LEGISLATIVE COUNCIL

Thursday 9 December 2004

The President (The Hon. Dr Meredith Burgmann) took the chair at 9.45 a.m.

The Clerk of the Parliaments offered the Prayers.

GENERAL PURPOSE STANDING COMMITTEE NO. 5

Report

Mr Ian Cohen, as Chairman, tabled report No. 22, entitled "Hunter Economic Zone and Tomalpin woodlands", dated December 2004, together with transcripts of evidence, tabled documents, submissions and correspondence.

Report ordered to be printed.

Mr IAN COHEN [9.47 a.m.]: I move:

That the House take note of the report.

Debate adjourned on motion by Mr Ian Cohen.

PETITIONS

Disability Programs Funding

Petition requesting a guarantee that the quality of services offered by the Post-School Options and Adult Training, Learning and Support programs will not be reduced through funding cuts or restructuring, received from **Ms Sylvia Hale**.

BUSINESS OF THE HOUSE

Postponement of Business

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

GENERAL PURPOSE STANDING COMMITTEE NO. 1

Reference

Reverend the Hon. Dr GORDON MOYES [9.52 a.m.]: I wish to inform the House that on 8 December 2004 General Purpose Standing Committee No. 1 resolved to adopt the following terms of reference:

1. That General Purpose Standing Committee No. 1 inquire into, and report on the operations and outcomes of all personal injury compensation legislation (including but not limited to claims by persons injured in motor accidents, transport accidents, accidents in the workplace, at public events, in public places and in commercial premises but not including claims by victims injured as a result of criminal acts) approved by the Parliament of New South Wales from 1999, with particular reference to:

   (a) the impact on employment in rural and regional communities,

   (b) the impact on community events and activities, and community groups,

   (c) the impact on insurance premium levels and the availability of cost-effective insurance,

(d) the level and availability of compulsory third party motor accident premiums required to fund claims cost if changes had not been implemented in 1999; and the impact on the WorkCover scheme if changes had not been implemented in 2001, and

(e) any other issue that the Committee considers to be of relevance to the inquiry.

GENERAL-PURPOSE STANDING COMMITTEE NO. 2

Reference

The Hon. PATRICIA FORSYTHE [9.54 a.m.]: I wish to inform the House that on 8 December 2004 General Purpose Standing Committee No. 2 resolved to adopt the following terms of reference:

1. That General Purpose Standing Committee No. 2 inquire into and report on the operation of Mona Vale Hospital, and in particular:

   (a) the closure of the intensive care unit and the reasons behind its transfer to another hospital,

   (b) the level of funding given to Mona Vale Hospital compared to other hospitals in the area,

   (c) the level of community consultation in relation to changes proposed by NSW Health to the hospital, and

   (d) the reasons why the hospital has not been made the general hospital for the Northern Beaches area.

2. That the committee report by 31 March 2005.

REDFERN-WATERLOO AUTHORITY BILL

In Committee

Clauses 1 and 2 agreed to.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [9.57 a.m.]: I move Government amendment

No. 1 Page 2. Insert after line 6:

3 Objects of Act

The objects of this Act are:

(a) to encourage the development of Redfern-Waterloo into an active, vibrant and sustainable community, and

(b) to promote, support and respect the Aboriginal community in Redfern-Waterloo having regard to the importance of the area to the Aboriginal people, and

(c) to promote the orderly development of Redfern-Waterloo taking into consideration principles of social, economic, ecological and other sustainable development, and

(d) to enable the establishment of public areas in Redfern-Waterloo, and

(e) to promote greater social cohesion and community safety in Redfern-Waterloo.

This amendment inserts a new clause outlining the objects of the Act. Extensive public comment and community consultation has occurred since the bill was first introduced. Following that consultation the Government has identified a need to make clear the objects of the bill, including encouraging an active, vibrant and sustainable community in Redfern-Waterloo; promoting and supporting the indigenous community; recognising the symbolism of parts of Redfern to the Aboriginal community in New South Wales; taking into consideration principles of socio-economic, ecological and other sustainable development; and promoting social cohesion and improving community safety.

These objects make it clear that the bill is designed to improve public amenity, quality of life and safety in Redfern-Waterloo. I draw particular attention to object (b), which relates to the Aboriginal community. There is no doubt that parts of Redfern, notably the Block development, have a unique status for many indigenous people in the community, not just in Sydney but elsewhere in New South Wales. Some wild and inaccurate claims have been made about attempting to remove this community. These claims are nonsense. The Redfern Aboriginal community is an important part of the social makeup of Redfern-Waterloo. The proposed objects of the Act make that clear. I commend the amendment to the House.

The Hon. DON HARWIN [10.00 a.m.]: The Opposition welcomes and supports Government amendment No. 1 in relation to the objects of the bill. As I outlined in my contribution to the second reading of the bill, RED watch raised the issue of having objects in the legislation in a lengthy meeting I had with them last Friday. It was also something that I was able to pass on as a concern in my meeting with Dr Gellatly and Dr Ramsey. The Opposition's view is that the Act would be improved by having objects, and we are pleased that Government has done that. Having objects in legislation assists courts should litigation ever arise from an action of the Redfern-Waterloo Authority, and in knowing what the Authority is about and what it is designed to achieve. This is a win for the community who have been concerned about this. The Opposition is pleased to support it and we are glad the Government has taken it up.

Reverend the Hon. FRED NILE [10.01 a.m.]: The Christian Democratic Party supports this amendment and is pleased that paragraphs (b) and (c) have been included. The object of paragraph (b) is to promote, support and respect the Aboriginal community in Redfern-Waterloo having regard to the importance of the area to the Aboriginal people. The object of paragraph (c) is to promote greater social cohesion and community safety in Redfern-Waterloo and that has been a major concern for many years.

Ms SYLVIA HALE [10.04 a.m.]: I move Greens amendment No. 1:

No. 1 Page 2. Insert after line 6:

3 Objects of Act

The objects of this Act are, in relation to the Redfern-Waterloo area:

(a) to protect the indigenous culture of the area, recognising the importance of the area to the Aboriginal people, and

(b) to create employment opportunities and an economic environment that provides employment for local residents, and

(c) to provide adequate affordable housing that meets the diverse family, cultural and disability needs of the local community, and

(d) to enhance and strengthen the existing communities of the area (including the Aboriginal, ethnic, public housing, low income and student communities), and

(e) to protect and enhance the heritage values of the area, and

(f) to promote social justice and enhance community well-being.

The Greens applaud the introduction of objects into the bill. It is extraordinary that objects were not included in the first place and, if necessary, the Greens will support the Government's amendment. However, we believe that the Government's amendment is far weaker than the objects proposed in our amendment. What is supposed to distinguish this bill from, say, legislation applying to the Sydney Harbour Foreshore Authority, is its broader social compass and that it establishes the making of a plan and that type of thing. Indeed, this social objective was so important that in the third sentence of the Minister's second reading speech he said that Redfern-Waterloo is home to particularly disadvantaged communities with high numbers of unemployed people, low-income families and public housing tenants.

The first object in the Greens amendment is to protect the indigenous culture of the area. The second object is to create employment opportunity. It is not enough just to say it would be a nice thing: we must recognise that it is in the creation of those employment opportunities that hopes for the area lie. We believe it is absolutely essential to include an objective that is directed towards the creation of employment opportunity. The third object relates to the lack of adequate affordable public housing in the area. The Greens acknowledge that the public housing in the area needs to be upgraded but it is the retention of affordable public housing that is absolutely essential. We believe it is so important and so distinctive a feature of the area to date, that it is essential to have the provision of future adequate affordable housing that meets the diverse family, cultural and disability needs of the local community.

Not including these objects in the bill would be an indicator that they will not be at the forefront of the considerations of the new Redfern-Waterloo Authority. In paragraph (f) of our amendment the Greens seek to protect and enhance the heritage values of the area. We also have a significant objective and one that is not included in the Government amendment No. 1, that is, to promote social justice and to enhance community wellbeing. The issues at the heart of the problems at Redfern are the absence of employment opportunities, the unsuitability of much of the housing provided there and the need to promote social justice in the area. It is

because these issues are so important that they should be spelt out and explicitly stated in the objects at the very start of the bill. I commend Greens amendment No. 1.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [10.05 a.m.]: I congratulate the Government on putting forward some objectives, although perhaps I should not congratulate it for doing what it should have done before. The idea that the Government introduced a bill of this magnitude without objectives suggests that it was whipping ahead to grab the power without really thinking about what it was going to do with it.

The Hon. Don Harwin: I am sure it knew exactly what it was going to do with it.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Yes, it probably knew exactly what it was going to do with it. Had it won the Council of the City of Sydney election it would have used that vehicle. The Government's objectives are less specific than the Greens but they do pay service to sustainability and look at the position of the Aboriginal community, which is extremely important. They suggest orderly development in public areas and social cohesion and community safety, however, they do not look at affordable housing. Affordable housing is an important issue in this area because cities of the world that have become hubs are very much driven by a world market in relation to land prices. City workers who do more menial and less well-paid jobs have to live miles from the city, and that makes it immensely difficult to get labour for the city centre.

Developers want a more homogenous society from a financial point of view and the image of public housing now is that because there is so little of it, it has become welfare housing associated with welfare problems. Developers who want to maintain prices would prefer to pay a levy for community housing rather than provide it. This amendment will require real affirmative action and some courage to stand against developers who may be in private-public partnership or other relationship with the Government or some other profit maximising endeavour. Therefore, if the Government wants affordable housing it should have included it in the objectives of the legislation. I believe it is socially necessary to have affordable housing near the city centre for workers, even taking the most utilitarian view of the function of housing. I am disappointed that it has not been included in the objectives and I believe that the Greens amendment should be supported.

The Greens amendment is stronger on job creation. The Government is neglectful as it is letting government contracts that do not meet Aboriginal participation in the building industry standards and that has been addressed by the Greens. The Greens have less generic material than the Government but the legislation would be improved by including those objectives. The Government is at least doing the right thing, so I support its amendment and I support the elements of the Greens amendment as well.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [10.08 a.m.]: The Government has moved a similar amendment to insert objects into the bill. The Government agrees with the Greens and the Opposition that it is of value to outline the bill's principal roles in this way. In preparing the Government's amendment to the bill to insert new objects into the Act, it conducted ongoing consultation with the Redfern-Waterloo residents and peak bodies. Following that consultation the Government identified objects, including encouraging an active, vibrant and sustainable community in Redfern-Waterloo; promoting and supporting the indigenous community; recognising the symbolism of parts of Redfern to the Aboriginal community of New South Wales; taking into consideration the principles of social, economic, ecological and other sustainable development; and promoting social cohesion and improving community safety.

These objects make it clear that the bill is designed to improve public amenity, quality of life and safety in Waterloo. The Greens amendment proposes some important objects. However, it is much more narrowly focused than the Government's proposal and does not capture the full range of the authority's responsibilities. For example, the Greens amendment does not include community safety; the Government's does. The Government believes improving community safety is an important object of the bill, and therefore we cannot support the Greens amendment to the extent that it differs from our own. The Government opposes that amendment.

The Hon. DON HARWIN [10.10 a.m.]: I will briefly put on record why the Opposition is happy with the Government's objects of the legislation, as opposed to the Greens amendment. Essentially, there are four concepts in the Greens amendment that are not in the Government's amendment. They are, of course, social justice, heritage, affordable housing, and employment opportunities. I am sure the view of the Minister would be that social justice would be encapsulated in the five Government objects moved here, but if I could be permitted a small self-indulgence, I personally have no problems with social justice as a concept in our legislation. What I

greatly regret is the way social justice has been appropriated in terms of the public lexicon by a number of people and twisted into a concept that was never intended.

The Liberal Party has always strongly supported social justice. In fact, Sir Robert Menzies frequently talked about social justice in his speeches. In a book that our former colleague the Hon. Dr Marlene Goldsmith edited, I wrote a chapter on the Liberal conception of social justice. A Liberal conception of how social justice is achieved is very different from how some these days would regard it. That, perhaps, is why it is falling out of favour. In terms of heritage, I believe other Government amendments certainly cover heritage. As to affordable housing, I certainly believe in the Government's espoused objects of a sustainable community, supporting the Aboriginal community, socially sustainable development, and social cohesion. All of those objects, in my view, encapsulate the need to provide adequate affordable housing.

I am somewhat intrigued about how the Greens amendment supports the creation of employment opportunities. I think the Liberal Party and The Nationals would be a little sceptical as to how an authority like this could create employment opportunities. We see a greater need for market-driven solutions. We query how effective such an authority could be in creating employment opportunities. But perhaps we might hear more about that from Ms Sylvia Hale.

Ms SYLVIA HALE [10.13 a.m.]: I move:

That the Government amendment be amended by adding:

(g) to create employment opportunities and an economic environment that provides employment for local residents, and

(h) to provide adequate affordable housing that meets the diverse family, cultural and disability needs of the local community, and

(i) to protect and enhance the heritage values of the area, and

(j) to promote social justice and enhance community well-being.

The new paragraphs I seek to insert in the Government's amendment are in fact paragraphs (b), (c), (e) and (f) of the Greens amendment. I moved the amendment because all honourable members who have contributed to this debate have noted that these are admirable objectives. If they are so, they should be incorporated in the legislation.

In terms of employment opportunities, obviously there will be much activity by government departments in the Redfern-Waterloo area. For example, if the Department of Housing observes its responsibilities, it would be seeking to ensure appropriate provision is made for employment of indigenous people on any works that it undertakes. The Minister in the other place, in his second reading speech, made great play of the prospects of improving employment. He talked about a technology park and the establishment of some sort of cancer institute. Of course, there is always room for scepticism that that type of employment would generate jobs for people who do not live in the Redfern-Waterloo area but come into the area, use their skills and then leave the area. Of course, if this object is inserted in the Act, it will spell out clearly that anything the authority does has to bear this object in mind. Whilst the Opposition has an amendment that goes to the preservation of heritage in the area, we should pay regard to the fact that tis is a unique area that contains so many items of real importance. An article in this morning's *Sydney Morning Herald* suggests that Redfern courthouse could well be disposed of. Goodness knows what fate would befall it under Minister Sartor! I think it is important to stress the primacy of its consideration in any redevelopment of the area.

As to the provision of social justice, as the Hon. Don Harwin said, this is an objective to which most people subscribe, though exactly how it is interpreted at different times varies enormously. At least its insertion in the bill would be an important step forward. I will be most interested in how honourable members vote on these issues. I will be interested in whether the Government votes against an amendment that provides for the provision of adequate affordable housing, the protection and enhancement of heritage values, the promotion of social justice, and the creation of employment opportunities. I commend the Greens amendment to the Government amendment.

Question—That the amendment of Government amendment No. 1 be agreed to—put.

The Committee divided.

Ayes, 5

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

Noes, 20

Ms Burnswoods	Mr Kelly	Mr Ryan
Mr Catanzariti	Mr Lynn	Mr Tingle
Mr Clarke	Reverend Dr Moyes	Mr Tsang
Mr Costa	Reverend Nile	Mr West
Ms Cusack	Mr Obeid	*Tellers,*
Mrs Forsythe	Mr Pearce	Mr Harwin
Mr Jenkins	Mr Roozendaal	Mr Primrose

Question resolved in the negative.

Amendment of Government amendment No. 1 negatived.

Government amendment No. 1 agreed to.

The CHAIRMAN: Greens amendment No. 1 lapses.

Clause 3 to 10 agreed to.

Ms SYLVIA HALE [10.26 a.m.], by leave: I move Greens amendments Nos 2 to 8 in globo:

No. 2 Page 4, clause 11. Insert after line 7:

(1) The Minister is to appoint an advisory committee to be called the Community Advisory Council.

(2) The Community Advisory Council is to consist of such persons as the Minister considers represent the community of the Redfern-Waterloo area.

(3) The Minister is to publicly call for nominations to the Community Advisory Council and is to consider any such nominations.

(4) The Community Advisory Council has the following functions:

(a) to provide advice to the Minister in relation to the preparation of the Redfern-Waterloo Plan and any amendments to, replacement of or review of that Plan,

(b) to provide advice to the Minister in relation to the implementation of the Redfern-Waterloo Plan.

