister for Transport Services, and Minister for the Hunter. Is he aware of an invitation issued by the *Daily Telegraph's* Central Coast Extra for him to go to the Central Coast to explain to the thousands of commuters why the train service on the Central Coast to Sydney line is such a disaster? Will he confirm his acceptance of the *Daily Telegraph's* invitation? Will he agree to attend a public meeting? Will he now advise an exact date when he will travel to the Central Coast?

The Hon. MICHAEL COSTA: The honourable member forgot to add at the start of his question, "Following his trip on a Central Coast train a year or so ago at the invitation of the *Daily Telegraph*—"

The Hon. Charlie Lynn: Point of order: I did not ask the Minister what he thought I should have asked. I asked him a question about the acceptance of an invitation from the *Daily Telegraph*.

The PRESIDENT: Order! The Minister may continue.

The Hon. MICHAEL COSTA: I will not debate the point of order. The fact of the matter is that the invitation that was offered to me made it very clear it was following the trip I made a year ago at the invitation of the *Daily Telegraph*. If the honourable member were putting a sensible and frank question, he would have added that introduction. I inform the House that I have accepted the invitation. We are organising a time for me to do that. I look forward to doing it. It will not be the first time that I have ridden on trains, unlike the honourable member who sits on the Opposition side of the House.

CROWN LAND WEED AND PEST ANIMALS CONTROL

The Hon. KAYEE GRIFFIN: My question is to the Minister for Lands. What action is being taken to manage weed and pest animals on the Crown land estate?

The Hon. TONY KELLY: Weed and pest animal management is important for all private and public land. We have all seen the important work that has been done by NSW Agriculture in managing locusts across the State under the guidance of the Minister for Primary Industries, the Hon. Ian Macdonald. The Department of Lands is also involved in managing the spread of weeds and pest control on Crown land. Recently the New South Wales Government allocated a further $2 million over four years for programs to address weed and pest control problems on Crown land in country New South Wales. The increased funds will target specific weed and pest animals and will be integrated with existing government programs. A commitment of $685,000 will be allocated this year to specific weed control programs. These funds will boost an existing joint scheme with NSW Agriculture in which over 500 weed management projects have already been successfully implemented over the last five years.

The Hon. Ian Macdonald: A great effort!

The Hon. TONY KELLY: It really is a great effort. Weed control projects will address weeds of national significance and other serious weeds, such as alligator weed, salvinia, bitou bush, lantana, serrated tussock and blackberry. Specific pest animal control programs will also be implemented with additional funds of

$190,000. These schemes will be tackling foxes, rabbits, wild dogs, and emerging pests such as feral goats, pigs and deer. The programs are expected to assist not only rural and regional agricultural industries; they will also contribute to the protection and enhancement of native plants and animals on Crown land.

A series of smaller projects also will be developed as part of the overall allocation that will service complaints about weeds and pest animals as part of the Department of Lands good-neighbour policy. The Department of Lands adopts a good-neighbour approach to land management. All programs are based on a co-operative approach to land management, with responsibility being shared between other State government agencies, such as weeds county councils, rural lands protection boards, local government, Crown reserve trusts, Landcare groups, neighbours and rural and regional communities. The New South Wales Government has committed $2 million over four years to these programs.

[*Interruption*]

That is a lot more than the National Party ever allocated. The National Party never allocated anything to address this problem. The same can be said of funding by the Coalition to the rural bushfire brigades. The last Coalition Government allocated $197 million over seven years to the brigades whereas the Carr Labor Government has allocated two-thirds of that amount this year alone. The Nationals should not talk about such things. The Government has statutory responsibilities under the Noxious Weeds Act 1993 and the Rural Lands Protection Act 1998 to control pests and reduce their impact on neighbours. The department is represented on regional weeds committees and pest animal control associations where there are significant parcels of Crown land involved. These committees are preparing and implementing regional plans for specific species.

TRANSIT OFFICERS PASSENGERS TREATMENT

The Hon. Dr PETER WONG: My question without notice is directed to the Minister for Transport Services. Will the Minister explain the measures his department has undertaken to prevent a repeat of the vicious attack by transit officers on Mitchell Stuart? What action has CityRail taken against the transit officers who were involved in this vicious attack? With CityRail in total disarray, will he explain how the heavy-handed tactics adopted by transit officers will silence the rising tide of anger among commuters? What is the present number of guards and transit officers who are employed by CityRail?

The Hon. MICHAEL COSTA: Yesterday some allegations were made about the behaviour of the transit officers, so I make the very important point that at this stage the statements are allegations. An incident occurred to which the honourable member has referred, and my advice is that the police were called. An internal investigation is under way, but one should not presume that because an allegation has been made, offences are proved. An internal investigation is under way. I will be happy to make the results of that investigation public when it has concluded.

KARIONG JUVENILE JUSTICE CENTRE EMPLOYEES REDUNDANCY AND RETRENCHMENT ARRANGEMENTS

The Hon. CATHERINE CUSACK: My question is directed to the Minister for Industrial Relations. What action is the Minister taking to ensure that the Department of Juvenile Justice follows correct procedures in sacking workers at Kariong? What action is he taking to rectify apparent breaches of the award due to the department's failure to give 10 days notice of transfer and its failure to consult workers regarding redundancies and retrenchment arrangements?

The Hon. JOHN DELLA BOSCA: I am pleased the Hon. Catherine Cusack is the shadow Minister for Juvenile Justice and not the shadow Minister for Industrial Relations—because she clearly does not know anything about industrial relations. As the Minister for Industrial Relations I am responsible for regulating the industrial relations system.

The Hon. Duncan Gay: You had to get the answer from your file.

The Hon. JOHN DELLA BOSCA: That is no business of the Deputy Leader of the Opposition. The Treasurer told me earlier to maintain the fictions of the House!

The Hon. Catherine Cusack: So you are not responsible either.

The Hon. JOHN DELLA BOSCA: The point I am making is that the union represents those members as individuals and the unions are in a position to take up any of the issues that the Hon. Catherine Cusack has described. It is not my role to be an industrial policeman and intervene in every dispute. I think I have previously been asked questions in the House by the Hon. Catherine Cusack about the Kariong Juvenile Justice Centre and I have recently referred to the issues, but by now honourable members should be aware that management of the Kariong Juvenile Justice Centre has been transferred from the Department of Juvenile Justice to the auspices of the Department of Corrective Services. WorkCover's main role in relation to that transfer has been with regard to occupational health and safety.

I previously reported to the House that those matters have been subject to ongoing investigations into safe working methods. I might add that recently I was told that some of the problems—indeed, many of the problems—have their origins in the poor design of many aspects of the centre and in many aspects of the way in which the centre was originally conceived. In fact, one could argue that a large amount of public money has been put at risk by the original conception of the building and the way in which it has been engineered.

The Hon. Catherine Cusack: What about workers' entitlements?

The PRESIDENT: Order! I call the Hon. Catherine Cusack to order for the first time.

The Hon. JOHN DELLA BOSCA: The Hon. Catherine Cusack played a major role in determining the structure, ergonomics and the whole way in which the building was constructed. The original framework, resulting in poor occupational health and safety, and the risks to which workers have been subjected are squarely in the shadow Minister's court. An interjection from across the Chamber referred to workers' entitlements. Clearly members of the Coalition do not understand or know what workers' entitlements mean because the entitlements of any employee of the Department of Juvenile Justice will be protected under the terms of both the Public Sector Management Act and the relevant industrial relations instruments. Again the members of the Coalition demonstrate the depth of their ignorance about the industrial framework.

The Hon. Michael Gallacher: They could always make a group claim under workers compensation legislation.

The Hon. JOHN DELLA BOSCA: As I have stated previously in this House, when a breach of occupational health and safety poses a serious risk, is identified and is within the realm of public interest, WorkCover will investigate and, when required, prosecute employers, including public sector employers, who fail to meet their obligations. Honourable members of course are aware that WorkCover has already commenced a prosecution in the Industrial Relations Commission in relation to some of these matters. Although I will not go into any detail about that, I nevertheless point out, as I previously have in the House, that the current Department of Juvenile Justice and its successor have made significant achievements in the field of occupational health and safety in recent years.

[*Interruption*]

The Leader of the Opposition referred to workers compensation, so I am pointing out that an indication of the department's success in implementing safe working systems and injury management programs is a reduction in its workers compensation premiums. This favourable outcome has led to the department's premium being cut from $8.133 million in one year to $4.824 million in the following year—almost halving its premium.

CONSTRUCTION INDUSTRY OCCUPATIONAL HEALTH AND SAFETY

The Hon. IAN WEST: My question without notice is addressed to the Minister for Industrial Relations. Will the Minister outline measures the Government is taking to improve safety in the construction industry?

The Hon. JOHN DELLA BOSCA: This week WorkCover's construction team commenced its latest safety compliance campaign, focused on construction sites in metropolitan Sydney. WorkCover inspectors will target construction sites until late December, checking occupational health and safety compliance. At this time of the year there is often pressure to finish projects in time for Christmas, there can be a temptation to cut corners, and consequently safety measures may suffer. A team of WorkCover inspectors will particularly examine construction work involving moving equipment such as backhoes, excavators, bulldozers, graders, and front-end loaders, and other high-risk plant. Although the focus of the inspections is largely advisory, inspectors

will, where required, take necessary action and issue appropriate improvement notices where an immediate risk to health and safety is detected. When appropriate, prosecutions, which may result in fines or costs, will be used as a last resort.

Specific attention will be paid to the maintenance of high-risk registrable plant and other occupational health and safety issues associated with using moving equipment. As honourable members would be aware, WorkCover NSW is the nation's best-resourced and most active workplace safety authority. With 301 authorised inspectors, it has the largest and most active team. The inspectors launch more than double the number of prosecutions of all other State and Territories combined, they win more than 90 per cent of their prosecutions, and they recover 88 per cent of the fines levied by the courts. In a statewide construction blitz during February and March this year, 500 sites were visited by WorkCover inspectors. More than 500 safety notices were issued, largely for hazards associated with working at heights, inadequate scaffolding, electrical hazards, and inadequate or poor safe work method statements or practices.

The pre-Christmas construction compliance campaign aims to raise employers' awareness of their obligations and ensure that our productive workplaces are the safest possible. In addition to the compliance visits, WorkCover is working with unions and the major employer groups to improve workplace safety in the construction industry. The aim of the project is an increased ability by employers to manage workplace hazards, which will help to reduce the number of serious injuries and fatalities in the construction industry. In January WorkCover introduced the "Code of Practice: Moving plant on construction sites". That new code of practice is to assist employers in deciding appropriate measures to prevent risks to workers and other people on construction sites where moving equipment is used. "Code of Practice: Moving plant on construction sites" can be obtained on the WorkCover web site or by calling the WorkCover Publications Hotline.

AUSTRALIAN HEAD OF STATE

Reverend the Hon. Dr GORDON MOYES: My question without notice is addressed to the Minister for Justice, representing the Attorney General. Is the Attorney General aware that, under the Australian Constitution, Australia has a Head of State, being the Governor-General? Given that the Head of State is an Australian, does that mean that the argument posited by republicans in the referendum held five years ago this week, and still resorted to as a valid argument for a republic, is redundant? Is the Minister aware that while the Queen is Queen of Australia, she cannot usurp the powers and duties of Australia's Head of State, the Governor-General, as has been made clear in the Australian Constitution on legal advice from the Solicitor-General?

The Hon. JOHN HATZISTERGOS: A large part of that question seeks legal advice, and I am very well qualified to give it. In fact, people used to pay me a lot of money to do just that. In the circumstances of the question, I decline to take up the honourable member's invitation. I think the answer is self-explanatory from his question.

BRIGALOW BELT SOUTH BIOREGION LOGGING MORATORIUM

The Hon. RICK COLLESS: My question without notice is addressed to the Minister for Primary Industries. On Friday 5 November did the Minister tell a meeting of foresters and sawmillers at Dubbo that he was unaware of the Government's moratorium on logging in 500 compartments in the Brigalow Belt South Bioregion? Does the Minister recall that two members of this House, myself included, raised the issue of the moratorium on three occasions, on 20, 27 and 28 October 2004? Why did the Minister lie to the sawmillers in Dubbo? Will the Minister now apologise to them for his incompetence?

The Hon. IAN MACDONALD: That is absolute nonsense—unbelievable nonsense. I know of the compartments, and there are other compartments in the south. I did not say anything like what was suggested by the honourable member. The question is absolutely ridiculous; he makes things up.

The Hon. JOHN DELLA BOSCA: If honourable members have further questions, I suggest they put them on notice.

Questions without notice concluded.

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

HISTORIC HOUSES AMENDMENT BILL

STATE RECORDS AMENDMENT BILL

Bills received.

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

Motion by the Hon. Michael Egan 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 a later hour of the sitting.

Bills read a first time and ordered to be printed.

JOINT SELECT COMMITTEE ON THE TRANSPORTATION AND STORAGE OF NUCLEAR WASTE

Government Response to Report

The Hon. Michael Egan tabled the Government's response to report No. 53/01, entitled "Inquiry into the Transportation and Storage of Nuclear Waste", tabled on 17 February 2004.

Ordered to be printed.

STANDING COMMITTEE ON SOCIAL ISSUES

Report: Inquiry into Issues Relating to Redfern and Waterloo: Interim Report

Debate resumed from 27 October.

The Hon. ROBYN PARKER [2.32 p.m.]: Although I strongly support the principles of harm minimisation, the mobile needle van in Redfern is the source of great contention. Its location is a huge problem. I support the recommendation of the Standing Committee on Social Issues that the mobile van should be moved to another location that is not near a children's playground. However, that is not the only response needed to the massive drug problem in the Redfern area. We need more referral services, detoxification programs, access to a rapid response overdose management team, and counselling for those who get syringes from the van. We certainly need an Aboriginal-specific program. I wonder whether Rachel Forster Hospital, which is currently vacant, could be a suitable venue. I think the interim report could have made more recommendations that addressed the area's huge drug problem.

My main area of dissent with the interim report concerns the progress and future of the Redfern Waterloo Partnership Project and the process surrounding the future development of the Block. The partnership project received $7 million from the Premier's Department over two years, and halfway through our inquiry the Carr Government granted it a further $2.5 million per annum. That is amazing in light of the many problems with that program, which has failed to deliver any real results. The Government's report admitted that. My dissent, however, should not be viewed as a lack of support for an increased State Government commitment. I believe there should be a huge increase in commitment, funding, and resources from the State Government.

I am determined to ensure that past failures are not repeated and that the best possible outcomes are achieved for the Redfern and Waterloo communities, particularly their Aboriginal members. The inquiry's terms of reference invited a serious and unbiased inquiry that would deliver fearless recommendations. I believe that some of the committee's recommendations will result only in the continuation of the Carr Government's inaction and ineffective bureaucratic policies. Time and time again this Government responds to a problem by adding another layer of bureaucratic nonsense. I think a better name for the Minister for Aboriginal Affairs, Dr Refshauge, would be Dr Do-nothing, because this Government has done very little in the past 10 years. It took a riot in Redfern and a parliamentary inquiry to elicit some sort of response from the Government. The Government's refusal to accept the overwhelming criticism of the Redfern Waterloo Partnership Project is breathtaking. It has no idea how many services are available in the area, and a human services review was not received by the time the interim report was tabled. Funding of $7 million over two years has achieved very little.

The interim report also refers to the Aboriginal Housing Company and the redevelopment of the Block. the Block must be redeveloped and the Aboriginal Housing Company must receive government assistance. An audit must be conducted and a full program of support should be generated to help the company provide sustainable housing.

The Hon. KAYEE GRIFFIN [2.37 p.m.]: The interim report of the Standing Committee on Social Issues, entitled "Inquiry into Issues Relating to Redfern and Waterloo", considered the Redfern Waterloo Partnership Project, the redevelopment of the Block, policing strategies and resources, and the mobile needle and syringe service. I congratulate members of the committee and the staff who helped with the conduct of the hearings and compiling the interim report. They made it much easier for committee members to explore the issues addressed in that report. This was not an easy inquiry, and finding witnesses and gathering submissions were certainly not easy tasks. I thank the committee staff for their hard work on the interim report and for ensuring that the committee had access to submissions and witnesses, who filled in the blanks by speaking more fully to their submissions and outlined their concerns about the issues confronting the committee.

The interim report deals specifically with four areas. The committee considered issues regarding the Redfern Waterloo Partnership Project, redevelopment of the Block and the Aboriginal Housing Company, and other matters that community members thought were relevant to the Block's future. The committee further considered policing strategies and resources, drug and alcohol use, and available options. The mobile needle and syringe service was a pressing issue that arose in a lot of the evidence from members of the public and various organisations, and in submissions received by the committee. The committee has made some important and appropriate recommendations in relation to those matters.

In relation to policing strategies and resources dealt with in chapter 4, a timely announcement was made in relation to enhancing policing in Redfern in 2004. At that time the Minister for Police announced 32 strategies and initiatives to improve policing in the Redfern Local Area Command. Police and people working in that area have some difficult problems to overcome, but there are not simple solutions. The perception outside the area is that a number of issues need to be addressed which I know the police, community groups and services involved are working very hard towards. We have to work through the problems, and some of the results will come to fruition in a long time rather than in a short time.

If people were serious about what needs to happen and about the resolutions to the problems they would know that short-term fixes are not necessarily appropriate and that there has to be a vision for the future to change things for the better for the community. People must work together and not divide the community, as has occurred in the past. The committee noted in the report from evidence that people do not necessarily feel that both communities should be lumped together. Different issues relate to Redfern and Waterloo, and they need to be kept separate. Solutions to problems in those areas should take into account the concerns of both communities. Some issues cross both communities, but some are relevant only to Waterloo or to Redfern. Recommendations to resolve problems in the future will assist in helping both communities, but a single solution does not resolve problems of both communities or does not relate specifically to one or the other community.

Concerns were expressed by police in the Redfern Local Area Command regarding injuries sustained by them in the course of duty and how those injuries should be specifically recorded in the future, rather than being recorded anecdotally. The report recommended that the system should enable statistics to be collated and monitored in relation to each local area command, and statewide comparisons between local area commands should be made. As we know, each local area command deals with different issues, but there should be a uniform system so that people looking at statistics about police being injured on duty, or in the course of duty, can refer to a common record. Several recommendations were made in relation to the level of violence against police and the allocation of resources to the local area command.

The Minister for Police announced a summary of strategies and initiatives. Recommendation 13 of the committee was that the Minister for Police, as part of a six-month review of initiatives announced on 16 July, carefully examine the impact of the increasing officers on the ability of the Redfern Local Area Command to investigate crime, and on the local community. There was some discussion within the committee about whether a six-monthly review would necessarily be the most adequate way to deal with this. Of course, one comment in the report is that there should also be an 18-month review. Other initiatives relating to policing strategies also concerned the level of experience of officers who work in the Redfern Local Area Command and what happens in the future with having seasoned officers as opposed to recruits just out of the academy who move straight into a command such as Redfern.

What has been implemented in the New South Wales Police Aboriginal Strategic Direction 2004-06—and as part of the six-monthly review, the initiatives announced on 16 July—should also be looked at in conjunction with what the strategic direction is proposing for the future in relation to the Redfern Local Area Command. Once again, I thank all members of the committee and the secretariat for their hard work on this interim report. I look forward to the committee's final report later this year.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [2.47 p.m.]: I take some pride in this report and have a sense of ownership of it. The terms of reference started from a motion moved by the Hon. Greg Pearce. I was keen to expand them to include not only the riot but also the antecedent social situation in Redfern and Waterloo. I spoke to Senator Aden Ridgway, drafted some terms of reference and moved an amendment to the motion moved by the Hon. Greg Pearce. The Government was willing to take over the inquiry—rather than having an inquiry inflicted on it—and produced amendments that incorporated most of my concerns. The referral was to a government committee rather than to a select committee, and I thought it was better for the Government to come on board to look at the issues. I believe that I had a lot of influence on the terms of reference because the Government was not initially keen to hold an inquiry, but it held one.

The riot—which was a consequence of the tragic death of TJ Hickey—was originally outside the committee's terms of reference. Redfern is a chronic socially disadvantaged community in which there was a lot of resentment. The Coroner's inquiry regarding the death of TJ Hickey was ongoing, as was the Coburn inquiry into the policing strategies on the night of the riot. The report had merely noted the antecedents and the tragic death of TJ Hickey. The evidence was of chronic disadvantage and the distinct nature of it in the Redfern and Waterloo areas. Redfern is more an Aboriginal area and Waterloo is more an old housing commission area with an ageing population of diverse ethnicity.

The committee looked at the Redfern-Waterloo Partnership Project. There was an initial flurry of consultation, which was supposedly designed to co-ordinate real estate development and look at social problems. Although that initial flurry of consultation promised much, that process was not ongoing with regard to social issues groups. It may have continued with groups that had more money and were likely to have influence on the built environment. The question therefore arose: Was this consultation process really to do with real estate development? Though it was not conceptually, it is a bit hard to say what it was. However, Aboriginal people who spoke about it seemed to regard it as an extension of the Premier's Department. It seemed to lack autonomy. That it could not provide a list of non-government organisations in the area for the Morgan Disney human services report is quite telling. It did not appear to take an independent stance on anything. Again, the perception was that it was merely an arm of the Premier's Department.

The other item was the Block, which has immense symbolic value, having been given to the Aboriginal people by the Whitlam Government. It has been progressively falling down. Whether it was inappropriate accommodation, or whether the social circumstances were such that they led to the degeneration of white housing, is another issue. Certainly, the solution that the Aboriginal Housing Company has come up with is to progressively empty those houses and demolish the Block. the Block is now more than half demolished. One recommendation was that it should be rebuilt. I regard that matter as extremely important, and I tried to make it part of our recommendations.

The plan that has been worked out by the Aboriginal Housing Company, with help from the University of Sydney, suggests that the initial phase of building will require expenditure of $27 million. The Aboriginal Housing Company has $2 million of that. It would have been nice if the Government had put its hand up, acknowledged this was an important symbolic act for Aboriginal people and committed $12.5 million of the remaining $25 million to that project. Had the Government done that, in the context of the recent pork-barrelling Federal election, I feel sure the parliamentary parties would have seen the Federal Government coming up with $12.5 million to match the State funding, and this project would have been built. I believe the lack of a New South Wales Government response in that instance is most disappointing for the Aboriginal people, and places a real question mark over the Government's commitment to the Aboriginal people. Here was a golden opportunity for the Government to put in a significant sum of money. If it had, I think the balance of funding required would have been forthcoming with Howard and Latham engaging in a bidding war that went to $6 billion and $4 billion respectively. However, the New South Wales Government did not do so. So I criticise it for that inaction.

As to policing strategies, there have been good and bad. Perhaps the police have struggled with a legacy of mistrust. If you are trying to prevent crime and are arresting people that you think might have been likely to have committed those crimes—what is called preventative maintenance—that is good policing.

However, if the offenders come from one racial group, obviously the task becomes very difficult. Addressing cultural difficulties and the need for reconciliation—which, unfortunately, is being quite seriously neglected in Australia at the moment—also makes things difficult. Cultural programs to address those problems are extremely important and need to be taken further. The good work being done by Dennis Smith and some of the police also needs to be acknowledged—although one must ask why the police are doing things that one might have thought are the bailiwick of the Department of Community Services or other non-government organisations, if they were better funded.

The drugs issue is not only extremely important but is regarded as the engine of crime. Of course, the need to fund a drug habit leads to crime; it is the mother of crime. It is very demoralising for residents to see their streets being turned into shooting galleries. At the same time, the necessity to adopt measures to prevent AIDS makes giving out clean needles very important indeed so that we will not have an AIDS epidemic similar to those have occurred where the prohibitive approach has been used, such as in New York in particular and the United States of America generally, where large portions of drug-using populations have AIDS. That these problems grow geometrically is a medical fact that needs to be recognised. Locals feel that drug use has a honey pot affect: people who are not locals come to Redfern station, have their shot of heroin and leave the area again. Redfern has a very important train station, and problems are being inflicted on local people by drug users who are not locals. They provide role models of successful and rich drug dealers—rich because they make super-normal profits from dealing in illegal substances.

There was some evidence supporting the movement of the needle exchange van. I was not in favour of that proposal. My view was that the van should be positioned by those who know the area. I felt there should be injecting rooms if necessary, because I believe the Kings Cross injecting rooms have saved lives. Though the Government had drawn its conclusions from the operations of those injecting rooms, the fact that it did not have the political courage to implement its conclusion warrants my criticism of it. The Government response to the problems of Redfern has been very silly. It lacked a consultative approach with many of the non-government organisations. Those are quite diverse organisations. I do not think there is any problem with having diverse non-government organisations. Often, such organisations grow in response to needs, either because of the efforts of individuals or because governments set them up. Generally, governments do not set up organisations in places where they are not needed, and the organisations evolve in a manner that is appropriate for those communities. Often, if the community is very disadvantaged, those bodies will be under-resourced.

The Government's response in this instance was to set up the Redfern-Waterloo Partnership Project, which effectively was a ballooning of part of the Premier's Department. That project gave the status of best-funded non-government organisation to an outside group, Barnardos. Whether Barnardos should have been funded rather than increasing funding to existing organisations is quite a moot point. That is bound to create some resentment within an organisation that is battling to run a program that is trying to satisfy demands that far exceed its funding. Because of that inadequacy another group is brought in and assumes more influence and power, and gains more money than the local organisation has. That is not the best way to go about dealing with the matter. Then, of course, all other non-government organisations have to swallow their pride and their differences, and integrate the new service on the basis that the local community needs it. That response by the Government is very disappointing.

When these sorts of inquiries are set up, presumably in good faith, the Government should wait for the reports of the inquiries and listen to their recommendations. I know that under the standing orders I cannot talk about anything that has happened since this report came out in August, but quite a lot has happened since then. I do not believe the Government has taken this report into account to the extent that it should have, especially regarding the Block and its funding, and what it could have done to deal with the drugs problem and the overall management of the area. This report certainly is a step in the right direction. The final report will take matters further, and hopefully we will have the opportunity to speak then on what is being done.

The Hon. GREG PEARCE [2.57 p.m.]: Peace in Sydney was shattered on the evening of Sunday 15 February and the early morning of Monday 16 February by images of rioters in Redfern throwing molotov cocktails, bottles and bricks, burning the railway station and injuring at least 36 police. The riot followed the tragic death of Aboriginal youth TJ Hickey. In such distressing circumstances where the longstanding problems associated with Redfern were brought into such stark relief, the Carr Labor Government went into its usual spin, trying to deny, cover up and blame. Three inquiries were announced by the Premier, to be conducted by the Coroner, NSW Police and WorkCover, with a view to hosing down the many issues that the riot raised.

On 25 February I moved in the Legislative Council to establish a select committee to carry out a thorough public inquiry into the riot and other issues in Redfern. The Labor Government, with the support of a

number of the crossbenchers, succeeded in shifting the inquiry to a committee controlled by the Government and chaired by a Labor member. And, astonishingly, the Carr Government succeeded in having the terms of reference of the inquiry changed to actually delete any investigation of the riot. The Government insisted on calling the riot an "incident" in Redfern. The result was that the inquiry opened with fireworks between me and the Hon. Jan Burnswoods as I made it plain that we would not let the Government get away with making an inquiry a cover-up, and that we wanted some real action on the problems in Redfern.

Local people, the police, health and social workers, government officials and others gave their evidence of rampant drug use and drug selling, of crime including the appalling robberies from elderly women, of poverty and appalling health and housing conditions, unemployment, school truancy—all an appalling social and legal mess in 2004. Perhaps the most depressing evidence was that highlighting what everyone knew of the appalling conditions in Redfern and that, notwithstanding previous riots and dozens of inquiries, nothing had changed for the better. Notwithstanding that many witnesses wanted to talk about the riot, the Chair repeatedly resorted to ruling that the riot was outside the committee's terms of reference. That set the tone, as the Government members attempted to make the report a defence of the $7 million Redfern-Waterloo Partnership Project, which was Premier Carr's response in 2002 to previous troubles in Redfern.

Government members used their numbers to repeatedly include provisions in the interim report supportive of the Redfern-Waterloo partnership, notwithstanding the weight of evidence that the partnership failed to tackle and address the serious problems, and in spite of the Government's submission and evidence from the head of the Premier's Department, Dr Gellatly, who said:

> There is poor or non-existent co-ordination, inadequate accountability across the service system, duplication of services and under resourced, under trained and non-viable services.

He also admitted that the Government did not know how many organisations were providing services in Redfern and Waterloo, nor did he know the capacity of those services. Dr Gellatly conceded that:

> A further challenge is the need to upgrade infrastructure and renew the urban environment in the area, and this is a major task.

His evidence made it plain that the Government had failed to manage the crisis in the area, had failed to establish an effective anti-drug strategy and had failed at longer-term issues, such as the redevelopment of the Block. By the time of our inquiry the project could not say what its objectives were and how they could be measured. It has engendered enormous criticism for its failure to consult and poor communications. The project had not completed a review of service providers to establish what services were available in Redfern and Waterloo and what was required. It had failed also to complete the Redfern-Eveleigh-Darlinghurst planning strategy, and an audit of the Aboriginal Housing Company, which owns the Block, was not complete.

Astonishingly, in May Premier Carr announced the extension of the partnership until 2006 with approval for a further $5 million in funding. Many of the witnesses we heard from made the point that the $12 million invested in the Premier's Office personnel and consultants by the partnership would have been much better spent on services on the ground in Redfern and Waterloo. I agree with paragraph 2.101 of the report, which provides a good summary of the need for long-term commitment to solve the problems. Police evidence highlighted the failure of the Government to properly address and resource the issues in Redfern. The response of the Minister for Police, John Watkins, to the riot was to talk the talk. In question time on Tuesday 17 February he said:

> Redfern local area command is well resourced. It has more police than it ever had before. Commander Smith should not feel constrained by his finances in dealing with this particular problem. Our force is better equipped than it ever has been.