(5) A member of the Community Advisory Council holds office, subject to the regulations, for such term, not exceeding 2 years, as is specified in the relevant instrument of appointment and is, if otherwise qualified, eligible for re-appointment.

No. 3 Page 4, clause 11 (1), line 8. Insert "other" after "such".

No. 4 Page 4, clause 11 (2), line 11. Insert "appointed under subsection (1)" after "advisory committee".

No. 5 Page 4, clause 11 (3), line 13. Insert "appointed under subsection (1)" after "advisory committee".

No. 6 Page 4, clause 11 (4), line 16. Omit "this section". Insert instead "subsection (1)".

No. 7 Page 4, clause 11 (5), line 17. Omit "committee member". Insert instead "member of an advisory committee appointed under subsection (1)".

No. 8 Page 4, clause 11 (9), lines 29 and 30. Omit "this section". Insert instead "subsection (1)".

The amendments will enable the appointment of an advisory committee to be called the Community Advisory Council. Currently the Minister may appoint advisory committees, although there is no obligation on him to do so. He also has the power to change the composition of those committees, to dismiss them or to do with them what he will. The Greens amendments will prevent the Minister from dissolving the advisory committee whenever he feels like it. It is essential that the many verbal commitments to take into account the views of the Redfern-Waterloo community be translated into deeds. The Community Advisory Council would consist of such persons as the Minister considers represent the communities of Redfern and Waterloo.

The amendments outline the mechanisms that would require the Minister to call for public nominations and to consider those nominations. The Community Advisory Council would provide advice to the Minister on the preparation of the plan, which exists yet supposedly does not exist. More importantly, it would provide advice on implementation of the plan. Subject to the regulations a member of the Community Advisory Council would hold office for two years, although that person would be eligible for reappointment. The amendments incorporate into the bill the mechanics to guarantee community representation on the Community Advisory Council appointed by the Minister. They will also advise the Minister on the implementation of the plan. It is one thing to have a plan, but it is another thing to ignore its recommendations entirely. This is a very important set of amendments. I commend them to the Committee.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [10.29 a.m.]: The bill provides that the Minister may create a number of advisory committees to advise the Minister and the authority on particular areas of operation within the Redfern-Waterloo area. The Minister has indicated that he intends to create a number of advisory committees. Public nominations will be called for membership of at least three advisory committees. These committees will consist of a number of community representatives and representatives of various relevant government agencies. It is the intention to also consult with the existing community advisory committee in the Redfern-Waterloo area. The committee structure should be sufficiently flexible to allow for the formation of additional committees as required. How various committees interact would be resolved informally to maximise the opportunity for public input to the Redfern-Waterloo Plan and the authority.

The Greens amendments attempt to reduce flexibility in the committee system by legislating for a single committee and giving that committee de facto precedence over any others that may be formed. This diminishes the importance of the other committees, including those covering human services or employment, to mere adjuncts of the master committee which the Greens propose. The Government intends to establish a number of advisory committees to include substantial public representation. The Government cannot support this proposal to legislate for certain committees and grant them status over others. The Government opposes these amendments. As has already been noted, amendments Nos. 3 to 8 are consequential upon a determination of amendment No. 2.

The Hon. DON HARWIN [10.31 a.m.]: In our meetings with the Dr Gellatly and Dr Ramsey at the Premier's Department, on behalf of the Government they made it quite explicit that there would be a community advisory council. In the last couple of weeks there has been a lot of comment about how well Independents represent their electorates and what they can get from the government of the day. Basically Redfern-Waterloo shows for all time how little Independents are able to achieve for their electorates. I note that after the next election, Redfern and Waterloo and the whole operational area of the Redfern-Waterloo Authority will be in the electorates of Heffron and Marrickville.

The Opposition is not about micromanaging advisory committees. We believe that there should be a degree of flexibility about the number of advisory committees that will be needed to deal with problems as complex as those associated with Redfern and Waterloo. I remind the Government that at the next election, Redfern and Waterloo will be wholly in electorates that currently are represented by Labor members.

Reverend the Hon. FRED NILE [10.32 a.m.]: Clause 11 of the bill sets out in detail the formation of the committees. If the Greens amendments are adopted, that will create an imbalance in the legislation. We will be focusing on just one committee when we know that there will be at least three committees. To maintain a balance in the legislation, there should not be an overemphasis on one particular committee. To ensure representation of the Aboriginal community, I foreshadow that the Christian Democratic Party amendment No. 1 deals with the issue of membership of those committees. I believe it will deal with this issue adequately.

Ms SYLVIA HALE [10.33 a.m.]: We have been informed that it is the Minister's intention to institute such a committee. If that is his intention, there should be no problem with the Greens amendments. On the

question of balance, I point out that obviously there will be committees dealing with either area, irrespective of whether one area is Redfern or the other is Waterloo. One hopes that there will be committees dealing with heritage and other committees dealing with housing—a whole variety of committees. The amendments are designed to put in place an overarching committee that keeps in view the vision or the plans for the area as a whole. The amendments are designed to create a committee that brings together the work of all the individual committees and provides advice to the Minister on what the committees are recommending and on how the recommendations of the other committees should be implemented.

It is not a question of the committee proposed by the Greens making the others irrelevant or less important. The committee envisaged by these amendments would have a co-ordinating role in bringing together the work of the other committees. The Hon. Don Harwin has said that the Opposition is not about micromanaging the area. I believe what the Opposition is on about is washing its hands of the area. I think that has been indicated by its response to this bill as a whole. The Opposition is thoroughly aware, I am sure, of the appalling precedents that are being established in much of this bill, yet it has chosen to make a very token effort at amending some of the legislation. The Opposition has not gone anywhere near removing the most offensive elements of the bill.

The Greens are trying to empower the community to make sure that there is genuine participation in the manner in which the authority is run and to ensure that there is at least one committee that the Minister will not be able to dismiss, change, alter or curtail as he sees fit. The essential problem of the bill is the way in which so much power is delivered into the hands of the Minister without any appropriate checks or balances. The establishment of one community advisory council would at least provide a voice for the community instead of having the voice of the community stifled, which I believe is the Government's intention.

The Hon. DON HARWIN [10.36 a.m.]: Ms Sylvia Hale has made a number of remarks about the Opposition's position on this bill. I think it is important to respond to them on the record immediately. First of all, in terms of the substantive issue, which is of course what we should be speaking to instead of listening to some members dishing out abuse of the Opposition, there was a very long second reading debate and members went right through the problems associated with Redfern and Waterloo. Anyone who suggests that the creation of a community advisory committee along the lines suggested by the Greens will be an adequate means of oversighting the work of the authority, is completely stark raving off the track, suffice it to say. That is just not the way to deal with supervision. There are complex problems associated with the area and to suggest that members right now know the solution to those problems and that right now we know the way to set up a means of accountability to deal with problems that inevitably will arise in the course of the operation of the authority is simply wrong.

I think the authority needs to be given some flexibility. I am very comfortable with the position that the Opposition is taking in relation to the advisory committees. I remind Ms Sylvia Hale that it is often the case that undertakings are given on Government legislation in this Chamber. They are placed on the record, and that is the way in which accountability is clearly invoked. The Minister has stated in Committee and on the record an undertaking that has been given by the Minister in the other place, and the Minister in the other place walks away from that commitment at his own peril.

The final point I make in response to the comments made by Ms Sylvia Hale and in response to Mr Turnbull from REDwatch is that in 14 days all papers in relation to the Redfern-Waterloo Authority will be available for members to examine. Contrary to the impression that might be given in Mr Turnbull's email or might have been gathered from Ms Sylvia Hale's comments, those papers will be available only because yesterday the Opposition gave the Greens a guarantee that it would support the order. It was only at that point that the Chamber was able to deal with the matter formally.

If the Greens think for one minute that those papers would have been produced without the support of the Opposition or that accountability of the Redfern-Waterloo Authority will be maintained through the production of documents by the public sector relating to the authority without the support of the Opposition, they are simply wrong and they ought to remember that. More than anything else it is the call for papers and the production of papers that enables members of Parliament to know what the Government is really up to, and that will keep the Government accountable. It will also ensure that the undertakings given by the Minister will be carried through, and carried through in an appropriate manner.

Question—That the amendments be agreed to—put.

The Committee divided.

Ayes, 5

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

Noes, 23

Ms Burnswoods	Mr Jenkins	Mr Roozendaal
Mr Catanzariti	Mr Kelly	Mr Tingle
Mr Clarke	Mr Lynn	Mr Tsang
Mr Colless	Mr Macdonald	Mr West
Ms Cusack	Reverend Dr Moyes	Dr Wong
Mr Della Bosca	Reverend Nile	*Tellers,*
Mr Egan	Mr Oldfield	Mr Harwin
Mrs Forsythe	Mrs Pavey	Mr Primrose

Question resolved in the negative.

Amendments negatived.

Reverend the Hon. FRED NILE [10.46 a.m.]: I move Christian Democratic Party Amendment No. 1:

No. 1 Page 4, clause 11. Insert after line 14:

(4) The Minister is to ensure that there are at least 2 representatives of the Aboriginal community of the Redfern-Waterloo area appointed as members of each advisory committee that has functions involving social, human services or employment issues that affect that community.

I am very pleased to move the amendment and have been advised by the Minister that the Government will accept that it is a revision of my original amendment on sheet C-066, with which I will not proceed. My revised amendment picks up the main points of my list of amendments. In addition, the Minister's letter that I read onto *Hansard* last night covered the other points. I am pleased that there will be at least two, maybe more, Aboriginal representatives on the advisory committees. That is a very positive move.

I assume that the Committee will agree to my amendment as it enables Aboriginal representatives to play a major role in decision making and not hear second hand of any decision that affects them. The Aboriginal representatives will be at the heart of any decisions made by the Redfern-Waterloo Authority. In earlier debate about the community committee Ms Sylvia Hale said that there was to be a super committee, one main committee, to which all other committees would report. My view is that the authority is the body to whom the committees report—that is its role. My amendment is in line with that concept.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [10.48 a.m.]: The Government supports the amendment for the reasons given by Reverend the Hon. Fred Nile.

Amendment agreed to.

Clause 11 as amended agreed to.

Clauses 12 and 13 agreed to.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [10.50 a.m.]: I move Australian Democrats amendment:

Page 5. Insert after line 15:

14 Appointment of Parliamentary Committee

(1) As soon as practicable after the commencement of this section and the commencement of the first session of each Parliament, a committee of the Legislative Council is to be designated by resolution of the Legislative Council as the designated committee for the purposes of this Act.

(2) The resolution of the Legislative Council is to specify the terms of reference of the committee so designated which are to relate to the supervision of the exercise of the functions of the Authority under this Act.

This amendment would appoint a parliamentary committee, designated by resolution of the Legislative Council, to oversee the Redfern-Waterloo Authority to ensure that its actions are consistent with the terms of the Act under which it operates and with good social policy. This amendment is about whether Parliament and its committees will scrutinise the Government's actions through this unusual authority, which has absolute power. It is a matter of accountability and examining the authority in an ongoing and systematic fashion via a committee of the Parliament. I commend the amendment to the Committee.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [10.51 a.m.]: The Government opposes the Australian Democrats amendment. The bill provides that the authority will administer the functions of the Act. The authority shall conduct its functions according to the objects of the Act and for the benefit of the residents of Redfern and Waterloo. This amendment would have the effect of replacing the authority with a parliamentary committee that would, in the words of the amendment, conduct a "supervision of the exercise of the functions of the Authority." The authority is responsible to the Minister and the Minister is responsible to Parliament. There is no need for such an amendment as the authority is already accountable to Parliament via the Minister.

The Hon. DON HARWIN [10.52 a.m.]: I am not sure why the Hon. Dr Arthur Chesterfield-Evans feels the need to move this amendment when general purpose standing committees Nos 2 or 4, through self-reference, could examine virtually any matter that needed to be considered with regard to the Redfern-Waterloo Authority. I am confused as to why the Hon. Dr Arthur Chesterfield-Evans has moved the amendment in this form. If he is suggesting that there should be an oversight committee along the lines of the Joint Standing Committee on Electoral Matters, the Committee on the Independent Commission Against Corruption or the Committee on the Office of the Ombudsman and the Police Integrity Commission, I am not sure that I agree with that approach. The Ombudsman, the Police Integrity Commission, the Electoral Commissioner and the State Electoral Commission are very different beasts from the Redfern-Waterloo Authority, which is envisaged in this bill. Most of those oversight committees look specifically at the activities of watchdogs that are almost semi-autonomous—we hope they are fully autonomous—that play a specific role in the public sector.

As I have carriage of this bill on behalf of the Opposition, I can confirm that if any members of the community or any members of this Chamber have specific concerns about any aspect of the operation of the Redfern-Waterloo Authority we will vigorously support them, so long as we regard their case as having some merit. We certainly give an undertaking that the matter will be referred to the relevant general purpose standing committee—probably No. 2 or No. 4. I am not sure that this amendment is necessary and I invite the Hon. Dr Arthur Chesterfield-Evans to explain why this model is needed in the Act. I do not think it is.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [10.54 a.m.]: The answer is that I believe this model was created when the Government did not win the election for the City of Sydney council. The Government amalgamated South Sydney and Sydney councils and if it had won the subsequent election—as it intended—it could have done as it pleased in Redfern and Waterloo because it would have controlled local government. However, the Government lost the election so it has created an authority that effectively supplants local government. Whenever an area appears to need more development than other areas the Government simply supplants local government and creates an authority with pretty draconian powers. This authority was created quickly—to the point that there were no objects in the bill.

I then canvassed the notion of, instead of passing the bill, referring it to the Standing Committee on Social Issues, which was conducting an inquiry into issues relating to Redfern and Waterloo. The Government did not reveal its plans for Redfern and Waterloo to the committee, which I believe constituted contempt of the committee. The Government and senior public servants told the hearings that nothing was set in stone only a few days before the leak to the *Sydney Morning Herald* revealed the advanced state of the Government's plans for the area. In fact, it was almost a contempt of Parliament.

I asked Parliament, and the Opposition in particular, to strengthen the position of committees in supervising the Government—and indeed to strengthen the whole concept of parliamentary accountability. My understanding is that the Opposition was not minded to refer the entire bill to a committee to examine its content and consider the structure of the authority. That was my preferred course. Therefore, I consulted about the idea that a parliamentary committee could have oversight of this extremely powerful authority in a systematic and ongoing matter.

The Hon. Don Harwin said that this authority is different from ICAC and various other autonomous bodies, but it will have the power to influence many people's lives in an area that is not unique, unlike the Olympic site or the Sydney Harbour foreshore. Redfern and Waterloo cover a large area and constitute a significant part of the City of Sydney—it is effectively half the local council area that the Government restructured only recently. The implication is that the Government believes local government is not the avenue through which to pursue any sort of land development. Such projects should instead be forwarded to a small subcommittee of the central executive—which is what this authority is.

Given the Opposition's desire to ensure accountability to Parliament rather than merely sit back and watch bills pass through this place that give all power to Ministers and the executive—which is what has been happening—I had hoped for the Opposition's support of this amendment. I believe this to be a good middle-of-the-road option that will not delay the passage of the bill by sending it to a committee for consideration. It would provide ongoing parliamentary input and alleviate sniping about individual buildings for the next decade or so, as residents become upset and estimates committees come and go while the bulldozers stay one step ahead of the process. I ask the Hon. Don Harwin to revise his position and support my amendment.

The Hon. DON HARWIN [10.58 a.m.]: We will not support referring the bill to a parliamentary committee. As several Opposition members have said in this place, there are serious problems in Redfern and Waterloo that the Government must deal with now. We have certainly put on the record all our concerns about the model that will be adopted through this bill. I encourage the Hon. Dr Arthur Chesterfield-Evans to reflect upon the composition of the oversight committees which he suggests would be a better model, and the composition of the general purpose standing committees, particularly Nos 2 and 4. The Opposition's proposition—and the fact the we have a call for papers in place—without the amendment of the Hon. Dr Arthur Chesterfield-Evans, would be far more effective than setting up an oversight committee on which Government members would have the majority.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.00 a.m.]: If this House sets up a committee it does not therefore follow that the Government would have the numbers on that committee; quite the contrary.