He then went on the Sally Loane program and admitted that the local branch of the Police Association had a longstanding series of requests for resources and other operational matters to be addressed. He admitted that the Redfern police station was truly hopeless:

> It's probably the worst police station I've been into and the wonderful work that is being done by Redfern police and has been done for a long time deserves to have proper accommodation.

In July Watkins was handed the police investigation report into the Redfern riot, Strike Force Coburn. The report was kept secret, but it was devastating in its criticism of police resources, training and preparedness to deal with major incidents, such as the Redfern riot. Watkins responded within a week with a list of 32 strategies and initiatives to improve policing in Redfern, which was released on 16 July. The response was a belated acceptance of the long-known problems at Redfern local area command. It was a devastating indictment of

Watkins and his predecessors, the failure to listen to police, and provide necessary resources and commitment to support local police. However, consistent with the Carr Government's obsession with cover-up and secrecy, Watkins continued to refuse to produce the Coburn report, once using the pathetic excuse that a copy had been sent to the Coroner. He continued to keep it a secret after the Coroner indicated he had no interest in it. The Opposition members insisted that the report be released, but that did not happen.

A clue to the devastating findings in the Coburn report was provided in some of the police evidence to the inquiry. Of concern was some of the evidence of Commander Bob Waites, who attempted to blame the subordinate on the scene for lack of proper response. Mr Waite's failure to turn up to the riot prior to 1.30 in the morning was not satisfactorily explained and his failure to implement correct procedures—for example, locating himself in the correct command situation—was not pursued. Notwithstanding that, the inquiry helped to produce a significant outcome in improving police resources and also to address some of the problems, such as the need for better cultural training for police and the introduction of inexperienced probationary police into Redfern. The inquiry was conducted in such a manner as to prevent a thorough investigation of many of the other social issues. Attempts to get to the core of these issues were frustrated by Government members on the committee. The most disgraceful example of this was the sycophantic praise by Government members of one witness, Lyall Monro, the 1970s activist who was shown on television footage abusing Aboriginal women elders who were trying to calm the situation at about two o'clock on the morning of the riot. Munro attacked members of the committee.

The Hon. Jan Burnswoods: Point of order.

The Hon. GREG PEARCE: Evidence of a number of indigenous and other witnesses confirmed that old race warriors like Munro were part of the problem and not part of the solution.

The Hon. Jan Burnswoods: I disagree with a lot of what the Hon. Greg Pearce is saying. I am taking a point of order only to point out that he is attacking an individual, not a member of this House. If he wishes to do that, whether it is about Lyall Munro or anyone else, he can do so only by way of substantive motion.

The Hon. GREG PEARCE: To the point of order: As you know, Madam Deputy-President, that is a nonsensical point of order. If a person has a problem there is a way to deal with it.

The DEPUTY-PRESIDENT (The Hon. Patricia Forsythe): Was the member referring to another member of the House?

The Hon. GREG PEARCE: No. It is just a time waster—the usual performance.

The DEPUTY-PRESIDENT (The Hon. Patricia Forsythe): Order! There is no point of order. The member may proceed.

The Hon. GREG PEARCE: Of great concern also to Opposition members was the role of the Department of Aboriginal Affairs in New South Wales. We had the spectre of the head of the department, who was on a salary of $180,000, telling us that the department did not actually do anything in Redfern. When she was asked what exactly the department did, the head of the department responded:

> I do run a number of structures across the Government. We provide advice, obviously, to the Minister. We also do a range of responses on Cabinet matters, and all of those sorts of things that Government agencies do. We have an Aboriginal Affairs Plan Co-ordinating Committee. We have, as I said before, cluster groups of agencies and Aboriginal people involved in that group. They are the sorts of things.

As I said, that is absolute gobbledygook. It is shameful that the Department of Aboriginal Affairs with a budget of $7 million and 69 staff does not deliver any services into Redfern. Although the interim report ultimately included some good recommendations—for example, removal of the needle van and the policing package—Opposition members had to write a minority report because of the direction taken by the Government majority members. In particular, we expressed our concern that the Redfern-Waterloo Partnership Project should not continue because clearly it was a failure. Our second major concern was the recommendation that funding be provided for development of the Block. The major concern relates to the capacity of the Aboriginal Housing Company to manage and implement redevelopment of the Block and its subsequent occupation. We thought the recommendation was premature, particularly given that the audit of the housing company and evaluation of its property promised by the partnership has not been completed. The recommendations fly in the face of comments

in various parts of the report—for example, paragraph 1.31—as to the complexity of the issues and the committee's intention to deal with the Block in its final report.

One matter that should be noted was the leaking of part of the Chair's draft report by a crossbench member. The committee took no action. Notwithstanding the Government's approach, the committee's inquiry was an important part of the pressure that forced action in Redfern. Further action has been announced. I would like to thank the secretariat—particularly Julie Longsworth, Rachel Callinan and Victoria Pymm—and others for their work on what at times was a difficult inquiry. I was most concerned at the way Government members of the inquiry initially denied the Police Association representative, Mr Huxtable, the opportunity to give his evidence, refused to publish his submission at the beginning of the inquiry and the ham-fisted attempt to slur his wife, who is also an officer at the Redfern police station. It was appalling.

The Hon. IAN WEST [3.07 p.m.]: Unlike the previous speaker, the Hon. Greg Pearce, I will be positive and forward looking in my comments on this important interim report on the inquiry into the development and future of the Block, the Redfern-Waterloo Partnership Project, the funding of the Pemulwuy redevelopment project, policing strategies and resources, and the mobile needle and syringe service. The third paragraph of the Chair's foreword sets the scene to a large extent when it states that the issues facing the Australian people and the New South Wales and Commonwealth Governments in relation to the Aboriginal community go back to the beginning of European settlement in 1788. Many would say that we have little to be proud of in that long history. Clearly, the time is long overdue for us to face the deep-rooted problems of poverty, disadvantage and racism that beset many Aboriginal people in Redfern and Waterloo, and throughout New South Wales. The position was put extremely eloquently by a former Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick Dodson, who stated in 1993:

> Social justice is what faces you when you get up in the morning.
>
> It is awakening in a house with an adequate water supply, cooking facilities and adequate sanitation. It is the ability to nourish your children and send them to a school where their education not only equips them for employment but reinforces their knowledge of and appreciation of their cultural inheritance. It is the prospect of genuine employment and good health, a life of choices and opportunity, freedom from discrimination.

Those thoughts apply to the indigenous community as well as to other communities that constitute our great multicultural nation, our Great Southern Land, Australia. I take this opportunity to thank the committee's executive officers and secretariat for the dedication, skill and sheer hard work they contributed to the preparation of this report—Julie Langsworth, Rachel Callinan, Victoria Pymm and Heather Crichton.

The first five recommendations of the report relate to the Redfern-Waterloo Partnership Project. Recommendations 6 to 9 relate to the Aboriginal Housing Company. Recommendations 10 to 19 relate to policing. Recommendations 20 to 22 relate to a whole-of-government approach. Other members of the committee have already commented on most of the report's recommendations, but I will comment specifically on recommendations 15 and 16. Recommendation 15 relates to the Minister for Police undertaking an audit of the implementation of the initiatives contained in the document entitled "NSW Police Aboriginal Strategic Direction 2003-2006" in the Redfern Local Area Command, and suggests that relevant initiatives be properly implemented as a matter of priority. Recommendation 16 states that, as part of the six-month review of initiatives announced on 16 July 2004, the Minister for Police consider the impact of the initiatives on the local Aboriginal community with reference to the NSW Police Aboriginal Strategic Direction document.

I acknowledge that currently a great deal of work is being done by the superintendent of police and Tranby college to develop a program of cultural awareness. It is hoped that the training and cultural awareness project will result in joint advice becoming part of a consultative approach involving the local community on how policing can be better carried out in Redfern. It is my hope that we do not lose sight of the extremely important consensual initiatives contained in the strategic direction document. I also hope that the document's proposals, instead of being met with initial and short-lived enthusiasm, are properly implemented on a long-term basis. It is a great responsibility for the Minister for Police to ensure that those initiatives do not end up on the cutting-room floor or gather dust on a shelf, and I am confident that the Minister will acquit himself admirably of that responsibility. I refer now to recommendation 20, which relates to the needle and syringe clean-up program. During any period of transition, while changes in the location of the service or modification in the range of service are implemented, there is a vital need to ensure that an appropriate needle and syringe service will continue to be available.

It has given me great pleasure to play a role in the compilation of this report. Committee members and the secretariat have contributed a great deal of effort to ensure that this interim report leads to positive and

forward-thinking proposals. While I acknowledge that from time to time some negativity has been displayed by certain members of the committee with a view to obtaining some political advantage, I am fairly confident that even the Hon. Greg Pearce would want the potential for improvements arising out of the final report to be realised. I am sure that he acknowledges that the interim recommendations are sound and that their implementation will enable the Redfern-Waterloo community to progress while avoiding negativity and backward proposals. It is with pleasure that I commend the interim report to the House.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [3.17 p.m.]: Although I am not a member of the committee, for the most part I compliment the committee on its interim report, particularly the Hon. Greg Pearce, and on ensuring that moves toward improvement are under way. The initiative of addressing issues in Redfern-Waterloo is an important one and it was born out of a pretty tough night. I suspect that, given that I am not a member of the committee, many honourable members will wonder why I am participating in the debate. It will be no surprise to some—although it will be a surprise to others, I am sure—to know that for a large part of the year while I am attending to parliamentary duties I live in Redfern.

My life in Crookwell and my life in Redfern make an interesting juxtaposition. At my farm in Crookwell, most of the time I leave the house unlocked and my car keys in the car, but in Redfern I have had a back-to-base alarm and motion detectors installed at my premises and there are bars on the windows. Despite the difference in the living environments, there is a remarkable similarity in community spirit and the friendship of people in the street. It is unbelievable. While I am in Redfern, I could easily convince myself that I am back in the community in which I have lived for 50-odd years, Crookwell, because of the friendliness of people.

During my approximately 16 years of service as a member of this Parliament I have lived in many parts of Sydney but Redfern has been the friendliest area of them all. In other areas of Sydney, such as in parts of the eastern suburbs, my family and I have not made friends among the community, as we have in Redfern.

I am telling this story because although there are negatives about Redfern there are certainly some positives. This report is a step in the right direction. I was actually in Redfern on that Sunday night after having driven down from my farm. During the night I was awaken by the sound of a helicopter—an unusual sound in that area because Redfern is not under the flight path. I went out onto our balcony and I could see a helicopter circling the Block, which is about three blocks from our residence. I could hear voices coming up from the street saying that some kids were throwing rocks at police. It was not until the next morning that I learnt what had actually happened.

As the Hon. Greg Pearce and other members have said, many young police officers are stationed in the area. Shortly after the riot my wife's car was broken into whilst stationary at a set of lights at Waterloo. The young police officer handling her case was fresh out of the academy—as many of them are—and he did a terrific job. However, he appeared to be looking for support; I could tell that he felt alone. We tend to forget about front-line police in such situations. I hope that out of all this solutions will arise. Sometimes it is all too easy for people living in areas such as Hunters Hill to suggest that a needle exchange program or injecting room would be an instant solution to the problems in Redfern. Those with ideas of that nature should visit the area before making such suggestions. On some mornings I dress in old shorts, joggers and an old farm shirt and walk around the streets of that great community. I do not wear designer jogging gear.

The Hon. Jennifer Gardiner: Too much information!

The Hon. DUNCAN GAY: Yes, it probably is too much information. As I walk around the Redfern and Waterloo public housing areas, where there is a large Aboriginal and unemployed population, I am frequently greeted with friendly smiles and "G'days". I find that quite exceptional. My message to the House is that Redfern is a good community and it has good people, but various governments have let it down. There have been too many well-meaning people who did not understand local issues and too much bureaucracy. This report is a step in the right direction and, hopefully, will provide solutions to the area's problems. I applaud the committee on its report.

Reverend the Hon. FRED NILE [3.25 p.m.]: On behalf of the Christian Democratic Party I contribute to this take-note debate on the report of the Standing Committee on Social Issues entitled "Inquiry into Issues Relating to Redfern and Waterloo, Interim Report No. 32 dated August 2004". Over the years I have been to the Block, and spoken with Aboriginal elders and visited a number of homes in the area. Aboriginal people were given a sense of hope when the Whitlam Government gave them ownership of some buildings in the area. Sadly, and tragically, the Redfern riot highlighted the serious problems experienced there. Over time conflicts

have developed between police and Aboriginal residents. It is hard to estimate how many Aboriginal people reside in the Redfern-Waterloo area. One count suggested 700, but I believe the number is higher than that.

Between one census and another the transient population around the Block can range from low to high. The figures from the last census were lower than I expected. Following the riot I visited Redfern and met with Mrs Hickey to give her some encouragement because I believed that the Aboriginal people in the area were feeling alienated—a sense of Aboriginal people versus white people; and not only white police but the white community. I attempted to break through that attitude, which the Aboriginal people seemed to be locked into, to show them that I, and the whole non-Aboriginal community, shared their concerns about the riot and the death of TJ Hickey. I gave Mrs Hickey a fairly large donation towards TJ's funeral as well as an offer of friendship and support.

I spent some time talking to people who said they had been near the accident site, people who later gave evidence in the inquiry. As a layperson, it seemed to me that TJ's death was a tragic accident. He may have believed he was fleeing from police, but it seems obvious that a police van could not have accessed that narrow laneway. Over the years I have had discussions with the leaders of the Redfern Aboriginal Housing Company, particularly Mick Mundine and Pastor Peter Walker. For many years they have worked towards providing a solution to the Aboriginal housing problems. Of course, most problems stem from the state of disrepair of the buildings.

I am pleased that I was able to play some part in causing the Standing Committee on Social Issues to conduct this inquiry. My participation probably upset the Hon. Greg Pearce, who was pushing for the establishment of a select committee to inquire into the matter. However, my belief was that it was likely that the Government would act on the recommendations of a standing committee of this House rather than the recommendations of a partisan select committee. I hope my assessment will prove to be correct and that the Government will implement these recommendations.

Mick Mundine and Pastor Peter Walker have developed models of their dream; the problem is the cost. The last estimate was $26 million. The housing company has not received State or Federal financial support and obviously cannot finance such a project from its own resources. It has laid the basis for a project incorporating Aboriginal culture. The plan for redevelopment may not be the way we would do it, but it combines modern housing design with Aboriginal culture. The project has been named the Pemulwuy Redevelopment Project, named after an Aboriginal leader. I strongly support recommendation 7 in that report, which states:

> That the three tiers of government makes a firm commitment to the redevelopment of the Block by the Aboriginal Housing Company, subject to the requirements set out in Recommendation 8—

which deals with auditing issues—

> and in particular that:
>
> - the NSW Government make a substantial funding contribution to enable the completion of the Pemulwuy Redevelopment Project, and that it facilitate access by the Aboriginal Housing Company to other funding sources.
> - the Federal Government be approached by the NSW Government to make a substantial funding contribution to the Pemulwuy Redevelopment Project.
> - the City of Sydney Council make a substantial contribution to the Pemulwuy Redevelopment Project, which might take the form of in-kind assistance, such as handing over freehold title to laneways or waiving rates for a period of time.

I ask the Government to act urgently on what I believe to be the most important recommendation in this report. People residing in the Block have always been disadvantaged as a result of drug abuse, unemployment, alcohol addiction and poor health and housing conditions. While Pastor Peter Walker and I were visiting the area I saw a young Aboriginal boy aged 12 or 13 go up to the needle van, get his needle, inject right at the doorway of the van, overdose and fall to the ground in front of the van. An ambulance was called and, fortunately, ambulance officers were able to resuscitate the boy.

Pastor Peter Walker was angry that this van was allowed to operate in the Block without the support of Aboriginal leaders or the community. It seems to me to be a case of white men saying to Aboriginal people, "We know what is best for you. We will not place a van in Bankstown, Bondi or Ku-ring-gai, but we will place a van in Redfern, in the centre of your community." That has had a demoralising effect on the Aboriginal community. The views of Aboriginal people were ignored, and that again highlights just how patronising the

white community is. We believe that we know what is best for the Aboriginal community and that whatever we suggest the Aboriginal community just has to put up with it.

I oppose recommendation 22, which makes reference to providing information to the community about the need for improvements to the needle syringe service that is to be implemented in the area. That is not what Aboriginal people in the Block want. The implementation of such a service would only help drug dealers and the drug industry; it would promote a drug culture and result in a honey-pot effect in that area. We must restore the dignity of Aboriginal people in Redfern and Waterloo and respect the views of their leaders. I cannot support the committee's recommendation for the retention of the needle van in the general area of the Block.

Pursuant to standing orders business interrupted.

BUDGET ESTIMATES AND RELATED PAPERS

Financial Year 2004-05

Debate resumed from 27 October.

The Hon. DON HARWIN [3.33 p.m.]: This debate is occurring as a result of a sessional order I moved on behalf of Opposition members on 22 June 2004. It is a matter of record that for several years the Government has not allowed honourable members to properly debate its budgets. I am pleased that with the support of the House I have been able to rectify that error. Four months into the financial year we are well placed to examine some of the obfuscation and misrepresentation that is a feature of this budget and this Treasurer's flawed characterisation of our State's true financial position.

In doing so we begin to understand why this Government is not so keen to have its budget scrutinised. This began with the mini-budget exercise, which has been exposed principally as an exercise in spin. The Treasurer could see that the State was going into deficit because of his fiscal profligacy and he knew that an expansion of the revenue base would have to be announced for 2004-05. He chose to bring down a mini-budget in close proximity to discussions with the Federal Government on future Commonwealth-State financial arrangements in a fairly transparent attempt to blame the Federal Government for his tax increases. Yet, as we all know, the ongoing controversy over horizontal fiscal equalisation is nothing new; the Treasurer made no representations to his Federal colleagues to change it and his Federal colleagues made no promise to withdraw this policy approach as part of their recent election platform.

The figure of $376 million quoted by the Premier in a dishonest television advertising campaign has been revealed as an overstatement. The actual figure shown in the budget papers is $345 million. We also now know, thanks to the Auditor-General, that the Treasurer has used an accounting trick to manipulate the headline result for the 2004-05 financial year. Yet again, spin has been preferred to substance. On 30 June the Treasurer made a total of $172 million in payments from the Consolidated Fund to the Ministry of Transport, even though the payments were not needed until the new financial year. The result was to reduce the size of the 2004-05 deficit forecast from $551 million to $379 million.

Since the budget has been released we have also found out that the forecast surplus of $37 million for 2003-04 came in at just $6 million. Ironically, the Treasurer's accounting fiddle almost deprived him of his precious record of budget surpluses. While last year's surplus figure has been exposed as rubbery, the Treasurer has been even more sensitive about this year's deficit figure—so much so that he seems to have breached provisions of the Public Finance and Audit Act requiring him to release a monthly statement on the budgetary position by the end of the following month outlining year-to-date performance against the projections released with the budget estimates that we are now debating.

At the end of September the Treasurer had still not released the figures for July and August, as he was obviously concerned at the collapsing budgetary position. It was widely suspected that there was a serious shortfall in revenue from the new tax on vendors of investment properties. So on 19 October I asked the Treasurer whether he could supply me with official monthly figures on receipts from vendor tax for the months of August and September. The August figure of $29 million dribbled out that day and, following a further question to the Treasurer on 21 October, I was able to extract the September figure of $26 million. Clearly, this new tax will not collect the $690 million in its first four years of operations, which is what was projected in the budget papers.

With the belated release of the July and August monthly statements required under the Act and with a further analysis undertaken by the Opposition it is now clear that the forecast deficit in the budget estimates is at least $176 million too low and a more realistic assessment would be for an end-of-year result back-up of the order of $555 million in the red. There is a legitimate debate about the value of deficit budgeting. For example, former Reserve Bank Governor Bernie Fraser entered the fray in mid-September claiming that the idea that a budget surplus needed to be maintained to preserve the Government's financial credentials should be overturned. He advocated increased expenditure on infrastructure funded by public debt. A week earlier Property Council Executive Director, Ken Morrison, was reported in the *Daily Telegraph* as saying:

> We want the NSW Government to abandon its debt elimination mantra and get serious about investing in infrastructure in NSW.

Sadly, we know only too well that this year's deficit will come from profligate recurrent expenditure. It does not result from the sort of prudent investment in growth-generating infrastructure such as our roads, railway tracks, electricity grid and water supply that we so desperately need in this State. Of course, that is the sort of infrastructure that Mr Fraser and Mr Morrison were talking about.

In this respect we need look no further for confirmation than volume 3 of the Auditor-General's report to Parliament, which was released a few weeks ago. Helpfully, we also have the benefit of further analysis of the report from the Auditor-General's predecessor, Mr Tony Harris, which appeared in the *Australian Financial Review* on 2 November. According to the report, Mr Harris noted that the amount being spent on basic maintenance of our infrastructure assets is about $300 million a year below the level needed to reflect growth in the State's non-current assets. He concluded that:

> The NSW Government has succumbed to the usual temptations of underinvesting in assets and maintenance.

He said that this allows the Government to:

> … boast that they are reducing rather than increasing state debt

and to declare:

> … budget surpluses which have been artificially boosted by delaying maintenance until it is critical.

For the sake of completeness, Mr Harris could have also mentioned the practice of helping with the budget bottom line by extracting dividends from our water and electricity enterprises while infrastructure is crumbling. It is perhaps the worst kept secret in Macquarie Street that the Treasurer has delivered his last State budget. What an epitaph the 2004-05 State budget will be to Michael Egan's stewardship of the State's finances. So that he can retire with a string of budget surpluses intact the Treasurer has been prepared to propagate this sorry story of spin in place of budget honesty, starting with the mini-budget fraud and then compounding it with dodgy surplus and deficit forecasts.

This budget is a timely reminder of Labor's credentials when it comes to economic management. This Government has been living off the benefit of eight years of effective management of the Australian economy by John Howard, Peter Costello and the national Government in Canberra. The Carr Government has also had the revenue benefits of a sustained property boom. But it has nothing to show for it. We often hear it said that the problem with this State Government is its handling of the delivery of basic services—schools, hospitals, rail, roads, water and electricity. We hear that it is a service delivery problem, but these budget estimates show that it is not just that. In fact Labor's approach to economic management is at the heart of virtually every troubled State Government service. In particular, the Government has failed to provide adequately for the State's infrastructure needs, which underpin those services.

The budget papers shed some light on the status of the 2002 State infrastructure plan. The Opposition has cross-referenced the plan with the budget papers and other information and we have concluded that, of the 87 major projects we surveyed, nearly one in four is delayed and nearly one in 10 has been cancelled, abandoned or dramatically reduced in scope. Moreover, budget overruns on these projects amount to a massive estimated $752 million. When we realise how many problems there are with the existing plan we can see why the Carr Government has failed to make a meaningful impact on the backlog of infrastructure needed to provide the level of services that the people of New South Wales are entitled to.

For example, investment necessary for the long-term viability of Sydney's rail system is not provided in this budget. Ron Christie's 2001 report on the rail system—which the Government initially suppressed and then dismissed—detailed the need to add new lines and stations and to spend at least $20 billion on urgent

maintenance as the only way of avoiding operational paralysis across the rail network. This budget makes little impact in that area. After three days of power failures recently and NEMCO predictions of further blackouts, there is no credible plan accompanying this budget to give us the electricity infrastructure we need.

The Carr Government has also squibbed on taking the critical decisions needed to give a growing city like Sydney the water infrastructure it needs. Its recently announced bandaid solution involves spending almost $700 million to take away the Shoalhaven's water, to look at the desalinisation as a last resort and not much else. The Government has failed to devise some imaginative solutions, and I am disappointed that it gave no commitment to exploring the full cost benefits of schemes such as large-scale stormwater harvesting and, considering that we recycle less than 3 per cent of the water we consume, the reuse of grey water.

When we are worried about our supply of drinking water, it is a disgrace that the State Government must be forced by the National Competition Council to take an imaginative approach to the reuse of sewage. Services Sydney has a plan to harvest the millions of litres of effluent that would otherwise be disposed of through ocean outfalls. Even under a limited-scale proposal that water could be reused for irrigation, for example. That is exactly what happened in the Shoalhaven through Shoalhaven Water's reclaimed water management scheme, which I have outlined previously in the House. Grey water could also be reused for environmental flows through river systems rather than releasing high-quality drinkable water for that purpose. However, Sydney Water seems more interested in protecting its turf than in allowing a private firm to compete with it.

This approach also characterises Sydney Water's reluctance to embrace private proposals to cool power stations by reusing grey water recycled from the sewage of Blue Mountains residents. Mount Piper and Wallerawang power stations use up to 32 billion litres of water a year that could otherwise flow into the Warragamba Dam catchment. I hope the Government has seen the sense in this project. Harvesting stormwater should also be a priority. I have just spent several thousand dollars getting an engineer to design a stormwater detention pit for a house I am having built at Dulwich Hill, and it will cost several thousand more dollars to have the retention pit built. However, despite the volume of the retention pit being almost 15,000 litres, I am not allowed to harvest that stormwater and reuse it. It will flow instead into our stormwater system and then into our waterways.

That brings me to my concerns about the budget's impact on stormwater infrastructure and the related issue of water quality in Sydney Harbour and the lower reaches of the Parramatta and Cooks rivers. In this budget the Carr Government has axed its $82 million Stormwater Trust Grants Scheme. The Government should be expanding rather than abandoning this important environmental project. While the Deputy Premier has announced funding for improved access to the Cooks River foreshore, with new parks, walkways, and cycleways, water quality in the river will languish, with no more grants for stormwater infrastructure. Instead we will continue to have a river with levels of bacteria that are more than 650 times the public health benchmark for swimming.

We need a totally new approach to infrastructure, and only a change of government can bring this about. The Opposition has given a commitment that in government it will commission an audit of infrastructure as an urgent priority. To assess the findings of the audit and then put together a workable implementation plan, we will appoint a commission of experts, balanced by community representatives, to produce a 50-year State plan for New South Wales. We will take a one-stop-shop approach to infrastructure projects. Part of that approach will be a much more constructive engagement with the private sector through public-private partnerships. We are determined to end Labor's approach, under which the bureaucracy views private sector proposals as a threat. We must harvest the private sector's innovation and commercial expertise. This flawed budget underlines how urgently we need this fresh approach.

The Hon. CATHERINE CUSACK [3.47 p.m.]: It is hard to know what to make of the budget for the new Office for Women. Not a great deal of information was provided when the budget was announced, presumably because the future of the office was still unresolved when the budget papers were printed. Indeed, the 2003-04 financial year was an utter catastrophe for the Department for Women. The head of the department, Robyn Henderson, went on leave in December and, instead of appointing the departmental deputy, Phillippa Hall, as acting chief executive officer [CEO], a senior officer from the Premier's Department, Dr Elizabeth Coombs, was brought in to act in the position. Ms Henderson returned from holidays in January and was instantly sacked by the Minister for Women. No reasons were given and Ms Henderson joined the growing ranks of disappeared CEOs.

I note that Minister Nori has put the sword to three of her CEOs in the past year. That is a fairly intimidating kill rate and, assuming another willing and sufficiently courageous CEO can be found, I wish him or her lots of luck. I do not want to sound negative but a good anti-waste policy would see all CEO appointments by the Carr Government restricted only to short-term parking spots and an initial print run of no more than 100 business cards—possibly only 50 if they serve under Minister Nori.

After Ms Henderson was sacked Dr Coombs instigated a review of the Department for Women. A few months later, on 6 April, the Government announced the department's abolition as an initiative of the mini-budget. We know from the mini-budget estimates hearings that a new Office for Women has been established in the Premier's Department and that its budget has been reduced from about $5 million to $1.255 million.

It made me wonder about the Women's Grants Program, about which Minister Nori has constantly expressed a commitment to continue. This program was funded to the tune of $1.155 million. If it were to continue, only approximately $100,000 would be left for the rest of the Office for Women. Dr Coombs indicated at the mini-budget hearings that negotiations were ongoing, and the Government was seeking to find a new adviser for women at that time. Dr Coombs, who arrived at the Department for Women in December 2003 for a six-week stint, was still there trying to sort out the mess in July 2004. Ultimately her own desk in the Premier's Department was kept safe for her, even though her own substantive position had been abolished and a new one created. I understand that, having set up the new Office for Women, Dr Coombs has returned to the Premier's Department. I know that those on this side of the House have a high regard for her and appreciate her efforts to get the best possible outcome for women in these circumstances.

The 2004-05 budget papers did not provide funding for a staff allocation for the Department For Women. It was still chaotic and uncertain, having lost its chief executive officer, its departmental status, and most of its budget. We did, however, receive a press release from the Minister for Women, Sandra Nori, entitled "Women Forge Ahead in NSW" and it is a wonderful tribute to political spin, a textbook example of the gap between this Government's rhetoric and actual reality. I thought the Government's announcement that it was axing the XPT on the North Coast in a press release headed "Good News for North Coast Passengers" was a bit rich, but I think that "Women Forge Ahead" probably takes the cake.

In that release the Minister said the Women's Grants Program will continue, but no funding details are given; there are some mentoring and network initiatives, and that is about it. It is hardly glory days. Indeed, it seems the content of the release is inversely related to the grand and glorious heading. I note that the press release was issued in June and we have not had another press release on women's issues from the Minister for Women, and it is now November, which is a fair time lag. In the "Women Forge Ahead" press release the Minister concluded by saying:

> I'm very positive about the department's move to be part of a larger agency. It will give it greater influence among other departments, and provide synergies that are currently not available to the department as a stand alone agency.

The Opposition concurs with the Government that the Office for Women is better located in the Premier's Department. Departments are service organisations, and the old Department for Women was never successful on that front. We believe that a successful office will have a qualified professional public servant at its head, with an ability to think and act strategically, and thus be an effective and positive force for improvement on behalf of women on whole-of-government policy.

The old Department for Women was marginalised. It was inappropriate for the chief executive officer to seek media stardom—that is not constructive or necessary—indeed it was probably a distraction from her credibility and real performance. We will continue to ask questions and closely monitor the progress of the new office. Without being able to comment on funding, the office appears to have made a good start on personnel, and I will make it a priority to seek further briefings on progress as the office becomes established in the Premier's Department.

The Department of Juvenile Justice began the financial year with a budget in the order of $130 million. A large slice of this budget appears to have already been lost with the transfer of Kariong to the Department of Corrective Services. Kariong reportedly costs $5.5 million to operate, and thus the department's budget will reduce to approximately $124 million. Minister Diane Beamer claims that the funding allocation was a 6.4 per cent increase, but, really, like virtually everything the Minister says, it cannot be believed. It does not take into account the increased funding that was required as the department shoulders the responsibility for the transfer of detainees around the State. Of course, pay rises needed to be funded across the whole system. And the Government was committed to certain enhancements to youth justice conferencing.

When all those things are taken into account there is absolutely no doubt that, contrary to what the Minister describes as a "pleasingly positive allocation", the Department of Juvenile Justice had a real cut. As I have said, this is a very small budget. It is about one-third of the cost of the pay rise the Premier offered rail workers yesterday. The amount of $124 million is less than the cost of a 1.5 percent pay rise for teachers. Employees in the Department of Juvenile Justice are less well paid on average. The department has an increasing workload. About three-quarters of its budget is spent on nine detention centres. In the past financial year the average number of detainees increased from 290 per night to 302. The department cannot control what the courts send through its doors. Equally, youth justice conferencing, community-based supervision orders, and an unending thirst for court reports means that demand continues to be strong in an agency that really does not have a lot of funds to start with.

As a result, when the Government cuts funding to Juvenile Justice, the effects are immediate and significant. In real terms, funding has been cut for both years I have served as shadow Minister. I believe it was also significantly cut in most of the years that the Hon. Carmel Tebbutt was Minister. The department must meet the cost of pay rises—when budget indexation falls short of meeting that cost, saving measures obviously have to be taken. This is fine for one or two years, but successive years of cuts means that when the fat is gone, functional savings have to be made. But how is that done when legislative demand for the service is growing? In 2002 and 2003 that was done partially through workers compensation savings. But those workers compensation figures have again billowed out over the past 12 months and I believe that the department is now in dire financial straits.

Again, I hold Minister Beamer accountable. It is her principal role to be the breadwinner for this department, and she has failed miserably. The result of having to take a knife to the department has been the fundamental cause of all of the major problems we have seen in recent months. First of all, we have seen an unrealistic use of casual staff in our detention centres. That is because they are cheaper to employee and, in some centres, up to half the staff are inexperienced casuals. There is a reluctance to use permanent staff on weekends when overtime payments are important. During Christmas holidays when permanent staff want to take leave, staffing at detention centres is unacceptably vulnerable. This has compromised security in our detention centres. There is constant restructuring underway in the Department of Juvenile Justice and it is really all just to save pennies—it is demoralising—but I cannot see how it has any choice.

The constant violence in detention centres which gobbles up more and more resources is absolutely demoralising staff in the community-based sector, an important section that is grossly underfunded. Timely payments to creditors by the departments collapsed to just 43 per cent in the September 2003 quarter. That is disastrous, considering that half of the department's major cost centres are in the country. It means that small businesses and contractors are carrying the can for what appears to now be a major cash flow crisis being experienced in the department. Indeed, I have met with one contractor, Logic Security, a Wagga Wagga based company, that supplied emergency services at Grafton—a long way from Albury—over the Christmas break to help repair the Acmena Detention Centre after it was completely trashed by detainees and closed for a month after a riot.

A lot of small contractors with areas of expertise were dragged in from all over the State, from as far as Wagga Wagga. Those people have major costs and have to pay their subbies, and when push comes to shove they cannot get the money out of the department. The contractor still has not got his money from the department, and that is absolutely ruinous to small business. In my view the money the department is getting is not being spent wisely. There is far too much vandalism resulting from loss of control in detention centres, which, I believe, has conservatively cost $1 million during the 2003-04 financial year. In fact, that would be a gross underestimate. The Grafton riot alone cost more than $600,000.

The department gets consultants to come in on programs to try to rescue, and change overnight, the behaviour of detainees in detention centres. On the other hand, with the emphasis on welfare in these centres, it is simply delegating all the security matters to the Department of Commerce. The supervision of the Department of Commerce security contract has just been pathetic. It is hard to blame the individuals, particularly if a person in, say, the Riverina is overseeing the installation of $500,000 worth of high-tech security cameras in that centre in the morning and then has to monitor the construction of a new stage in the local school hall in the afternoon.

One would hardly get the world's best security consultant available in a town like Wagga Wagga, so it is difficult to blame the individual. I have to say that the system is deeply flawed. I have no doubt that we have wasted a fortune on capital works and security spending on flawed systems that are really ill-advised and designed by consultants that are costing more and more money to fix.

Last year the Department of Juvenile Justice failed, under the system as it now operates, to secure an invitation from Treasury to bid for new capital works. I noted that the department was seeking urgent funding for security measures to repair flaws, belatedly discovered following the Acmena riot, which it believed were endemic to the whole of the system. The department was not successful in securing the type of funding it was seeking. The Opposition is somewhat sanguine about this, given that when Treasury does give the department money, so much of it seems to be wasted and we seem to make little progress towards achieving a solution. The Department of Juvenile Justice suffers greatly from the Government's naivety in thinking that juvenile justice is small, easy and does not matter. The appointment of Minister Diane Beamer on that premise was a huge mistake, and the department will continue to stagger and blunder under great pressure until that Minister is replaced.

The second great yoke that holds the department back is the flawed philosophy regarding its role in the justice system. What is often referred to as the welfare approach in detention centres is, in our view, deeply flawed. The department's annual report of 2002-03, referred to detainees and young offenders—including those in the most serious of categories—as "clients". That annual report has 150 references to clients. By any definition, a client is a person who is in need of service. In the annual report, the department refers to meeting the service needs of its clients. To me, clients would include persons who are sick and are patients in a hospital. They are not people who commit violent offences against often elderly and defenceless members of our community. It is utterly inappropriate to refer to very serious young offenders in particular as clients of the department. That highlights the misplaced emphasis of this Government.

In our view, these young offenders are crying out for structure and discipline, and if that is not provided they will get themselves into trouble, staff will be assaulted, and property will be vandalised and damaged. The department's constant emphasis on negotiation in any type of crisis is flawed. We must be realistic about what can be achieved. We need to be realistic about the manipulative ways of detainees at all levels of the juvenile justice system. This was graphically highlighted in the recently tabled Vern Dalton report.

The Kariong crisis that we have just heard about is one very public example of the stupidity of complacency. The greatest cost, of course, in human terms are staff assaults. The ineffective management of detainees is no good for the detainees. Young offenders in community supervision are also being neglected as a result of the detention centre juggernaut. The Department of Juvenile Justice plays a crucial role in delivering on the fabric of protection for our community and for changing behaviour. I urge the Government to rethink its policies, to rethink its management, and to rethink the extent to which this agency can continue to bear the brunt of funding cuts resulting from the fiscal mismanagement of this Government.

Debate adjourned on motion by the Hon. Jon Jenkins.

THREATENED SPECIES LEGISLATION AMENDMENT BILL

In Committee

Consideration resumed from an earlier hour.

Mr IAN COHEN [4.04 p.m.]: I move Greens amendment No. 46:

No. 46 Page 30, schedule 1 [78], lines 3-7. Omit all words on those lines.

This amendment ensures that listing currently in process can be completed under the old system. I commend the amendment.

The Hon. IAN MACDONALD (Minister for Primary Industries) [4.04 p.m.]: The Government opposes the amendment. The provisions intended to be omitted are essential transitional arrangements for nominations to the schedules on which the Scientific Committee has not yet made a final determination.

The Hon. RICK COLLESS [4.04 p.m.]: The Opposition opposes the amendment.

Amendment negatived.

Schedule 1 as amended agreed to.

Mr IAN COHEN [4.05 p.m.]: I move Greens amendment No. 47:

No. 47 Page 36, schedule 2 [11]. Insert after line 12:

220FD Regulations prescribing criteria under this Part

A regulation that prescribes criteria for the purposes of section 220F, 220FA, 220FB or 220FC is not to be made unless the Minister certifies in writing that:

(a) the criteria are based on scientific principles only, and

(b) any criteria for listing under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth were given due consideration before the regulation was made.

The regulations for listing should be based on scientific principles, taking into consideration the criteria in the regulations for listing in the Commonwealth Environment Protection and Biodiversity Conservation Act. Amendments should ensure that any regulation is based on science and integrated with Commonwealth law, not other matters, keeping it in the spirit of the Act, which requires credible data on the state of our species. Such data should not be kept from the public, which subsequently can make decisions about the fate of threatened species. I commend the amendment.

The Hon. IAN MACDONALD (Minister for Primary Industries) [4.06 p.m.]: The Government is prepared to support this amendment. It relates to the Fisheries Management Act and is equivalent to a similar Greens amendment relating to the Threatened Species Conservation Act, an amendment which we also supported. As was stated in relation to Greens amendment No. 1, the amendment merely codifies what the Government has already stated as its policy. The amendment also will ensure consistency with the Commonwealth threatened species legislation. I might add that advising on social and economic considerations will be a core function of the proposed Social and Economic Advisory Council. The members of that council, which will include a wide range of experts, will be in a position to advise the Government on the social and economic consequences of any listings so these issues can be properly taken into account as the Government decides how best to respond.

The Hon. RICK COLLESS [4.07 p.m.]: The Opposition will not oppose the amendment.

Amendment agreed to.

Mr IAN COHEN [4.08 p.m.]: I move Greens amendment No. 48:

No. 48 Page 37, schedule 2 [16], line 15. Insert "every 12 months" after "nominations".

The amendment relates to the public production of a list of priorities for the listing of species every twelve months to keep the Scientific Committee in touch with current needs as seen by government, experts and the community. I commend the amendment.

The Hon. IAN MACDONALD (Minister for Primary Industries) [4.08 p.m.]: The Government is prepared to support this amendment. The amendment relates to the Fisheries Management Act and is equivalent to a similar Greens amendment relating to the Threatened Species Conservation Act, an amendment we also supported.

The Hon. RICK COLLESS [4.08 p.m.]: The Opposition will not oppose the amendment.

Amendment agreed to.

Mr IAN COHEN [4.09 p.m.], by leave: I move Greens amendments 49, 50, 51 and 52 in globo:

No. 49 Page 37, schedule 2 [16], lines 20-21. Omit all words on those lines. Insert instead:

(b) any advice or recommendations of the Minister or the NRC concerning those priorities, and

(c) any criteria for determining priorities that is specified in the regulations, and

(d) any submissions concerning priorities made under subsection (1B).

No. 50 Page 37, schedule 2 [16], line 28. Insert "Any advice given is to be based on reasons of a scientific nature provided in the advice." after "conservation."

No. 51 Page 37, schedule 2 [16]. Insert after line 28:

(1B) Any person may make a submission to the Fisheries Scientific Committee concerning priorities for the consideration of nominations by the Fisheries Scientific Committee.

No. 52 Pages 38-39, schedule 2 [21], proposed section 220L, line 22 on page 38 to line 11 on page 39. Omit all words on those lines.

In relation to Greens amendments Nos 49 and 50, the advice given by the Minister or the Natural Resources Commission [NRC] on listing should be based on scientific grounds consistent with the criteria for listing. In regard to Greens amendment No. 51, the public should be able to provide suggestions on what the priorities for listing should be, not just the NRC or the Government. In relation to Greens amendment No. 52, the Minister should not be able to interfere with the listing process. Independence for the process run by the Scientific Committee is essential to its credibility. I commend Greens amendments Nos 49, 50, 51 and 52 to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries) [4.10 p.m.]: The Government opposes Greens amendments Nos 49, 50, 51 and 52 to the Fisheries Management Act, which are similar to Greens amendments relating to the Threatened Species Conservation Act, which were not supported. As I said when opposing the earlier Greens amendments, amendments Nos 49, 50 and 51 are unnecessary in the Government's view, and have the potential to make the listing process overly difficult, costly and cumbersome for the Scientific Committee. If accepted, the amendments would place the Scientific Committee in an almost impossible position. It would be faced with having to determine listing priorities after having received numerous public submissions, each of which may ask it to prioritise things differently. No matter what decision is made on listing priorities it would end up being criticised by one group or other in the community.

The Government does not support Greens amendment No. 52—these comments will apply also to Greens amendments Nos 53 and 54. Again, it relates to the Fisheries Management Act and is similar to a previous Greens amendment. As I said when opposing Greens amendments Nos 6 to 8, one of the key aims of the bill is to make the Scientific Committee more accountable than it is now. Allowing the Minister to refer a proposed final determination back to the Scientific Committee for reasons of a scientific nature is perfectly reasonable. Mr Ian Cohen should not assume that members of the Scientific Committee would feel pressured by these provisions. To the contrary, I expect the committee would welcome the opportunity to reassess a proposed listing on the basis of new factual information or science coming to light. As scientists they want to make the most accurate decisions possible. I stress that the ultimate independence of the committee in the listing process will be preserved.

The Hon. RICK COLLESS [4.11 p.m.]: The Opposition will oppose this group of amendments.

Amendments negatived.

The CHAIRMAN: The next amendment is Opposition amendment No. 21. I note that this amendment is in conflict with Greens amendment No. 53. If Opposition amendment No. 21 were to succeed, Greens amendment No. 53 could not be put. The amendments will be considered concurrently.

The Hon. RICK COLLESS [4.13 p.m.]: I seek the advice of the Clerks. Opposition amendment No. 21 is similar to Opposition amendments Nos 4 and 6, which I moved in globo earlier. It relates to the final determination. If the Scientific Committee does not comply with all the requirements it would be deemed to be void. It seems to me that it would be inappropriate if Opposition amendment No. 21 applied to the Fisheries Management Act and not the Threatened Species Conservation Act. If Opposition amendments Nos 21 and 23 are deemed to be not lapsed I would seek leave to move them in globo.

The CHAIRMAN: The decision made in relation to early amendments does not mean that Opposition amendment No. 21 cannot be moved, but it would need to be moved separately, not in globo with Opposition amendment No. 23, because a Greens amendment conflicts with it.

The Hon. RICK COLLESS [4.15 p.m.]: I move Opposition amendment No. 21:

No. 21 Page 39, schedule 2 [21], lines 15-18. Omit all words on those lines. Insert instead:

(7) A final determination that is made by the Fisheries Scientific Committee without complying with all of the requirements of this section is void.

The provision in the bill allows for the complete mismanagement by the Scientific Committee and the Minister. If this were to happen the final determination still can be made by default. If the committee and the Minister failed to properly discharge their responsibilities the determination should not proceed. The amendment provides for the determination to be void if the Minister and the director-general fail to address the final determination requirements rather than the termination being approved automatically. The whole process will be more accountable.

The Hon. IAN MACDONALD (Minister for Primary Industries) [4.16 p.m.]: The Government does not support Opposition amendment No. 21, which relates to the Fisheries Management Act and is similar to an Opposition amendment moved to the Threatened Species Conservation Act, which was not supported.

Mr IAN COHEN [4.17 p.m.]: The Greens do not support Opposition amendment No. 21. The amendment to the Fisheries Management Act mirrors amendments to the Threatened Species Conservation Act. Our comments are similar to those we expressed to Opposition amendments Nos 1 to 7, which we did not support. Similarly, we do not support this amendment.

Amendment negatived.

Mr IAN COHEN [4.18 p.m.]: I move Greens amendment No. 53:

No. 53 Page 39, schedule 2 [21], lines 16-18. Omit "or to give notice to the Minister of a proposed final determination within the period required by this section".

This amendment is similar to the earlier amendment, which was lost. The Minister should not be able to interfere with the listing process. Independence of the process run by the Scientific Committee is essential to its credibility. I commend Greens amendment No. 53 to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries) [4.19 p.m.]: The Government does not support Greens amendment No. 53. The comments I made in relation to Greens amendment No. 52 are applicable.

The Hon. RICK COLLESS [4.19 p.m.]: Greens amendment No. 53 will cause subsection (7) of proposed section 220L to read "Failure to make a final determination within the period required by this section does not affect the validity of the determination." The issue is the same as the one I attempted to address in my earlier amendment. The Opposition wants the exact reverse of proposed subsection (7) to apply. If the final determination is not made by the Fisheries Scientific Committee within the time frame provided, it is the Opposition's belief that the application for final determination should be void rather than validated because it indicates that the committee and the department have not properly discharged their functions. In those circumstances, it would be unreasonable for the determination to be validated.

Amendment negatived.

Mr IAN COHEN [4.21 p.m.]: I move Greens amendment No. 54:

No. 54 Pages 39-40, schedule 2 [21], line 19 on page 39 to line 11 on page 40. Omit all words on those lines.

I adopt the arguments that I presented, unsuccessfully, when the Committee was considering Greens amendments Nos 52 and 53. I commend Greens amendment No. 54 to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries) [4.21 p.m.]: The Government opposes Greens amendment No. 54 for the same reasons that it opposed Greens amendments Nos 52 and 53.

The Hon. RICK COLLESS [4.21 p.m.]: I adopt exactly the same arguments as those I advanced in relation to Greens amendments Nos 52 and 53.

Amendment negatived.

The Hon. RICK COLLESS [4.22 p.m.]: I move Opposition amendment No. 23:

No. 23 Page 40, schedule 2 [21], lines 10 and 11. Omit all words on those lines. Insert instead:

(4) A final determination that is made by the Fisheries Scientific Committee after the period within which it is required to make the determination under this section is void.

The comments I made in relation to Opposition amendment No. 21 apply to this amendment.

The Hon. IAN MACDONALD (Minister for Primary Industries) [4.22 p.m.]: I outlined the Government's position in relation to this amendment when I dealt with Opposition amendment No. 18, and I adopt those remarks to apply to this amendment as well.

Mr IAN COHEN [4.23 p.m.]: The Greens do not support the Opposition's amendment No. 23. The Greens position reflects the position we adopted when we did not support Opposition amendments Nos 1 to 7.

Amendment negatived.

Mr IAN COHEN [4.24 p.m.], by leave: I move Greens amendments No. 55, 56 and 57 in globo:

No. 55 Page 41, schedule 2 [22], lines 16-17. Omit "sections 220K, 220L (3)-(6) and 220M". Insert instead "section 220K".

No. 56 Page 42, schedule 2 [23], lines 4-8. Omit all words on those lines.

No. 57 Page 42, schedule 2 [23]. Insert after line 8:

220NB Director-General to conduct investigation of potentially threatened species, populations and ecological communities

(1) The Director-General is to conduct a State-wide investigation of vascular marine vegetation and vertebrate fish species and populations, and ecological communities, for the purpose of identifying species, populations and ecological communities that are potentially threatened species, populations or ecological communities.

(2) An investigation is to be completed within 2 years after the commencement of this section.

(3) A report on the outcome of the investigation is to be provided to the Fisheries Scientific Committee.

(4) The report is to identify those species, populations and ecological communities that are not listed in schedule 4, 4A or 5 that are, in the opinion of the Director-General, eligible for listing.

(5) The Fisheries Scientific Committee is to have regard to the report when exercising its functions under this Act.

Greens amendment No. 55 represents a tidying up process as a consequence of previous amendments. Greens amendment No. 56 seeks to remove the power from the Minister or the Natural Resources Commission to give directions to the Fisheries Scientific Committee about investigations into the status of species. Greens amendment No. 57 requires the director-general to conduct a statewide investigation in biodiversity and include that as input into future listings decision making. I commend Greens amendments Nos 55, 56 and 57 to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries) [4.25 p.m.]: The Government opposes Greens amendments Nos 55, 56 and 57. Greens amendment No. 55 relates to the provisional listing provision under the Fisheries Management Act. The amendment is consequential to Greens amendments Nos 52 and 54, which omit proposed section 220M and subsections (4) and (5) of proposed section 220L. Neither amendment was supported. In those circumstances, Greens amendment No. 55 is redundant.

Greens amendment No. 56 relates to the Fisheries Management Act and is similar to the Greens amendment in relation to the Threatened Species Conservation Act. As I stated in relation to Greens amendment No. 10, it is considered essential for the Government to have the ability to require the Scientific Committee to undertake investigations of the type outlined in proposed section 25A (3). This will not undermine its independence so far as listing is concerned; on the contrary, it is a sensible proposal that will allow Ministers to ensure that the Scientific Committee's work is undertaken more efficiently and more effectively.

Greens amendment No. 57 also relates to the Fisheries Management Act and is similar to Greens amendment No. 11. I point out that the resources required to undertake the investigation that will be required under proposed section 25B (1) are potentially massive. The reality is that, if this amendment becomes law, scarce resources will be diverted to investigating threatened species instead of doing something about saving them.

The Hon. RICK COLLESS [4.26 p.m.]: The Opposition will not support any of the three amendments.

Amendments negatived.

Mr IAN COHEN [4.27 p.m.]: I move Greens amendment No. 58:

No. 58 Page 42, schedule 2 [24] and [25], lines 9-15. Omit all words on those lines. Insert instead:

[24] Part 7A, Division 3

Omit the Division. Insert instead:

Division 3 Critical habitat of endangered and critically endangered species, populations and ecological communities had

220P Habitat eligible to be declared to be critical habitat

(1) The whole or any part or parts of the habitat of an endangered or critically endangered species, population or ecological community that is critical to the survival of the species, population or ecological community is eligible to be declared under this Division to be the critical habitat of the species, population or ecological community.

(2) The regulations may provide that a specified habitat, or habitat of a specified kind, may, or may not, be declared to be critical habitat for the purposes of this Division.

220Q Fisheries Scientific Committee responsible for identifying critical habitat

The Fisheries Scientific Committee is responsible for identifying (where this is possible) the critical habitat of each endangered or critically endangered species, population and ecological community.

220R Preparation of draft declaration of critical habitat

The Fisheries Scientific Committee must, if it considers that it is possible to identify the critical habitat of an endangered or critically endangered species, population or ecological community, prepare a draft declaration that declares the area or areas of land comprising the critical habitat of that species, population or ecological community.

220S Publication of recommendation

(1) After preparing a draft declaration, the Fisheries Scientific Committee must:

(a) give a copy of it to the Director-General, and

(b) give notice of the draft declaration to all persons known by the Fisheries Scientific Committee, following the making of reasonable searches and inquiries, to be affected by the declaration, being:

(i) landholders (including public authorities who are landholders) of the land concerned, and

(ii) other public authorities known to the Fisheries Scientific Committee to exercise relevant functions in relation to the land, and

(iii) if the land concerned is subject to a mortgage, charge or positive covenant—the mortgagee, chargee or person entitled to the benefit of the covenant, and

(iv) holders of leases and other interests granted by the Crown over the land concerned, and

(c) publish notice of the draft declaration in a newspaper circulating generally throughout the State and, if the recommendation is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and

(d) publish notice of the draft declaration in the Gazette.

(2) The notice must:

(a) state that the draft declaration has been prepared, and

(b) specify the address of the place at which copies of the draft declaration may be inspected, and

(c) invite persons to make written submissions to the Fisheries Scientific Committee about the draft declaration, and

(d) specify the address of the place to which submissions about the draft declaration may be forwarded and the date by which submissions must be made.

220T Consideration of submissions by Fisheries Scientific Committee

(1) The Fisheries Scientific Committee must consider all written submissions received by the Fisheries Scientific Committee on or before the date specified in the notice.

(2) The Fisheries Scientific Committee may amend the draft declaration to take account of any of those submissions or decide not to proceed with the declaration.

220U Declaration of critical habitat

(1) If the Fisheries Scientific Committee decides to proceed with a declaration, the Fisheries Scientific Committee may, by notification published in the Gazette, declare the area or areas identified in the

draft declaration (with any appropriate amendment) and described in the notification to be the critical habitat of the endangered or critically endangered species, population or ecological community concerned.

(2) Section 220Y (2) applies to the publication of a map of the critical habitat.

220V Publication of declaration of critical habitat

As soon as practicable after the declaration of critical habitat by the Fisheries Scientific Committee, the Committee must:

(a) give notice of the declaration to all persons known by the Fisheries Scientific Committee, following the making of reasonable searches and inquiries, to be affected by the declaration, being:

(i) landholders (including public authorities who are landholders) of the land concerned, and

(ii) other public authorities known by the Fisheries Scientific Committee to exercise relevant functions in relation to the land, in particular, the Valuer-General, and

(iii) if the land is subject to a mortgage, charge or positive covenant—the mortgagee, chargee or person entitled to the benefit of the covenant of the land concerned, and

(b) publish notice of the declaration in a newspaper circulating generally throughout the State and, if the declaration is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and

(c) publish notice of the declaration in the Gazette.

220W Amendment or revocation of declaration of critical habitat

(1) The Fisheries Scientific Committee may amend or revoke a declaration of critical habitat by a further notification published in the Gazette.

(2) Before amending or revoking a declaration, the Fisheries Scientific Committee must give and publish notice of the proposed amendment or revocation as if it were a draft declaration referred to in section 220R, and consider all written submissions concerning the proposed amendment or revocation that are received on or before the date specified in the notice.

(3) If a declaration is amended or revoked by the Fisheries Scientific Committee, the Committee must:

(a) give notice of the amendment or revocation to:

(i) those persons who were given notice of the making of the declaration and who retain the requisite interest in the land, and

(ii) any other person known by the Fisheries Scientific Committee, following the making of reasonable searches and inquiries, to have become a landholder, public authority exercising relevant functions in relation to the land, mortgagee, chargee or person entitled to the benefit of a positive covenant in the land concerned after notice of the making of the declaration was given, and

(b) publish notice of the amendment or revocation in the Gazette.

(4) A notice under subsection (3) must give the reasons for the amendment or revocation of the declaration.

220X Public authorities to have regard to critical habitat

A public authority must, on and after publication of a declaration of critical habitat, have regard to the existence of critical habitat:

(a) in relation to use of land that it owns or controls that is within or contains critical habitat, or

(b) in exercising its functions in relation to land that is within or contains critical habitat.

220Y Map of critical habitat to be prepared and published

(1) Before the publication of a declaration, or an amendment of a declaration, of critical habitat, the Fisheries Scientific Committee must arrange for the preparation of a map that shows the location of the critical habitat proposed to be declared or amended.

(2) A copy of the map is to be published in the Gazette on the publication of the declaration of the critical habitat.

220YA Maps of critical habitat to be served

The Fisheries Scientific Committee must serve a copy of a map of critical habitat on the following:

(a) the Director-General,

(b) the Director-General of the Department of Infrastructure, Planning and Natural Resources,

(c) each council within whose area the whole or part of the critical habitat is located,

(d) landholders of the land concerned (including public authorities who are landholders),

(e) holders of leases and other interests granted by the Crown,

(f) other public authorities known by the Scientific Committee to exercise relevant functions in relation to the land concerned.

220YB Fisheries Scientific Committee to keep register of critical habitat

(1) The Fisheries Scientific Committee must keep a register containing copies of declarations of critical habitat as in force from time to time, and maps of the critical habitat that are published in the Gazette, and must make that register available to public authorities.

(2) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Fisheries Scientific Committee.

220YC Discretion not to disclose location of critical habitat

(1) Despite the other provisions of this Division, the Fisheries Scientific Committee may decline to disclose the precise location of critical habitat (or proposed critical habitat) in accordance with this Division to the public or to any class of affected persons. This subsection extends to the notification of a draft declaration of critical habitat, the declaration of critical habitat, any public or other notice of any such declaration, the service of a copy of any map or the keeping of any register under this Division.

(2) The Fisheries Scientific Committee may decline to disclose the precise location of critical habitat (or proposed critical habitat) only if the Committee is satisfied that:

(a) the disclosure would be likely to expose the habitat and the endangered or critically endangered species, population or ecological community that occupies it to a significant threat, and

(b) each landholder of land concerned agrees that the precise location should not be disclosed, and

(c) it is in the public interest that the precise location should not be disclosed.

(3) This section does not prevent the Fisheries Scientific Committee from disclosing the precise location of critical habitat (or proposed critical habitat) to particular persons, including:

(a) landholders or other persons having an interest in, or in lawful uses of, the land, or

(b) public authorities exercising functions in relation to the land, or

(c) persons entitled by law to notice of the existence of interests in or proposals affecting the land.

220Z Effect of failure to comply with procedural requirements

A declaration of critical habitat is not open to challenge because of a failure to comply with the procedural requirements of this Division after the declaration has been published in the Gazette.

The requirements in the Act for designation and protection of critical habitat need updating so that they become effective. To date, the existing provisions in the Act have been ignored. I commend Greens amendment No. 58 to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries) [4.27 p.m.]: The Government cannot support this amendment, which relates to the Fisheries Management Act and is similar to Greens amendment No. 12. When drafting this bill, the Government undertook a detailed and extensive process of consultation. The amendment seeks to insert an entirely new part into the Act which, to the Government's knowledge, has not been subjected to any form of consultation with affected stakeholders.

The Hon. RICK COLLESS [4.28 p.m.]: The Coalition is opposed to Greens amendment No. 58.

Amendment negatived.

The Hon. RICK COLLESS [4.28 p.m.], by leave: I move Opposition amendments Nos 25 and 26 in globo:

No. 25 Page 42, schedule 2 [24], lines 11-13. Omit "and critically endangered species, populations and ecological communities".