The Hon. Don Harwin: It will if it is put in legislation, like all the other oversight committees such as the Committee on the Office of the Ombudsman and the Police Integrity Commission and the Committee on the Independent Commission Against Corruption and the Joint Standing Committee on Electoral Matters.

The CHAIRMAN: Order! The Hon. Dr Arthur Chesterfield-Evans has the call.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: My understanding is that the implication is that the council would set the committee, and the Government would not be able to do that. But perhaps I am wrong. In regard to the idea that the Opposition has simply put its concerns on the record, we are not writing legislation for historians to pick through in 50 years; we are trying to influence what happens.

The Hon. Duncan Gay: Get into the real world.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: That is what I am asking you to do, mate, get into the real world. The Opposition is simply putting its concerns on the record! Whoop-de-do, mate! It is not a matter of just putting things on the record; it is a matter of actually trying to influence what happens.

The Hon. JOHN TINGLE [11.01 p.m.]: I am not sure how to follow an act like that, but I find myself pretty much in tune with what the Hon. Don Harwin has said, for one reason. If we did set up such an oversight committee, given the structure of the Redfern-Waterloo Authority and its extremely autonomous nature, does the Hon. Dr Arthur Chesterfield-Evans really believe that such a committee, finding some flaw in the way the authority was functioning, would have any sanctions available to it to do anything about it? I do not think it would.

Amendment negatived.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.02 a.m.], by leave: I move Australian Democrats amendment Nos 1 and 2:

No. 1 Page 6, clause 14 (1). Insert after line 21:

(f) to consider, nurture, promote, develop and respect the unique status and iconic nationwide symbolism of the Redfern-Waterloo area, for Aboriginal people, in all the activities on which the Authority embarks,

No. 2 Page 6, clause 14 (1) (f), lines 22 and 23. Omit all words on those lines. Insert instead:

(f) to do any other thing for the improvement and community well-being of the operational area in consultation with local government, business, the local indigenous community and the non-government sector.

Dealing with amendment No. 1, it is important to not only respect the people of the first nation, our first settlers, but to also acknowledge the importance of this place in their lives. Redfern and Waterloo will always be a place for Aboriginal people from all over this country to gather to meet family and to rediscover their family. Redfern and Waterloo could be of great national pride to us if they become positive, vibrant and unique places to witness and be part of the original inhabitants' life and culture. In the words of Michael Gravener from "The Settlement":

I believe that if we at Redfern-Waterloo get it right, its positive influence will spread to all people, especially Aboriginal people, and help in allowing them rightful and just place in our society.

Amendment No. 1 will embed in the legislation an encouragement of iconic national symbolism for the Aboriginal people. I am hopeful that Redfern and Waterloo can achieve a type of regeneration similar to that which occurred with the Maori culture in New Zealand. Amendment No. 2 demands a better consultative mechanism. This amendment will strengthen the previous poor consultation with residents. I commend both amendments to the Committee.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [11.04 a.m.]: Australian Democrats amendment No 1 would require the authority to consider the iconic nature of Redfern-Waterloo to the indigenous community in every aspect of its function. The objects of the bill include promoting, respecting and supporting the Aboriginal community in Redfern-Waterloo having regard to the importance of the area to the Aboriginal people. However, to require the authority to consider the iconic nature of Redfern-Waterloo in every action is impracticable. Many actions of the authority would be minor in nature and it would be impossible to approach them with due consideration of the iconic nature of Redfern-Waterloo. While the Government supports the sentiment, it cannot support an amendment that would be impossible to carry out. The amendment is opposed.

Amendment No. 2 would remove the requirement that the authority take action for the sustainable improvement of the area. Instead, the authority would be required to consult with several local governments, the business community, the indigenous community and the non-government sector before taking any actions. The business community and non-government sector are not clearly defined and would be open to legal challenge should this amendment proceed. In addition, while it is intended that there shall be extensive consultation on many aspects of the operations of the authority, it is impracticable to require those groups, and only those groups, to be consulted as one of the core functions of the Redfern-Waterloo Authority with respect to all of its actions. The Government therefore also opposes this amendment.

Amendments negatived.

Clause 14 agreed to.

Ms SYLVIA HALE [11.06 a.m.]: I move Greens amendment No. 9:

No. 9 Page 7, clause 15 (3), lines 4-6. Omit all words on those lines. Insert instead:

(3) In carrying out any of its functions, the Authority is to apply the principles of social, economic, environmental and other sustainable development.

This amendment amends clause 15 (3). Obviously the present wording of the clause obliges the authority merely to take into consideration such principles, but in effect it means the authority can ignore them. The Greens amendment puts an obligation upon the authority to act in accordance with the principles set out.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.08 a.m.]: I move Australian Democrats amendment No. 3:

No. 3 Page 7, clause 15 (3), lines 4 and 5. Omit "take into consideration, where relevant,". Insert instead "consider the".

This amendment strengthens the obligation of the Government. The words "take into consideration, where relevant" effectively mean that the Government can say things are irrelevant but this amendment forces it to consider the issues and slightly strengthens the wording.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [11.09 a.m.]: In relation to Greens amendment No. 9, the Government supports the application of principles of social, economic, environmental and sustainable development. In fact, clause 15 (3) of the bill states:

> In carrying out any of its functions, the Authority is to take into consideration, where relevant, principles of social, economic, ecological and other sustainable development.

This amendment essentially removes "where relevant" and requires these principles to be applied on all occasions, whether relevant or not. This would mean that to every action taken by every employee of the authority, no matter how inconsequential, these principles would have to apply or it would be left open to legal challenge. The principles of social, economic, environmental and sustainable development are a core part of the bill. They are essential considerations. But applying them to every action of the authority, no matter how small, cannot be accepted. The Government opposes that amendment.

The Government also opposes the final Australian Democrats amendment. Essentially, this amendment would remove the "where relevant" clause and require that the principles of social, economic, ecological and sustainable development be applied on all occasions, whether relevant or not, as was the case with the Greens amendment. As I said earlier, this would mean that every action of every employee of the authority would have to apply those principles. Therefore my comments are equally relevant and important regarding both amendments.

Greens amendment No. 9 negatived.

Australian Democrats amendment No. 3 negatived.

Clause 15 agreed to.

Ms SYLVIA HALE [11.10 a.m.], by leave: I move Greens amendments Nos 10 and 11 in globo:

No. 10 Page 7, clause 16, lines 8 and 9. Omit all words on those lines.

No. 11 Page 7, clause 16, line 11. Insert "within the operational area" after "private land".

Clause 16 (1) of the bill provides:

> The Authority is not limited to exercising its functions on or in relation to land within the operational area.

Greens amendmen11.10t No. 10 seeks to delete subclause (1). The effect of the amendment is to limit the authority's activities to the area described in the bill. It would limit the authority's opportunities to expand its borders. If this subclause is not deleted, it is not unreasonable to expect that there may well be a creep as the authority seeks to expand the extent of its empire. Obviously, at stake here are critical areas not only within Alexandria itself but also in other areas leading to the airport. Greens amendment No. 11 inserts the words "within the operational area" at the end of the first sentence in subclause (2), so that that sentence would read:

> The Authority may exercise its functions on or in relation to public or private land within the operational area.

Unless that specification is included, the authority will have enormous power to act not only in relation to public land but also in relation to private land. Currently, the subclause would hand extraordinary powers to the authority, and in effect to the Minister. It is important that there be some constraints. It is logical to limit the authority's exercise of its functions in relation to public or private land to the area within its borders. I commend Greens amendments Nos 10 and 11 to the Committee.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [11.13 a.m.]: The Government opposes Greens amendment No. 10. The authority's power to operate outside its area is largely intended to allow the provision of public amenities that benefit Redfern and Waterloo but may be physically located just outside its borders. For example, the authority may wish to design a traffic plan to reduce the number of heavy vehicles passing through Redfern-Waterloo on their way to the airport. This traffic plan would necessarily cover areas outside the immediate boundaries of the authority. As another example, a community centre or a park that benefits Waterloo residents might be physically located across the road, in Alexandria. Any extension of the role that is unrelated to achieving the benefits for Redfern-Waterloo would probably be ultra vires. The bill also provides that certain

developer contributions from the old Carlton and United Breweries site be used to improve Redfern-Waterloo. These Greens amendments would prevent that money from being spent on Redfern-Waterloo. Greens amendment No. 11 is consequential on Greens amendment No. 10 and is also opposed.

Ms SYLVIA HALE [11.14 a.m.]: When attempting to justify the provisions of the bill, the Minister always seeks to bring up the most benign of examples and suggests that of course there are no ulterior motives and that there is no possibility of such powers being exercised inappropriately. I ask honourable members to bear in mind that City Road is just outside the authority's area, as is Victoria Park, South Dowling Street and Botany Road. Under the provisions now contained in the bill the authority could exercise its powers, for example, to make determinations as to the future of major thoroughfares, or to determine to sell off public land in other local government areas, or it could authorise the demolition or alteration of heritage buildings outside the boundaries of the authority.

Members of the House would be extraordinarily naïve to think that the Government would never contemplate the authority doing any such thing. I cannot, for the life of me, see why the Opposition or crossbench members would care to give the Government cart blanche in the exercise of the authority's powers in this regard, particularly given that the areas we could be talking about—supposedly areas immediately impinging upon the borders of the authority—are of such critical importance to Sydney's development. An extraordinarily bad precedent would be established by giving these powers to the authority. It is in everybody's interests—as the Opposition should well know—to seek to curb the overriding authority that will be handed to the Minister.

Amendments negatived.

Clause 16 agreed to.

Clauses 17 to 25 agreed to.

Ms SYLVIA HALE [11.18 a.m.], by leave: I move Greens amendments Nos 12 to 18 in globo:

No. 12 Page 12, clause 26 (2), line 15. Omit "may". Insert instead "must".

No. 13 Page 12, clause 26. Insert after line 30:

(3) The Minister is:

(a) to publicly exhibit the draft Redfern-Waterloo Plan for a period of at least 21 days, and

(b) to seek public comment on the draft Redfern-Waterloo Plan during the period of public exhibition, and

(c) to take into consideration any submissions made during the period of the exhibition and during the period of 7 days (or such longer period as the Minister may determine) from the end of that exhibition period.

No. 14 Page 12, clause 26. Insert after line 35:

(6) The Minister is to ensure, as far as is practicable, that:

(a) no aspect of the Redfern-Waterloo Plan is implemented unless the Plan contains the strategic vision for the sustainable improvement of the operational area, and

(b) the Redfern-Waterloo Plan is prepared within the period of 2 years after the date of assent to this Act and that by the end of that 2-year period the Plan addresses all of the matters referred to in subsection (2) (a)-(j).

No, 15 Page 13, clause 26 (7), lines 5-11. Omit all words on those lines. Insert instead:

(7) The Minister administering the *Environmental Planning and Assessment Act 1979* may make an environmental planning instrument for the purposes of subsection (6) in accordance with that Act.

(8) Despite any provision of the *Environmental Planning and Assessment Act 1979*, the Minister administering that Act is:

(a) to publicly exhibit for a period of at least 28 days any draft regional environmental plan, or draft State environmental planning policy, to be made for the purposes of subsection (6) that deals solely with land in the operational area, and

(b) to seek public comment on the draft regional environmental plan or draft State environmental planning policy during the period of public exhibition, and

(c) to take into consideration any submissions made during the period of the exhibition and during the period of 7 days (or such longer period as the Minister may determine) from the end of that exhibition period.

No. 16 Page 13, clause 26 (8), line 12. Omit "may". Insert instead "must".

No. 17 Page 13, clause 26. Insert after line 18:

(9) Sections 40 (Notice of statutory rules to be tabled) and 41 (Disallowance of statutory rules) of the *Interpretation Act 1987* apply to the Redfern-Waterloo Plan in the same way as those sections apply to a statutory rule.

No. 18 Page 13. Insert after line 20:

27 Social and community plan for operational area

The Minister is to ensure that:

(a) a community or social plan is prepared for the operational area generally in accordance with the requirements for such plans applying to local councils under the *Local Government Act 1993*, and

(b) the community or social plan is publicly exhibited with the draft Redfern-Waterloo Plan, and

(c) the community or social plan is reviewed and, if necessary, amended before it is publicly exhibited with any amendment or replacement of the Redfern-Waterloo Plan.

I ask that questions be put in relation to each amendment seriatim. The substance of Greens amendment No. 12 is in clause 26 as it currently stands. Clause 26 provides:

The Redfern-Waterloo Plan may make provision for or with respect to the following matters …

Our amendments seek to replace the word "may" with the word "must", obliging the authority to make provision in any plan for the creation of employment opportunities, urban design, human services, and renewal and regeneration of public land and assets, to use just a few examples.

Greens amendment No. 12 seeks to make it obligatory for the plan to make provision for the very matters that are covered in clause 26 (2) (a) to (i). Greens amendment No. 13 requires the Minister to exhibit publicly the draft Redfern-Waterloo Plan for a period of at least 21 days, to seek public comment and to take into consideration any submissions made during the period of exhibition, and for a period of seven days from the end of that exhibition. The amendment introduces into the plan the same provisions that relate to the preparation of any regional environmental plan or local environmental plan to ensure proper public scrutiny and the opportunity for public comment. Greens amendment No. 14 introduces a new clause that requires the vision to be released before the plan can be implemented, and for the full contents of the plan to be available publicly within two years.

Although the bill authorises the preparation of a plan, no time limit has been set for the finalisation of the plan. Two years after the event at Minto local residents are still waiting for the master plan to be presented and adopted. Rather than bits of the plan being dribbled out a little at a time so that the whole is never available at any one time, Greens amendment No. 14 would require the plan to be prepared at least for public discussion, scrutiny and comment within a two-year period. Given the enormous powers the bill delivers into the hands of the Minister, it is not unreasonable to stipulate a two-year time limit on the preparation of the plans. If the plan is not in place, the Minister will have almost unchecked authority.

Greens amendment No. 15 requires that all planning instruments used to implement the Redfern-Waterloo Plan must conform to standard public consultation mechanisms. This somewhat lengthy amendment requires the plan to be exhibited publicly for a period of at least 28 days, that public comment on the draft be sought and that consideration be given to any submissions made during the period of exhibition. Amendments Nos 15 and 16 provide the mechanics for the introduction of the time frame for the plan and the way in which it is to be dealt with. Greens amendment No. 17 requires the plan to be tabled in the same way that all other regulations are tabled, thus allowing the Parliament to disallow them if necessary. The plan will be subject to sections 40 and 41 of the Interpretation Act. Given that we are being asked to accept the bona fides of everyone's intentions and in view of the power being given to the authority and the Minister, at the very least the plan should be tabled and subject to oversight by the Parliament and, if necessary, disallowed.

Greens amendment No. 18 inserts a new clause to provide for a social and community plan for the operational area. Local councils are required to provide social and community plans. It appears that the authority is usurping much of the power of the City of Sydney Council. The obligations placed on the council should be placed also on the authority because its activities, whether it is the demolition or redevelopment of buildings or the sale of public assets, obviously will have a huge impact upon communities living in the area. It is absolutely essential to ensure that any of the activities carried out by the authority are in accord with the community or the social plan. The way in which the authority controls the use of the physical environment—buildings, streets and open space—must be in accord with the social objectives set out in the community plan. The Greens urge the Committee to adopt amendment No. 18.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [11.28 a.m.]: The Redfern-Waterloo Plan is designed to be a flexible document that changes over time to emphasise the changing needs of the area. For example, it may be that the plan is produced in a number of stages, or the plan may cover strategic vision for land use. It may be in addition to a human services plan. If Greens amendment No. 12 were carried, the Redfern-Waterloo Plan would be required to cover every potential aspect of operations from day one. If it did not, the plan would be open to legal challenge. This would tie down the authority in constant legal disputes over the breadth of the plan, and that would prevent the authority from setting priorities or adapting to the changing needs of the Redfern-Waterloo residents. Therefore the Government opposes Greens amendment No. 12.

The Government opposes also Greens amendment No. 13 because the bill currently states that the Redfern-Waterloo Plan is to be made public. When the plan is reviewed, due consideration must be given to public submissions that may be made from time to time. It should be perfectly clear that the Government intends that the plan will be public. The plan will succeed only if it has the broad support of the Redfern-Waterloo community; there will be no value in keeping the plan in any way secret. However, the plan is designed to be a flexible document that changes over time to meet the changing needs of the area. For example, the plan will be produced in a number of stages, as I have said. The amendment will reduce the flexibility of the plan by requiring advertising periods for every minor change of the plan, thereby slowing down the process of delivering improvements in Redfern-Waterloo.

The Government opposes Greens amendment No. 14. As previously stated, the Government supports the application of the principles of social, economic and environmentally sustainable development. In fact, the bill currently states that when the authority carries out its functions, it is to take into consideration, whenever relevant, the principles of social, economic, ecological and environmentally sustainable development. The amendment essentially requires that these principles should be applied on all occasions, whether the principles are relevant or not. This would mean that every action taken in the plan, no matter how inconsequential, would have to apply these principles or be open to legal challenge. The principles of social, economic and environmentally sustainable development are a core part of the bill. They are essential considerations, but applying them to every action of the authority, no matter how small, cannot be accepted.

The amendment also requires that the plan be prepared within two years. Honourable members should be assured that the plan will be introduced as soon as possible. Mandating a certain time frame for the plan could have the effect of curtailing public consultation and leaving some residents unable to express their views, all because of an arbitrary time frame that has been determined by this Parliament long before the plan is actually commenced. The Government therefore also opposes that amendment.

The Government opposes also Greens amendment No. 15, which would remove the Government's power to make an environmental planning instrument by gazettal. This will significantly delay the introduction of any such planning instruments and slow down the process of delivering sustainable improvements to public services and amenities in the Redfern-Waterloo area.

The Government cannot support Greens amendment No. 16, which relates to clause 26 (8). It provides that the authority must, at the request of the Director-General of the Department of Infrastructure, Planning and Natural Resources do certain things. The Redfern-Waterloo Authority is under the direction of the Minister responsible for Redfern-Waterloo, not the Director-General of the Department of Infrastructure, Planning and Natural Resources. The amendment creates two lines of direction for Redfern-Waterloo Authority employees who carry out functions of the authority within the operational area. It is illogical to set up an inherent conflict. For that reason, the Government opposes the amendment.

Greens amendment No. 17 will allow the Parliament to disallow the Redfern-Waterloo Plan as it would be a statutory rule. The effect of this amendment would be that no plan or amendment to the plan would have

any finality or force until the Parliament determined that it would not reject the plan. The Redfern-Waterloo Plan is designed to be amended over time to meet the changing needs of the Redfern-Waterloo community. If this amendment were carried, every amendment to the plan, no matter how minor, would be left in a state of uncertainty in the face of possible parliamentary disallowance. The Redfern-Waterloo Plan would become unworkable as a result of this amendment. The Government urges that this amendment be rejected also.

Greens amendment No. 18 inserts a requirement for a social and community plan to be prepared in conjunction with other requirements of the Redfern-Waterloo Authority. This unnecessary provision also duplicates some of the roles of the Redfern-Waterloo Plan. Many of the social service issues that the amendment refers to will be dealt with by the Redfern-Waterloo Partnership Project in the Premier's Department, and not by the authority. The amendment will oblige the authority to carry out a process in an area in which it has only partial involvement. The Government opposes all the amendments.

The Hon. DON HARWIN [11.33 a.m.]: I will deal with a couple of Greens amendments and I will invite the Minister to comment on a few matters. With regard to amendment No. 17, I am completely unsympathetic to the Minister's generic comments about disallowance, although they are predictable comments for a Minister. However, in my view it is inappropriate for the Minister to suggest that public sector agencies should be excluded from the operation of section 40 and section 41 of the Interpretation Act. In this specific instance, I regard as fair the Minister's comments on the difficulty of a document of the nature of the Redfern-Waterloo Plan being subject to disallowance. I cannot imagine that this plan will be in a form that would allow it to be disallowed in the same way as regulations may be disallowed; that is just inconceivable in terms of the complexity of matters that will be dealt with in relation to Redfern-Waterloo.

I refer now to Greens amendment No. 18. Tempting as it is to think that this bill renders the Council of the City of Sydney a doughnut council—which the Minister at the table deprecates so regularly—of course, the bill does not do that. The Minister should not look so quizzical; he might send the wrong message. The obligations that the Council of the City of Sydney will have in terms of its community plan under the Local Government Act will remain. The authority will have responsibility for State significant developments. Ongoing social welfare obligations will remain for the Redfern-Waterloo Partnership Project, which was the case before the authority was proposed. I believe that amendment No. 18 is redundant.

Greens amendment No. 13 is very significant. I point out to the Minister that throughout his entire response to the comments made by Ms Sylvia Hale in support of her amendment, I heard him give no undertaking at all about public consultation. I heard him make some remarks about how making the plan inflexible might make it difficult to undertake public consultation, but I heard him give no guarantees or undertakings to the Committee about what would happen if the Committee left the plan flexible—that is, what public consultation would be undertaken, or what exhibition drafts would be allowed by the authority.

I would have thought that if the Committee were to give the Government and the new authority flexibility to address the complex social problems and other difficult infrastructure planning that will need to be undertaken in the operational area, we could at least have had an undertaking given in this Chamber about how the authority will approach such significant issues. I invite the Minister to address the Committee in more detail on that matter because the issues are significant and they are relevant to whether Greens amendment No. 13 should be passed by the Committee.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [11.37 a.m.]: As I have said, the bill currently states that the Redfern-Waterloo Plan is to be made public. That is stated in clause 26 (3). I also said that the plan would be reviewed, and as it is reviewed, due consideration will be given to any public submissions that are made from time to time. Under clause 26 (4), public submissions will be invited and considered.

Ms SYLVIA HALE [11.38 a.m.]: The Hon. Don Harwin has made the point that in fact the authority will be dealing merely with State significant developments. I think that is all the more reason for it to have in place a social plan. The nature of any development deemed to be State significant means that the social requirements of an area can be easily overlooked, ignored or treated as second-best considerations. That is all the more reason for the authority to have a social plan. If the Council of the City of Sydney also has a social plan it is important that the two be synchronised to the greatest possible extent. It would be ludicrous if the city council were using its resources to pursue one objective that the authority chose to ignore, or to which its actions were directly counter. In response to the Minister's assurance that the plan will be reviewed and made public, if that is the case there is no conceivable argument to require that plan to be publicly exhibited for at least 21 days.

What is wrong with the bill containing a mechanism that sets out the public's rights to exhibiting and commenting on the plan? Otherwise, everything is left to the grace, favour and good intentions of the Minister. From experience everyone knows that good intentions are not sufficient and cannot be relied upon. I urge the Opposition and the crossbenchers to support the Greens amendments, in particular amendments Nos 13 and 18.

Greens amendment No. 12 negatived.

Question—That Greens amendment No. 13 be agreed to—put.

The Committee divided.

Ayes, 6

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

Noes, 22

Ms Burnswoods	Mr Kelly	Mr Roozendaal
Mr Catanzariti	Mr Lynn	Mr Tingle
Mr Clarke	Reverend Dr Moyes	Mr Tsang
Mr Colless	Reverend Nile	Mr West
Mr Costa	Mr Obeid	
Mr Della Bosca	Mr Oldfield	*Tellers,*
Miss Gardiner	Mrs Pavey	Mr Harwin
Mr Jenkins	Mr Pearce	Mr Primrose

Question resolved in the negative.

Greens amendment No. 13 negatived.

Greens amendment No. 14 negatived.

Greens amendment No. 15 negatived.

Greens amendment No. 16 negatived.

Greens amendment No. 17 negatived.

Question—That Greens amendment No. 18 be agreed to—put.

The Committee divided.

Ayes, 6

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

Noes, 22

Ms Burnswoods	Mr Kelly	Mr Roozendaal
Mr Catanzariti	Mr Lynn	Mr Tingle
Mr Clarke	Reverend Dr Moyes	Mr Tsang
Mr Colless	Reverend Nile	Mr West
Mr Costa	Mr Obeid	
Mr Della Bosca	Mr Oldfield	*Tellers,*
Miss Gardiner	Mrs Pavey	Mr Harwin
Mr Jenkins	Mr Pearce	Mr Primrose

Question resolved in the negative.

Greens amendment No. 18 negatived.

Clause 26 agreed to.

Clause 27 agreed to.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [11.52 a.m.]: I move Government amendment No. 2:

No. 2 Pages 13 and 14, clause 28, line 32 on page 13 to line 4 on page 14. Omit all words on those lines. Insert instead:

28 Heritage matters

(1) The provisions of the *Heritage Act 1977* do not apply to the carrying out of development in the operational area that is State significant development.

(2) However, an item or part of an item listed on the State Heritage Register is not to be altered or demolished unless:

(a) the Minister has consulted the Heritage Council of New South Wales about the matter and has taken into consideration any advice duly provided by the Council, and

(b) the Minister is satisfied that it is necessary for the sustainable improvement of the operational area.

(3) The regulations may make provision for or with respect to the procedures for consulting the Heritage Council of New South Wales and for the provision of advice by that Council.

This amendment relates to heritage matters and aims to ensure a formal role for the Heritage Council of New South Wales in relation to heritage-listed items on State significant sites. The amendment follows consultation with the Heritage Council and others. The bill currently provides that the Heritage Act 1977 not apply to the development of certain State significant sites provided the Minister determines that this development is essential to the overall strategic vision for the area. Concerns have been raised that a future Minister may choose to make decisions about heritage items so affected without considering the views of the Heritage Council beforehand. This amendment goes some way to addressing this concern. The amendment provides that no item or part of an item listed on the State Heritage Register can be demolished unless the Minister has consulted with the Heritage Council first and given due consideration to its advice. In addition, the Minister must be satisfied that the demolition is necessary for the sustainable improvement of the operational area. I commend the amendment to the Committee.

Ms SYLVIA HALE [11.53 a.m.]: I move Greens amendment No. 19:

No. 19 Page 13, clause 28 (1), lines 33-37. Omit all words on those lines. Insert instead:

(1) The provisions of the *Heritage Act 1977* do not apply to development to the extent to which the development affects the platforms and buildings forming Redfern Station if the development:

(a) is within the operational area and is State significant development, and

(b) is identified in the Redfern-Waterloo Plan as development that may be carried out despite any prohibition or restriction under that Act.

The effect of this amendment is to limit the overriding of the Heritage Act 1977 to only those buildings that form part of Redfern station. When the Greens were briefed about the bill before its introduction we were told that Redfern station was the key issue. The Minister did not want preservation of the toilets at the station to

stand in the way of redeveloping the site. In this amendment the Greens are giving the Minister what he wants and saying that the Heritage Act should prevail elsewhere but not in relation to Redfern station. That is the Minister's sole rationale for attempting to exclude the workings of the Heritage Act from the authority, and this amendment will give him what he seeks.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [11.55 a.m.]: Government amendment No. 2 requires the Heritage Council to be consulted and its views given due consideration before the demolition of any items listed on the State Heritage Register. The Minister must also be satisfied in developing a State significant site that is essential to the strategic vision of the area. The Redfern-Waterloo Plan will not be achieved if the Heritage Act were to apply. For example, the Redfern and Waterloo communities have discussed the need for a town centre and the Redfern railway station has been identified as an appropriate location for such a centre. The railway station needs to be redeveloped to meet the requirements of the disability discrimination Act. These improvements cannot be carried out without affecting heritage-listed buildings, notably a heritage toilet on the site.

The Government is required to consult the Heritage Council and consider its advice before proceeding. The Government believes this strikes the right balance between protecting heritage structures and ensuring the social, economic and structural improvement of Redfern and Waterloo. Greens amendment No. 19 would limit the exemption from the Heritage Act to Redfern railway station alone. This could significantly reduce the opportunities for adaptive reuse of other heritage sites in the area, and thereby reduce the amount of funding available to improve the lives and wellbeing of Redfern and Waterloo residents. The Government strongly opposes Greens amendment No. 19.

The Hon. DON HARWIN [11.56 a.m.]: I want to clarify something with regard to Greens amendment No. 19. There appear to be three options on the circulated document C-047D.

The CHAIRMAN: On circulated sheet C-047D the options that appear under Greens amendment No. 19 are voting instructions for the Greens to follow. The first option applies to clause 27, to which the Committee has already agreed.

The Hon. DON HARWIN: That is what I am checking. The Greens appear to have missed that one. Turning to Government amendment No. 2, as I said during the second reading debate, I raised heritage issues with the Premier's Department. We are pleased that the Government is introducing amendments on heritage matters. I was disappointed that in responding to Greens amendment No. 19 the Minister did not specify areas other than Redfern railway station where it will be necessary to override the Heritage Act. Nevertheless, now that Government amendment No. 2 has been moved, I think we can proceed with some degree of confidence that important heritage items in the Redfern and Waterloo areas will receive proper consideration from the new authority.

Government amendment No. 2 agreed to.

The CHAIRMAN: As Government amendment No. 2 has been agreed to, Greens amendment No. 19 lapses.

Clause 28 as amended agreed to.

Ms SYLVIA HALE [12.01 p.m.]: I move Greens amendment No. 20:

No. 20 Page 14, clause 29, lines 6-11. Omit all words on those lines. Insert instead:

(1) This section applies to development that is State significant development and that is carried out on land within the operational area.

This amendment inserts a new clause 29 (1) in relation to development contributions for affordable housing. The upshot of the amendment is to limit the transfer of affordable housing levies to land within the authority area and not to cherry pick sites outside the boundaries of the authority such as the Carlton United Brewery site. I think money needs to be expended on the Redfern-Waterloo area and on the provision of affordable housing. I have absolutely no problem with the Government allocating money to that from its budget. However, I think it is grossly unfair and fundamentally wrong that the levies that will be raised in one area, in this instance Chippendale, will not be expended in that area. The levies are allowed to be raised because they serve a definite purpose in the area from which they are extracted.

The Carlton United Brewery site on Broadway will experience a great influx of people, which will place additional pressures on public amenities and resources. I believe the levies should be expended by the Council of the City of Sydney within its own area rather than transferred to the area of the authority. The Government should not be allowed to escape the burden of its responsibility of providing adequate funding for affordable housing. However, that funding should be provided by the State budget through the Department of Housing rather than extracted from the city of Sydney area that is the Carlton United Brewery site. I commend Greens amendment No. 20 to the Committee.

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

DISTINGUISHED VISITORS

The CHAIRMAN: Order! I acknowledge the presence in the President's gallery of Mr Zhang Ruifu, Vice-Chairman of the Hunan Provincial Committee of the Chinese People's Political Consultative Conference.

QUESTIONS WITHOUT NOTICE

RAILCORP EMPLOYEES HEALTH ASSESSMENTS

The Hon. MICHAEL GALLACHER: My question is directed to the Minister for Transport Services. Will the Minister provide an assurance to the House that all RailCorp employees in operational safety critical roles have undergone health assessments and checks for colour blindness? How many RailCorp employees have failed a health assessment or have been found to be colour blind? What quality assurance procedures are in place to ensure that safety critical workers are not able to circumvent tests for colour blindness? What duties are safety critical workers who are found to be unfit or colour blind now undertaking? What is the cost to taxpayers of the salaries for those workers who are no longer able to undertake the tasks for which they were originally employed?

The Hon. MICHAEL COSTA: I am glad that the honourable member has asked this question because it indicates a change of attitude in the Opposition in relation to medical standards and health-related issues. Earlier in the year, the Leader of the Opposition, John Brogden, said that the Government was acting maniacally in relation to medical standards and we should drop our procedures in light of the Waterfall accident. If this question indicates that the Opposition is taking the issue of health standards more seriously, it has been very useful.

The Hon. Michael Egan: It is a welcome change.

The Hon. MICHAEL COSTA: It is a welcome change if it is doing that but the Opposition has taken a whole year to get to this stage. In relation to medical standards, as I have said on a number of occasions, new national medical standards were introduced in July 2004 for all rail operators. Those new medical standards are more rigorous than the previous standards that applied in RailCorp and there are also more rigorous tests for colour blindness. I do not have details of the number of people who have passed or failed the tests, but I am happy to ask RailCorp to provide that information. Certainly, the question of medical standards is an important issue and it is very pleasing that the Opposition has finally accepted the Government's rationale in introducing tougher medical standards.

MAGISTRATES EARLY REFERRAL INTO TREATMENT PROGRAM

The Hon. AMANDA FAZIO: My question is addressed to the Special Minister of State. Will the Minister update the House on the Magistrates Early Referral Into Treatment Program?