Insert instead "species, populations and ecological communities and critically endangered species and ecological communities".

No. 26 Page 42, schedule 2 [25], lines 14-15. Omit all words on that line. Insert instead:

[25] Sections 220P (1), 220T (1), 220Y (2) (a)

Insert "or critically endangered species or ecological community" after "endangered species, population or ecological community" wherever occurring.

[26] Section 220Q Identification of critical habitat

Insert "and each critically endangered species and ecological community" after "ecological community" in section 220Q (1).

These amendments address exactly the same issue as addressed by the Opposition's amendments Nos 9 to 14, which related to the description of critically endangered species, populations and ecological communities. It would be commonsense for the Government to agree to Opposition amendments Nos 25 and 26, because they are consistent with amendments Nos 9 to 14 that I moved previously.

The Hon. IAN MACDONALD (Minister for Primary Industries) [4.30 p.m.]: The Government supports Opposition amendments Nos 25 and 26 for the same reasons it supported Opposition amendments Nos 9 to 14.

Mr IAN COHEN [4.30 p.m.]: The Greens do not support Opposition amendments Nos 25 and 26 for the same reasons I expressed earlier.

Amendments agreed to.

The CHAIRMAN: Government amendment No. 9 is in conflict with Opposition amendment No. 27. I ask the Minister to move Government amendment No. 9 and the Committee will then deal with Opposition amendment No. 27.

The Hon. IAN MACDONALD (Minister for Primary Industries) [4.31 p.m.]: I move Government amendment No. 9:

No. 9 Page 43, schedule 2 [27], lines 3-6. Omit all words on those lines. Insert instead:

(b1) was authorised by a property vegetation plan approved under the *Native Vegetation Act 2003*, being an act that had the benefit of biodiversity certification of the native vegetation reform package under Division 10 when the plan was approved, or

Honourable members who were present last night would recall that I gave a dissertation in relation to this amendment when dealing with Government amendment No. 1, and I have even convinced the Hon. Patricia Forsythe that I was correct in my description of it. However, I have a further dissertation because the Hon. Rick Colless and the Deputy Leader of the Opposition got a few facts wrong last night in relation to Government amendments Nos 1 to 9. During debate last night the Deputy Leader of the Opposition and the Hon. Rick Colless claimed that the biodiversity certification provisions of the bill do not provide certainty for farmers. That is simply wrong and is at odds with the position of the President of the New South Wales Farmers Association, Mr Mal Peters, who knows a great deal more about this matter than do honourable members.

After all, Mr Peters sat on the Sinclair committee and was instrumental in drafting the Government's landmark native vegetation reforms. For the record, the position put by farmers in this process is that they want property vegetation plans [PVPs] to provide security so that they can carry out their farming activities without the need for further approvals. The Government is also committed to this outcome and we have delivered on our

commitment. Nothing in the bill will allow a PVP to be cancelled once it is validly issued, even if the Ministers were to suspend biodiversity certification for the catchment management authority that issued the PVP. In fact, under the system that will commence early next year farmers will receive on-farm assistance from expert staff employed by their local catchment management authority, who would use the new PVP developer to plan for the best possible management of native vegetation and land use for farming activities.

Once a farmer's plan meets the standards in the PVP, the PVP will be issued and can last for up to 15 years. While that PVP is in place a farmer does not have to obtain any further approvals for farm work that is consistent with the plan. In effect, the PVP will include all necessary approvals under the Threatened Species Conservation Act or the Fisheries Management Act. In other words, the bill provides a mechanism for threatened species regulation to be switched off for farmers who hold a PVP from their local catchment management authority. That will create a level of unprecedented certainty in the area of natural resource management. However, switching off threatened species legislation is not something that the New South Wales Government takes lightly. It is essential that there be a robust and transparent system in place to ensure that threatened species issues are properly addressed by catchment management authorities.

Threatened species are not a renewable resource: when they are gone, they are gone. These checks and balances provided through the mechanism of biodiversity certification of the native vegetation reform package ensure that threatened species are protected. That is why the bill provides for the Ministers to be able to suspend biodiversity certification if any catchment management authority failed in its duty to protect threatened species in its area of operation. Naturally, certification will be reissued once the catchment management authority puts in place appropriate measures for the conservation of threatened species.

Let me be very clear on this: this provision in the bill does not undermine the certainty and security provided to farmers already holding a PVP approved during the time in which certification was in place. Under the bill a PVP will not become void if biodiversity certification is suspended. In fact, once approved, PVPs continue to be in force for up to 15 years. Removal of certification does not retrospectively invalidate a PVP or switch back on threatened species regulations on the farm covered by a validly issued PVP. I commend Government amendment No. 9.

Mr IAN COHEN [4.34 p.m.]: I was comfortable supporting the Government's amendment No. 9 until I heard that dissertation! Having said that, I am sure honourable members well know my concerns about the cutting off of threatened species triggers. I continue to support this amendment, as it appears to be the lesser of two evils when compared with the Opposition's attitude to this matter. The Greens support Government amendment No. 9.

The CHAIRMAN: If Government amendment No. 9 is passed, it will not be possible to move Liberal Party amendment No. 27. The Hon. Rick Colless may now move Liberal Party amendment No. 27.

The Hon. RICK COLLESS [4.35 p.m.]: Madam Chair, I seek further clarification. Last night when the Opposition moved amendment No. 15, exactly the same issue arose as applies to our amendments Nos 27, 35 and 36. As Opposition amendment No. 15 was lost last night, does that mean that Opposition amendments Nos 27, 35 and 36 lapse?

The CHAIRMAN: No, they do not lapse. It does not matter whether they have a strange impact on the bill, they can be moved. It is up to the Committee to decide whether the amendments are passed.

The Hon. RICK COLLESS: Are you giving an opinion or stating a fact?

The CHAIRMAN: I am stating a fact, based on my interpretation of the advice I have received from the Clerks. The Hon. Rick Colless can move Opposition amendment No. 27 and speak to it and to Government amendment No. 9.

The Hon. RICK COLLESS [4.36 p.m.]: I move Opposition amendment No. 27:

No. 27 Page 43, schedule 2 [27], lines 4-6. Omit all words on those lines. Insert instead "under the *Native Vegetation Act 2003*, or".

My comments in relation to Opposition amendment No. 15 apply to this amendment.

The Hon. IAN MACDONALD (Minister for Primary Industries) [4.37 p.m.]: The Government is unable to support Opposition amendment No. 27 relating to the Fisheries Management Act, which is equivalent to a similar amendment that was opposed last night.

Mr IAN COHEN [4.37 p.m.]: The Greens do not support the additional protection of defences and defences where biodiversity certification has not been granted. Certification is the key test that should receive benefits. The Greens do not support Opposition amendment No. 27.

Government amendment No. 9 agreed to.

The CHAIRMAN: Order! It is not now possible to put the question on Opposition amendment No. 27, so it lapses.

The Hon. RICK COLLESS [4.38 p.m.]: Do Opposition amendments Nos 35 and 36 also lapse?

The CHAIRMAN: No, they do not automatically lapse. The Hon. Rick Colless may move them later.

The Hon. RICK COLLESS [4.39 p.m.]: I move Opposition amendment No. 28:

No. 28 Page 43, schedule 2 [29], lines 11-14. Omit all words on those lines. Insert instead:

220ZFAExemptions

(1) This Division does not apply to or in respect of the following activities:

This amendment seeks to change the basic tenet in the Fisheries Management Act and the National Parks and Wildlife Act of a farmer being guilty of an offence under those Acts until he can prove his innocence by providing a defence to a prosecution, to a situation more in line with the rest of the laws in this State, which provide that a person is innocent of an offence until the prosecution can prove his or her guilt. This amendment relates to clearing and routine agricultural management activities.

Members in this Chamber must accept that we are dealing with freehold title on agricultural land. Freehold title is held for the purpose of agricultural production. Once the property vegetation plan has been signed off by the Minister no further restrictions should be placed on the primary producer—much less having to prove his innocence, while the department does not have to prove his guilt. I commend this amendment to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries) [4.40 p.m.]: The Government opposes Opposition amendment No. 28, which would fundamentally change a key part of the bill that provides defences for farmers and other landholders. The bill clearly addresses farmers' long-held concerns about the application of environmental legislation to day-to-day farming activities. The bill does not reverse the onus of proof when it makes routine agricultural management activities a defence to prosecution under the current Act. Routine agricultural management activities are already a defence to prosecution under section 113A (3) of the existing Threatened Species Conservation Act. In practice, there is no difference between the existing Act and the bill in this regard. This amendment could have significant legal implications for farmers because other parts of the bill refer to available defences. So removing the word "defences" in one clause would create confusion.

Mr IAN COHEN [4.41 p.m.]: The Greens do not support Opposition amendment No. 28, which will make it all the harder to prove an offence. It is an invitation to commit an offence, as an offender would know that the test of proof had been made difficult. As a result, those landholders who can afford expensive lawyers will take the chance and clear important vegetation. The Greens clearly do not support this amendment.

Amendment negatived.

The Hon IAN MACDONALD (Minister for Primary Industries) [4.42 p.m.]: I move Government amendment No. 10.

No. 10 Page 43, schedule 2 [29], lines 15-21. Omit all words on those lines. Insert instead:

(a) clearing of native vegetation that constitutes a routine agricultural management activity,

(b) a routine farming practice activity (other than clearing of native vegetation),

What I have to say in relation to this amendment is applicable to Government amendments 11, 21 and 22. The New South Wales Farmers Association raised concerns about the way in which the bill, as drafted, would require the development of a regulation to deal with non-native vegetation routine agricultural management activities [RAMAs]. In particular, the association expressed concern about the fact that this would require a definitive list of such RAMAs to be included in the regulation, and that would be impossible to achieve. Following discussions with the association these amendments were drafted to refer to such non-native vegetation activities as a "routine farming practice activity other than clearing of native vegetation".

That would enable the regulation to be drafted in such a way that it would deal with the activities that were not covered in the definition of a routine farming practice activity. I fully expect that it will be a very short list as it is not the Government's intention to include in the Threatened Species Conservation Act what are obviously routine farming activities such as spraying a paddock, picking up deadwood or shifting rocks that pose a real hazard to the everyday work of the farming community.

The types of matters that I think are appropriate to deal with in the regulation would be the shooting of flying foxes or ducks for pest mitigation purposes, the use of goats by property developers to clear native vegetation on prospective development sites, or the shooting of wedge-tail eagles to protect lambs. It is my view that activities such as those cannot reasonably be included in the definition of a routine farming practice activity, and the regulation should make that clear when it is developed. Consistent with the undertaking given in the Legislative Assembly, the Government is committed to fully consulting all stakeholders, including the New South Wales Farmers Association, before finalising this regulation.

This amendment has addressed the association's major issues. The president of the association, Mr Mal Peters, has written to urge the Legislative Council to pass these amendments so that the Threatened Species Conservation Act can be switched off for farmers carrying out routine activities or developing a property development vegetation plan. The reforms in the bill will provide improved protection for the State's biodiversity and threatened species while providing the farming community with the security it requires to continue its vital activities—feeding and clothing the people of New South Wales.

Mr IAN COHEN [4.45 p.m.]: The Greens support Government amendment No. 10, which will improve the capacity to regulate the clearing of non-native vegetation where that may impact on native vegetation under the term "routine farming". For example, overspray from the spraying of vegetation should not be allowed to drift and kill certain species.

The Hon. RICK COLLESS [4.45 p.m.]: The Coalition is opposed to this amendment. After the New South Wales Farmers Association rightly pointed out to the Minister the problems relating to the classification of routine agricultural management activities, its response was to include in the legislation the additional term of routine farming practice activity, which is not defined anywhere in the bill. The Coalition addressed that flaw by proposing its amendment No. 32, which will provide for the Director-General of the Department of Primary Industries to certify that a particular activity is a routine agricultural management activity. That far simpler solution is dynamic in nature rather than the static approach proposed by the Government's amendment to the bill.

Reverend the Hon. FRED NILE [4.46 p.m.]: The Christian Democratic Party supports Government amendment No. 10. I acknowledge the explanation given earlier by the Hon. Rick Colless, but we believe that the introduction of this concept of routine agricultural management activities will advantage farmers. The New South Wales Farmers Association is of the belief that this will improve the bill.

Amendment agreed to.

The Hon. RICK COLLESS [4.47 p.m.], by leave: I move Opposition amendments Nos 29, 30, 31 and 32 in globo:

No. 29 Page 44, schedule 2 [29], line 3. Omit "(in the Western Division)".

No. 30 Page 44, schedule 2 [29], lines 15 and 16. Omit all words on those lines. Insert instead:

(e) the harvesting or other clearing of planted native vegetation (other than native vegetation planted under a publicly funded rehabilitation program),

No. 31 Page 44, schedule 2 [29], proposed section 220ZFA, line 27. Omit "an imminent risk". Insert instead "a risk".

No. 32 Page 44, schedule 2 [29], proposed section 220ZFA. Insert after line 28:

(j) any activity certified by the Director-General of the Department of Primary Industries, by order published in the Gazette, to be a routine agricultural management activity.

Amendment No. 29 involves an issue that I raised in debate on the Native Vegetation Act at about this time last year. It refers to the fact that the construction and operation of airstrips in the Western Division should be classified as routine agricultural management activities, while denying the same classification in the eastern and central divisions. I simply cannot fathom why that difference exists. I have asked the Minister in previous debates in this Chamber to try to explain that difference to me but I have not yet received an answer. I am still at a loss to understand why the Government insists on maintaining a difference between airstrips in the Western Division and airstrips in the eastern and central divisions.

Airstrips are widely used in the eastern part of the State for transport, firefighting and the application of fertilisers and farm chemicals. The Minister might care to advise honourable members how many of the aircraft that flew from airstrips during the current locust plague operation would be caught by this amendment. If this amendment is not agreed to, aircraft will not be able to operate from many on-farm airstrips for what are essentially routine agricultural management activities. There is no justification for the different requirements for airstrips in the Western Division and the eastern and central divisions. I commend the amendment to the Committee.

Mr IAN COHEN [4.49 p.m.]: The Opposition's amendments seek to redefine the routine agricultural management activities [RAMAs] found in the Native Vegetation Act. For example, they propose to extend airstrips operating as RAMAs in the Western Division to airstrips throughout the State. To allow airstrips to be built in the central and coastal regions in remnant vegetation without any environmental assessment or consent under the Native Vegetation Act will inevitably lead to extensive clearing, and that is not acceptable.

The proposal in amendment No. 32 to allow the Department of Primary Industries to create RAMAs is a very serious attack on the structures and agreements that established the Native Vegetation Act. It is simply a ploy to make massive inroads into the protection of remnant vegetation and attack the recommendations of the Wentworth report and the Sinclair committee. The Greens cannot support this amendment as the Native Vegetation Act was a very difficult negotiation exercise and the changes proposed have not been discussed or agreed between stakeholders. The Greens do not support the Opposition amendments.

The Hon. IAN MACDONALD (Minister for Primary Industries) [4.50 p.m.]: The Government opposes Opposition amendments Nos 29, 30, 31 and 32. I will deal first with amendment No. 31. The definition of "routine agricultural management activity" [RAMA] has been taken from the Native Vegetation Act. That Act was established following the Wentworth agreement between farmers and environmentalists. Opposition amendment No. 31 would cause inconsistency and uncertainty for farmers by creating requirements under this bill that are different from those in the Native Vegetation Act. The circumstances in which an approval is required for the clearing of native vegetation have been negotiated through the native vegetation reforms and this bill should not be used as an opportunity to reopen that debate.

Having said that, I state also that Opposition amendment No. 31 raises a serious issue. It has been suggested that a farmer will find it difficult to comply with both the Occupational Health and Safety Act and this bill. However, the Occupational Health and Safety Act and the Threatened Species Conservation Act, as amended by this bill, will operate concurrently and without conflict. Just because someone is trying to comply with one piece of legislation does not mean that he or she can disregard another in the normal course of business.

The bill provides that those facing imminent risk of serious personal injury or damage to property are able to act quickly to respond to such risks. The provision in the bill will not result in farmers being exposed to dangerous situations. To the contrary, the provision explicitly allows farmers to respond quickly to such situations. However, if the risk is extremely remote or unlikely or if it may arise only in the distant future, it can be resolved easily through the normal procedures available under the Native Vegetation Act or the Threatened Species Conservation Act. For example, a development consent or property vegetation plan may be obtained from the local catchment management authority. If it relates to bushfire hazard reduction, the Rural Fire Service can be approached to issue the necessary approval under the Rural Fires Act.

This kind of forward planning is a normal part of farm and business planning practices. The Government's amendments, developed in collaboration with the New South Wales Farmers Association, limit the definition of RAMAs to actions involving the clearing of native vegetation. A broader provision for routine farming practice activities is to be included for activities other than clearing, under which routine activities to prevent personal injury are covered.

The Government cannot support Opposition amendments Nos 29, 30 and 32. As I have said, the definition of "routine agricultural management activity" in the bill was adopted from the Native Vegetation Act. The Opposition amendments would create inconsistency and uncertainty and would undermine the agreement between farmers and environmentalists, which was the basis of the native vegetation reforms that have ended broad-scale land clearing. However, following discussions with the New South Wales Farmers Association, the Government has drafted amendments that will include provision for routine farming practice activities that do not involve the clearing of native vegetation. Regulations can be drafted to deal with activities that are not covered by routine farming practice activities. I am confident that this will be a very short list, as I have said before, as it is not the Government's intention to make the Threatened Species Act intrude upon routine farming practices, such as spraying paddocks. I have dealt with most other issues in my previous comments, with the exception of airstrips. The maintenance of airstrips has always been a defence in the Western Division. They are a necessary part of farming infrastructure in the west of the State, where public airstrips are few and far between.

The Hon. RICK COLLESS [4.54 p.m.]: I ask the Minister for Primary Industries to confirm to the Committee that the operation and maintenance of airstrips in the eastern and central divisions of the State are not farming practices. Would the Minister describe them as such? The airstrip on my property is used regularly, as are the airstrips on the properties of all my neighbours. If the bill is passed in its present form, we will not be able to maintain those airstrips. What will happen if a few seedlings sprout at the end of an airstrip and are caught by the legislation? The airstrip will be shut down as a consequence of this bill or because it no longer meets the protocols and guidelines specified by the aviation industry.

I will speak to Opposition amendments Nos 30, 31 and 32 as I did not do so previously. Amendment No. 30 relates to the harvesting and clearing of native vegetation that has been planted by a farmer. The bill suggests that its provisions should apply to such vegetation if it has been planted for commercial purposes. The harvesting of any planted native vegetation should be allowed except for those plantings that were funded with public money through Landcare programs and other land rehabilitation projects. Many farmers plant lots of trees and other major vegetation for many different reasons—certainly not just for commercial reasons. It is unrealistic to say that a farmer who plants a tree cannot cut it down or lop it if that needs to be done eventually, for whatever reason. On the other hand, vegetation planted under the various suites of Landcare programs using public funds should be protected from clearing, and this amendment would clarify the situation.

Opposition amendment No. 31 would remove the word "imminent". Allowing a routine agricultural management activity [RAMA] to be defined only as an activity that is required in order to remove or reduce an imminent risk is a serious flaw in good risk management practices. Good risk management is about reducing and removing risks before they become imminent risks. There are also WorkCover and occupational health and safety issues to consider. One can only imagine the legal nightmare that would ensue if a member of the public were injured by a falling tree limb and the farmer was required to prove that the risk of that limb falling was not imminent. The only winners in that ridiculous scenario would be the legal profession, and the farmer would ultimately be required to pay damages. The removal of the word "imminent" is more consistent with good risk management practices and WorkCover practices, and I commend the amendment to the Committee.

Opposition amendment No. 32 overcomes a problem that I call the "bill of rights" issue. The bill as it is currently worded provides that every on-farm activity is illegal unless it is identified as a RAMA. As I said in my speech during the second reading debate, the bill's architects have simply not considered many activities. For example, construction operations, the maintenance of soil conservation works, building irrigation canals, land planing for irrigation and the installation of private on-farm pipelines are not included as RAMAs yet all these routine activities are carried out daily on my farm and others across New South Wales. The removal and control of weeds and pests classified under various schedules of the Noxious Weeds Act and the Rural Lands Protection Act are listed as routine agricultural management activities but the management of weeds and pests from crops and pastures that are not listed are not included in the definition.

The Government's amendment confuses the issue further by introducing another term: routine farming practice activities. This term is not defined and it does not mean anything to farmers. Opposition amendment No. 32 will end the confusion by allowing the Director-General of the Department of Primary Industries to adjudicate whether farm activities are deemed to be routine. As the head of the lead agency on agricultural issues this person is the logical choice to play that role of adjudicator wherever there is a conflict. I commend the amendment to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries) [4.58 p.m.]: I want to clarify the airstrips issue and make the situation perfectly clear. The bill, insofar as it impacts on airstrips, is entirely

consistent with the existing Native Vegetation Act. It does not change the law. A property vegetation plan or a development application under the Native Vegetation Act will easily resolve the situation described by the Hon. Rick Colless. As I understand it, maintaining one's airstrip is a permissible activity under the Native Vegetation Act.

The Hon. RICK COLLESS [4.59 p.m.]: Why is there a difference between the east and the west in relation to the management of airstrips? Other issues I agree are peripheral and require changing also, but why is there a difference between what happens with airstrips in the Western Division and airstrips the central and eastern divisions? That is an inconsistency, and to date the Minister has not provided an answer to that question, or at least he has not been able to obtain an answer from his advisers. Well, I want an answer to the question.

Mr IAN COHEN [5.00 p.m.]: The Hon. Rick Colless may be a little disingenuous on this occasion. On one hand the bill is referring to clearing for airstrips and on the other hand it refers to maintaining airstrips, that is, clearing regrowth to maintain airstrips. There is no objection whatsoever to that.

The Hon. IAN MACDONALD (Minister for Primary Industries) [5.00 p.m.]: In relation to the last clarion call by the Hon. Rick Colless I advise that this situation has been in existence for some time. Nothing has changed. There has been a slight difference in operation, but property vegetation plans or development applications, as I understand the Native Vegetation Act, make it permissible to maintain an airstrip.

The Hon. JON JENKINS [5.01 p.m.]: I am also somewhat confused. The Minister might verify what I say but, as I understand it, in the Western Division clearing native vegetation for an airstrip is considered a routine agricultural management activity. In the east an existing airstrip can be maintained, and even extended to cater for different sized planes, but a new airstrip cannot be created. Is that right?

The Hon. IAN MACDONALD (Minister for Primary Industries) [5.01 p.m.]: Yes, there are two available procedures: a property vegetation plan may provide for an airstrip and it can be obtained through a development consent. So it is not excluded. One can proceed on either course.

Amendments negatived.

The Hon. IAN MACDONALD (Minister for Primary Industries) [5.02 p.m.]: I move Government amendment No. 11:

No. 11 Page 44, schedule 2 [29], lines 29-32. Omit all words on those lines. Insert instead:

(3) This section does not authorise the doing of an act that constitutes a routine agricultural management activity or routine farming practice activity:

(a) if it exceeds the minimum extent reasonably necessary for carrying out the activity, or

I outlined in consideration of Government amendment No. 10 the Government's position in this regard. The Government is responding to concerns of the New South Wales Farmers Association and this amendment is designed to satisfy those concerns.

Mr IAN COHEN [5.03 p.m.]: Greens amendment No. 59, which I will move by leave in an amended form from that in which it was circulated, will amend Government amendment No. 11 to ensure that unscrupulous operators do not use farming activities to remove environmental values in preparation for a change of use, such as urban development via rezoning. Such activities are broader than routine management activity or routine farming practice activity as provided for in the Native Vegetation Act. The insertion of the word "reasonably" as a test of "minimum extent necessary" is a major change to the phraseology used in the Native Vegetation Act, which sets a dangerous precedent and worsens abuse of a routine agricultural management activity.

I am advised by the Environmental Defenders Office that Government amendment No. 11 would introduce disparate tests under the threatened species native vegetation management regimes. This may lead to uncertainty in relation to the application of laws on the ground, a result that would run directly contrary to the Wentworth model aim of strengthening and simplifying the approach to landscape conservation. I am advised further that the phrase "minimum extent necessary" was the subject of extensive negotiations during the native vegetation reform implementation and regulations consultation processes. It would be a distortion of these negotiations to introduce a new test via the threatened species legislation particularly when the two regimes are inextricably linked.

The introduction of the word "reasonably" qualifies and muddies the test under threatened species laws. It changes an objective test to an objective/subjective test, with all the attendant legal problems of interpretation. Changes such as these should not be brought in at the last moment, and will do great damage to the roundtable arrangements on native vegetation of which the Government is so proud. I know that environmentalists will feel betrayed. The Greens do not support Government amendment No. 11. I move circulated Greens amendment No. 59, in the following amended form:

That Government amendment No. 11 be amended by omitting all words after "act" in the first line and inserting instead:

(a) if it exceeds the minimum extent reasonably necessary for carrying out a routine agricultural management activity or routine farming practice activity, or

This amendment will amend Government amendment No. 11, providing that the bill should also prevent pre-emptive clearing of any vegetation that is necessarily a physical part of a future activity that requires consent—including the agricultural activities stated in subsection (1) and (2) of proposed section 220ZFA, which are used to facilitate a work, building or structure, including a change of agricultural use that will require an approval. Such behaviour already occurs where clearing takes place to reduce environmental values prior to seeking permission for an urban use, a subdivision or an agricultural use that involves the clearing of native vegetation. The pre-emptive clearing is not for a continuing long-term use but a short-term use to reduce environmental values that will make it all the more likely that a consent will be obtained. I commend Greens amendment No. 59, as amended, to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries) [5.08 p.m.]: The Government is prepared to support Greens amendment No. 59 in its amended form, which seeks to amend Government amendment No. 11. The Government supports this amendment only because it will provide internal consistency within the bill. It will also assist with one of the Government's aims in this bill: to stop unscrupulous developers from purchasing farming lands and destroying the habitat found on the land by, for example, grazing goats in an unsustainable manner or underscrubbing in preparation for lodging a development application that would be more readily approved because of the destruction of habitat. The bill already aims to stop this type of activity in regard to routine agricultural management activities and, under the Government's amendment, routine farming practices. This amendment will extend the safety net to the clearing of non-protected regrowth and grazing. The Government will support the other minor change proposed by Mr Ian Cohen. This is for technical clarification only. It will ensure that paragraph (a) relates to routine agricultural management activities and routine farming practice activities and not to other defences provided.

The CHAIRMAN: As there seems to be some confusion I will state the position as the Chair understands it. Greens amendment No. 59, as amended by leave, amends Government amendment No. 11 to read as follows:

No. 11 Page 44, schedule 2 [29], lines 29-32. Omit all words on those lines. Insert instead:

(3) This section does not authorise the doing of an act:

(a) if it exceeds the minimum extent reasonably necessary for the carrying out of a routine agricultural management activity or routine farming practice activity, or

The Hon. RICK COLLESS [5.15 p.m.]: Madam Chair, thank you for that clarification. I hope everyone is on the same page with this at the moment. I guess what has happened points out the danger of moving amendments on the run, rather than circulating proper amendments. Maybe we can all learn a lesson from that.

The Opposition will not support the amendment. This is a change in emphasis so that any activity is not authorised if it exceeds what is said to be "the minimum extent reasonably necessary" for carrying out certain activities. Who determines what that extent is to be? Who will decide that? Is it the farmer? Is it to be government bureaucrats, who probably do not understand farming principles as well as they should? Will it ultimately be decided by the courts? And at what cost to the farmer? There are simply too many unknowns. With those few comments, the Opposition will not support the amendment.

The Hon. IAN MACDONALD (Minister for Primary Industries) [5.16 p.m.]: The Government supports this amendment and recommends that it be carried today. However, we will check on it in other areas, and if we have to attend to it we will.

Greens amendment No. 59 agreed to.

Government amendment No. 11 as amended agreed to.

Mr IAN COHEN [5.20 p.m.], by leave: I move Greens amendments Nos 62 and 63 in globo.

No. 62 Page 45, schedule 2 [30], lines 17-20. Omit all words on those lines.

No. 63 Page 45, schedule 2 [32], lines 23-24. Omit all words on those lines.

Greens amendments Nos 62 and 63 refer to mandatory recovery plans. I understand there may be some support for them. Although we accept that it is practical to remove timetables for recovery plans, the amendments ensure that recovery planning remains a mandatory duty because the Government's proposal makes it discretionary. The amendments will reinstate the requirement for threat abatement plans. I target particularly the aquatic threatened species the grey nurse shark. Honourable members are aware that I have spent significant time in this House in various circumstances and also among the general public raising awareness about this endangered species. The Carr Government's proposed amendments to threatened species legislation will bring many New South Wales species closer to extension. If the bill is not improved by accepting Greens amendments Nos 62 and 63, a mandatory requirement for a recovery plan for threatened species will no longer be required.

A recovery plan aims to return the species, population, or ecological community back to a level in nature where its future is no longer under threat. The abolition of any mandatory requirement to produce such plans will have serious implications for the future survival of many iconic New South Wales species, including the critically endangered grey nurse shark, which is listed as an endangered species under the Fisheries Management Act. Once abundant in New South Wales, their numbers have diminished severely in recent decades, predominantly as a result of fishing activities. The grey nurse was the first shark in the world to be listed as threatened when the New South Wales Government listed it in 1984. Some 20 years later their numbers are still declining, and current estimates are that approximately 300 remain along the entire east coast of Australia.

Although all fishing is playing a role in the decline of the grey nurse, accidental hooking by recreational fishers is by far the leading contributor. Once hooked, the wounds of this harmless species become infected, they cannot feed, and they are destined to die a slow and painful death. The abundance of photographic evidence showing hooked grey nurse sharks demonstrates the need for recovery plans for the grey nurse shark, which can reduce fishing mortality to the point that the species will recover.

By removing the need for recovery plans for species such as the grey nurse, I question the motivation and intent of the Carr Government to protect the future of the New South Wales environment. Mr Carr seems more concerned about placating a small but vocal group of recreational fishers, and aiding developers and farmers with their visions, than showing a commitment to preventing the State's native animals from becoming extinct. A New South Wales Fishery discussion paper states:

> The incidence of grey nurse sharks with hooks embedded in their jaws has significantly increased, from 2 per cent to 12 per cent over the past decade.

Without a mandatory recovery plan how does the Premier suppose that the number of hookings will not continue to rise? The grey nurse shark is an especially vulnerable species due to a relatively low reproductive rate. Females take seven to eight years to reach sexual maturity, and only one or two young are born every two years. I commend Greens amendments Nos 62 and 63 to the Committee.

The Hon. JON JENKINS [5.24 p.m.]: I realise that I have caused some consternation for the Government by supporting these amendments. Last night I would have supported Greens amendments Nos 13 and 14, but I made a mistake. It would not have made a difference to the result, because the numbers were not there. We must have plans to help recover species. I know they are expensive, and I can hear the Minister in the background saying how expensive they are. Obviously it is a big consideration with recovery plans.

Whether it is a land-based park or a marine-based park, the New South Wales Government now owns nearly 50 per cent of the land base on the coastal plain in the eastern half of the State. If the Government does

not have the money to manage and look after the parks properly, it will have to look at alternative measures. Large numbers of volunteers could be used in land-based parks to reduce the workload on National Parks and Wildlife staff. To a lesser extent volunteers could also be used in marine-based parks.

The diving community, which dives regularly under almost all the reefs up and down the New South Wales coastline, could be used to research fish stocks. They could report regularly on the different types of fish, the number of fish and, for example, grey nurse sharks. Mr Ian Cohen said that the major threat to grey nurse sharks was recreational fishers who accidentally hook them. But that is not true. The vast majority of hooks in the mouths of grey nurse sharks are stainless-steel, long-line hooks; they are not soft iron recreational hooks.

Recreational fishers use barbless, non-stainless-steel hooks that will corrode, or they will use barbless hooks that will release. I support these plans to force the Government to deal with some of these issues that they would prefer to ignore. It is not good enough for the Government to say it does not have the money when it continues to acquire massive amounts of land and marine parks. It would be hypocritical in the extreme not to have in place proper management plans to recover the species for which the parks are acquired.

I support the amendments. I agree that we need recovery plans. I encourage the Minister to use the volunteer community. There may be some concerns about volunteers, and often I hear this from the National Parks and Wildlife Service, the Marine Parks Authority, and some of the extremist green organisations. However, I remind the House of organisations such as the Rural Fire Service, which is a highly trained and professional unit that holds people's lives and property in its hands every single day. The State Emergency Service rescues us from floods and other sorts of emergencies. The Volunteer Rescue Association attends every serious motor vehicle accident outside the city region. I have seen them literally extract people from their cars. Volunteer organisations can be professional, highly trained, and an integral part of our society.

Ms Lee Rhiannon: Are they a threatened species?

The Hon. JON JENKINS: They are a threatened species on both sides of politics, unfortunately. I encourage the Carr Government to develop plans and to involve the volunteer community in these threat abatement plans, to reduce the cost to Government.

The Hon. IAN MACDONALD (Minister for Primary Industries) [5.28 p.m.]: To accept Greens amendments Nos 62 and 63 would be to ensure an inconsistency between the two Acts that deal with threatened species. Last night the House voted to go a completely different route for terrestrial species to the one advocated today by the Greens. The Government's aim throughout this whole exercise has been to bring both Acts together rather than create anomalies and differences. Plans for some species, such as the green sawfish, which has not been seen in this State since 1973, would be totally unnecessary.

I will cite evidence to show that the issue being considered by this Committee is not a simple one. As I am advised, 19 species are currently listed. Each plan would cost $100,000 for research alone and there will be extra costs for implementation. Mr Ian Cohen has made a great number of suggestions in relation to fisheries. If he seeks to insert a mandatory provision into the bill, considerable resources will be required to manage the outcome, particularly bearing in mind that there are species in the pipeline that will also be listed. If Mr Ian Cohen thinks that the department can afford expenditure on a scale that will meet planning of the magnitude I have described, he is quite wrong. It would take millions of dollars to put together a scheme that has been described by Mr Ian Cohen.

I suggest instead that a workable alternative is to have abatement plans and recovery plans as an option associated with saving species on a prioritised basis, which is currently the position. Adoption of the suggestion by Mr Ian Cohen would be contrary to the provisions of the Threatened Species Conservation Act and would result in inconsistency as well as create a burden for the fisheries section of the Department of Primary Industries that would be totally unacceptable to the Government. The proposal simply involves far too much expenditure.

The Hon. RICK COLLESS [5.31 p.m.]: I have some sympathy for these amendments because there is no point in having a Threatened Species Conservation Act if the Government cannot afford to implement its provisions. The Minister's comments show that the whole design of this legislation is wrong.

The Hon. Ian Macdonald: No. We prioritise.

The Hon. RICK COLLESS: It is fine for the Minister to say that we should prioritise, but if these amendments are not agreed to, there will be no requirement to ensure that the Minister must prepare recovery plans. The difficulty I am highlighting is the reason why I said in the second reading debate—right from the word go—that this Act has been a spectacular failure: As yet, no recovery plans have been implemented and no species have been removed from the threatened species list because of their recovery. Surely that is what the Threatened Species Conservation Act should be all about: getting species to a stage at which they are removed from the threatened species list. I am sure the Chairman of the Committee agrees.

The CHAIRMAN: Especially as regards the swift parrot.

The Hon. RICK COLLESS: Especially in relation to the swift parrot, as the Chairman rightly points out. What is the point of having a Threatened Species Conservation Act if the Minister says we cannot afford to implement it? The Minister's comments make a nonsense of the whole Act and put it at risk of being just a piece of paper that will collect dust on a shelf without achieving anything to save or conserve threatened species. If funding is such an important issue now, one must ask why the original framework of the bill included the statement that the director-general must prepare recovery plans. If it was good enough for those who conceived the bill to believe in the need for that provision when it was originally drafted, it should be good enough for the Government to believe in it now. The Opposition supports the amendment.

Mr IAN COHEN [5.33 p.m.]: I listened with interest to the Minister's cost estimates. He said the cost would be hundreds of thousands of dollars—as though that level of expenditure is absolutely beyond the reach of the Government. The reality is that the Government has demonstrated a capacity for expenditure on a vast scale. Earlier the Minister mentioned to me in passing that the Government stands to collect $14 million in revenue from gold extraction at the Lake Cowal goldmine, which was the subject of a motion proposed by Ms Lee Rhiannon and passed by the House earlier. That is the magnitude of revenue that goes directly into this Government's coffers, and it disturbs me that a Government which espouses a high level of environmental credentials and dines out, as it were, on that reputation does not seem to be capable of spending $100,000 to save each species that is clearly threatened.

I challenge the Minister's assertion because the level of expenditure involved in implementing the amendments is small, especially bearing in mind the importance of research on, establishment of, and support for species that are on the brink of extinction in what is supposed to be the premier conservation State of Australia. In the case of the grey nurse shark, conservation efforts may be too late. It is a talking point that despite the grey nurse shark having been given protection status 20 years ago, there is still a massive decline in their numbers and they are still being taken accidentally by hook and line and in so-called shark protection devices—nets that do not even do the job of protecting bathers, partly because they are put up at such an early stage in the year that there are hardly any bathers to protect.

There have been massive losses of this protected species, yet this Minister quibbles about expenditure on recovery plans for threatened species. Recent research has shown that even an undisturbed grey nurse shark population, which is defined as one that is unaffected by fishing impacts, would require at least two decades to double in size. Population modelling that was recently conducted by Otway Bradshaw and Harcourt has found that the grey nurse will be heading for extinction during the next few decades if adequate protection measures are not created to prevent the decline in its numbers. As an apex predator, the grey nurse shark plays a very important role in marine ecosystems. Its extinction, which is currently estimated to occur within the next 40 years, will upset the integral structure of the oceans and will create unforeseen consequences.

As a threatened species, the grey nurse shark needs a recovery plan and it needs mandatory protection. Its habitats must be protected from damage, and the implication of proposed developments on its survival must be assessed. In order to protect this species, every possible measure and resource must be directed towards allowing populations of grey nurse sharks to recover. The Fisheries Management Act already has the tools to protect threatened species; the Carr Government just needs to use the Act, not gut it.

The problems associated with the grey nurse shark highlight the problems faced by many species whose survival will be under question if mandatory recovery plans for threatened species are abolished. Other species need protection besides the grey nurse shark, which already has a recovery plan. The Minister has already undertaken expenditure on recovery plans, so he should think about making that expenditure worthwhile. The eastern freshwater cod is the only species that has a final recovery plan. The oxleyan pygmy perch has a draft recovery plan. Among the endangered species in our own territory, the Murray hardyhead, the trout cod, the river snail, and the green sawfish do not have recovery plans. This legislation presents an opportunity to redress that state of affairs.

I wonder how many times I have to point out in this Parliament the fundamental need to protect threatened species. Do I have to go through 10 years in this Parliament of drawing attention to the plight of threatened species conservation, only to know that when I leave the Parliament another threatened species will have become extinct?

The Hon. JON JENKINS [5.38 p.m.]: Obviously my decision to support this amendment has somewhat upset the Minister. He cited 19 species and an estimated cost of $100,000 per recovery plan for each species. To be honest, $1.9 million is not an outrageous amount.

Mr Ian Cohen: There are seven endangered species on the list.

The Hon. JON JENKINS: The Minister told me 19. So we are looking at $700,000?

Mr Ian Cohen: There are 19 species whose populations are vulnerable, but there are seven threatened species.

The Hon. JON JENKINS: So are we looking at a cost of $700,000? Perhaps the cost is somewhere between $700,000 and $1 million?

Reverend the Hon. Fred Nile: It is $1.5 million.

The Hon. JON JENKINS: I am getting conflicting figures.

The CHAIRMAN: Order! Members are reminded that interjections are disorderly at all times.

The Hon. JON JENKINS: It is somewhere in the middle, about $1 million—let us split the difference between the two lists of threatened species. The amount of $1 million is not an extraordinary sum for the department to spend on plans to save threatened species. Recreational fishers are one of my main constituent groups, people whom I represent in this place. The Minister has said that the Government may have to ban recreational fishing.

The Hon. Ian Macdonald: I did not say that. That is ridiculous. I said there is no question that it would have an impact.

The Hon. JON JENKINS: The Minister has said it would have an impact on recreational fishing, and I agree with him.

Mr Ian Cohen: Most recreational fishers would be happy if they knew they were protected.

The CHAIRMAN: Order! The Hon. Jon Jenkins has the call.

The Hon. JON JENKINS: I am trying to say that most recreational fishers would be happy to help contribute to the survival of threatened species.

The Hon. Ian Macdonald: I cannot see them being happy with your proposal for critical habitats.

The Hon. JON JENKINS: But critical habitats are not part of the plan. The only endangered species traditionally caught by recreational fishers in the marine environment is the grey nurse shark, which is caught accidentally. Current research shows that the majority of grey nurse sharks caught accidentally have stainless steel, long-line hooks in their mouth, not recreational fishers' hooks. The recreational fishers have agreed to the basic requirements: to use barbless hooks, to use soft iron hooks, to not use steel tracers, and to not fish at night around the marine reef environment. Those agreements should be part of the recovery plan. Is the Minister saying that the recovery plan should include extreme measures—to ban recreational fishing over vast areas?

The Hon. IAN MACDONALD (Minister for Primary Industries) [5.41 p.m.]: The Hon. Jon Jenkins is missing the point about what the Government is trying to do through this bill. The Government is trying to create a more adaptive management of natural resources with relevance to threatened species. In the terrestrial Threatened Species Conservation Act the Government concentrated on building, in effect, an adaptive management model rather than a prescriptive one. The same principles have been applied to threatened species in relation to the Fisheries Management Act. There cannot be a flexible approach to terrestrial species and an inflexible mandatory methodology applied to marine life.

The recreational fishing industry in this State will see the intervention by the Hon. Jon Jenkins in a very negative light. The industry would prefer the flexible and adaptive management practices to the prescriptive approach that has been suggested, and I will explain why. The Hon. Ian Cohen has raised the grey nurse shark, and I agree that it needs to be protected. The Government has created 10 critical habitats for the grey nurse shark. The recreational fishing industry was quite opposed to some of the ideas embedded in the critical habitat, but the Hon. Ian Cohen is now putting further ideas to the Government about the extension of the habitats in a way that will have a profound impact on recreational fishing.

A number of habitats are important recreational fishing sites—there is no question about that—particularly around South West Rocks. Under the Act there will have to be a mandatory recovery plan for each of the 19 species. I assume that would involve some abatement strategy that would relate to the environment in which the particular threatened species survives. In making it mandatory for the Government to spend a lot of resources putting this together, it will be inevitable that recreational fishing interests will be undermined—there is no question about that. If the Hon. Jon Jenkins thinks for one moment that the recreational fishing industry in this State agrees with the ideas put forward by the Hon. Ian Cohen about critical habitats and their extension, he has another thing coming. If a requirement is mandatory the Government is forced to study, research and implement plans in each and every case that affects the—

The Hon. Rick Colless: That is what the Act requires now.

The Hon. IAN MACDONALD: No, under this flexible and adaptive management the Government would tend to concentrate on the habitat issues rather than on the individual species. The Government is particularly concerned about the habitat issue. The Hon. Jon Jenkins, who has supported the recreational fishing industry quite heavily, perhaps should have consulted the industry about this issue prior to changing his position in relation to the Act.

The Hon. John Ryan: This is scaremongering.

The Hon. IAN MACDONALD: It is not scaremongering. The Hon. John Ryan knows nothing about this.

The Hon. John Ryan: It is scaremongering.

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

The Hon. IAN MACDONALD: I agree that there needs to be protection. The way adaptive management works under this bill is that the Government would prioritise issues around threatened species, whether terrestrial or marine, and would look at a range of approaches. The Hon. Jon Jenkins wants a mandatory plan for the 19 species, and others will come. That will take a lot of resources and will move away from the central concept of looking at overall habitats rather than individual species.

Mr IAN COHEN [5.46 p.m.]: To clarify one situation that seems to be confusing the Minister, I will make a clear distinction between the preparation of recovery plans and critical habitat plans. My amendment requests that recovery plans be mandatory, and I do not resile from that. I believe that the state of certain species is significantly critical and we need to take those steps. Critical habitat plans will remain discretionary for the Government. That needs to be clearly laid out; the critical habitats will remain at the discretion of the Minister and the Government. The two have different paths, and we are calling for an emergency measure for species in certain circumstances. We need recovery plans for critically endangered species.

The Hon. JON JENKINS [5.48 p.m.]: The Minister indicated that we have black and white alternatives: we have either a flexible approach or a ban on recreational fishing up and down the coast. There are viable alternatives to bans.

The Hon. Ian Macdonald: I did not say that.

The Hon. JON JENKINS: The Minister did say that.

The Hon. Ian Macdonald: I said it will have an impact.

The Hon. JON JENKINS: Let us not mince words: there are viable alternatives. For instance, I have mentioned the grey nurse shark. There are tens of thousands of recreational fishermen up and down the coast,

and I have spoken to many of them. They are prepared to take every single possible step to protect the grey nurse shark, including not using stainless steel gear, using barbless hooks, not fishing at night, and not fishing in reef areas. They are absolutely happy to abide by those guidelines. An abatement plan does not have to be a ban. The Minister or the department will choose to place a ban, or change or modify the activities of recreational fishermen. That is totally within the Minister's power. A ban is not the only alternative.

When we start to change behaviour we have to police those activities to ensure that people abide by them. However, the vast majority of fishers enforce their own limits. They already have voluntary bag, catch and size limits—which are far in excess of what is required by the law—and they do that of their own volition. The Minister is somewhat cynical about this issue. The research that is required to prepare endangered species lists has already been done. If it had not been done we would not have a threatened species list.

The Hon. Ian Macdonald: It is a recovery plan.

The Hon. JON JENKINS: It is a recovery plan?

The Hon. Ian Macdonald: Research is carried out to establish whether a species is endangered. We then have to implement a recovery plan, which requires a separate level of research.

The Hon. JON JENKINS: The research that is required to prepare an endangered species list has already been done. I do not know how much of that is included in the $100,000.

The Hon. Ian Macdonald: It is proposed to ban hook and line fishing in inland waterways.

The Hon. JON JENKINS: Banning such activities is not the only option available to the Minister. The Minister made much about different parts of the bill—for example, marine habitats versus land-based habitats. There is a difference between those habitats. No agricultural or farming activities, or urban development, are carried out in the ocean.

The Hon. Rick Colless: Not even an airstrip.

The Hon. JON JENKINS: Not even an airstrip. There is no urban development, even in the western ocean. There are vast differences between marine and land-based habitats, and it is logical to have different management regimes for those two habitats. The Minister referred earlier to prioritisation. Recently in this Chamber I asked the Minister about the social and economic values of commercial fishing verses recreational fishing. I also asked him about the environmental outcomes. When commercial fishing has been banned and recreational fishing has been allowed to continue, environmental outcomes and fish stock recovery have been stunning. Botany Bay and Lake Macquarie are but two examples.

I agree 100 per cent with the Minister's statement that prioritisation is the way to go. What are the major threats to our endangered fish species? Recreational fishing is not a threat. The Minister has an alternative. He must establish what are the threats to our endangered fish species. I do not agree with this blanket idea of banning things; it is a decision that has been made by his department. I was careful about coming to my decision. I do not always agree with the views espoused by Mr Ian Cohen, but he is right in relation to this issue. Critical habitat is not something that should be listed. The listing of critical habitat requires a different process under the Act. Threat abatement plans are also a separate issue.

Reverend the Hon. FRED NILE [5.52 p.m.]: I wish to clarify what we are debating. The Greens amendment deletes the words "may prepare" on page 45 of the bill and replaces them with the words "must prepare". If this amendment is carried it will make that provision mandatory. I ask the Minister to give me an assurance that if the amendment is defeated and the words "may prepare" remain in the bill, investigations will still be undertaken in relation to the grey nurse shark.

The Hon. Rick Colless: He will say anything to get it through.

Reverend the Hon. FRED NILE: That was my reason for asking that question. We want to get the bill through. The Hon. Rick Colless is not too worried about the bill. He knows that this provision might threaten the bill.

The Hon. Rick Colless: I am extremely concerned about this bill, Fred. You know that. You have not been listening to what I have been saying.

Reverend the Hon. FRED NILE: I have been listening to what the honourable member has been saying, but this strategy may endanger the bill.

The Hon. Rick Colless: Rubbish!

Reverend the Hon. FRED NILE: It has not been a priority for The Nationals, but it is a priority now.

The Hon. Rick Colless: Don't verbal me.

Reverend the Hon. FRED NILE: That is my concern.

The Hon. Rick Colless: What is a priority for The Nationals is a matter for The Nationals.

Reverend the Hon. FRED NILE: I understand that. I am just saying that there is a danger that it may threaten the bill. I am just pointing that out to members of The Nationals. That might be the underlying purpose of this amendment. I ask the Minister to give me an assurance that in the case of a threatened species, such as the grey nurse shark—the point made earlier by Mr Ian Cohen—special plans will be prepared.

The Hon. IAN MACDONALD (Minister for Primary Industries) [5.56 p.m.]: The Government will be making announcements in the near future about enhancing protection measures relating to the grey nurse shark. My commitment to the protection of the grey nurse shark stretches back to when I was first appointed Minister for Agriculture and Fisheries. I established a public inquiry into protection measures relating to the grey nurse shark even though those measures had been in existence only since September 2002. So the protection of the grey nurse shark is high on my list of priorities. It is not just the threatened species that we have to take into account; we also have to take into account key threatening processes. I refer to one of the most recent key threatening processes that was announced by the Fisheries Scientific Committee. Honourable members should remember that we are dealing with listings made by the Fisheries Scientific Committee. That committee recently established that hook and line fishing was a key threatening process.

The Hon. Jon Jenkins: To which fish?

The Hon. IAN MACDONALD: To all fish. I have not finished. Several other key threatening processes are listed. Surely the Hon. Jon Jenkins is aware of what this amendment by The Nationals is intended to achieve. The latest key threatening process—

The Hon. Rick Colless: I did not move the amendment, so withdraw that.

The Hon. IAN MACDONALD: Sorry, the Greens-Nationals alliance. Recently the Fisheries Scientific Committee listed hook and line fishing as a key threatening process for fish in New South Wales waters. Recreational and commercial fishers started ringing up my office because that listing received instant publicity in the papers. The papers ran the story that hook and line fishing was to be banned in New South Wales, but I made a number of statements in which I said that the Government would not ban hook and line fishing. Because the Hon. Jon Jenkins is supporting this process I now have to spend $100,000 or more of NSW Fisheries money to prepare a fishing abatement strategy.

[*Interruption*]

No, that statement is correct. The Greens amendment, which unfortunately is backed by The Nationals, will mean that recovery plans will have to be prepared for all key threatening processes. The Hon. Jon Jenkins is now suggesting that as hook and line fishing is a key threatening process—and there are others—a recovery plan will have to be prepared. The Hon. Jon Jenkins said that it is wonderful that commercial fishing has been banned in some areas and that as a result fish stocks have recovered. However, he seems to forget that the national survey on fishing conducted by Senator Ian Macdonald's department came to the conclusion that in 2002-03 the same amount of fish were taken by commercial fishers in Australia as were taken by recreational fishers. If we can take those sorts of steps—

The Hon. Jon Jenkins: Does that relate to by-catch?

The Hon. IAN MACDONALD: My understanding of the Commonwealth survey that was conducted is that it includes every catch. New South Wales has one million recreational fishers.

The Hon. John Ryan: How would you believe that?

The Hon. IAN MACDONALD: It is a Commonwealth survey. If the Hon. John Ryan wants to knock Senator Ian Macdonald, the Federal Minister for Fisheries, Forestry and Conservation, he can go right ahead. The honourable member should send him a letter telling him that his survey is wrong. Each catch was roughly 76,000 tonnes. I assure Reverend the Hon. Fred Nile—it will involve the Minister for the Environment as well—that plans will be prepared in emergencies. That is the main thing: We prioritise so that we can devote more resources to critical areas. For example, we are preparing a draft recovery plan for the grey nurse shark. Draft recovery plans are public and transparent. They will have scientific input and public scrutiny. It is not simply a matter of preparing a plan; there is a process involved and there is scientific input in that process.

I must make a distinction regarding what the Hon. Jon Jenkins said earlier about doing the science. Before listing a species we must do the science and decide whether it is threatened. Then—regardless of what species is listed—we will have to prepare a recovery plan. That is a complicated, expensive process that will eat into valuable departmental resources that could be diverted to critical plans—the sorts of emergencies that the Hon. Patricia Forsythe outlined, such as the grey nurse shark recovery plan. We will be announcing major changes in that area in the not too distant future.

Mr IAN COHEN [6.01 p.m.]: When Mr Macdonald was made a Minister in March 2003 he said he would do something about species protection. What has he done? This is a backtrack and it is very disappointing. We obviously need recovery plans for the other 20 or so threatened species. Let me make it clear: key threatening processes are affected not by Greens amendments Nos 62 and 63 but by amendment No. 64. Let us consider each amendment in turn. I have watched the discussion with interest and I think something rather fishy is going on—it goes further even than the subject before us. I am concerned about hypocrisy. When it comes to these sorts of issues, which mean nothing to him, Reverend the Hon. Fred Nile waits for a way out—a compromise. But when it comes to the moralistic issues that he raises Inquisition-style in this place, he is as hard as a rock; he never compromises. But on these sorts of issues that mean nothing to him he apparently believes the Government has some divine right to rule. It is absolute hypocrisy.

The Hon. JON JENKINS [6.02 p.m.]: I think everyone is getting a little hot under the collar. A note has been passed to me and I must raise one matter with the Minister. I selected very carefully which amendments I would support and which I would reject. I have very good reasons for doing that. Greens amendment No. 64 refers to key threatening processes. Greens amendments Nos 62 and 63 deal only with the recovery plans for particular species. I have already said that I will support amendments Nos 62 and 63 but not amendment No. 64.

The Hon. Ian Macdonald: We are only considering Nos 62 and 63.

The Hon. JON JENKINS: That is right. So key threatening processes are not part of the discussion. I have selected carefully which amendments I will support. The Minister spoke about prioritising resources. The threat abatement plans will address the key threatening processes for each species and how they should be addressed. If the Minister is saying that a threat abatement plan would not address each of the key activities, prioritise which activity affects the species most and determine which key threatening process should be changed or modified, that is not a very good recommendation for the threat abatement plans. Can the Minister tell me more about the threat abatement plans?

Question—That the amendments be agreed to—put.

The Committee divided.

Ayes, 17

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

Noes, 19

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

Pairs

Ms Cusack	Dr Burgmann
Mr Gallacher	Ms Robertson

Question resolved in the negative.

Amendments negatived.

Mr IAN COHEN [6.12 p.m.]: I move Greens amendment No. 64:

No. 64 Page 45, schedule 2 [34], lines 28-30. Omit all words on those lines.

The differences between the previous amendment and this amendment have already been debated. I commend Greens amendment No. 64 to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries) [6.13 p.m.]: The Government opposes this amendment for the reasons outlined in detail in consideration of the previous two amendments.

The Hon. RICK COLLESS [6.13 p.m.]: The Opposition will not support this amendment.

Amendment negatived.

Mr IAN COHEN [6.14 p.m.]: I move Greens amendment No. 65:

No. 65 Page 46, schedule 2. Insert after line 23:

[38] Section 220ZVA

Insert after section 220ZV:

220ZVA Information database

(1) The Director-General is to establish a database of information in relation to threatened species, populations and ecological communities.

(2) The database is to contain the following information in relation to each threatened species, population or ecological community:

(a) the reasons for listing,

(b) habitat location and requirements,

(c) factors threatening survival,

(d) desired recovery mechanisms.

(3) The database is to be kept in such form as the Director-General approves.

(4) Information on the database is to be made available for public inspection by publication on the internet site of the Department and in such other manner as the Director-General approves.

I understand there is some support for this amendment, which relates to the department establishing a public database on threatened species populations or ecological communities, about which it is important to have clear, precise information. I commend Greens amendment No. 65 to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries) [6.14 p.m.]: The Government does not support this amendment. It is unclear exactly how extensive the proposed information database is intended to be. Its preparation has the potential to divert scarce resources away from on-the-ground activities that can actually protect threatened species to what is essentially an administrative process, and that is very undesirable.

Amendment negatived.

Mr IAN COHEN [6.15 p.m.], by leave: I move Greens amendments Nos 66, 68 and 69 in globo:

No. 66 Page 47, schedule 2 [38], proposed section 220ZVA, line 8. Omit all words on that line. Insert instead:

and threat abatement strategies and their effectiveness, and

(d) contains a status report on each threatened species, where information is available, and

(e) sets out clear timetables for recovery and threat abatement planning and achievement.

No. 68 Page 47, schedule 2 [38], proposed section 220ZVB, lines 11-12. Omit "As soon as practicable after the commencement of this section, the". Insert instead "The".

No. 69 Page 47, schedule 2 [38], proposed section 220ZVB. Insert after line 13:

(2) The Priorities Action Statement must be completed as soon as practicable and no later than 12 months after the date of assent to the *Threatened Species Legislation Amendment Act 2004*.

These amendments involve recovery planning that is to be replaced by a priorities action statement [PAS]. The guidelines and criteria, in addition to the actual PAS, should be subject to public comment. The PAS should occur within 12 months of the commencement of the Act and be adopted by the director-general within four months of its completion. To ensure the PAS and recovery planning start as soon as possible, the PAS should address effectiveness of recovery strategies, provide a status report on each species where information is available and have clear timetables for recovery planning, threat abatement and achievement. The amendments also require advice on the PAS to be made publicly available, with the exception of commercially sensitive information. It also requires not less than 30 days for public comment. I commend Greens amendments Nos 66, 68 and 69 to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries) [6.17 p.m.]: The Government supports Greens amendments Nos 66, 68 and 69.

Amendments agreed to.

Mr IAN COHEN [6.17 p.m.], by leave: I move Greens amendments Nos 67 and 70 in globo:

No. 67 Page 47, schedule 2 [38], proposed section 220ZVA. Insert after line 8:

(2) The guidelines and criteria for decision-making regarding a Priorities Action Statement should be publicly available for input.

No. 70 Page 47, schedule 2 [38], proposed section 220ZVB, line 22. Insert "Any advice provided must be made publicly available (with the exception of any information the Director-General considers to be of a commercially sensitive nature)." after "appropriate.".

We have covered the detail of the argument of these amendments in my earlier discussion. I commend Greens amendments Nos. 67 and 70 to the Committee. I ask that questions on these amendments be put seriatim.

The Hon. IAN MACDONALD (Minister for Primary Industries) [6.19 p.m.]: The Government does not support these amendments. Amendment No. 67 relates to the Fisheries Management Act and is similar to Greens amendment No. 18, which was defeated earlier. The priorities action statement is a statement of the strategies to be taken to achieve recovery and threat abatement. The bill establishes an open process for the public to comment on the statement before it is finalised. The statement should be judged on its merits, rather than by reference to a bureaucratic and general set of guidelines and criteria. Amendment No. 70 mirrors another amendment relating to the Threatened Species Conservation Act, Greens amendment No. 21, which was opposed and defeated. The Freedom of Information Act 1989 remains the most appropriate mechanism for assessing this kind of information because it contains the relevant provisions concerning consultation with third parties, exemptions for Cabinet-related material, and the like.