The Hon. JOHN DELLA BOSCA: I thank the honourable member for her question and her ongoing interest in the important initiatives in relation to drug diversion. Last week, the Attorney-General and I launched the Magistrates Early Referral Into Treatment [MERIT] program at Sydney's Downing Centre courts. Honourable members would be aware that the MERIT program offers the option of drug treatment to adult defendants who are eligible for bail and are before the courts. Since the commencement of the MERIT program four years ago as a trial in Lismore, it has been successful in getting offenders into treatment for the first time.

The program has now been expanded across all 17 of the previous area health services and is available at 52 local courts that service approximately 65 per cent of the State's local court population.

MERITs results are very promising with nearly 4,000 people over the past four years formally accepted into the program and attempting to turn their lives away from drug crime and toward rehabilitation. Equally encouraging is that more than 60 per cent of these defendants successfully completed program requirements. Re-offending data also indicates that the people who complete MERIT have a significantly lower likelihood of re-offending, leading to safer communities within New South Wales through reduced drug-related crime. MERIT is a prime example of how criminal justice intervention programs can be successful in directing offenders into treatment to address their drug use and associated criminal behaviour. By encouraging defendants to tackle their drug problems, we are also reducing the motivation behind their criminal activity.

MERIT relies on a comprehensive range of health and welfare services including detoxification, treatment and rehabilitation. Participants are closely case-managed and the magistrate receives regular reports on their progress. MERIT, like other initiatives of the Government such as the Adult Drug Court and Youth Drug and Alcohol Court, is a great example of how the police and courts can work in close partnership with health services in reaching individuals—individuals who might not otherwise have received treatment for their underlying problems. Since the Drug Summit in 1999, we have developed broad-ranging recommendations on how best to tackle the drug problem. This Government has committed an additional $230 million over four years for a drug program budget.

More than $56 million has been allocated in 2004-05 to expand drug prevention, education, treatment and law enforcement—including $32.6 million for expanded drug treatment and health care. With regard to diversion programs, the Government has allocated $41 million over the next four years. Under the current diversion initiative of the National Illicit Drugs Strategy, the Commonwealth Government has also provided New South Wales with more than $60 million to 2006-07, and I commend them on that contribution. More than $100 million is being spent in New South Wales on drug diversion initiatives such as: MERIT; the Adult Drug Court; the Youth Drug and Alcohol Court; the Cannabis Cautioning Scheme; youth justice conferencing and cautions for minor drug users under the Young Offenders Act; rural and regional counsellors for young offenders, and training for police and health professionals.

These programs provide a comprehensive range of options to divert people from the criminal justice system into treatment. The programs can be used at different stages in the criminal justice system. Importantly, they not only deal with an offender's crime, they also aim to stop further criminal behaviour by addressing the root cause of the problem: the offender's illicit drug use. I commend the MERIT program and look forward to updating the House on its future progress.

EXCEPTIONAL CIRCUMSTANCES DROUGHT ASSISTANCE

The Hon. DUNCAN GAY: I direct my question to the Minister for the calicivirus—sorry, the Minister for Primary Industries. Following the Minister's claims to have successfully secured an agreement to improve an automatic declaration process for exceptional circumstances drought assistance at last week's Primary Industries Ministerial Council meeting, will he now apply the same principles of an automatic or semi-automatic exceptional circumstances declaration system to New South Wales drought assistance so that it can be triggered automatically when rural lands protection boards enter a 1-in-10-to-15 year drought?

The Hon. IAN MACDONALD: Madam President—

The Hon. Michael Gallacher: What's up, Doc?

The Hon. John Ryan: You wascally wabbit! What's with the carrot?

The Hon. IAN MACDONALD: Thanks for it, Dunc!

The Hon. Michael Gallacher: You don't know where he's had it!

The Hon. IAN MACDONALD: It's a beautiful carrot. I was somewhat amused by the use of a particular prop last night, and am again amused by the use of this carrot prop this morning. I must say that the way The Nationals have been disappearing in the Western Division and in the west generally in recent months, they have probably been eating calicivirus-infected carrots, resulting in a cross-species transfer that is wiping

out The Nationals. We will have to watch carefully what The Nationals are eating, but especially carrots. I thank the honourable member for his carrot. Carrots are good for you; they are good for the eyesight and keep you fit and healthy. It is good to know that the Deputy Leader of the Opposition is supporting our major rural industries by purchasing carrots.

The Hon. Eric Roozendaal: He found it in a bin!

The Hon. IAN MACDONALD: Being responsible for food safety in this State, I probably should have done a little bit of checking before I munched on this carrot! In relation to the actual question, yes, New South Wales was successful at the Primary Industries Ministerial Council meeting last Friday in getting a decent resolution carried in relation to the automatic rollover of exceptional circumstances funding for income support. It was a great resolution to get through. Honourable members must bear in mind that here we are dealing with two different things.

The Hon. Duncan Gay: So there is one law for the Federal Minister and a different law for you!

The Hon. IAN MACDONALD: Just hold on a second! The system that the rural lands protection boards assist us in administering deals with 1-in-10-year drought circumstances, and that is a far lower test than that for the delivery of funding under exceptional circumstances, that is, a 1-in-20-year or 1-in-25-year drought. That is a far more onerous situation than a 1-in-10-year drought. That is basically the reason that this system is applied to national funding; it is a 1-in-20-year to 1-in-25-year climate and pasture growth and water availability test, which is much more onerous than the test that relates to an advance for a 1-in-10-year drought.

The Hon. Duncan Gay: It's just too hard, isn't it?

The Hon. IAN MACDONALD: No. The honourable member basically is chasing rabbits with this one! The fact is that they are completely different applications. I hope I have explained that sufficiently for the honourable member.

The Hon. Duncan Gay: No, you haven't.

The Hon. IAN MACDONALD: One is a 1-in-10-year event, and that is a State matter, and that is far more regular than a 1-in-20-year to a 1-in-25-year event, which is often regarded as a 1-in-100-year event anyway. So that the criteria that one would establish under the climate model are far more easily determined for an event in 1-in-20-year event or 1-in-25-year event than it is to determine for a 1-in-10-year event. So they are completely different systems. I hope the honourable member will reflect upon that when he leaves the Chamber. I am happy to share this carrot with anyone prepared to eat it! I do not note any interest shown by the Hon. Tony Catanzariti.

The Hon. Duncan Gay: He's not that silly!

The Hon. IAN MACDONALD: I thank the honourable member for his question.

BOARD OF STUDIES RELIGION COURSE SYLLABUS

Reverend the Hon. Dr GORDON MOYES: I ask the Minister for Community Services, as the representative in this House of the Minister for Education and Training, a question without notice. First, is the Minister aware that the proposed syllabus prepared by the New South Wales Board of Studies for the Studies of Religion course is drafted in such a way so as to deny, to a great extent, the Christian heritage of this country? For example, the old unit-1 course had a foundation study looking at the religious heritage of Australia from 1788 to 1901, which highlighted the predominance of Australia's Christian heritage whereas the current draft syllabus omits this foundation study completely. Second, is the Minister aware that 70 per cent of Australians align themselves with the Christian faith? Is the Minister also aware that the representation of and emphasis on Australia being multi-faith in the draft syllabus negates the predominance of Christianity in present Australia and the fact that Australia, as a nation, has a solid Christian heritage?

The Hon. Michael Egan: The question is out of order.

The Hon. Michael Gallacher: Are you taking a point of order?

The Hon. Michael Egan: No. It's Christmas!

The Hon. CARMEL TEBBUTT: Despite the interjections, I will refer the question to the Minister in the other place and I undertake to obtain a response for the honourable member.

NORTH COAST FORESTRY RESEARCH

The Hon. TONY CATANZARITI: My question is addressed to the Minister for Primary Industries. Can the Minister inform the House of developments in forestry research on the New South Wales North Coast?

The Hon. IAN MACDONALD: In fact I have just announced that the New South Wales Department of Primary Industries will invest heavily in important forestry research on the North Coast next year. Excuse me, but a bit of carrot is caught in my throat!

The Hon. Michael Gallacher: It's got him, Dunc!

The Hon. John Della Bosca: Not the calicivirus?

The Hon. IAN MACDONALD: No. It only affects The Nationals. Forests NSW will commit an extra $700,000 to genetic research to improve the growth, quality and pest resistance of hardwood plantations. The funding will be used to construct four specialised buildings at the Forestry Centre of Excellence, in Grafton, to house this cutting-edge research. The buildings will be atmosphere-controlled to allow the commercial-scale production of hardwood trees. They will be fitted with technology that allows the automatic fertilisation of tens of thousands of plants at one time. They will also be designed to capture and recycle rainwater for irrigation.

The advanced buildings will give some of our top forestry scientists a chance to study the genetics of hardwood trees and therefore help to improve the strength and durability of the timber. As with all of our scientific endeavours, the key is to make the research targeted, focused and practical for industry to adopt. This research project will certainly meet all those criteria. The results will be directly applied to the forestry industry, to help improve the growth and quality of plantation wood and increase pest resistance. Better hardwood tree material will generate solid returns to the industry, providing more security for the 4,630 jobs that depend directly on the industry in New South Wales. It will also make the industry much more environmentally sustainable. Importantly, this research project will boost the profile of New South Wales as a world leader in the use of genetics to improve forestry productivity. It will also help our reputation as a leader in hardwood propagation research.

We will be in a better position to compete with Brazil and South Africa, which are currently pioneering the propagation of eucalyptus. I should remind honourable members that this Grafton project is part of the State Government's Towards 2020 reinvestment plan to reinvigorate our key primary industries research centres. This $700,000 project is just the start of many research initiatives at the Forestry Centre of Excellence, which I announced in September. In fact, the Government plans to spend another $1 million over the next two years to expand existing nursery facilities, upgrade infrastructure and establish trials in both hardwood and softwood plantations. Nearly 500 hectares have been set aside at the site to establish these plantations and boost the specialised forestry research focus at the site.

I acknowledge the centre's previous long history in agricultural and fisheries research, which is an absolute tribute to the talent and hard work of the scientists and their support staff at the site. The new role of Grafton as a Centre of Excellence in forestry research will build on previous successes in forestry research statewide. For example, I inform honourable members that in the past our research has produced a 55 per cent increase in the volume of wood produced from our propagation facilities, compared to routine seedling planting stock. We have focused on research in two major species, spotted gum and blackbutt, for which we have the world's largest breeding program. Each of these is highly valued in Australian milling industry. They are in short supply in other parts of the world.

[*Interruption*]

Development of the $700,000 research project at Grafton is due to start in early 2005. I will update members as it progresses. The Deputy Leader of the Opposition interjects. I would have thought that the ridicule copped by The Nationals from every sector of political life in this Chamber over its fantastic performance in Dubbo would have resulted in his taking a powder and going to Crookwell to look after his sheep.

TEMPE TRAM AND BUS DEPOT

Ms LEE RHIANNON: I direct my question without notice to the Minister for Transport Services. In view of the proposal by the State Transit Authority to dispose of the former Tempe Tram and Bus Depot, will the Minister guarantee that the historic Tempe tram shed, the largest and most intact tramway facility in New South Wales, will be retained? Will he guarantee that it will continue to be used as a bus and truck museum and that the heritage values of the war memorial and federation offices on the site will be kept in any redevelopment of the site?

The Hon. MICHAEL COSTA: There are proposals for the site that were mentioned. I am advised that the State Transit Authority is looking for other sites for the heritage train museum. That will be a matter for discussion between the State Transit Authority and the trustees of that organisation. We will use every endeavour to ensure that war memorials or anything that is war related remains. They are important items and they would be factored into any development proposal.

Ms LEE RHIANNON: I ask a supplementary question. Will the Minister guarantee that the collection at the Tempe Bus and Truck Museum will not be moved from its present location until a suitable site has been secured for its rehousing?

The Hon. MICHAEL COSTA: I refer to my previous answer.

DEPARTMENT OF COMMUNITY SERVICES AND BABY SMITH

The Hon. JOHN RYAN: My question is directed to the Minister for Community Services. How many reports did the Department of Community Services [DOCS] Helpline and Kempsey community service centre receive about the three-year-old boy known as baby Smith who died tragically from suspicious injuries in Kempsey on 26 October this year? When did DOCS receive its first report about this child? What category were these reports given? Was the boy sighted by caseworkers following these initial reports? Did the joint investigation review team make recommendations to the Children's Court about the ongoing care of this child and, if so, what was this advice?

The Hon. CARMEL TEBBUTT: The honourable member has asked a question about a very sad and tragic case, of which I am aware. I offer my since condolences to all of those who have been affected by the tragic death of this child. I can advise the House that the child was the subject of a child protection report in June, which was referred on the same day to the joint investigative response team—a child protection team comprising DOCS officers and police. That team investigated the matter, and expert medical advice was sought in both Port Macquarie and Sydney. DOCS staff met with the family and, as a result, undertakings were made to the Children's Court regarding the care of this child. Given that the matter is subject to a police and coronial investigation I am unable, at this time, to make any further comment. Of course, this matter will be subject also to a review by the Ombudsman in his capacity of reviewing child deaths in New South Wales.

EMPLOYMENT AND TRAINING OF PEOPLE WITH DISABILITIES

The Hon. ERIC ROOZENDAAL: My question without notice is addressed to the Minister for Disability Services. What practical measures are being taken by the Government to assist organisations offering to create work or training opportunities for people with intellectual or physical disabilities?

The Hon. CARMEL TEBBUTT: I have no doubt that this is a very important question, but my colleague the Minister for Rural Affairs will do an admirable job of responding.

The Hon. John Ryan: Point of order. During questions without notice it is traditional for Government members to ask questions of Ministers of which they have prior notice.

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

The Hon. TONY KELLY: Obviously, there is no prior notice.

The Hon. Don Harwin: Point of order.

The PRESIDENT: Order!

The Hon. TONY KELLY: This is about—

The PRESIDENT: Order! The Minister will resume his seat.

The Hon. Don Harwin: Madam President, point of order.

The PRESIDENT: Order! I was perfectly aware the member was seeking the call on a point of order. He had no cause to shout.

The Hon. Don Harwin: I apologise for shouting, but you have advised the House constantly of the need to speak up so that you can hear what we are saying. My point of order is that a question was asked by the Hon. Eric Roozendaal, which was read fluently. Then the Minister for Community Services answered the question. We now appear to have a second Minister attempting to answer the question. That is not allowed for within the standing orders. Occasionally the Leader of the Government takes a question, as Leader of the Government, on behalf of another Minister, but always as the first Minister to answer the question, not as the second. The idea that the Leader of the House can provide a second answer is not envisaged under the standing orders. You should rule this answer out of order.

The Hon. Carmel Tebbutt: To the point of order: When the question was asked of me I responded. But I did indicate that I was referring the question to the Minister for Rural Affairs.

The Hon. Don Harwin: Further to the point of order: The Minister dams herself and the Leader of the House with her own words. She responded to the question. She answered it. Asked. Answered. We do not need a second answer.

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

The Hon. Michael Egan: To the point of order: The Hon. Don Harwin is right. The Minister said she responded to the question. But responding to a question and answering a question are two different things. The question has not yet been answered, and the Minister for Rural Affairs is entitled to answer it.

The Hon. John Ryan: To the point of order: The question asked by the Hon. Eric Roozendaal clearly concerned the Adult Learning and Training Scheme, which is well within the Minister's portfolio. It is something with which she has been dealing for some time—hacking, slashing and cutting. The only Minister capable of answering a question about that matter is the Minister for Disability Services. If she has to hand it to the Minister for Rural Affairs to give an answer then we have a Minister for Disability Services who has nothing to say about her portfolio.

The Hon. TONY KELLY: To the point of order: It is disappointing that the Opposition has chosen to take a point of order on such an important matter. I was going to talk about the Sunnyfield Association, a group that has been looking after people with disabilities for 50 years. It is so disappointing.

The PRESIDENT: Order! The Minister for Disability Services referred the question to the Minister for Rural Affairs to answer. The Minister for Rural Affairs may answer the question.

The Hon. Don Harwin: Time has expired for an answer.