Amendments negatived.

Mr IAN COHEN [6.20 p.m.], by leave: I move Green amendments Nos 71 and 72 in globo:

No. 71 Page 48, schedule 2 [38], proposed section 220ZVD, lines 1-2. Omit all words on those lines. Insert instead:

(3) The Director-General must adopt the Priorities Action Statement or amendment (with or without alterations) within 4 months after the end of the period allowed for the public comment on the draft statement or amendment.

No. 72 Page 48, schedule 2 [39], proposed section 221NA. Insert after line 25:

(3) A regulation that provides that development or an activity of a specified type does not constitute development that is likely to significantly affect threatened species, populations or ecological communities, or their habitats, is not to be made unless the Minister has certified in writing that the development or activity is of minimal environmental impact on threatened species, populations and ecological communities, and their habitats.

I have already put the major points relative to Greens amendment No. 71 in consideration of the last round of amendments. Regarding Greens amendment No. 72, the Government is introducing a class of development exempt from the Act's consent process. This should reflect what already occurs for such development in the Environmental Protection Act. The regulations may provide that development or an activity of a specified type constitutes development that is of minimal environmental impact on threatened species populations or ecological communities or their habitats. I commend Greens amendments Nos 71 and 72.

The Hon. IAN MACDONALD (Minister for Primary Industries) [6.21 p.m.]: The Government supports both amendments, as it did when similar amendments were moved in relation to the Threatened Species Conservation Act.

The Hon. RICK COLLESS [6.21 p.m.]: The Opposition will not oppose the amendments.

Amendments agreed to.

The Hon. IAN MACDONALD (Minister for Primary Industries) [6.22 p.m.], by leave: I move Government amendments Nos 12, 13 and 14 in globo:

No. 12 Page 49, schedule 2 [42] (proposed section 221ZG). Insert after line 24:

(2) The Minister may confer biodiversity certification even if the native vegetation reform package does not comprise all the elements of the package.

(3) The Minister may, by order published in the Gazette, suspend biodiversity certification of the native vegetation reform package if the composition of the package changes after its certification (for instance by any amendment of the *Native Vegetation Act 2003* or regulations under that Act, or by the approval or amendment of a State-wide standard or target or of a catchment action plan). The Minister may by order published in the Gazette lift any suspension under this subsection.

(4) The Minister may, in an order conferring biodiversity certification or in another order published in the Gazette, exclude from the certification of the native vegetation reform package any specified class of activity.

(5) In deciding on any action under this section, the Minister is to have regard to the likely impact of the native vegetation reform package (or any relevant aspect of its operation) on the achievement of the objects of this Part.

No. 13 Page 49, schedule 2 [42], lines 25-39. Omit all words on those lines. Insert instead:

221ZH Effect of biodiversity certification

While biodiversity certification of the native vegetation reform package is in force, any activity on land within the area of operations of each catchment management authority has the benefit of that biodiversity certification (except any activity excluded from certification under section 221ZG (4)).

Note. Biodiversity certification has the following effects:

(a) the clearing of native vegetation as authorised by a property vegetation plan that is approved while the clearing has the benefit of biodiversity certification is a defence to a prosecution for certain offences under Part 8A of the NPW Act, and

(b) development consent to clearing of native vegetation that has the benefit of biodiversity certification does not require the preparation of a species impact statement or consultation between Ministers. (See section 14 (4) of the *Native Vegetation Act 2003*.)

No. 14 Page 50, schedule 2 [42], line 1. Omit all words on that line. Insert instead:

221ZI Suspension of certification in connection with implementation of package

These amendments, as I have already noted, relate to a previous set of Government amendments, numbered 1 to 9, on which I gave a detailed dissertation last night. I am sure honourable members will be relieved if I do not repeat now what I said then. However, I assure honourable members that, if I am required to repeat my comments, I will rise to the challenge.

Amendments agreed to.

The CHAIRMAN: Government amendment No. 15 and Greens amendment No. 73 are in conflict and may be considered concurrently. I propose to put questions separately on both amendments. If Government amendment No. 15 is successful, Greens amendment No. 73 will lapse.

The Hon. IAN MACDONALD (Minister for Primary Industries) [6.24 p.m.]: I move Government amendment No. 15:

No. 15 Page 50, schedule 2 [42] (proposed section 221ZI), lines 2-7. Omit all words on those lines.

This Government amendment relates to the original Government amendments Nos 1 to 9. Again, I do not propose to delay the Committee by repeating the comments I made to those amendments. I commend the amendment.

Mr IAN COHEN [6.24 p.m.]: I move Greens amendment No. 73 as circulated:

No. 73 Page 50, schedule 2 [42], proposed section 221ZI, line 2. Omit "may". Insert instead "must".

This amendment addresses the suspension or revocation of certification. Rather than have the discretion to suspend or revoke the certification of the native reform package if it is, or is likely to, fail to conserve threatened species, et cetera, the Minister must suspend or revoke. I commend Greens amendment No. 73.

The Hon. IAN MACDONALD (Minister for Primary Industries) [6.25 p.m.]: Greens amendment No. 73 is similar to Greens amendments Nos 25 and 26, which related to the Threatened Species Act. As I said in relation to those previous amendments, it is preferable that the existing provision remain in place and that suspension of certification of an environmental planning instrument occur only after the circumstances listed in proposed section 126E (4) have been met. It should be noted that there is in this subsection a regulation-making power that would allow other circumstances to be prescribed in the future, if that were deemed appropriate.

Government amendment No. 15 agreed to.

The CHAIRMAN: As Government amendment No. 15 has been agreed to, Greens amendment No. 73 lapses.

[*The Chairman left the chair at 6.26 p.m. The Committee resumed at 8.15 p.m.*]

The Hon. IAN MACDONALD (Minister for Primary Industries) [8.17 p.m.], by leave: I move Government amendments Nos 16 and 17 in globo:

No. 16 Page 50, schedule 2 [42], line 9. Omit "or revoke".

No. 17 Page 50, schedule 2 [42], line 18. Omit "or following the revocation".

As I have told the Committee several times, these amendments follow the shape and form of Government amendments Nos 1 to 9 so I will not repeat the extensive comments that I made when speaking earlier to those amendments. I commend the amendments to the Committee.

Mr IAN COHEN [8.19 p.m.]: My response to Government amendments Nos 16 and 17 is the same as my response to Government amendments Nos 6, 7 and 8. The Greens certainly do not support the amendments.

The Hon. RICK COLLESS [8.19 p.m.]: My response is almost identical to that of Mr Ian Cohen in that my comments on Government amendments Nos 16 and 17 are the same as those I made earlier.

Amendments agreed to.

Mr IAN COHEN [8.20 p.m.]: I move Greens amendment No. 74:

No. 74 Page 50, schedule 2 [42], proposed section 221ZI. Insert after line 32:

(5) The Minister is to give due consideration to any public submissions received by the Minister before forming an opinion for the purposes of this section.

This amendment gives a role to public submissions with regard to proposed suspensions or revocations. I commend Greens amendment No. 74 to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries) [8.20 p.m.]: The Government does not support Greens amendment No. 74. My comments on this amendment are similar to my response to Greens amendment Nos 25 and 26, which we considered earlier.

The Hon. RICK COLLESS [8.20 p.m.]: The Opposition also opposes Greens amendment No. 74. It is amazing to watch the Greens move amendments to suit themselves. They talk continually about the need for science in the equation yet this amendment calls on the Minister to give due consideration to public submissions. There is no mention of any science.

Mr IAN COHEN [8.21 p.m.]: The Nationals are much displeased by the idea of public input. I note that the Government has ripped away our third party appeal rights—which are, in essence, public input and not necessarily science. The Nationals supported that action and performed callisthenics in this place on the issue of third party input. The Greens supported that amendment. I am surprised to see The Nationals being so disparaging of the public.

Amendment negatived.

The Hon. IAN MACDONALD (Minister for Primary Industries) [8.21 p.m.]: I move Government amendment No. 18:

No. 18 Page 50, schedule 2 [42] (proposed section 221ZJ), line 36. Omit "or revocation".

This amendment is in similar terms to Government amendments Nos 1 to 9. I refer honourable members to my comments in regard to amendment No. 12.

Mr IAN COHEN [8.22 p.m.]: The Greens do not support Government amendment No. 18.

Amendment agreed to.

Mr IAN COHEN [8.23 p.m.], by leave: I move Greens amendments Nos 75, 76 and 77 in globo:

No. 75 Page 50, schedule 2 [42], proposed section 221ZJ, line 37. Insert "within 14 days" after "given".

No. 76 Page 51, schedule 2 [42], proposed section 221ZJ. Insert after line 3:

(2) The Minister is to keep a register containing copies of each notice of the grant of biodiversity certification under this Division and of any suspension or revocation of that certification.

(3) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Minister.

No. 77 Page 51, schedule 2 [42], proposed section 221ZK, lines 7-10. Omit all words on those lines. Insert instead:

(1) The Minister may by order published in the Gazette confer biodiversity certification on an EPI if satisfied that the EPI, in addition to any other relevant measures to be taken, will lead to the overall improvement or maintenance of biodiversity values. Biodiversity values include threatened species, populations and ecological communities and their habitats.

Amendment No. 75 relates to notices of the grant of suspension or revocation to be given within 14 days. It is a reasonable amendment and it is worthy of support. Amendment No. 76 creates a register of certifications for public access. The Committee is well aware of my concerns, and the concerns of other honourable members, about public access. In relation to amendment No. 77, the bill creates a biodiversity certification process for environmental planning instruments [EPIs]. There should be an environmental test by which to test the EPI, not just complete ministerial discretion. This test is proposed to be the overall improvement of biodiversity values. Thus, the Minister should have regard to the achievement of the objects of the Act and the types of permanent conservation measures, and have available good data on the species in the EPI region on which to base a decision. I commend Greens amendments Nos 75, 76 and 77 to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries) [8.24 p.m.]: The Government supports each of these amendments. I am sure Mr Ian Cohen will be pleased.

Amendments agreed to.

Mr IAN COHEN [8.26 p.m.], by leave: I move Greens amendments Nos 78 and 79 in globo:

No. 78 Page 51, schedule 2 [42], proposed section 221ZK. Insert after line 10:

(2) For the purposes of this section, ***relevant measures*** include, but are not limited to, the following:

(a) the reservation of land under Part 4 of the NPW Act or the entering into of a permanent conservation agreement relating to the land under that Act,

(b) the entering into of a permanent trust agreement in relation to land under the *Nature Conservation Trust Act 2001*,

(c) long-term measures to rehabilitate or restore biodiversity values on land.

No. 79 Page 51, schedule 2 [42], proposed section 221ZK. Insert after line 10:

(2) Biodiversity certification must not be granted by the Minister unless the Minister is satisfied the EPI meets the following criteria for certification:

(a) the EPI includes a list of threatened species, populations and ecological communities likely to occur in the area to which the EPI relates,

(b) the EPI includes an assessment of the likely impact of the EPI on threatened species, populations and ecological communities, and their habitats, including (where known) the factors threatening or benefiting survival and recovery and an assessment of their existing conservation status and viability,

(c) the EPI includes an assessment that takes account of the principles of ecologically sustainable development,

(d) the EPI includes a description of any conservation outcomes proposed in the EPI and how the conservation outcomes will promote the conservation of threatened species, populations and ecological communities.

Amendment No. 78 outlines relevant additional measures for consideration outlined in amendment No. 77. Amendment No. 79 sets out a regional biodiversity survey process that will underpin the assessment of the biodiversity impacts of the EPIs. I commend amendments Nos 78 and 79 to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries) [8.27 p.m.]: The Government does not support these well-crafted amendments from the Greens, prepared by its think-tank, the Total Environment Centre.

The Hon. RICK COLLESS [8.26 p.m.]: I am pleased the Minister confirmed that he does not support Greens amendments Nos 78 and 79. The Opposition is concerned that amendment No. 79, in particular, would add a lot more complexity to the process. We do not support these amendments.

Amendments negatived.

Mr IAN COHEN [8.28 p.m.], by leave: I move Greens amendments Nos 80 and 81 in globo:

No. 80 Page 51, schedule 2 [42], proposed section 221ZK. Insert after line 29:

(3) In deciding any matter under this section the Minister is to have regard to the objects of this Part.

No. 81 Page 53, schedule 2 [42], proposed section 221ZN. Insert after line 8:

(3) The Minister must not extend the period of biodiversity certification of an EPI unless, prior to granting the extension, the Minister:

(a) by notice published in a newspaper circulating generally throughout the State, invites persons to make written submissions to the Minister on the proposed extension, and

(b) considers any written submissions received before the closing date specified in the notice for the making of submissions (being a date that is not less than 30 days after the date the notice is first published under this subsection).

In regard to amendment No. 80, in deciding on certification the Minister is to have regard to the objects of the Act. In relation to biodiversity certification of an EPI being extended, amendment No. 81 provides an opportunity for the public to provide comment on the proposed extension. I commend Greens amendments Nos 80 and 81 to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries) [8.29 p.m.]: The Government supports these two amendments. Amendment No. 80 is similar to Greens amendment No. 32 and amendment No. 81 is similar to Greens amendment No. 33, which the Government supported in other circumstances.

The Hon. RICK COLLESS [8.29 p.m.]: The Opposition will not support either of the amendments, particularly Greens amendment No. 80. This is yet another nonsense amendment. It provides that:

> In deciding any matter under this Part the Minister is to have regard to the objects of this Part.

It is my understanding that the Minister must have regard to the objects of any part of any Act when he considers any matter the subject of that Act. So it really is a nonsense amendment. It is what I call a circular reference. The Opposition will oppose it.

Amendments agreed to.

Mr IAN COHEN [8.31 p.m.]: I move Greens amendment No. 82:

No. 82 Page 53, schedule 2 [42], proposed section 221ZN, line 10. Insert ", subject to the completion of a further survey with respect to the land (as required to satisfy the criteria for certification)" after "Division".

If it is proposed to extend the certification, which may be 10 years after the original certification, there will be a need to undertake a further biodiversity survey. I commend the amendment.

The Hon. IAN MACDONALD (Minister for Primary Industries) [8.32 p.m.]: The Government does not support this amendment. It is similar to Greens amendment No. 34, which the Government opposed earlier and was defeated.

Amendment negatived.

Mr IAN COHEN [8.32 p.m.]: I move Greens amendment No. 83:

No. 83 Page 53, schedule 2 [42]. Insert after line 10:

221ZO Reassessment of biodiversity certification

(1) The Minister is to reassess the grant of biodiversity certification in respect of an EPI following any review of the EPI under the *Environmental Planning and Assessment Act 1979*, or any rezoning of land to which the EPI applies, to determine whether biodiversity certification should be maintained or modified.

(2) If a local council undertakes a review of a biodiversity certified EPI that applies to land in its area, the council is to notify the Minister of the commencement of that review, and the outcome of that review, as soon as practicable.

If an EPI is reviewed with the intention of changing its provisions, then the Minister needs to determine whether certification should be maintained or modified. I commend the amendment.

The Hon. IAN MACDONALD (Minister for Primary Industries) [8.32 p.m.]: The Government supports this amendment. It is similar to Greens amendment No. 35, which the Government accepted.

Amendment agreed to.

Mr IAN COHEN [8.32 p.m.], by leave: I move Greens amendments Nos 84, 85 and 86 in globo:

No. 84 Page 53, schedule 2 [42], proposed section 221ZO. Insert after line 18:

(b) the EPI, and any other relevant measures, will fail or has failed to lead to the overall improvement or maintenance of biodiversity values on the area of land to which the EPI applies, or

No. 85 Page 53, schedule 2 [42], proposed section 221ZO. Insert after line 18:

(b) the EPI has ceased to meet the criteria for certification, or

No. 86 Page 53, schedule 2 [42], proposed section 221ZO. Insert after line 18:

(b) the EPI is not consistent with the achievement of the objects of this Part, or

With the addition of extra tests for biodiversity certification of EPI, we need to close the loop by making them a matter to be considered for decertification. I commend the three amendments.

The Hon. IAN MACDONALD (Minister for Primary Industries) [8.32 p.m.]: The Government does not support these amendments. They are similar to Greens amendments Nos 36, 37 and 38, which the Government opposed and the Committee rejected.

Amendments negatived.

Mr IAN COHEN [8.33 p.m.], by leave: I move Greens amendments Nos 87 and 88 in globo:

No. 87 Page 53, schedule 2 [42], proposed section 221ZP, line 28. Insert "within 21 days" after "given".

No. 88 Page 53, schedule 2 [42], proposed section 221ZP. Insert after line 34:

(2) The Minister is to keep a register containing copies of each notice of the grant of biodiversity certification under this Division and of any extension, suspension or revocation of that certification.

(3) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Minister.

Greens amendment No. 87 provides for 21 days for notification for the grant, revocation or suspension of notification. Greens amendment No. 88 sets up a public register containing copies of biodiversity certifications. I commend both amendments to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries) [8.34 p.m.]: The Government supports Greens amendments Nos 87 and 88. They relate to Greens amendments Nos 39 and 40, which the Government supported.

Amendments agreed to.

Mr IAN COHEN [8.34 p.m.]: I move Greens amendment No. 89:

No. 89 Page 54, schedule 2 [42], proposed section 221ZQ, line 31. Insert "but only if the majority of those conservation benefits are of a permanent nature" after "EPI)".

Biodiversity certification of an EPI anticipates that there will be a number of conservation benefits. The amendment provides that the majority of those benefits should be of a permanent nature. I commend the amendment to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries) [8.34 p.m.]: The Government does not support Greens amendment No. 89. This amendment is similar to Greens amendment No. 41, which has already been dealt with. The Government opposed that amendment, and the Committee rejected it.

Amendment negatived.

Mr IAN COHEN [8.35 p.m.], by leave: I move Greens amendments Nos 90 and 91 in globo:

No. 90 Page 54, schedule 2 [42], proposed section 221ZQ, lines 36-38. Omit all words on those lines. Insert instead:

(5) The annual report of the Department is to include an assessment of how any voluntary action taken pursuant to a condition imposed under this section has benefited or is likely to benefit the adversely affected threatened species, including details of how any land or money contributed pursuant to such a condition has benefited or is likely to benefit threatened species.

No. 91 Page 55, schedule 2 [42], proposed section 221ZR, line 17. Insert "(not exceeding 3 years)" after "period".

Regarding amendment No. 90, the bill provides for the voluntary contribution of land or money as a condition of certification. The amendment states that such things should benefit adversely affected species. Regarding amendment No. 91, the accreditation of consultants is a good move. The amendment brings the term of the

accreditation into line with the Contaminated Sites Act, which provides for no more than three years accreditation. This will improve the integrity of the consultant industry. I commend the amendments.

The Hon. IAN MACDONALD (Minister for Primary Industries) [8.36 p.m.]: The Government supports Greens amendments Nos 90 and 91. Amendment No. 90 is equivalent to Greens amendment No. 42, and amendment No. 91 is equivalent to Greens amendment No. 43, which the Government supported.

Amendments agreed to.

The Hon. RICK COLLESS [8.37 p.m.]: I move Opposition amendment No. 33:

No. 33 Page 55, schedule 2 [42]. Insert after line 29:

Division 12 Biodiversity certification of catchment action plans

221ZS Biodiversity certification

(1) The Minister may, by order published in the Gazette, confer biodiversity certification on a catchment action plan for the purposes of this Part.

(2) In this Division, ***catchment action plan*** means a catchment action plan under the *Catchment Management Authorities Act 2003*.

221ZT Effect of biodiversity certification

While biodiversity certification of a catchment action plan is in force, all land within the area of operations of the catchment management authority responsible for the plan has the benefit of biodiversity certification.

Note. If a catchment action plan is certified under this Division:

(a) the clearing of native vegetation as authorised by a property vegetation plan that is approved for land while the land has the benefit of biodiversity certification is not an offence under section 220ZFA, and

(b) development consent to clearing of native vegetation does not require the preparation of a species impact statement or consultation between Ministers (see section 14 (4) of the *Native Vegetation Act 2003*).

221ZU Period of certification

(1) Biodiversity certification of a catchment action plan remains in force for such period as the Minister determines and specifies in the certification. If no period is specified, biodiversity certification remains in force for 10 years.

(2) Prior to the expiration of biodiversity certification of a catchment action plan, the Minister may, by order published in the Gazette, extend by a period of up to 10 years the period for which that certification remains in force, but only if the Minister has reviewed the catchment action plan to take account of any new listing of a species, population or ecological community or the discovery of a species, population or ecological community not previously known in an area.

(3) This section does not prevent further biodiversity certification of a catchment action plan under this Division.

221ZV Suspension and revocation of certification

(1) The Minister may, by order published in the Gazette, suspend or revoke biodiversity certification of a catchment action plan if:

(a) the plan or its current or likely future implementation will result in a failure to conserve threatened species, populations and ecological communities, or

(b) the catchment management authority responsible for the plan has failed to properly exercise its functions under the plan, or

(c) the catchment management authority responsible for the plan has otherwise failed to exercise its functions in a manner that promotes the conservation of threatened species, populations and ecological communities.

(2) During the suspension or following the revocation of biodiversity certification of a catchment action plan, land within the area of operations of the catchment management authority responsible for the plan does not have the benefit of the biodiversity certification of the catchment action plan.

(3) The Minister is only entitled to form an opinion for the purposes of this section:

(a) based on the outcome of any audit undertaken by the NRC, or

(b) based on the results of an investigation conducted by the Director-General, or

(c) in such other circumstances as may be prescribed by the regulations.

221ZW Notification of certification, suspension or revocation

Notice of the grant of biodiversity certification under this Division or of any suspension or revocation of that certification under this Division is to be given:

(a) to the relevant catchment management authority, and

(b) to the Director-General of the Department of Infrastructure, Planning and Natural Resources, and

(c) on the website of the Department of Primary Industries.

Opposition amendment No. 33 inserts division 12 into the Fisheries Management Act. Basically, the same arguments apply as those which we put forward in support of amendment No. 16 in relation to the Threatened Species Conservation Act. That is, insertion of division 12 into the Act provides for the biodiversity certification of catchment action plans. This is an important provision to insert into the bill, and it further justifies the strengthening of the property vegetation planning component of the Act. If the whole concept of biodiversity certification has any meaning at all, it is absolutely vital that catchment action plans are certified. To my mind, proposed division 12 is meaningful, and I commend the amendment to insert it in the bill.

Mr IAN COHEN [8.38 p.m.]: This Opposition amendment adopts the same position that it took on amendment No. 16. The Greens did not support that amendment, and will not support Opposition amendment No. 33. As the Hon. Rick Colless said, this amendment provides for biodiversity certification of catchment action plans and treats the plans the same as EPIs would be treated. However, as I said before, catchment action plans are not regulatory instruments; and, even if they had received certification, they do not impose legal obligations on landowners. They are, basically, a framework for investment in catchment improvement. The Greens cannot support this Opposition amendment.

The Hon. IAN MACDONALD (Minister for Primary Industries) [8.39 p.m.]: The Government opposes Opposition amendment No. 33. The amendment relating to the Fisheries Management Act is equivalent to a similar Opposition amendment relating to the Threatened Species Conservation Act, which we did not support.

Amendment negatived.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [8.40 p.m.]: I move Australian Democrats amendment No. 2:

No. 2 Page 55, schedule 2 [42]. Insert after line 29:

Division 12 Appeals

221ZS Appeals against biodiversity certification of EPI

(1) An interested person may, within 28 days after notice of a biodiversity certification decision is first published on the website of the Department of Primary Industries, appeal to the Land and Environment Court against that decision.

(2) The Land and Environment Court may hear and determine an appeal made under this section.

(3) In determining such an appeal, the Court may, by order:

(a) confirm the decision, or

(b) revoke the decision, or

(c) revoke the decision and substitute any decision that could have been made by the Minister under Division 11.

(4) An order made by the Court under this section:

(a) takes effect on and from a date specified by the Court, and

(b) operates as if it were a decision made by the Minister under this Act.

> (5) If an appeal is made under this section, the Minister is to be given notice of that appeal, in accordance with rules of court, and is entitled to be heard at the hearing of the appeal as a party to the appeal.
>
> (6) In this section:
>
> ***biodiversity certification decision*** means a decision of the Minister to grant biodiversity certification of an EPI under Division 11.
>
> ***interested person*** means a person who made a submission in respect of a biodiversity certification decision under section 221ZK (3).

This amendment deals with third party appeals for fishing. Third party appeal rights are an important part of a process of review, and should be supported. The amendment will enable the Land and Environment Court to hear determinations of appeal against biodiversity certification of environmental planning instruments, but only by interested persons within 28 days after the certification decision is first published by the Department of Primary Industries and only by people who have already made a submission on the subject. I commend the amendment to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries) [8.41 p.m.]: The Government opposes Australian Democrats amendment No. 2. These amendments were given to us very late, as were the Greens amendments. These types of amendments should have been circulated far earlier to allow proper consideration. The Government opposes the amendment because it will create an immediate inconsistency with the Environmental Planning and Assessment Act. Merit appeals, which are about an environmental planning instrument [EPI], are not presently allowed under the Act. The amendment would allow merit appeals for an EPI at least insofar as biodiversity certification is concerned.

It is worth recollecting that when the Government was amending the Land and Environment Court Act in 2002, a fact that seems to have escaped the Hon. Dr Arthur Chesterfield-Evans, numerous members of the crossbench, including the mover of the amendment as I recall, objected to the ability of the court to hear merit appeals. The Committee might like to hear how the Hon. Dr Arthur Chesterfield-Evans and others felt about merit appeals. During debate on the Land and Environment Court Amendment Bill in 2002 various comments were made about the court and its ability to hear merit appeals. The Hon. Dr Arthur Chesterfield-Evans noted that the court had not been immune to controversy, and is recorded in *Hansard* as saying:

> Its numerous critics have dubbed the Land and Environment Court as "the developers' court", citing the merit appeal option frequently used by developers.

He went on to say, and I quote again from his big mouth:

> The court has been a big problem. In fact, in my more cynical moments, I think that it is part of the Carr Government's blunt strategy of urban consolidation.

This is the same court the Hon. Dr Arthur Chesterfield-Evans wants to hear merit appeals on decisions concerning the biodiversity certification of local environmental plans. Ms Lee Rhiannon from the Greens said:

> Amongst local communities, the court's record is so bad that it is known almost universally as the land and development court. The reputation of the court is well earned. Around New South Wales there are spectacular monuments to the bias of the court and the law that it enforces.

If Ms Lee Rhiannon still believes that, she should oppose any move to empower the court to consider merit appeals on biodiversity certification.

Mr IAN COHEN [8.43 p.m.]: I was vastly entertained by the Minister's perspective, but I do not quite see how criticism of particular court processes necessarily means that we take away the ability of the interested public to represent, in this case, threatened species and have an opportunity to appear before the court. One would hope that the weight of argument would turn around the nature of some of the decisions. Both Ms Lee Rhiannon and the Hon. Dr Arthur Chesterfield-Evans have expressed some well-deserved criticism of the Land and Environment Court in this House. But that does not take away from the fact that to remove third party appeal rights altogether, as the Government is doing, will remedy the situation. The Greens support Australian Democrats amendment No. 2.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [8.44 p.m.]: I feel I ought to respond to the Minister. I am on the record as criticising the Land and Environment Court. Indeed, none less than Frank Sartor when he was Lord Mayor of Sydney produced a brochure about its appalling record of following developer's

applications. Some local councils have been forced into huge debt trying to stop developers from overriding the planning attempts they had made to control it. I make no apologies for that. But I still think there should be the process of a court of appeal as against biodiversity certification as part of the public process. The fact that I think the court has problems does not mean that I do not want the court to have a go rather than trust the Minister, who is framing the legislation to be extremely developer friendly and much less friendly to threatened species, and who will make it difficult for the Scientific Committee, which provides some balance.

Amendment negatived.

The Hon. RICK COLLESS [8.46 p.m.]: I move Opposition amendment No. 34:

No. 34 Page 55, schedule 2. Insert after line 36:

[45] Section 290

Omit the section. Insert instead:

290 Review of Act

(1) The Minister is to review this Act to determine whether the policy objectives of the Act are being fulfilled and whether the terms of the Act, and any environmental planning instruments granted biodiversity certification under Division 11 of Part 7A, remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the *Threatened Species Legislation Amendment Act 2004*.

(3) The Minister is to make arrangements for public consultation with respect to the review.

(4) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

The amendment allows for review of the Act five years after the assent of the bill, with a report to be tabled in both House of Parliament within 12 months of the five-year period. This is an important amendment because the whole concept of threatened species conservation should be accountable. We must know if the Act is working and whether it is saving threatened species. The amendment will put a review in place, which should help us to determine that. As I said in my contribution to the second reading debate, the great failing of the Threatened Species Conservation Act is that it is not working because of the number of species on the list, the number of recovery plans that have not been implemented and the number of species that have not been saved. There is a good argument for a five-year review. I commend the amendment to the Committee.

Mr IAN COHEN [8.47 p.m.]: The Greens support Opposition amendment No. 34, which is similar to amendment No. 17. We support the concept of five-yearly reviews by the House, and we would support an amendment that refers to a review of the allocation of resources for the implementation of the Act. It is a commendable amendment by the Opposition.

The Hon. IAN MACDONALD (Minister for Primary Industries) [8.48 p.m.]: The Government supports Opposition amendment No. 34, which is equivalent to amendment No. 17.

Amendment agreed to.

Mr IAN COHEN [8.48 p.m.]: I do not move Greens supplementary amendment No. 8 as circulated. I move Greens amendment No. 93:

No. 93 Page 57, schedule 2 [49], lines 3-7. Omit all words on those lines. Insert instead:

17C Fisheries Scientific Committee's final determination

Section 220L, as substituted by the *Threatened Species Legislation Amendment Act 2004*, extends to a matter pending under section 220L and not finally determined before the commencement of this clause.

This amendment ensures that listings currently in process can be completed under the old system. I commend Greens amendment No. 93 to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries) [8.49 p.m.]: The Government opposes Greens amendment No. 93, for the reasons I outlined in my remarks on Greens amendment No. 46, which dealt with the Threatened Species Conservation Act.

The Hon. RICK COLLESS [8.49 p.m.]: The Opposition does not support this amendment.

Amendment negatived.

Schedule 2 as amended agreed to.

The CHAIRMAN: Government amendment No. 19 and Opposition amendment No. 39 are in conflict and I propose to deal with them concurrently. If Government amendment No. 19 is agreed to, Opposition amendment No. 39 will lapse.

The Hon. IAN MACDONALD (Minister for Primary Industries) [8.50 p.m.]: I move Government amendment No. 19:

No. 19 Page 59, schedule 3.1 [4], lines 4-8. Omit all words on those lines. Insert instead:

(a2) was authorised by a property vegetation plan approved under the *Native Vegetation Act 2003*, being an act that had the benefit of biodiversity certification of the native vegetation reform package under Division 4 of Part 7 of the *Threatened Species Conservation Act 1995* when the plan was approved, or

The comments I made in relation to Government amendments Nos 1 to 9 and 12 to 18 apply also to this amendment.

The Hon. RICK COLLESS [8.51 p.m.]: I move Opposition amendment No. 35:

No. 35 Page 59, schedule 3.1 [4], lines 5-8. Omit all words on those lines. Insert instead "under the *Native Vegetation Act 2003*, or".

This amendment relates to the same issues discussed in relation to Opposition amendments Nos 15 and 27. It creates an exemption from the director-general making a stop-work order for a clearing program, so long as the clearing is authorised by an approved property vegetation plan, but it is conditional upon approval being granted while the biodiversity certification is in force. It is the conditional approval that is a matter of concern for rural communities. The approval of the property vegetation plan under the Native Vegetation Act should be the pinnacle of the approval process for farmers who are attempting to get on with the business of producing agricultural products from their land. I commend the amendment to the Committee.

Mr IAN COHEN [8.52 p.m.]: The Greens support Government amendment No. 19. My remarks in relation to these amendments are the same as the remarks I made earlier in relation to Government amendment No. 9. I note that Opposition amendment No. 35 is designed to release any person from the offence of harming or picking threatened species, or damaging habitat.

The Hon. Rick Colless: It is a simplification of the process, which is what Mr Ian Cohen does not want to see.

Mr IAN COHEN: Simplification can lead to extinction, so I think we have fundamentally opposing views on that subject. The effect of the amendment is to release a person from the offence of harming or picking threatened species or damaging habitat, if they do anything under the Native Vegetation Act 2003, regardless of whether it has biodiversity certification. This is simply an invitation to destroy those species. One wonders what irresponsible person advised the Opposition to attempt to make the Threatened Species Conservation Act redundant.

The Hon. Rick Colless: You have just accused all farmers of being irresponsible.

Mr IAN COHEN: The Greens do not support the Opposition amendment. It is not a case of accusing farmers of being irresponsible but, rather, of the Opposition showing its support for irresponsible farmers. There are some, but not many.

The Hon. Rick Colless: Do not verbal me.

Mr IAN COHEN: I have the call and I can say what I like about the Opposition's amendment. I was pointing out what the Opposition's amendment clearly does. The Hon. Rick Colless was verballing me by interjecting, and, as the Chairman of the Committee would say, interjections are disorderly at all times. The fact

of the matter is that the Opposition is ignoring responsible farmers and allowing irresponsible cowboys to get away with destroying threatened species.

The Hon. IAN MACDONALD (Minister for Primary Industries) [8.54 p.m.]: The Government opposes Opposition amendment No. 35. The remarks I made in relation to Opposition amendments Nos 15 and 27 apply to this amendment.

Government amendment No. 19 agreed to.

The CHAIRMAN: Order! As Government amendment No. 19 has been agreed to, Opposition amendment No. 35 lapses. Government amendment No. 20 and Opposition amendment No. 36 are in conflict, and I will deal with them together.

The Hon. RICK COLLESS [8.56 p.m.]: To expedite the procedure, I will not move Opposition amendment No. 36.

The Hon. IAN MACDONALD (Minister for Primary Industries) [8.56 p.m.]: I move Government amendment No. 20:

No. 20 Page 59, schedule 3.1 [5], lines 13-18. Omit all words on those lines. Insert instead:

(a2) was authorised by a property vegetation plan approved under the *Native Vegetation Act 2003*, being an act that had the benefit of biodiversity certification of the native vegetation reform package under Division 4 of Part 7 of the *Threatened Species Conservation Act 1995* when the plan was approved, or

The remarks I made in relation to Government amendments Nos 1 to 9 and 12 to 19 apply also to this amendment.

Amendment agreed to.

The Hon. RICK COLLESS [8.57 p.m.], by leave: I move Opposition amendments Nos 37, 38, 39 and 40 in globo:

No. 37 Page 60, schedule 3.1 [7], lines 3-6. Omit all words on those lines. Insert instead:

118G Exemptions

(1) This Part does not apply to or in respect of the following activities:

No. 38 Page 60, schedule 3.1 [7], line 30. Omit "(in the Western Division)".

No. 39 Page 61, schedule 3.1 [7], lines 5 and 6. Omit all words on those lines. Insert instead:

(e) the harvesting or other clearing of planted native vegetation (other than native vegetation planted under a publicly funded rehabilitation program),

No. 40 Page 61, schedule 3.1 [7], proposed section 118G, line 17. Omit "an imminent risk". Insert instead "a risk".

Opposition amendment No. 37 is basically the same as Opposition amendment No. 28, which dealt with terrestrial acts. This amendment changes the basic tenets of the Fisheries Management Act and the National Parks and Wildlife Act. A farmer will be guilty of an offence under these Acts unless he can prove his innocence by proving a defence to a prosecution. This amendment seeks to bring the provisions of this bill more into line with other laws in this State which provide that a person is innocent of an offence until the prosecution can prove his guilt.

The relevant offences relate to clearing and routine agricultural management activities. All honourable members must accept that we are dealing with freehold title on agricultural land. Freehold title is held for the purposes of agricultural production. After the property vegetation plan is signed off by the Minister, no further restriction should be placed on the primary producer, much less having him prove his innocence while the department does not have to prove his guilt.

Opposition amendment No. 38 relates to the construction, operation and maintenance of airstrips in the Western Division, which is classified as a routine agricultural management activity, whereas the bill denies the same classification to airstrips in the Eastern Division and the Central Division. I have listened to the arguments

advanced previously by the Minister in relation to this issue. They did not make sense then, and they do not make sense now. For the life of me, I still cannot understand why a distinction is drawn between airstrips that are constructed, operated and maintained west of an arbitrary line near Dubbo and airstrips that are operated in the eastern and central divisions of this State.

Opposition amendment No. 39 relates to the harvesting of planted native vegetation, which is allowable if it was planted for commercial purposes. Harvesting should be allowed for any planted native vegetation, except for plantings that are publicly funded through Landcare programs and other land rehabilitation programs. Many farmers plant a lot of trees and other native vegetation for different purposes, and certainly not all of them are commercial. It is unrealistic to expect that any farmer who plants a tree cannot cut it down or lop it if it eventually needs to be cleared for whatever reason. On the other hand, vegetation planted under the various suite of Landcare programs should be protected from clearing, and amendment No. 39 would clarify that.

Opposition amendment No. 40 relates to the words "imminent risk". The word "imminent" should be removed because an activity required to remove or reduce an imminent risk as a routine agricultural management activity is a very serious flaw in good risk management practices. Good risk management is about removing and reducing risks before they become imminent risks. WorkCover and occupational health and safety issues arise from this as well. I commend the amendments to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries) [9.00 p.m.]: The Government cannot support Opposition amendments Nos 37, 38, 39 or 40. Opposition amendment No. 37 is similar to an amendment moved previously and fundamentally changes a key part of the bill that provides defences for farmers and other landholders. Clearly the bill will address farmers' long-held concerns about the application of environmental legislation to day-to-day farming activities.

The bill does not reverse the onus of proof when it makes routine agricultural management activities a defence to prosecution under the current Act. Routine agricultural management activities are already a defence to prosecution under section 113A (3) of the existing Threatened Species Conservation Act. In practice there is no difference between the existing Act and the bill in that regard. The amendment could have significant legal implications for farmers, because other parts of the bill refer to "available defences". Removing the word "defences" in one clause would create confusion.

In regard to Opposition amendment No. 38, I give a guarantee that in the near future the Government will write to the Hon. Rick Colless outlining the situation regarding airstrips. He will get a comprehensive written reply.

The Hon. Rick Colless: I do not want the bureaucratic reasons. I want the technical reasons why there is a difference between the western, eastern and central divisions.

The Hon. IAN MACDONALD: I am happy to provide that. The Government opposes Opposition amendments Nos 38, 39 and 41. The Government cannot support Opposition amendment No. 40, because it is similar to Opposition amendment No. 31 relating to the Threatened Species Conservation Act.

Mr IAN COHEN [9.02 p.m.]: The Greens do not support Opposition amendments Nos 37 to 40, for reasons similar to those stated in opposing Opposition amendments Nos 28 to 32. The Opposition amendment will make it harder to prove an offence. It is an invitation to commit an offence because the offender will know that the test of proof has been made very difficult. As a result, landholders who can afford expensive lawyers will take a chance and clear important vegetation.

The other amendments seek to redefine the routine agricultural management activities [RAMAs] in the Native Vegetation Act. For example, they propose to extend airstrips as a RAMA in the Western Division to the entire State. To allow airstrips to be built in the central and coastal regions in remnant vegetation without any environmental assessment, and consent under the Native Vegetation Act, will inevitably lead to extensive clearing and is not acceptable.

The Hon. Duncan Gay: An airstrip-led clearing program?

Mr IAN COHEN: That is the difference between the Minister and the Greens. He is much closer to your way of thinking and he will probably send you a nice supportive letter. At least we are consistent.

The Hon. Rick Colless: How many airstrips have you flown in and out of?

Mr IAN COHEN: I have flown in and out of a few as a member of the State development committee.

The Hon. Rick Colless: Farm airstrips?

Mr IAN COHEN: Yes, farm airstrips. As I was saying, the proposal to allow the Department of Primary Industries to create RAMAs is a very serious attack on the structures and agreements that set up the Native Vegetation Act. It is simply a ploy to make massive inroads into the protection of remnant vegetation and attacks the recommendations of the Wentworth group and the Sinclair committee, as I said.

Question—That the amendments be agreed to—put.

The Committee divided.

Ayes, 13

Mr Clarke	Mr Lynn	Mr Ryan
Mr Colless	Mr Oldfield	
Ms Cusack	Ms Parker	*Tellers,*
Mrs Forsythe	Mrs Pavey	Mr Gay
Miss Gardiner	Mr Pearce	Mr Harwin

Noes, 25

Mr Breen	Ms Griffin	Ms Rhiannon
Dr Burgmann	Ms Hale	Mr Roozendaal
Ms Burnswoods	Mr Hatzistergos	Ms Tebbutt
Mr Catanzariti	Mr Jenkins	Mr Tingle
Dr Chesterfield-Evans	Mr Kelly	Mr Tsang
Mr Cohen	Mr Macdonald	
Mr Costa	Reverend Dr Moyes	*Tellers,*
Mr Della Bosca	Reverend Nile	Mr Primrose
Mr Egan	Mr Obeid	Mr West

Pair

Mr Gallacher	Ms Robertson

Question resolved in the negative.

Amendments negatived.

The Hon. IAN MACDONALD (Minister for Primary Industries) [9.11 p.m.]: I move Government amendment No. 21:

No. 21 Page 60, schedule 3.1 [7], lines 7-13. Omit all words on those lines. Insert instead:

(a) clearing of native vegetation that constitutes a routine agricultural management activity,

(b) a routine farming practice activity (other than clearing of native vegetation),

This amendment, which fits within the framework of two of the Government's earlier amendments, addresses the concerns raised by the New South Wales Farmers Association.

Mr IAN COHEN [9.13 p.m.]: The response of the Greens to Government amendment No. 21 is the same as its response to Government amendment No. 10. This amendment will improve the capacity to regulate the clearing of non-native vegetation where that may impact on native vegetation. The Greens support the amendment.

Amendment agreed to.

The Hon. RICK COLLESS [9.14 p.m.]: I move Opposition amendment No. 41:

No. 41 Page 61, schedule 3.1 [7], proposed section 118G. Insert after line 18:

(j) any activity certified by the Director-General of the Department of Primary Industries, by order published in the Gazette, to be a routine agricultural management activity.

This is an important amendment. Basically, proposed paragraph (j) overcomes the bill of rights issue to which I referred earlier. The current wording in the bill provides for everything on a farm being illegal unless it is identified as a routine agricultural management activity [RAMA]. As I said in the second reading debate, the architects of this bill have simply not considered many activities. For example, the construction, operation and maintenance of soil conservation works, irrigation canals, land planning for irrigation, and the installation of private on-farm pipelines are not included as RAMAs, yet they are all activities that are routinely carried out on a daily basis on farms all over New South Wales.

The removal and control of weeds and pests, as classified under the various schedules of the Noxious Weeds Act and the Rural Lands Protection Act, are listed as routine agricultural management activities, but the management of weeds and pests, and of crops and pastures, which are not listed, is not considered to be a RAMA. The Government's amendments to this bill are confusing as they introduce another term of routine farming practice activity, but it is not defined and it does not have any meaning for farmers. The Coalition's amendment will put an end to all the confusion by enabling the Director-General of the Department of Primary Industries to adjudicate on whether new farm activities are deemed to be routine. As the head of the lead agency on agricultural issues, that person is the logical person to adjudicate on issues about which conflicts arise. I commend the amendment to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries) [9.16 p.m.]: The Government does not support Opposition amendment No. 41. This amendment, which relates to the Fisheries Management Act, is equivalent to Opposition amendments to the Threatened Species Conservation Act, which were also not supported. I refer, of course, to Opposition amendments Nos 29, 30 and 32.

Mr IAN COHEN [9.16 p.m.]: The Greens do not support Opposition amendment No. 41.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 12

Mr Clarke	Mr Lynn	
Ms Cusack	Ms Parker	
Mrs Forsythe	Mrs Pavey	*Tellers,*
Miss Gardiner	Mr Pearce	Mr Colless
Mr Gay	Mr Ryan	Mr Harwin

Noes, 26

Mr Breen	Ms Griffin	Mr Oldfield
Dr Burgmann	Ms Hale	Ms Rhiannon
Ms Burnswoods	Mr Hatzistergos	Mr Roozendaal
Mr Catanzariti	Mr Jenkins	Ms Tebbutt
Dr Chesterfield-Evans	Mr Kelly	Mr Tingle
Mr Cohen	Mr Macdonald	Mr Tsang
Mr Costa	Reverend Dr Moyes	*Tellers,*
Mr Della Bosca	Reverend Nile	Mr Primrose
Mr Egan	Mr Obeid	Mr West

Pair

Mr Gallacher	Ms Robertson

Question resolved in the negative.

Amendment negatived.

The CHAIRMAN: Before proceeding with consideration I acknowledge the presence in the public gallery of members of the Law Extension Committee of the University of Sydney, who are accompanied by the honourable member for Port Macquarie, Rob Oakeshott.

The Hon. IAN MACDONALD (Minister for Primary Industries) [9.23 p.m.]: I move Government amendment No. 22:

No. 22 Page 61, schedule 3.1 [7], lines 19-22. Omit all words on those lines. Insert instead:

(3) This section does not authorise the doing of an act that constitutes a routine agricultural management activity or routine farming practice activity:

(a) if it exceeds the minimum extent reasonably necessary for carrying out the activity, or

Amendment No. 22 is in keeping with Government amendments Nos 10, 11 and 21, and I urge the Committee to support it for the reasons that I gave earlier. It addresses the issues raised with the Government by the New South Wales Farmers Association.

Mr IAN COHEN [9.24 p.m.]: The Greens do not support Government amendment No. 22. My response to this amendment is the same as my response to Government amendment No. 11. Greens amendments Nos 94 and 95 seek to remove the phrases "routine agricultural management activity" and "routine farming practice activity" and the word "reasonably" from this provision. Therefore, we do not support the amendment.

Reverend the Hon. FRED NILE [9.24 p.m.]: The Christian Democratic Party supports Government amendment No. 22.

Amendment agreed to.

The CHAIRMAN: Greens amendment No. 97, Opposition amendment No. 42 and Government amendment No. 23 conflict. They may be moved and considered concurrently. If any one of the amendments is agreed to, the others lapse.

Mr IAN COHEN [9.28 p.m.]: I do not move Greens amendment No. 97 as circulated.

The Hon. RICK COLLESS [9.29 p.m.]: I move Opposition amendment No. 42:

No. 42 Page 66, schedule 3.3, lines 2-14. Omit all words on those lines.

Opposition amendment No. 42 needs to be taken into account with Opposition amendment No. 43. Therefore, despite the fact that I have moved only amendment No. 42, I will address both amendments. While it is logical to roll all the processes from the various pieces of natural resources legislation into one, to have a single approval at the end of the day under the Acts mentioned in this clause, I have a concern that this clause will, in effect, embrace regulations under the Native Vegetation Act, and that standards and targets under the Natural Resources Commission Act, catchment action plans under the Catchment Management Authority Act, and the various guidelines and protocols made under all three Acts will become part of the Threatened Species Conservation Act.

These regulations, guidelines and protocols are not part of the parent legislation so it would be very dangerous to incorporate them as part of this legislation. It is simply incomprehensible that a regulation can be made, for example, under the Native Vegetation Act without proper parliamentary scrutiny and that legislation automatically becomes part of the Threatened Species Conservation Act—also without any scrutiny.

If the Government were serious about making the approval process easier for the beleaguered farmers of this State, it would have constructed this clause so that approval of a property vegetation plan would exempt the farmer from prosecution under this Act as long as the farmer was not operating outside the provisions of the property vegetation plan. Instead, it has been constructed so that the farmer may still be prosecuted while operating within his property vegetation plan, and this so-called biodiversity certification is only a defence to a prosecution. The farmer must prove his own innocence rather than the prosecution being required to prove the farmer's guilt. Section 27 (1) of the Native Vegetation Act provides:

(1) Native vegetation must not be cleared, except in accordance with:

(a) a development consent granted in accordance with this Act, or

(b) a property vegetation plan.

This means, of course, that the property vegetation plan was designed as the pinnacle of approval for land clearing. Development consent is not required if an approved plan is in place, and if the plan is being adhered to then the farmer should be protected from prosecution. Section 27(2) of the Native Vegetation Act provides:

> In determining whether to approve a draft plan, the Minister is to have regard to any relevant provisions of catchment action plans of catchment management authorities, and to the matters required by the regulations.

Now this section has the capacity, with some minor amendments, to provide the same degree of co-operation between the various pieces of legislation that is attempted in division 4 of the bill, but without the ridiculous bureaucratic approach that is embedded in division 4. A far better way to deal with this provision would have been to place more emphasis on the property vegetation plan and to amend section 27(2) of the Native Vegetation Act so that it would read:

> (2) In determining whether to approve a draft plan, the Minister is to have regard to:
>
> (a) statewide standards and targets for natural resource management issues recommended under the Natural Resources Commission Act 2003;
>
> (b) catchment action plans under the Catchment Management Authorities Act 2003; and
>
> (c) protocols and guidelines adopted or made under the regulations under the Natural Resources Commission Act 2003 and the Catchment Management Authorities Act 2003.

Section 28 of the Native Vegetation Act would also need to be amended to have any threatened species issues included in the property vegetation plan. If that amendment were to be adopted, the whole of division 4 could be deleted from the bill. I commend that Opposition amendment No. 42, which should be considered along with Opposition amendment No. 43, which seeks to amend the Native Vegetation Act in the way I have outlined.

Mr IAN COHEN [9.35 p.m.]: The Greens support Opposition amendment No. 42. The bill amends the Native Vegetation Act so that a species impact statement is not required for a development application where an environmental planning instrument [EPI] has biodiversity certification. However, the granting of an EPI certification will be a risky process for threatened species and I believe a species impact statement will still be needed. This will not cause a flood of species impact statements as a test of significance must be satisfied before certification is granted. This is in contrast to certification of the native vegetation package, which has a detailed environmental assessment process. The property vegetation plan developer, which is currently on exhibition, will be used by farmers for their property vegetation plans. The Greens support Opposition amendment No. 42.

The Hon. IAN MACDONALD (Minister for Primary Industries) [9.35 p.m.]: Opposition amendment No. 42 is a very serious amendment. Interestingly the Greens have supported it knowing full well the consequences if the amendment were to pass. If the amendment is agreed to, the New South Wales Farmers Association, and farmers generally, will be most upset because farmers who opt to obtain a development consent, rather than a property vegetation plan from their catchment management authority [CMA], will be required to comply with the full eight-part test, including the requirement of a species impact statement. That will be its impact. It will upset the New South Wales Farmers Association, which incidentally has asked the members of this Chamber and those who support the farming community to support this bill virtually unamended.

If the association heard that The Nationals and the Greens were in alliance on this amendment, there would be all hell to pay. The Government will not support amendment No. 42. The biodiversity certification of the native vegetation reform package provides certainty for farmers who obtain a property vegetation plan or development consent for clearing under the Native Vegetation Act. It is an essential provision of the bill that the holders of development consents under the Native Vegetation Act 2003 obtain the same benefits as holders of property vegetation plans under the same Act. If the amendment were admitted, applicants for development consent for clearing would need to satisfy the current threatened species requirements, including the test of significant, species impact statement and consultation or concurrence, as well as the requirements of the Native Vegetation Act.

This is clearly unfair. It is an essential part of the bill aimed at benefiting farmers who decide to apply for a development consent rather than a property vegetation plan. The Opposition amendment is similar to an amendment that was put forward by the Greens that was also not supported. I cannot believe that the Opposition has so dramatically misunderstood this bill that it has moved an amendment that will subject farmers who do not opt for a property vegetation plan—who might wish to apply to the CMA for some legitimate clearing activity, for instance—to the eight-part test, including providing a species impact statement.

The Hon. RICK COLLESS [9.38 p.m.]: May I respond to the Minister's extraordinary diatribe? I am speaking to Opposition amendments Nos 42 and 43. If Opposition amendment No. 42 is carried, Opposition amendment No. 43 must also be carried. Opposition amendment No. 43 will give absolute power to the property vegetation plan. It provides that the identification of any issues arising under the Threatened Species Conservation Act will be incorporated into the property vegetation plan [PVP]. The Minister has conceded that the property vegetation plan developer software will bring all this about.

If the PVP developer software is so good, why not include all provisions of the Threatened Species Conservation Act and the Native Vegetation Act in the PVP developer software and have the Minister for the Environment sign off on it? That would mean that when a farmer does a property vegetation plan using the PVP developer software the plan would be automatically signed off by the Minister for the Environment and the Minister for Natural Resources. The farmer would then have a property vegetation plan that cannot be challenged. That is the thrust of the Opposition amendments.

Despite what the Minister for Primary Industries says about New South Wales Farmers, I know for a fact that the proposal I have just put is the position from which the New South Wales Farmers started negotiations with the Minister. But New South Wales Farmers were forced into a watered-down provision, which is the one put by the Minister tonight. Honourable members need to understand that it is important that both Opposition amendments Nos 42 and 43 are agreed to. I do not want amendment No. 42 to be passed and amendment No. 43 to be rejected. I want both amendments agreed to, because that would substantially improve the bill and substantially improve the management of native vegetation and threatened species in this State.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [9.40 p.m.]: The Hon. Rick Colless is absolutely right. If Opposition amendments Nos 42 and 43 were supported by this Chamber, that would achieve exactly what was laid out in the rhetoric contained in the Minister's second reading speech. Instead, we have a dog's dinner of a bill, with many amendments made to it, more than half of which are Greens amendments that New South Wales Farmers have not seen. The Minister had the hide to stand in this place and tell us that New South Wales Farmers wanted this bill intact, pretty much as it was, yet he has moved amendments to it and he has supported and accepted Greens amendments. Now he tells us that the crucial pair of amendments that put in place the philosophy that he used to sell this bill to New South Wales Farmers will not be supported.

Opposition amendment No. 42 will be successful because we have the support of sufficient of the crossbenchers. However, Opposition amendment No. 43 will not succeed because the Minister will not support it. That will mean that one amendment will pass but not the other—and one without the other is worse than the existing position.

The Hon. Ian Macdonald: So are you withdrawing Opposition amendment No. 42?

The Hon. DUNCAN GAY: Acceptance of both amendments would be a huge step forward.

The Hon. Ian Macdonald: I am not agreeing to amendment No. 43 in any circumstances.

The Hon. DUNCAN GAY: While the Opposition has moved these amendments in good faith, the Minister is playing politics and failing to take an opportunity to improve the bill. The Hon. Rick Colless knows more about the bill and much more about issues affecting farmers than does any other member of this Chamber. Yet this fool of a Minister has decided to play games with farmers. The New South Wales Farmers Association knows that the Government had a chance to make the bill the way it wanted it, but this smart alec Minister decided to play games. Consequently, we will move our amendment No. 42, but we will not press it because of the huge risk posed by the Minister playing games.

The Hon. IAN MACDONALD (Minister for Primary Industries) [9.43 p.m.]: Can I speak to that nonsense, or has the Deputy Leader of the Opposition withdrawn the amendment?

The Hon. Rick Colless: It is not nonsense.

The Hon. IAN MACDONALD: The Deputy Leader of the Opposition said he would withdraw the amendment.

The Hon. Duncan Gay: How can I withdraw it? I did not move it.

The CHAIRMAN: That is right.

The Hon. Duncan Gay: If the Minister spent more time in the Chamber, he would learn some of these things. He should turn up occasionally.

The Hon. IAN MACDONALD: I am here all the time. The Opposition's amendments—which I think now, if Hon. Rick Colless concurs, will be withdrawn—reinstate the current regime under which farmers applying for an application to clear will have to do a full species impact statement and have either the Department of Environment and Planning or the Department of Primary Industries come to their properties to conduct a full assessment of their proposals.

Amendment negatived.

The Hon. IAN MACDONALD (Minister for Primary Industries) [9.44 p.m.]: I move Government amendment No. 23:

No. 23 Page 66, schedule 3.3, lines 4-14. Omit all words on those lines. Insert instead:

(4) If the clearing of any native vegetation has the benefit of biodiversity certification under Division 4 of Part 7 of the *Threatened Species Conservation Act 1995* and also the benefit of biodiversity certification under Part 7A of the *Fisheries Management Act 1994*:

(a) an application for development consent for clearing is not required to be accompanied by a species impact statement or statements (as would otherwise be required under section 78A of the EPA Act), and

(b) the Minister is not required to consult with the Minister administering the *Threatened Species Conservation Act 1995* and the Minister administering the *Fisheries Management Act 1994* (as would otherwise be required under section 79B of the EPA Act).

This amendment in similar in intent to Government amendments Nos 1 to 9 and 12 to 20. The amendments were the result of considerable discussions with the New South Wales Farmers Association and will vastly improve the current situation.

The Hon. Duncan Gay: You throw the name of the association around all the time.

The Hon. IAN MACDONALD: I could read the president's letter, which I have already quoted several times.

The Hon. Duncan Gay: Which one is that?

The Hon. IAN MACDONALD: The Nationals have become so irrelevant to the political processes of this State. They cannot get over the fact that the Government had very fruitful, positive discussions with the New South Wales Farmers Association, and we have come to an agreement in relation to this Act that represents a vast improvement on the previous position.

Mr IAN COHEN [9.45 p.m.]: The Greens support Government amendment No. 23. The Greens have been consistent in supporting conservation objectives. The amendment places development applications under the same "maintain or improve" test as property management plans. It is solely an environmental test, which is linked to ending broad-scale land clearing.

The Hon. RICK COLLESS [9.46 p.m.]: The Opposition is opposed to this amendment. The changes proposed by our amendment to the Native Vegetation Act 2003—which was a far better amendment than this—would have made property vegetation planning a more inclusive process, and would have overcome the shortfall that this ridiculous Government amendment attempts to clarify.

Amendment agreed to.

The Hon. RICK COLLESS [9.46 p.m.]: I seek advice as to whether Opposition amendment No. 43 can still be moved given that Opposition amendment No. 42 was not successful.

The CHAIRMAN: It can still be moved. It is not consequential upon Opposition amendment No. 42 being agreed to.

The Hon. RICK COLLESS: In that case, I happily move Opposition amendment No. 43:

No. 43 Page 66, schedule 3.3. Insert after line 14:

[2] Section 27 Plans require Ministerial approval

Omit section 27 (2). Insert instead:

(2) In determining whether to approve a draft plan, the Minister is to have regard to:

(a) State-wide natural resource management standards adopted for the purposes of the *Catchment Management Authorities Act 2003*, and

(b) catchment action plans under that Act, and

(c) protocols and guidelines adopted or made by the regulations under this Act.

[3] Section 28 Content of plans

Insert after section 28 (f):

(f1) by identification of any issues arising under the *Threatened Species Conservation Act 1995*,

This amendment amends section 27 (2) of the Native Vegetation Act 2003 by removing existing section 27 (2) and inserting a new section 27 (2), which provides:

In determining whether to approve a draft plan, the Minister is to have regard to:

(a) State-wide natural resource management standards adopted for the purposes of the *Catchment Management Authorities Act 2003*, and

(b) catchment action plans under that Act, and

(c) protocols and guidelines adopted or made by the regulations under this Act.