REDFERN RIOT WORKCOVER INVESTIGATION

Reverend the Hon. FRED NILE: I ask the Minister for Industrial Relations a question without notice. Is it a fact that deputy police commissioner David Madden and metropolitan regional commander Bob Waites are being investigated by WorkCover officials about their responsibility for providing a safe workplace for police as a result of the Redfern riot? What progress has taken place in this investigation? What action has the New South Wales Government taken to ensure that New South Wales police officers are equipped with the necessary riot equipment for all future eventualities?

The Hon. JOHN DELLA BOSCA: I thank the honourable member for his question and for his interest in this very important matter. Members will recall that I discussed this issue in the House on 16 November 2004. At that time I advised the House that WorkCover was conducting an independent investigation into the systems of work employed by NSW Police at the time of the so-called Redfern riot. I also

advised that this investigation was continuing, and this is indeed still the case. The investigation is focusing on the systems of work in place at the time of the incident.

As with most WorkCover investigations, it has conducted a systemic investigation and interviews with various levels of management and police service members who were involved in the incident. As part of the investigation process, a number of senior officers of the NSW Police have been interviewed. Contrary to the hysterics of public statements made by the Leader of the Opposition yesterday in the Legislative Assembly, I am advised that WorkCover is not actively considering any prosecutorial action against an individual police officer.

KARIONG JUVENILE CORRECTIONAL CENTRE

The Hon. CATHERINE CUSACK: My question without notice is directed to the Minister for Justice. Given the extensive history of detainee substance abuse at Kariong, why has the Department of Corrective Services decided not to employ a drug and alcohol counsellor at the centre? Why has the department decided instead to place two welfare officers at the centre? Does one of the welfare officers who has been placed at the centre live in Strathfield? Was this officer removed from his position at the Metropolitan Remand Centre two years ago due to a severe sleep apnoea that led to his being assessed as a security risk? Has this officer, who lives at Strathfield, been working at head office ever since his removal from the remand centre? Is the Department of Corrective Services using Kariong as a dumping ground for displaced officers?

The Hon. JOHN HATZISTERGOS: The Department of Corrective Services is well oversighted by some 14 different agencies that look at every nook and cranny of what we do and can investigate any issues relating to misconduct or lack of professionalism on behalf of any officer. I completely and utterly reject the imputation against the credibility of individual members of staff, which is inherent in the honourable member's question. I should also point out that the Hon. Catherine Cusack does not do herself any credit by using this forum as a place for defaming individuals in the way that she does based on spurious assertions that, all too often in question time, I have found to be tinged with information of that sort in her question.

The Hon. John Ryan: Have you got a D and A worker there, or not, Minister?

The Hon. JOHN HATZISTERGOS: Just hold your horses. Ever since the Department of Corrective Services has been involved in Kariong, the Ombudsman has been involved in inquiries and examining the way in which the programs have been rolled out.

[*Interruption*]

The Hon. JOHN HATZISTERGOS: Any inmate or any detainee who has any complaint about any of the issues is welcome to approach the Ombudsman in relation to those issues.

The Hon. Catherine Cusack: How would they be aware of this?

The Hon. JOHN HATZISTERGOS: In due course, the Hon. Catherine Cusack will find out more about what will happen with the Department of Corrective Services, but I can tell the Hon. Catherine Cusack that of all people, she is in no position to criticise.

[*Interruption*]

The Hon. JOHN HATZISTERGOS: Melinda, you know you are one of my favourites, you do, and it ill behoves you to interrupt. You have all that talent that oozes out of you and one day we will see you as the leader, but you should be a little bit more circumspect in your interjections because they often do not assist in clarifying any of the particular issues. I should point out that the staffing structure at Kariong includes a welfare officer, an alcohol and other drugs counsellor, a psychologist, and justice health staff. The part of the question that relates to the absence of drug and alcohol assistance at Kariong is incorrect.

The Hon. Catherine Cusack: A welfare officer has been placed in there?

The Hon. JOHN HATZISTERGOS: I have already listed the staff—two administration staff members, a welfare officer, and an alcohol and other drugs counsellor. In response to the specific defamatory allegations against officers made by the honourable member, I will examine those issues but no doubt I will find that, in common with many of the allegations raised by the Opposition, the allegations will have no substance.

[*Interruption*]

The Hon. JOHN HATZISTERGOS: Look, Catherine, you are the last person who should rant about Kariong. The Hon. Catherine Cusack's involvement in Kariong has produced two Ombudsman's reports which were damning about all the advice she gave to Virginia Chadwick and the taxpayer is still waiting to get value out of the salary that she was paid when she was Virginia Chadwick's adviser.

The PRESIDENT: Order! I call the Hon. John Ryan to order for the first time. To further educate members with regard to an earlier ruling, I advise that the *House of Representatives Practice* states that a Minister:

> … may also transfer a question to another Minister and it is not in order to question the reason for doing so.

Odgers's *Australian Senate Practice* states:

> It is the right and responsibility of ministers in this chamber to decide who will answer questions and in whose area of responsibility at particular question lies.

ACCOMMODATION FOR EMPLOYMENT AND TRAINING OF PEOPLE WITH DISABILITIES

The Hon. PETER PRIMROSE: My question is addressed to the Minister for Lands. Minister, what practical measures are being taken by the Government to assist organisations involved in creating work and training opportunities for people with intellectual and physical disabilities to find suitable space to accommodate their important work?

The Hon. John Ryan: Point of order: Madam President, you have given many rulings in this House that Ministers may be asked questions about matters concerning their portfolios. This is not a matter that falls within any of the portfolios of the Hon. Tony Kelly. It is a portfolio responsibility of the Minister for Disability Services.

The Hon. TONY KELLY: I do not believe that the Opposition would do this to the Sunnyfield Association.

The Hon. John Ryan: I beg your pardon, I have not finished.

The Hon. TONY KELLY: Madam President—

The PRESIDENT: Has the Hon. John Ryan finished his point of order?

The Hon. John Ryan: No, I have not. I am waiting for the Minister to sit down. The question is entirely within the portfolio responsibility of the Minister for Disability Services. This question is entirely about disability services. It may well have been appropriate for the Minister for Disabilities Services to be asked the question and refer it to Minister Kelly, but on this occasion the question was asked of him. It is not in his portfolio responsibilities. He should not be seeking to answer it.

The Hon. TONY KELLY: To the point of order: The question was directed to the Minister for Lands, and it said:

> Minister, what practical measures are being taken by the Government to assist organisations involved in creating work and training opportunities for people with intellectual and physical disabilities to find suitable space to accommodate their important work?

I emphasise the word "space", which refers to land. As the Minister for Lands, I handed over some land to assist people with disabilities. All the Opposition has tried to do is stop the Government asking a question and answering a question about these important people in our community. That is absolutely disgraceful.

The PRESIDENT: Order! The question is in order. The Minister has the call.

The Hon. TONY KELLY: Last week I had the privilege of handing over a block of land to an organisation called the Sunnyfield Association. The Sunnyfield Association is dedicated to the care and vocational training of people with disabilities in New South Wales. It will use the land to expand its Gateway project—a living skills and training centre for people with disabilities. The Department of Lands conducted an

extensive search to ensure it found the best site for Sunnyfield. Originally the Sunnyfield Association's intention was to build on a site close to its existing premises at Allambie Heights. However, the site was found to be environmentally unsuitable. The department identified a site close to the Spastic Centre and the Department of Education and Training Crown reserve lands in Allambie Heights.

I will tell the House about the fine work of the Sunnyfield Association, which was established more than 50 years ago. The Sunnyfield Association has a very proud history of working with people with disabilities. The association has gone from strength to strength and is now recognised as a national leader in its important work. People with disabilities face unique challenges. It is our duty to do what we can to support the career goals they set for themselves. The Sunnyfield Association does not have a one-size-fits-all approach, and that is the key reason for its success. One aspect of the Sunnyfield Association's mission is particularly important.

The Sunnyfield Association gives people with disabilities an opportunity to do rewarding work. Work not only helps one pay the bills, but also gives one a sense of purpose and self-esteem. All people have the right to work and gain that self-esteem. Work is vital to the social and economic inclusion of people with disabilities. The New South Wales Government welcomes all initiatives that promote vocational skills for people with disabilities. I had the pleasure of taking a tour of the Sunnyfield Association workshops, where I saw everyone hard at work, doing tasks such as refitting Qantas passenger headsets.

When honourable members next fly, they might spare a thought for the Sunnyfield Association, whose members refit the headsets that go back onto Qantas planes. Despite the problems I have had, on behalf of the House I congratulate the Sunnyfield Association on its important work. I am sure all honourable members join with me in those congratulations. I also commend the association's clients and families. Caring and guiding people with disabilities, allowing them to reach their unique potential, is a worthy pursuit. Treating people with dignity and integrity is the Australian way. That is why the Government supports the work of organisations such as the Sunnyfield Association.

ELECTRICITY CONSUMPTION

The Hon. JOHN TINGLE: My question without notice is addressed to the Minister for Local Government, representing the Minister for Energy and Utilities. In view of reports that the State faces a period of electricity shortages and a levy on excessive consumption, has the Minister considered the effect on overall power consumption of the large number of internal lights left burning for 24 hours a day in office blocks in the Sydney central business district and other business districts? If those lights are burning in empty offices overnight and at weekends do they represent a significant and wasteful consumption of electricity? Will the Minister consider an audit to see what proportion of lights are left burning unnecessarily with a view to a campaign to encourage managements to try to conserve electricity?

The Hon. TONY KELLY: I will pass on that important question to the Minister and ensure that I obtain a speedy response.

BIRDWOOD RURAL FIRE SERVICE TANKER

The Hon. MELINDA PAVEY: My question is addressed to the Minister for Emergency Services. Is the Minister aware that at Birdwood, on the State's mid North Coast, the fire tanker has been out of service for almost 12 months? Is the Minister further aware that rushed repairs are now being conducted on the tanker to ensure its delivery this weekend to conveniently coincide with the opening of the nearby Wauchope brigade headquarters by Mr Uniform himself, Commissioner Phil Koperberg?

The Hon. Peter Primrose: That question contains an epithet and is therefore out of order.

The PRESIDENT: Order! The question contained an epithet and I rule it out of order. The member might wish to rephrase her question in the eight seconds remaining to her.

The Hon. MELINDA PAVEY: Could the Minister answer the question?

The Hon. TONY KELLY: I am aware that about two months ago I opened that—

The Hon. Michael Egan: Point of order: The Minister cannot answer a question that is ruled out of order.

The Hon. John Ryan: To the point of order: The member rephrased her question.

The PRESIDENT: Order! The Minister may answer the rephrased question.

The Hon. TONY KELLY: The Rural Fire Service is committed to providing its volunteers with safe and effective firefighting tankers and equipment. The category nine tanker built for Hastings Council by a regional bodybuilder does not meet the Rural Fire Service's stringent safety standards. Until the tanker meets those standards no volunteer firefighter will be allowed to set foot in it. The Opposition, particularly the shadow Minister, has criticised the Rural Fire Service. The Opposition may criticise the service for caution, but the service has a major obligation to protect volunteers. Modifications to the Birdwood tanker are under way and it is expected that that brigade will be able to use the vehicle shortly.

In the meantime, the brigade has been supplied with a replacement category nine tanker to ensure that it is able to protect the local community during the fire season. Yet again, the Opposition has created alarm in its attempt to discredit the very stringent safety measures introduced by the Rural Fire Service to protect its volunteers. Apart from damaging the reputation of the service and its volunteers, the Opposition's comments are out of touch. Measures are currently under way to resolve the situation.

The Hon. MELINDA PAVEY: I ask a supplementary question. Minister, why did it take so long for the replacement tanker to arrive? Was it because Mr Koperberg will be at Wauchope next weekend?

The Hon. TONY KELLY: I assume the only relevant part of that question is why it took so long. It took a long time because the tanker had to be brought up to standard. I am not an engineer.

NSW OMBUDSMAN REPORT ON REVIEWABLE DEATHS

The Hon. HENRY TSANG: My question is directed to the Minister for Community Services. What is the Government's response to the first report by the Ombudsman into reviewable deaths, handed down today?

The Hon. CARMEL TEBBUTT: Today the Ombudsman handed down his first report on reviewable deaths, a function he was given by the Government to examine the deaths of children from abuse or neglect, or in suspicious circumstances. I thank the Ombudsman and his office for their work in preparing this important report. The death of a child is a tragedy. For many children domestic violence, parental drug and alcohol abuse, mental illness and neglect are the story of their lives, and the report makes for very sad reading. I make it very clear that I accept all the recommendations that relate to my agencies, and action is already under way in respect of many of the recommendations as part of the Government's five-year plan to strengthen child protection services.

The Government is employing more caseworkers, strengthening family support services, improving risk assessment processes and increasing training for staff. The Department of Community Services [DOCS] has established an internal unit to review child deaths and oversee any systemic reforms that may be required. The Ombudsman's recommendations reaffirm the work that the department is doing to continue to improve its practices and procedures. However, no child protection system, no matter how strong it is, can replace a loving, effective parent or carer when it comes to keeping children safe. DOCS can only ever be a safety net, and we are strengthening that safety net. Child protection is a shared responsibility.

The Government is committed to building a stronger child protection system through its five-year plan and its implementation is a responsibility that the department and all its staff take very seriously. The Government has provided extra resources to enable departmental officers to respond to more cases and to deliver services to children and families in need. The additional $1.2 billion to reform DOCS child protection and out-of-home care systems is making a considerable difference, and it is worth reflecting on some prominent aspects of the reform package. We are committed to providing $150 million in new funding for early intervention programs and, as I announced last month, some of this funding will be directed towards child and family centres that will offer disadvantaged families a one-stop shop through which to access a range of services.

The emphasis of our early intervention approach is on dealing with child protection issues when they first emerge and before they take hold. We have quarantined to be early intervention caseworkers 350 of the additional 875 caseworkers being recruited. Some 875 caseworkers equate roughly to 20,000 more families receiving assistance each year. About 300 new caseworkers will be on the ground by the end of this financial

year. The majority of these caseworkers will work in the child protection and early intervention areas. Caseworkers are undergoing more extensive training and new caseworkers are required to have a university degree. To ensure that we learn lessons from these tragic cases, the department is improving its capacity to review its actions and make systemic changes. To achieve this, the Complaints Assessment and Review Branch has been established. It has a specific child death review function and also investigates allegations against employees, including foster carers.

The DOCS reform program is on track. In 2004 more children and families were helped than in 2003 and in 2005 still more children and families will be helped. This is the product of a sustained reform process. It is a long process. Reform of this magnitude cannot happen overnight but real progress is being made. The Government and the department accept the Ombudsman's recommendations. We are committed to doing better, learning from mistakes and discharging our duty to protect children and young people in the best way we can.

THE HONOURABLE DAVID CLARKE RACIST ROAD RAGE ALLEGATION

The Hon. Dr PETER WONG: My question is directed to the Minister for Transport Services, representing the Minister for Roads, the Hon. Carl Scully. I refer the Minister to the report in this morning's edition of the *Daily Telegraph* about a road incident involving Ms Scarlett Wong and the New South Wales right-wing Liberal crusader the Hon. David Clarke, who has been accused of racist road rage. In view of this incident, which involved a right-wing member coming from the Left, will the Minister consider changing the traffic rules of the State in order to accommodate the driving skills of the Hon. David Clarke?

The Hon. John Ryan: The Hon. Dr Peter Wong has attacked another honourable member of the House in his question. Under the standing orders of this place, he can refer to other honourable members only by substantive motion.

The PRESIDENT: Order! I remind the Hon. Dr Peter Wong that questions must not contain imputations against other members of the Chamber. The question is out of order.

SIR ERIC WOODWARD MEMORIAL SCHOOL NURSE POSITION

The Hon. PATRICIA FORSYTHE: My question is directed to the Minister for Community Services, Minister for Ageing, Minister for Disability Services, and Minister for Youth. Does the Department of Ageing, Disability and Home Care propose to fund a full-time nurse position at the Sir Eric Woodward Memorial School at St Ives from 2005 or has the department adopted a policy of having a nurse attend on an on-call basis only? Given that many children at the school require ongoing nursing care, is the Government satisfied that the teachers and teachers' aides at the school have the knowledge and the skills needed to support the children in the absence of a nurse?

The Hon. CARMEL TEBBUTT: I thank the Hon. Patricia Forsythe for her question. I do not have any detailed information that enables me to respond comprehensively so I will take the question on notice and provide a response to the honourable member as soon as possible.

DEPARTMENT OF STATE AND REGIONAL DEVELOPMENT ANNUAL REPORT 2003-04

The Hon. CHRISTINE ROBERTSON: My question is addressed to the Treasurer, and Minister for State Development. Will the Minister inform the House about some of the Government's business activities and achievements highlighted in the Department of State and Regional Development 2003-04 annual report?

The Hon. MICHAEL EGAN: I would love to provide the House with those details, and I thank the Hon. Christine Robertson for her question. As honourable members will be aware, the New South Wales Department of State and Regional Development is the Government's business development agency and is responsible for helping grow the State's existing businesses while attracting new investment. The department's 2003-04 annual report highlights significant achievements for the year. The Government has helped to facilitate 144 investment projects across New South Wales, which generated more than $1.26 billion in investment and the creation and retention of almost 6,000 jobs—5,908, to be precise. This included 127 projects, worth $876 million of investment, in regional New South Wales; the creation and retention of 3,715 jobs in regional New South Wales; finance sector investment of $12 million, creating 300 jobs; and seven information and communication technology projects, worth almost $52 million and creating almost 900 jobs.

The Department of State and Regional Development also helped 125 New South Wales companies to secure more than $40 million of new business linked to the Beijing 2008 Olympics Business Program. Companies involved with the department's trade program in 2003-04 are projecting almost $60 million in sales as a result of their participation in the trade mission. The department's program to promote exports assisted almost 700 clients to achieve sales of $15.3 million. Another priority area is technology and innovation promotion. Biotechnology received strong support from the New South Wales Government during 2003-04, culminating in a trade mission to Bio2004, which was led by the Premier, and the signing of the Australia-New Zealand Biotech Alliance by the Australian States, the Commonwealth and New Zealand. The department also provided assistance to 24 New South Wales biotechnology companies under the High Growth BioBusiness Program, and further supported 56 companies under the Non Research Establishment Costs Program.

I am pleased to advise that in 2004, for the second year running, Sydney was voted the world's best city in the highly respected *Conde Nast Traveler Magazine* Readers Choice Award. Sydney beat Florence, San Francisco, Cape Town and Rome, which made the top five. I commend the work of the Department of State and Regional Development and look forward to its work in securing further investment for New South Wales.

FOSTER AND KINSHIP CARE

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: My question is directed to the Minister for Community Services. Does the Government retain responsibility for children in out-of-home care? If so, does the department have a database of all foster carers? What help or supervision does the department give to foster families? Is this help or supervision regular or systematic and what system is used? Are kinship carers and foster families who do not receive payments monitored in the same way? If not, what ongoing monitoring is there of such children?

The Hon. CARMEL TEBBUTT: As the Hon. Dr Arthur Chesterfield-Evans is aware, there have been significant changes and improvements to the regulation of out-of-home care through the proclamation of the various provisions of the Children and Young Persons (Care and Protection) Act that relate to out-of-home care. In particular, the role of the Children's Guardian has now been operationalised. Providers of out-of-home care are required to be accredited and the Children's Guardian also undertakes reviews of children in out-of-home care.

As to foster carers, the situation in New South Wales is that some foster carers will be overseen by the Department of Community Services but a range of very good non-government organisations also take responsibility for foster carers. The department contracts with those organisations with regard to children in care. The department pays an allowance for children who are in court-ordered care and a non-parental care allowance is also made available on the basis of a means test to some people who care for a child. Kinship care is an area facing significant change.

It is certainly the case that if a child is placed with a kinship carer via a court order the child will come under the purview of the department and be subject to the usual requirements that apply to a child in foster care. However, some children are in kinship care either with the knowledge and involvement of the department, but not necessarily as a result of a court order or, in many circumstances, without the knowledge and involvement of the department. As I have indicated on previous occasions, our priority to date has been to proclaim those sections of the Children and Young Persons (Care and Protection) Act that relate to court-ordered care, but there is currently a proposal out for consultation with regard to how we proceed with the voluntary care aspects of that legislation.

LAKE HUME FISHING LICENCES

The Hon. DON HARWIN: My question is directed to the Minister for Primary Industries. Is the Minister aware that recreational anglers are required to purchase both New South Wales and Victorian fishing licences to fish in the New South Wales waters of Lake Hume? What action will the Minister take to work with the Victorian Government to facilitate a single reciprocal licence for New South Wales anglers?

The Hon. IAN MACDONALD: I am pleased the Hon. Don Harwin has asked this question: I think it is the first question he has asked me.

The Hon. Don Harwin: That is not true.

The Hon. IAN MACDONALD: There might only be one other, but I am pleased he has asked this question because six months ago, in company with the Victorian Minister for Agriculture, the Hon. Bob Cameron, I announced in a blaze of publicity on the banks of Lake Hume that, in fact, Lake Hume would be the entire responsibility of the fisheries section of the Department of Agriculture in Victoria. In exchange, Lake Mulwala will be administered by New South Wales. The honourable member will find that arrangement was signed off this year.

VICTORIAN CORIANDER

Mr IAN COHEN: My question is directed to the Minister for Primary Industries. Will the Minister ban the importation and sale of Victorian coriander that has been sprayed with the chemical Success, which is quite properly banned in New South Wales?

The Hon. IAN MACDONALD: I will take that question on notice.

The Hon. MICHAEL EGAN: Madam President, I regret to inform the House that you have just heard the last question and answer for 2004. During the year there have been many balls bowled but no wickets taken. If honourable members have further questions, I suggest they put them on notice.

Questions without notice concluded.

MR GEORGE MOUTSOS RETIREMENT

The PRESIDENT: I would like to say a few words about Mr George Moutsos, Attendant, Chamber Services. Mr George Moutsos was born in Imbros, Turkey, on 20 March 1938. He migrated to Australia in 1965. George met his wife, Dukina, in Sydney and they married in 1969. Before coming to Parliament House, George was employed by the Holiday Inn, Menzies Sydney Hotel for almost 13 years. He was very well commended for his exemplary professional approach to guests, colleagues and management.

On 16 November 1987 George commenced work in the Parliamentary Food and Beverage Services as a dining room attendant and, on occasions, a waiter in the President's Dining Room. He was a very conscientious and hard-working member of the catering staff. On 28 September 1990 George transferred to the Legislative Council as a staff member of the Parliamentary Attendants. His former manager found him to be courteous and eager to seek work and learn the fundamentals of the Legislative Council. On 25 January 2001 George was permanently appointed to the position of Attendant, Chamber Services, and has carried and retained the confidence and respect of all members of the Legislative Council and members of staff during the past 14 years.

After 17 years with Parliament House, George will be missed by all members of the Legislative Council and staff for his gracious demeanour, professionalism and friendship. We all wish George, Dukina, his son, daughter and 17-month-old grandson a long and happy retirement—and good fishing and wine-making.

The Hon. MICHAEL EGAN, by leave: Madam President, on behalf of the Government and on my own behalf, I join with you in congratulating George on his well-earned retirement. He has been a feature of this Parliament both in the Chamber and in the dining room for a long, long time. He has been here longer than most honourable members of the House, and he has certainly been a first-class member of the parliamentary staff. We will all miss him and we certainly wish him well for a long and happy retirement. We not only wish him good fishing, but we hope that he continues to make a lot of good wine.

The Hon. MICHAEL GALLACHER, by leave: It is with pleasure, and indeed with a touch of sadness, that I say farewell to George in a professional sense. I would like to think that, like a number of staff who have assisted us over the years, George will come back as a visitor and be welcomed. It is correct to say that he is part of the team that makes the Legislative Council the Chamber that it is. He will be missed. I personally will miss his friendship and his humour. I wish George all the very best for the years ahead.

The Hon. DUNCAN GAY, by leave: I join with other honourable members in wishing George the best. He came here in 1987, a year ahead of me. He is a great guy. As much as anything else, he has a soothing influence on honourable members around this place. He is always happy and never lets anything get on top of him. Even when his son put wide wheels on his beloved Volkswagen he did not demur. George, I wish you all the very best.

Reverend the Hon. FRED NILE, by leave: I join other honourable members in thanking George for his 17 years service in this Parliament, his friendship, his loyalty, his good humour, his good manners and the assistance he has given me and other honourable members of this House. Thank you, George.

Mr IAN COHEN, by leave: On behalf of the Greens I thank George for his goodwill and his open and friendly attitude on every day that I have been in this House, which is some years now. On behalf of the Greens I wish him well in his retirement. He has been a very friendly ray of support, both in his presence in the House and in the parliamentary precincts. When things have been getting a bit rabid around the edges George has been very steady, and that has been most appreciated.

The Hon. JOHN HATZISTERGOS, by leave: George and I both share a common heritage and on occasions when we have had visitors to Parliament House they have always been impressed by the fact that we are such a multicultural nation and that we employ a person of George's calibre in the Parliament. I also want to commend you, Madam President, on your very generous declaration of the place where George was born as Imbros. That, of course, is the Greek name for that particular island. The Turks now call it something else, but I am pleased you have acknowledged it on the record of the New South Wales Parliament.

TABLING OF PAPERS

The Hon. John Hatzistergos tabled the following papers:

(1) Annual Reports (Departments) Act 1985—Report of the Office of the Director of Public Prosecutions for the year ended 30 June 2004.

(2) Annual Reports (Statutory Bodies) Act 1984—Report of the Protective Commissioner for the year ended 30 June 2004.

(3) Crimes (Administration of Sentences) Act 1999—Report of the Serious Offenders Review Council for the year ended 31 December 2003.

(4) Law Reform Commission Act 1967—Report No. 105 of the Law Reform Commission entitled "Time limits on loans payable on demand", dated October 2004.

Ordered to be printed.

NSW OMBUDSMAN

Reports

The President announced the receipt, pursuant to the Ombudsman Act 1974, of a special report entitled "Improving Outcomes for Children at Risk of Harm—A Case Study: A report arising from an investigation into the Department of Community Services and NSW Police following the death of a child", dated December 2004.

The President announced the receipt, pursuant to the Community Services (Complaints, Reviews and Monitoring) Act 1993 and the Ombudsman Act 1974, of a report entitled "Reviewable Deaths Annual Report 2003-2004", dated November 2004.

The President announced further that it had been authorised that the reports be made public.

TABLING OF PAPERS

The Hon. John Della Bosca tabled the following paper:

Drug Misuse and Trafficking 1985—Report on the review of part 2A of the Act.

The Hon. JOHN DELLA BOSCA, by leave: I wish to make a statement about the report. As the statement is lengthy, and in view of the hour, I seek leave to have it incorporated in *Hansard*.

Leave granted.

I present to the House the "Review of Part 2A of the *Drug Misuse and Trafficking Act 1985*", pursuant to section 36B (3) of the Act.

The review was undertaken by the Responsible Authorities for the Medically Supervised Injecting Centre Trial— the Director General of NSW Health and the Commissioner of Police— in accordance with section 36B of Part 2A of the Act.

The review relates to the first 18 months of the Medically Supervised Injecting Centre Trial from 1 May 2001 to 31 October 2002.

The report of the review makes six (6) recommendations for amending Part 2A of the Act.

The Government does not propose to implement the recommendations at this time.

Some of the recommendations would only apply in the event that there was a change of licensee or if injecting centres were established in other areas.

As Honourable Members are aware, the Government supports a trial of one medically supervised injecting centre located at Kings Cross.

There is only one trial and that is at Kings Cross. The legislation passed by this Parliament allows for only one trial.

One recommendation of the review relates to access to the Centre by young people aged 16 or 17 years.

The Government has always been strong on this point.

The Medically Supervised Injecting Centre is not a place for young people.

The evidence suggests that the Centre caters for entrenched and long term injecting drug users. Young people are by definition not in this category.

The Government believes that it is more appropriate for young people to be assessed, case managed and otherwise assisted to deal with their drug problem in facilities and circumstances other than the Medically Supervised Injecting Centre.

That is why, since the Drug Summit, the Government has bolstered a range of services for at risk young people in the Kings Cross area.

I can advise that the Minister for Youth will be announcing new services for at risk young people aged 12-25 years in the Kings Cross area in the new year.

The remaining recommendations of the review are of a technical nature and seek to change the operation of the Act.

The Government is of the view that the legislation is currently working well.

The Government receives regular reports from the Responsible Authorities for the Trial— the Director General of NSW Health and the Commissioner of Police— and is satisfied that the Act is sufficiently robust to ensure that the Trial is strictly regulated and tightly controlled.

The Government will continue to closely monitor the Medically Supervised Injecting Centre Trial.

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[*The President left the chair at 1.10 p.m. The House resumed at 2.00 p.m.*]

REDFERN-WATERLOO AUTHORITY BILL

In Committee

Consideration resumed from an earlier hour.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [2.00 p.m.]: Clause 29 currently provides that an affordable housing contribution from the former Carlton and United Breweries site be used for affordable housing in Redfern-Waterloo. This amendment would prevent this funding from being spent on affordable housing in Redfern-Waterloo, an area that contains several poorer communities in need of affordable housing. The Government intends to ensure affordable housing is available in Redfern-Waterloo, and it needs affordable housing levies. This section of the bill will deliver some of the necessary funding for the Redfern-Waterloo area. Accordingly, the Government opposes the amendment.

Greens amendment No. 20 negatived.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [2.02 p.m.], by leave: I move Government amendments Nos 3 to 8, in globo:

No. 3 Page 14, clause 29. Insert after line 31:

(4) If a Minister is not the consent authority for the carrying out of any development to which this section applies, the Minister may, by written notice to the consent authority, act in the place of the consent authority for the purposes of imposing a condition of consent referred to in subsection (2). Any consent that is granted for the development is, by force of this subsection, subject to that condition.

No. 4 Page 14, clause 29. Insert after line 35:

(5) Nothing in this section affects any other contributions that may be required to be made under section 30 or under Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979*.

No. 5 Pages 14 and 15, clause 30, line 36 on page 14 to line 15 on page 15. Omit all words on those lines. Insert instead:

30 Development contributions (other than for affordable housing)

(1) This section applies to development that is State significant development and that is carried out on land within the operational area.

(2) The consent authority may impose, as a condition of development consent in relation to development to which this section applies, a requirement that the applicant pay a levy of the percentage, authorised by a contributions plan referred to in section 31 (1), of the proposed cost of carrying out the development.

(3) Money required to be paid by a condition imposed under this section is to be applied towards the provision, extension or augmentation of public amenities or public services in or in the vicinity of the operational area (or towards recouping the cost of their provision, extension or augmentation). The application of the money is subject to any relevant provisions of the contributions plan referred to in section 31 (1).

(4) A condition imposed under this section is not invalid by reason only that there is no connection between the development the subject of the development consent and the object of expenditure of any money required to be paid by the condition.

(5) A condition under this section that is of a kind allowed by, and determined in accordance with, a contributions plan referred to in section 31 (1) may not be disallowed or amended by the Land and Environment Court on appeal.

(6) The regulations may make provision for or with respect to levies under this section, including:

(a) the means by which the proposed cost of carrying out development is to be estimated or determined, and

(b) the maximum percentage of a levy.

(7) For the purposes of this section, a reference to public amenities or public services includes a reference to open space and the Redfern Railway Station, but does not include a reference to water supply or sewerage services.

(8) This section does not affect the operation of Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979*. However:

(a) the consent authority cannot impose as a condition of the same development consent a condition under this section as well as a condition under section 94 or any other provision of that Division, and

(b) a contributions plan referred to in section 31 (1) may replace a contributions plan under that Division for the purposes of any condition imposed under section 94 or any other provision of that Division, and

(c) section 31 extends to any money resulting from a condition imposed under section 94 or any other provision of that Division.

No. 6 Page 15, clause 31 (1), line 19. Insert "in relation to development within the operational area" after "sections 29 and 30".

No. 7 Page 15, clause 31. Insert after line 19:

(2) The Minister administering the *Environmental Planning and Assessment Act 1979* may prepare and approve a contributions plan, in accordance with Division 6 of Part 4 of that Act, for the purposes of section 29 in relation to State significant development carried out on land referred to in section 29 (1) (b) (being land that was the former Carlton United Brewery site).