The amendment also seeks to insert in section 28, which relates to content of property vegetation plans, new subsection (f1), which reads:

by identification of any issues arising under the *Threatened Species Conservation Act 1995*,

This is where the Minister got it wrong, because he claimed that if this amendment were carried, property vegetation plans would still need to take into consideration the eight-part test.

The Hon. Ian Macdonald: I did not say that.

The Hon. RICK COLLESS: What did the Minister say?

The Hon. Ian Macdonald: I said that if they do not take a PVP option and want to clear, then it would attract a full assessment.

The Hon. RICK COLLESS: We are not talking about not taking a PVP option; we are talking about making the PVPs a more viable and simplified option for farmers by getting the developers of PVP software to take into consideration the provisions of the Threatened Species Conservation Act and the Native Vegetation Act. Bypassing all the bureaucratic processes in division 4 would simplify the process. Farmers could get PVPs in place simply, quickly and easily if the software is as good as the Government says it is. At this stage, our information is that it has substantial problems. That is what the amendment is all about. New South Wales Farmers started negotiations with the Minister on this and that is why we think it is important. It is what the farming communities of New South Wales want. I commend the amendment to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries) [9.50 p.m.]: The Government is not prepared to support the amendment, which involves changes to the Native Vegetation Act that are related to threatened species reform. Therefore, it is not relevant to the bill before the Committee. The Native Vegetation Act, the Catchment Management Authorities Act and the Natural Resources Commission Act establish a framework for the Natural Resources Commission to develop standards for natural resource management issues, and for catchment management authorities to implement standards on a regional basis through catchment action plans. The Minister, or following delegation a catchment management authority, is already required to have regard to catchment action plans when approving a property vegetation plan. The amendment introduces an extra step. Statewide standards are integrated already into the assessment of property vegetation plans, but through the relevant catchment action plan.

The amendment unnecessarily duplicates existing provisions of the natural resource management legislation. If there are additional suggestions for matters to be considered and addressed through property vegetation plans the native vegetation regulations are the proper place for these to be considered rather than by an amendment to the bill. In addition, the amendment removes the requirement for the Minister to have regard to the regulations and, instead, requires the Minister to have regard to protocols and guidelines. Unlike regulations, these are not subject to parliamentary scrutiny. Indeed, any protocols and guidelines can be developed already as part of the regulations. This additional requirement is unnecessary. The amendment adds identification of any issues arising under the Threatened Species Conservation Act to the content of property vegetation plans. It is unclear exactly what this means. In any case, under the existing provisions of the bill the Minister's biodiversity certification of the native vegetation reform package will ensure that threatened species issues are addressed properly.

Mr IAN COHEN [9.52 p.m.]: The amendment provides some additional matters to be considered when approving a PVP, but proposed section 27 (2) (c) is too narrow as the regulations provide for a range of considerations, and there is to be less reliance on protocols and guidelines. The final part of the amendment is of interest to us, but our previous comments about stakeholder agreements also apply. The Greens will not support Opposition amendment No. 43.

Amendment negatived.

Schedule 3 as amended agreed to.

Title agreed to.

The Hon. IAN MACDONALD (Minister for Primary Industries) [9.54 p.m.]: I move:

That the Chairman do now leave the chair and report the bill to the House with amendments.

Mr IAN COHEN [9.54 p.m.]: I move:

That the question be amended by omitting all words after "That" and inserting instead "the Committee reconsider schedule 3".

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 25

Mr Breen	Ms Griffin	Ms Rhiannon
Dr Burgmann	Ms Hale	Mr Roozendaal
Ms Burnswoods	Mr Hatzistergos	Ms Tebbutt
Mr Catanzariti	Mr Jenkins	Mr Tingle
Dr Chesterfield-Evans	Mr Kelly	Mr Tsang
Mr Cohen	Mr Macdonald	
Mr Costa	Reverend Dr Moyes	*Tellers,*
Mr Della Bosca	Reverend Nile	Mr Primrose
Mr Egan	Mr Obeid	Mr West

Noes, 13

Mr Clarke	Mr Lynn	Mr Ryan
Ms Cusack	Mr Oldfield	
Mrs Forsythe	Ms Parker	*Tellers,*
Miss Gardiner	Mrs Pavey	Mr Colless
Mr Gay	Mr Pearce	Mr Harwin

Pair

Ms Robertson	Mr Gallacher

Question resolved in the affirmative.

Amendment agreed to.

Motion as amended agreed to.

[*Consideration interrupted.*]

REMEMBRANCE DAY OBSERVANCE

The CHAIRMAN: Order! Later this evening a motion will be moved for a special adjournment to provide for the House to meet tomorrow at 10.57 a.m. As tomorrow is Remembrance Day, the House will meet at 10.57 a.m. so that members may assemble in the Chamber prior to 11.00 a.m., when Remembrance Day will be observed.

THREATENED SPECIES LEGISLATION AMENDMENT BILL

In Committee

[*Consideration resumed.*]

The CHAIRMAN: The Committee will now reconsider schedule 3.

Mr IAN COHEN [10.01 p.m.]: I move:

Page 61, schedule 3.1 [7], lines 19-22 as amended by Government amendment No. 22. Omit all words inserted on those lines. Insert instead:

(3) This section does not authorise the doing of an act:

(a) if it exceeds the minimum extent reasonably necessary for carrying out a routine agricultural management activity or routine farming practice activity, or

I draw the attention of the Committee to the addition of the words "activity or routine farming practice activity, or" after the words "agricultural management". There was a slight grammatical error in the amendment that was circulated. I commend the amendment to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries) [10.04 p.m.]: The Government supports the amendment.

Amendment agreed to.

Reconsidered schedule 3 as amended agreed to.

Bill reported from Committee with amendments.

Third Reading

The Hon. IAN MACDONALD (Minister for Primary Industries) [10.04 p.m.]: I move:

That this bill be now read a third time.

The House divided.

Ayes, 27

Ms Burnswoods	Mr Jenkins	Mr Roozendaal
Mr Catanzariti	Mr Kelly	Mr Ryan
Mr Clarke	Mr Lynn	Mr Tingle
Mr Colless	Mr Macdonald	Mr Tsang
Mr Costa	Reverend Dr Moyes	Mr West
Mr Egan	Reverend Nile	
Ms Fazio	Mr Obeid	
Mrs Forsythe	Mr Oldfield	*Tellers,*
Mr Gay	Ms Parker	Mr Harwin
Ms Griffin	Mr Pearce	Mr Primrose

Noes, 5

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

Question resolved in the affirmative.

Motion agreed to.

Bill read a third time.

SPECIAL ADJOURNMENT

Motion by the Hon. Ian Macdonald agreed to:

That this House at its rising today do adjourn until Thursday 11 November 2004 at 10.57 a.m.

ADJOURNMENT

The Hon. IAN MACDONALD (Minister for Primary Industries) [10.13 p.m.]: I move:

That this House do now adjourn.

ASSOCIAZIONE PUGLIA TWENTY-FIFTH ANNIVERSARY

The Hon. DON HARWIN [10.13 p.m.]: Since World War II Italy has been the principal source of migration to Australia from the non-English speaking world. The Italian association with Australia goes back even further. A Dominican priest working in Manila, Father Vittorio Riccio, sent a map to the Congregation for the Propagation of Faith in 1676 recommending missionary activity on our continent. A Venetian, Antonio Ponto, sailed with James Cook on the *Endeavour*. From its earliest days the penal colony had residents of Italian origin, including free settlers and some Sicilian sailors who had fallen foul of the British authorities.

My brother-in-law is the son of a migrant from Verona. It is a characteristic of the Italian diaspora that the community linkages of the country of their origins remain strong in Australia. Looking through a community directory, a strong presence from regions such as Calabria, Friuli and Sicily are apparent. It has been my pleasure to have an association with Italians from the region of Puglia. With apologies to the Apuli, the region of Puglia is the heel of the boot that is Italy. It is the far south-eastern tip of that beautiful country, facing the Adriatic Sea. The region produces one-tenth of the wine drunk in Europe and its olive oil is also renowned. Its cuisine is characterised by beautiful seafood caught locally and vegetables grown locally.

Tourists would delight in the Greek and Roman ruins, tenth century cathedrals, a chain of medieval hill towns, fishing villages and magnificent beaches. Lecce is a well-kept secret. It started as a Greek city and was the restyled as Roman. It retains its 25,000-seat amphitheatre from the first century BC. It is still a well-preserved city with many historic buildings in the Baroque style, including the magnificent Santa Croce Church and the Palazzo del Governo. On 8 October 2003 it was my pleasure to host a delegation from Puglia at Parliament House, which included the president of LUSEFE, a private university in Lecce. The delegation included also the mayor of the city of Bari. The delegation was visiting Australia at the invitation of the Associazione Puglia New South Wales, the local community organisation of Apuli-Australians in this State.

In Sydney there are about 10,000 Apuli-Australians, largely concentrated in the Canada Bay, Leichhardt and Ryde local government areas. The association has actively promoted social and cultural activities amongst local Apuli-Australians for 25 years. The association has formed a co-operative, being formally constituted under the Act on 18 August 2003, and through its own efforts has built a social centre in Renwich Street, Leichhardt, which has become a focus for community activities. Through my association I have been delighted to see the support of the Apuli regional government for diaspora communities. Mr Anthony Pecere, a 28-year-old Sydney man and a member of the association, serves as its consigliere in New South Wales and does a great job promoting social and cultural links.

The Associazione Puglia New South Wales is the local link with the Puglia region, and it does a marvellous job in keeping the links vibrant between Puglia and our State. For example, the Puglia region has provided computer hardware for the association's centre in Leichhardt and has financed 150 hours of Internet access for them. That will facilitate communications between local Apuli and other similar organisations around the world. The Puglia region has worked with the association on cultural exchanges, including folkloric music, dancing and literature. I was very impressed to read about a program for 10 young Apuli-Australians to participate in work experience in Puglia. Currently six scholarships are being offered to young Australians at the private university at Lecce, sponsored through links to Puglia.

On 30 October it was my pleasure to attend the Twenty-fifth Anniversary Ball for the Associazione Puglia New South Wales Co-Operative Ltd. Also in attendance were representatives of the Italian Chamber of Commerce and the Italian Consulate based in Sydney. It was a great evening and I extend a vote of enormous thanks to the board of directors: Gianni Carelli, the president; Felice Montrone, the vice-president; Anthony Pecere, the secretary; Len Volpicella, the social functions director; Giuseppe Marzullo, the treasurer; and committee members, including members of the women's committee and the youth committee.

It was a fantastic function, held at Five Dock. Hundreds of people attended to celebrate the association's work over 25 years. The audio-visual presentation was spectacular. I am delighted to advise that with the support of the Community Relations Commission that presentation will be able to be enjoyed by generations of Apuli-Australians for years to come. The presentation will be exhibited at Parliament House next year. Congratulations to the Associazione Puglia New South Wales for 25 years of fantastic work. [*Time expired.*]

RSPCA OPERATIONS

Ms LEE RHIANNON [10.18 p.m.]: On 21 June 2004 a *Four Corners* program suggested that nationally vested farming interest groups controlled the RSPCA and manipulated its activities to suit their own commercial purposes, often to the detriment of animal welfare. Since the program was aired I have been approached by a number of people concerned about the operations of the RSPCA: members of the public, and former employees and members of the RSPCA. One of their concerns relates to a letter sent to RSPCA members on 1 November. The letter, which was written on RSPCA letterhead, made reference to the organisation's upcoming election. The signatories refer to the *Four Corners* program as being "unfair and unbalanced" and say that "anonymous letters containing lies and distortions have been circulated". I understand from the people who approached me that the letter is in breach of clause 23 (6 (b) of the memorandum and articles, which state:

> All publicity for the election of members of the Board shall only be published as a resume of candidates listed in alphabetical order in the Animals Magazine.

That statement, in itself, is misleading for members. The letter implies that RSPCA branches have participated in its drafting and its execution, but I understand that that may not be the case. Other allegations that have been raised and that need to be thoroughly investigated include: substantial amounts of money left in legacies and bequests are not being used for the benefit of animals and animal welfare; the RSPCA inspectorate, law enforcement division, is underresourced and fails to ensure that complaints of cruelty are attended to in a reasonable time frame; and the inspectorate fails routinely to investigate intensive farming enterprises and other businesses relating to animals.

Large sums of money are being spent on motor vehicles, mobile telephone accounts, corporate American Express cards, and travel. High-cost consultants are retained by the RSPCA board to deal with activities that should be dealt with by the employed management team, whose services are of doubtful benefit to the organisation, its members, and the welfare of animals. On occasions the RSPCA has employed parties related to or associated with senior executives and board members. That could represent a conflict of interest that should at least be disclosed to members. For example, members are generally not aware that the president's aunt is employed as the RSPCA's bequests officer and that the legal firm in which the president is a partner solicits bequests on behalf of the RSPCA, manages the bequests, and publicly offers to write wills for donors.

The recent annual report of the New South Wales RSPCA shows that its income was $38 million, which included $10 million from the sale of non-current assets. An amount of $21 million was expended during the year. I have been told that large amounts of money have been spent on motorcars, telephones, travel, executive education, consultants, and legal fees. Meanwhile the shelters, particularly at Yagoona, are in a disgraceful condition. I am not making any inference about the work of Mr Albert Mok, the RSPCA auditor for the past 10 years, but the RSPCA needs to explain why a large accountancy firm is not undertaking that work, considering the fact that the RSPCA handles such vast sums of privately donated money and assets.

The RSPCA operates under an old and outdated memorandum of articles and association that has been amended from time to time. These complaints suggest that a review of the memorandum is needed. The probity of RSPCA finances has also been queried. From 2000 to 2004, the cost of raising funds increased from 14 per cent to 50 per cent. While substantially more money was raised compared with 2000, the cost of raising that money was so high that less money was obtained for the use of the RSPCA. I understand that in 2002 a private group, DVA Navion Pty Ltd, was retained at a large cost to drive fundraising efforts, but that members have not been kept informed of the employment of this firm and its performance, or the cost to the RSPCA.

We are also concerned about related party transactions. Paul O'Donnel and Andrew Wozniak's legal firms undertake work for the RSPCA when such work is available to the organisation pro bono. It would appear that that might involve breaches of fiduciary duty. Sadly, the people who have dared to raise these concerns have not been given answers. Private legal firms are hastily commissioned at great expense to deal with these people harshly and threateningly, yet the perpetrators of animal cruelty go without investigation or prosecution. The public holds the RSPCA in high standing but that goodwill is being damaged. It is time for answers. Change is needed.

ANTI-DISCRIMINATION BOARD ANNUAL REPORT

The Hon. PETER PRIMROSE [10.23 p.m.]: I draw to the attention of honourable members the recent annual report of the New South Wales Anti-Discrimination Board. The Anti-Discrimination Board was established under the Anti-Discrimination Act 1977 to administer that Act. It is the role of the board to promote antidiscrimination and equal opportunity principles and policies throughout New South Wales. The board, which is part of the Attorney General's Department, undertakes various functions. First, it handles discrimination complaints. The board provides an inquiry service for people who want to know about their rights or responsibilities under antidiscrimination law. The board also accepts complaints of discrimination, investigates complaints and conciliates complaints when appropriate.

Second, the board tries to prevent discrimination from occurring in the first place. It informs the people of New South Wales about their rights and responsibilities under antidiscrimination laws and explains how they can prevent, and deal with, discrimination. It does that through consultation, education programs, seminars, talks, participation in community functions, and the production and distribution of written information, and it also has a web site. Finally, it advises the Government on discrimination matters and makes recommendations to the Attorney General about applications for exemptions from the Anti-Discrimination Act.

Under the Anti-Discrimination Act 1977 certain types of discrimination or unfair treatment, harassment, and vilification are against the law. That includes discrimination on the basis of sex including pregnancy and sexual harassment, race, marital status, homosexuality, disability including HIV-AIDS, hepatitis C and other infectious diseases, age, transgender status and carers' responsibilities in employment. It is also against the law to discriminate against or harass a person because of the sex, race, marital status, disability homosexuality, age, or transgender status of any of his or her relatives, friends or associates. These types of discrimination and harassment are against the law if they occur in employment, government education—sexual harassment and race discrimination are also illegal in private education—registered clubs, the provision of goods or services, and the provision of accommodation.

Discrimination can be direct or indirect. Direct discrimination means treating someone unfairly or unequally simply because he or she belongs to a particular category of people, such as refusing to hire a woman because she may become pregnant. Indirect discrimination means treating someone according to a requirement that is the same for everyone but has an effect or result that is unequal. For example, an employer may have a requirement that a particular job requires a person who is over 180 centimetres tall, which is the example that is given in the report. If that is not really necessary, the employer may be discriminating indirectly against women and people from some ethnic groups who are less likely to be that height than are men or people from other ethnic groups.

Finally, I refer to vilification. Under the Act, vilification is any public act that incites others to hate, have serious contempt for, or severely ridicule a person or group of people on the basis of their racial background, homosexuality, HIV-AIDS status, or transgender status. Vilification laws occur outside the usual areas of employment, goods and services, et cetera; for example, in the media or in public places. I have made only general comments about the report but it obviously contains a lot of other information about fact sheets and statistics.

Page 13 of the report deals with resolving complaints. A number of types of employment complaints were received during 2003-04. Work environment and harassment accounted for 44.2 per cent of all complaints, while areas such as demotion, promotion, awards and so on accounted for less than 1 per cent. The report also refers to the types of employers about whom complaints were received. According to the report, 52.8 per cent of employers came from private enterprise, 11.9 per cent came from State government departments, 10 per cent were individual males, 5.3 per cent involved statutory bodies, hospitals were responsible for 4.7 per cent, and public education was responsible for 3.3 per cent. I commend the report to honourable members and suggest that they make themselves aware of it.

RELIGIOUS FREEDOM

The Hon. DAVID CLARKE [10.28 p.m.]: I was the subject of some extraordinary comments by the Hon. Eric Roozendaal during one of his recent adjournment speeches, although the President repeatedly warned him to cease making personal imputations against me. I propose to respond to some of his assertions in the limited time available to me tonight. For example, he asserted:

> In the Hon. David Clarke, we see the notion that "Christian values are at the foundation of our nation", and, as a result, those of other faiths should somehow be excluded.

I inform the Hon. Eric Roozendaal that it is an indisputable historical fact that Christian values are indeed at the foundation of our nation. Not only is it an historical fact but I am glad and thankful that it is the case. Australia is the free, peaceful, democratic and tolerant nation that it is today precisely because Christian values are at the core of our nation's foundations, and I certainly do not intend to apologise for that. The Hon. Eric Roozendaal suggests that it flows from that notion that I believe:

> … as a result, those of other faiths should somehow be excluded.

That implication is outrageously untrue and is a gross misrepresentation of my views. As a Christian, I respect the rights of all religious faith to freedom of practice in a manner that does not interfere in the religious freedom of others. I inform the honourable member that our country's record of religious tolerance exists precisely because of the Christian values that shape and guide our nation.

The Hon. Eric Roozendaal relied in his comments upon "a press release freely available in the Parliamentary Library", which supposedly chronicles what are alleged to be my political beliefs and associations. As to this so-called "press release", I inform the House that, first, this grossly defamatory document was removed from the Parliamentary Library after library personnel satisfied themselves that it falsely claimed authorisation by a person who was unaware of its existence. Thus the document defames that person as well. Secondly, the document contains numerous lies regarding my political and religious values, views and associations. Thirdly, the person falsely listed as authorising the document has never been contacted by the Hon. Eric Roozendaal, or anyone on his behalf, to verify its validity or contents. Fourthly, the honourable member relied on a document containing allegations that can be described only as religious bigotry and prejudice.

The Hon. Eric Roozendaal went on to refer to alleged events that occurred last May at a public meeting called for the formation of a Liberal Party branch. He referred to "an appalling riot", to "racist sentiments", to "a rabid and racist attack" and to people "being vilified for being Muslim". He alleged that I was the principal figure behind such events and sentiments. I emphatically deny and repudiate those allegations. They are grossly untrue. The Hon. Eric Roozendaal asserted:

> Liberals who have demonstrated a commitment to religious tolerance are the very members that David Clarke is keen to see ousted from the party.

I reject that assertion as untrue and without any factual basis whatsoever. I now turn to the honourable member's statement that Louise Markus, the victorious Liberal candidate for the seat of Greenway in the recent Federal election, was the beneficiary of a scurrilous leaflet highlighting the Labor candidate's Muslim religion. Louise Markus, a person of great decency, integrity and deep Christian faith, responded by issuing a press release which stated:

> Mr Roozendaal neglected to mention that an unauthorised and defamatory smear sheet on Mrs Markus was also distributed in the final days of the campaign.

She states that she accepted the assurance from the Australian Labor Party [ALP] that it had no involvement with the smear sheet. She also understood that the ALP accepted her assurance that no-one from her campaign

was involved with the leaflet critical of the ALP candidate. However, the facts certainly show that Louise Markus was the object of a vile public campaign that targeted her Christian religious affiliations in bigoted, mocking and intolerant terms. The Hon. Eric Roozendaal spoke in favour of greater understanding and acceptance of the Muslim community and said that the Labor Party does not discriminate on religious grounds. I draw the attention of the House to an article in the *Sydney Morning Herald* of 19 March 2004, which stated:

> Another aggrieved Labor figure was the former Rockdale Mayor Shaoquett Moselmane (a prominent Muslim) who stood aside to allow Frank Sartor to contest the State seat of Rockdale and believed he had a deal with Mr Roozendaal to take Mr Burke's (Legislative Council) seat.

The *Sydney Morning Herald* makes it clear that Mr Moselmane was very upset when it turned out that it was not he but the Hon. Eric Roozendaal who ended up getting the Legislative Council seat. One can sympathise with Mr Moselmane, who is quoted as saying:

> When you give up what is rightfully yours and negotiate a deal, you would expect that you are dealing with men of honour and they would honour the deal.

Clearly his expectations were misplaced. My advice to the Hon. Eric Roozendaal is to heed the words of the well-known saying "Practice what you preach."

HIGH COURT OF AUSTRALIA DECISIONS

The Hon. PETER BREEN [10.33 p.m.]: Last month the High Court of Australia handed down two decisions confirming Australia's position as the backwater of human rights in the developed world. While a United States federal court ruled that the military trial of a Guantanamo Bay prisoner is unlawful under the Geneva conventions, the High Court of Australia decided in two cases that prisoners could be held in indefinite detention on the basis of crimes they might otherwise commit if they were not incarcerated. One case is *Fardon v The Attorney General for Queensland* and the other is *Baker v The Queen*. Justice Michael Kirby was the sole dissenting judge in both cases and, to paraphrase his judgments, the High Court has effectively trashed the principles upholding the integrity of the States' courts established in *Kable v The Director of Public Prosecutions*.

The High Court in Kable struck down the Community Protection Act, which was Premier John Fahey's last desperate attempt to keep the Coalition in government after the Independent Commission Against Corruption so unjustly routed Nick Greiner and Tim Moore. Mr Fahey pushed the community protection legislation through both Houses of this Parliament in the hope of capitalising on fear and loathing in the community directed at Gregory Kable, who was due for release from prison after serving a sentence of seven years for the manslaughter of his wife. Gregory Kable appealed the Community Protection Act all the way to the High Court, where a majority of judges decided that it was inappropriate for Parliament to detain prisoners who had served their sentences. Kable was duly released and I point out that he did not turn out to be the demon contemplated by the Community Protection Act, due in no small measure to the good work of the Justice Action mentoring program. Gregory Kable is now a useful and productive member of society, who speaks at public forums and helps young prisoners to avoid re-offending.

I take this opportunity to commend to the House the Justice Action mentoring program and to express the opinion that much more is achieved with honey than with vinegar when dealing with prisoners. Given that most prisoners return to the community eventually, we should be remorseless in our efforts to educate and rehabilitate them, not remorseless in our vilification and condemnation. The tragedy of the two High Court decisions in Fardon and Baker is that the majority judges are supporting an attitude to prisoners that is highly destructive of our social fabric and undermines the principles of justice and fairness they are supposed to uphold. I am reminded of the High Court decision in Mabo when Tim Fischer described Sir Anthony Mason's court as basket weavers and historical dills. I would not wish to use such colourful language to describe Chief Justice Murray Gleeson's court, but honourable members will get my drift.

In the case of Fardon, a prisoner challenged the Dangerous Prisoners (Sexual Offenders) Act passed by the Queensland Parliament in 2003. The legislation was directed at Robert Fardon in much the same way as the Community Protection Act was directed at Gregory Kable. Fardon was judged by the Parliament to be a continuing threat to the community and an "unacceptable risk"—to use the words in the legislation. As in the Kable case, the High Court was asked in Fardon whether the legislation compromised public confidence in the integrity and impartiality of the justice system. In effect, the High Court said that a State court can pass any law it pleases, even one that intrudes into the judicial power under chapter III of the Commonwealth Constitution. The confusion in the minds of the judges about the issues is reflected in the fact that they published five judgments.

Earlier in the year when Bret Walker, SC, argued the Baker case in the High Court, I became alarmed about the direction in which the High Court is moving. Mr Walker said that it would surely be inappropriate for the New South Wales Parliament to pass a law that all red-headed prisoners are a threat to the community and therefore should remain in gaol. There was little resistance to that notion in the faces of the judges and nothing in their judgments to suggest that they would be concerned about such a law. Of course Justice Michael Kirby was the exception. In Baker, the judges delivered four judgments, not five, but the confusion in Fardon was no less evident.

Members will recall that Allan Baker, who murdered Ian Lamb and Virginia Morse, appealed to the High Court on the basis that he was "cemented in"—to use Premier Carr's words—by the Crimes Legislation Amendment (Existing Life Sentences) Act 2001. Baker will die in gaol as a result of the High Court decision even though the law at the time of his crimes meant that he could apply after eight years for a redetermination of his sentence. Indeed, Baker's co-offender, Kevin Crump, has already had his sentence redetermined to 30 years, which he has now served, but he, too, will die in gaol as a result of the Baker decision. The legislation was directed specifically at Allan Baker, and Premier Carr issued a number of press releases in which he promised Brian Morse, the widower of Virginia Morse, that Baker would never be released. The Premier has kept his promise and the High Court has upheld the cement law. I would describe the decisions in both Fardon and Baker as the triumph of justified indignation and outrage over commonsense and the just rule of law.

VOLUNTARY STUDENT UNIONISM

The Hon. HENRY TSANG [Parliamentary Secretary] [10.38 p.m.]: The Federal Government has made clear its intention to use its newly obtained Senate majority to push through its conservative agenda in the next Parliament. One of its recent ideological obsessions has been voluntary student unionism, known as VSU. On Christmas Eve 1998 one of the proponents of the New Right's agenda, Dr David Kemp, announced that he would introduce legislation that would give the choice to students as to whether they wished to join a student organisation and pay its fees. After an intense campaign from all tertiary organisations, the bill was withdrawn after its rejection in the Senate.

The Federal Coalition Government has wrongly defined the debate surrounding VSU as an issue relating to compulsory unionism. Student unionism is nothing of the sort. Instead, it is an issue that can be likened to local government rates, providing important services to the university community. Oddly enough, the Federal Government had no similar plans to make the payment of income tax optional. Student fees allow the student representative councils [SRCs] and student unions to provide services such as food outlets, sporting facilities, help to the disadvantaged, and academic and social programs. Those services are sometimes solely provided by student organisations, which is why VSU is such a dangerous and counterproductive path to take.

Without student fees, the impact on student life would be significant, particularly so in rural and regional campuses. The fees enable a sense of community to be created on campus. Student representation is a demonstration of our democratic traditions. The Vice-Chancellor of the University of Sydney, Professor Gavin Brown, has stated unequivocally the position of the group of eight universities. Professor Brown said that universities cannot afford to provide the services offered by student organisations. Given the defunding of the tertiary sector that has steadily taken place over the past few years, that much should be self-evident. The Federal Government is cutting representation to hide the defunding of tertiary education. One of Australia's leading education experts, Professor Simon Marginson, has shown that public funding of teaching and learning at universities has fallen from more than $12,000 a student in 1977, to about $5,000 today.

The Federal Government wants to silence all forms of dissent the same way it silenced the Youth Action and Policy Association, the peak youth movement, and also the Combined Pensioner and Superannuants Association, by de-funding them. Student organisations exist on all university and TAFE campuses. They are an essential and historical part of student life. The funds that are collected by the universities on their behalf are spent on important services to students. For example, at the University of Sydney, without student fees there would be no SRC, no legal advice for students, no welfare or academic advocacy, no second-hand bookshops and no *Honi Soit*—its famous student newspaper, edited in the past by well-known individuals such as Clive James, Laurie Oakes, Keith Windshuttle, and the current Chaser Team, to name just a few.

Past presidents of SRCs have included Jim Carlton, Geoffrey Robertson, Michael Kirby, Joe Hockey and Tony Abbott. Sports stars such as former Wallaby Captain and Sydney City Council Councillor Nick Farr-Jones, diver Loudy Tourkey, swimmer Matt Welsh, and rowers in the Awesome Foursome have all benefited from the facilities and support of the Sydney University Union. VSU will destroy community life on tertiary

campus and must be opposed. As a Fellow of the Senate of the University of Sydney, I am happy to stand by students in opposing the introduction of VSU. The voice of students—even if it is a voice of dissent—is worth protecting, as are all the services I have mentioned. VSU offers no significant advantage to students. On the contrary, its introduction threatens the fabric of the university community. We should not allow the Federal Government to destroy a great student tradition, one from which many of its currently serving members and Ministers benefited in their student days.

Motion agreed to.

The House adjourned at 10.43 p.m. until Thursday 11 November 2004 at 10.57 a.m.