(3) The Minister is to consult the Minister administering the *Environmental Planning and Assessment Act 1979* before approving a contributions plan for the purposes of section 30.

No. 8 Page 15, clause 31. Insert after line 21:

(3) The payment into the Fund of money resulting from a contribution referred to in section 29 or 30 does not affect the obligation of the Authority under this Act and the *Environmental Planning and Assessment Act 1979* to apply the money within a reasonable time towards the purpose for which the contribution was required.

Government amendments Nos 3 and 4 provide for an affordable housing contribution. They provide that the Minister for Infrastructure and Planning may require the imposition of an affordable housing levy on the redevelopment of the former Carlton and United Breweries site even if all other consent powers are delegated. This would permit delegation of consent powers for this site to Sydney city council while ensuring that an affordable housing levy may be imposed and that the proceeds of such a levy are to benefit Redfern-Waterloo. All honourable members would agree that the provision of affordable housing at Redfern-Waterloo is essential. We cannot afford to have this contribution frittered away on other projects in areas of lower need. These amendments secure this levy, even with the delegation of consent powers, to the benefit of the Redfern-Waterloo area.

Government amendment No. 4 makes clear that this clause relates only to affordable housing levies on the Carlton United Breweries site and not to clause 94 or clause 61 levies. Government amendment No. 5 follows extensive consultation with representatives of the property industry and others regarding the use of various levies to benefit the Redfern-Waterloo area. New clause 30 (1) states that the section applies only to State significant sites within the operational area, and not to the Carlton and United Breweries site. Subclause (2) states that the consent authority may impose a development levy authorised by a contributions plan. The contributions plan would be determined by the consent authority in consultation. Subclause (3) requires that that levy be spent on improving public amenities or public services in Redfern-Waterloo.

Subclauses (4) and (5) permit funds raised to be used for improvements to public amenities or public services anywhere within the operational area of Redfern and Waterloo, Eveleigh or Darlington. This allows funds to be spent in high-need areas even if the developments in that immediate location do not generate enough in the way of levies to fund them. Subclause (6) states that the consent authority may set a maximum percentage of levy by regulation and may also determine the means of estimating the levy. This allows some surety for developers who may have long lead times for their projects and need to calculate their return on investment. Subclause (7) confirms that the definition of "public amenity" includes public open space and the Redfern railway station, but does not include water and sewerage services. The purpose of this clause is to make clear the possible areas on which the developer levy may be spent and to specifically rule out diversion of those funds to other named government services.

The purpose of clause 7 is to make clear the possible areas on which the developer levy may be spent, and it specifically rules out diversion of these funds to other named government services. Clause 8 is an administrative clause that ensures the levy cannot be levied twice and that the contributions plan replaces any previous contributions plans so that all money gathered via these levies is considered part of the levy, and therefore paid to the Redfern-Waterloo Authority fund. These amendments will be a major funding measure for the benefit of Redfern-Waterloo residents. They provide also a degree of surety for the property industry, which may wish to invest in the redevelopment of certain sites in the area. The amendments have the support of industry, and the return would provide a major income stream to improve public services, public facilities, public open space and Redfern railway station.

Amendments Nos 6 and 7 provide that the Minister for Infrastructure and Planning will approve the contributions plan for the Carlton and United Brewery site, and that the Minister for Redfern-Waterloo will approve contributions plans for sites within the operational area, but only after consultation with the Minister for Infrastructure and Planning. Amendments Nos 6 and 7 ensure that the planning Minister plays a major role in the approval of developer contributions. Amendment No. 8 provides that development contributions from State significant sites, including the Carlton and United Brewery site, are spent for the benefit of Redfern-Waterloo residents within a reasonable timeframe. Concerns have been raised that action on improving public amenity should be taken swiftly. We cannot afford continued long delays in improving services and facilities in Redfern and Waterloo. This amendment will ensure that the money will flow directly to better services as swiftly as possible. I commend the amendments to the Committee.

The Hon. DON HARWIN [2.11 p.m.]: As I stated at some length in my contribution to the second reading debate, the Opposition supports these amendment.

Reverend the Hon. FRED NILE [2.11 p.m.]: The Christian Democratic Party is pleased to support these amendments, which will greatly help to improve the legislation.

Amendments agreed to.

Clause 29 as amended agreed to.

Clause 30 as amended agreed to.

Reverend the Hon. FRED NILE [2.12 p.m.]: I am pleased to move Christian Democratic Party amendment No. 2:

No. 2 Page 15. Insert after line 21:

32 Matters affecting the Aboriginal Housing Company and "the Block"

(1) The Minister or a nominee of the Minister is to consult with the Aboriginal Housing Company and other relevant representatives of the Aboriginal community on issues and strategies affecting, or the long-term strategic vision for, the Block (and its immediate area).

(2) In this section:

Aboriginal Housing Company means the Aboriginal Housing Company (ACN 001 154 481) incorporated under the *Corporations Act 2001* of the Commonwealth.

the Block means the area of land bounded by Eveleigh, Caroline, Louis and Vine Streets, Redfern.

This amendment is the result of discussions with Minister Sartor about the role of the Aboriginal Housing Company. The amendment should be considered in conjunction with Christian Democratic Party amendment No. 1 and the letter from the Minister that I read into *Hansard* last night, which dealt with a number of matters relating to the Aboriginal Housing Company. I am sure all honourable members are following the current debate about Aboriginal and non-Aboriginal communities moving from reconciliation to shared responsibility and mutual obligation. This amendment will ensure those principles are adhered to in the relationship between the Redfern-Waterloo Authority and the Aboriginal Housing Company. As the Aboriginal Housing Company is the legal owner of the Block the authority automatically would have to negotiate with the company, but it is important to have that fact spelt out in the legislation so that it is not left in limbo. If my amendment is unsuccessful, the legislation will have no reference to the Aboriginal Housing Company.

The Aboriginal Housing Company has represented Aboriginal people in the Block and it has a vision for the Block, which it has developed over many years with the co-operation of the Premier's Department. Government architects have done a great deal of work designing new housing for the Block. I hope that my amendment will enable that work to be picked up and carried on by the authority. The authority must consult with the Aboriginal Housing Company as a partner with a shared obligation rather than continue to communicate in the paternalistic way that white communities tend to talk to Aboriginal people. I remind honourable members that for more than 30 years the Aboriginal Housing Company has operated in the Block. It has survived attacks by big business, developers, local white residents, different tiers of government, and organised crime and drug dealers. Even radical elements of the Aboriginal community have tried to undermine and destroy it. The motivation for such attacks are simple: the Block is prime real estate worth more than $30 million. In spite of all that, the Aboriginal Housing Company remains in business and is in the process of successfully improving its operations. The assurances I have received from the Government suggest that the Government intends to support the amendment.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [2.16 p.m.]: The Government supports the amendment for the reasons put forward by Reverend the Hon. Fred Nile.

Amendment agreed to.

Clause 31 as amended agreed to.

Clauses 32 to 35 agreed to.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [2.17 p.m.] by leave: I move Government amendments Nos 9 and 10 in globo:

No. 9 Page 17. Insert after line 1:

36 Annual report to include certain matters

The annual report of the Authority required to be prepared under the *Annual Reports (Statutory Bodies) Act 1984* is to include a report as to the outcomes achieved by the Authority during the reporting period.

No. 10 Page 29, schedule 3. Insert after line 11:

3.3 Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory bodies

Insert in alphabetical order:

Redfern-Waterloo Authority

These amendments provide that there shall be an annual report from the Redfern-Waterloo Authority, and that the report shall include outcomes achieved by that authority within the reporting period. Government amendment No. 10 is consequential upon Government amendment No. 9. I commend the amendments to the Committee.

Ms SYLVIA HALE [2.18 p.m.]: I move:

That Government amendment No. 9 be amended by inserting after the words "reporting period" the words "in relation to the social, economic and environmental objectives of the Redfern-Waterloo Plan."

It is ludicrous that the Government's amendment requires the authority's annual report to state such things as, "We had 10 meetings, the last of which was a lovely Christmas party." Full stop. To be meaningful and useful to the community the report should stipulate whether the authority is meeting the objectives for which it was set up. Such a report would enable people to assess the functions of the authority. The Government should not reject an amendment along those lines unless it is determined not to accept any Greens amendments on principle. If so, the Government is not concerned about genuine principles but is merely being obstructionist.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [2.21 p.m.]: I take umbrage at the suggestion that I would automatically reject any of the Greens amendments. However, I do reject this amendment, but not for the reason given by Ms Sylvia Hale. Government departments produce hundreds of annual reports and the Parliament does not stipulate what should be included in those reports. Government departments produce very good and valuable annual reports and it would be inappropriate and inconsistent to require them to include the sort of detail referred to in the amendment.

Ms SYLVIA HALE [2.22 p.m.]: The Minister has said that hundreds of reports are produced each year, but this is an extraordinary bill. It relates to a plan that has not yet been produced or made public and gives the Minister enormous power not merely with respect to the authority but over other areas. Indeed, in many ways it overrides the provisions of the Environmental Planning and Assessment Act and the Heritage Act. Because the Minister has so much power, at the very least the project should have some accountability and transparency. It is eminently reasonable to require the authority to produce an annual report that benchmarks its achievements or policies against its objectives, given the broad powers already given to the Minister by this bill. I advise that I do not intend to move Greens amendment No. 21, as circulated, because if Government amendment No. 9 is agreed to, Greens amendment No. 21 will become redundant.

Amendment of Government amendment No. 9 negatived.

Government amendment No. 9 agreed to.

Government amendment No. 10 agreed to.

Clause 36 agreed to.

Clauses 37 to 44 agreed to.

The Hon. DON HARWIN [2.25 p.m.]: I move Opposition amendment No. 1:

No. 1 Page 21, clause 45 (3), lines 25-28. Omit all words on those lines. Insert instead:

(3) A regulation is not to be made under this section if it would result in an overall increase to the operational area of more than 5 per cent of the area specified in schedule 1 on the date of assent to this Act.

The Legislation Review Committee has referred clause 45 to the Parliament. Previously, I indicated that I had a meeting with the Deputy Lord Mayor and Councillor Mallard of the Council of the City of Sydney, who

expressed concern about clause 45. The honourable member for Bligh made extensive comment about clause 45 in the other place, and the Planning Institute of Australia is worried about the open-indeed nature of the clause. It is of interest also to residents. I believe the concerns of the residents of Redfern and Waterloo and members of REDwatch are legitimate. The authority should focus on Redfern and Waterloo and not on a large number of other areas.

Earlier I remarked that some cynics suggest that the bill will render the council of the City of Sydney a doughnut council and, more seriously, that its jurisdiction would subsequently be included, by regulation, in the operational area outlined in schedule 1. Therefore, I am of the opinion that the council would support my amendment. In the second reading debate I said that I was unhappy about the bill incorporating a Henry VIII clause that will effectively allow the Government to increase the operational area, by regulation, without any safeguards. I have moved this amendment to ensure that the matter will not be left open-ended and the Henry VIII clause will deal only with unforeseen matters, which is the purpose of such clauses. I believe the amendment will allay the concerns of the Legislation Review Committee, community members and the Council of the City of Sydney.

In addressing those concerns, we are tightening our focus on the authority for Redfern and Waterloo. The authority will not be able to expand its empire willy-nilly. Some people may think that the clause was not necessary, but I believe that it provides a safeguard that is desirable. There is still a capacity to bring proposals to expand the operational area before the Parliament in the form of a disallowance motion, as the expansion has to be done by regulation. Obviously the Opposition will be closely scrutinising all expansions to make sure that they are based on matters that the expression "unforeseen circumstances" implies, and that the Parliament is not being basically treated with contempt by the Minister on behalf of the new authority.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [2.30 p.m.]: While the Government would appreciate a larger percentage in the event of unforeseen circumstances, we appreciate the sentiments of the Opposition. We have had extensive consultation with the Opposition and we agree with the sentiments that have been expressed. There is no intention to have wholesale expansion. As pointed out by the Hon. Don Harwin, there is additional power in the Parliament to reject regulations, and that is the second aspect of the safeguard. The Government will support the amendment.

Amendment agreed to.

Clause 45 as amended agreed to.

Clauses 46 to 49 agreed to.

Schedule 1 and 2 agreed to.

Schedule 3 as amended agreed to.

Schedule 4 agreed to.

Title agreed to.

Bill reported from Committee with amendments and report adopted.

Third Reading

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [2.32 p.m.]: I move:

That this bill be now read a third time.

The House divided.

Ayes, 26

Ms Burnswoods	Ms Griffin	Mr Pearce
Mr Catanzariti	Mr Jenkins	Mr Roozendaal
Mr Clarke	Mr Kelly	Mr Ryan
Mr Colless	Mr Lynn	Mr Tingle
Ms Cusack	Reverend Dr Moyes	Mr Tsang
Mr Egan	Reverend Nile	Mr West
Ms Fazio	Mr Obeid	*Tellers,*
Mrs Forsythe	Mr Oldfield	Mr Harwin
Miss Gardiner	Mrs Pavey	Mr Primrose

Noes, 6

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

Question resolved in the affirmative.

Motion agreed to.

Bill read a third time.

COMMITTEE ON THE OFFICE OF THE VALUER-GENERAL

Report

The Hon. Kayee Griffin, as Chairman, tabled report No. 53/01, entitled "Report on the First General Meeting with the Valuer General", dated December 2004, together with transcript of proceedings and minutes.

Report ordered to be printed.

STANDING COMMITTEE ON SOCIAL ISSUES

Reference

The Hon. JAN BURNSWOODS: I inform the House that today the Standing Committee on Social Issues received the following reference from the Minister for Education and Training:

1. That the Social Issues Committee undertake an inquiry into the recruitment and training of teachers, with specific regard to the following terms of reference:

   (a) the best means of attracting quality teachers to New South Wales public schools and meeting the needs of school communities,

   (b) the effectiveness and efficiency of current means of recruiting teachers to New South Wales public schools, including:

      (i) recent graduates,

      (ii) career change teachers,

   (c) differences and similarities between primary and secondary school recruitment needs,

   (d) existing initiatives and programs of the Department of Education and Training, including:

      (i) *Teach NSW,*

      (ii) scholarships for undergraduates,

(iii) accelerated training courses,

(e) the role of the NSW Institute of Teachers and its accreditation and endorsement requirements,

(f) the role, distribution and effectiveness of university pre-service teacher education, and

(g) any other matter arising from these terms of reference.

2. That the committee report by 30 November 2005.

LOCAL GOVERNMENT AMENDMENT (PUBLIC-PRIVATE PARTNERSHIPS) BILL

Second Reading

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [2.42 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

This Bill amends the Local Government Act 1993 and provides a regulatory framework within which local government can benefit from public-private partnerships.

The Local Government Act 1993 is the core Act for the regulation of local council and county council functions.

Public-private partnerships (PPPs) are emerging as potentially attractive and flexible means for local government to create infrastructure and deliver services.

For the purposes of this Bill, a PPP is defined as any contracted relationship between a council and the private sector in which a council has an equity interest, shareholding or ongoing obligation or liability.

Normal transactions such as:

• sale of community land classified as operational,

• councils acting as trustees for donations or bequests

• and tendering

will not be affected by these new provisions.

A number of councils already have experience in negotiating public private partnerships.

Unfortunately, not all those experiences have, been positive.

As members will be aware, Liverpool City Council, between 1996 and 2003, entered into various commercial arrangements with the private sector to develop infrastructure on land owned by the Council.

The Liverpool City Council Public Inquiry found that the cost to Council of the failed redevelopment proposals—ultimately to be borne by ratepayers is at least $22 million.

The Commissioner of the Public Inquiry, Professor Maurice Daly, found that councils lacked the in house expertise required to successfully negotiate PPP arrangements.

This in turn may impact significantly on the ability of councils, throughout the state to make decisions about entering into such arrangements for the benefit of their communities.

Professor Daly also made a series of recommendations about managing local government participation in PPPs.

This bill gives effect to those recommendations.

Providing a regulatory framework with conditions before councils sign binding contracts, has the advantage of allowing flexibility for the financing/provision of council infrastructure and services.

At the same time, councils will be required to ensure that the public interest is protected and that any contracts entered into have had risk properly factored into them.

The bill proposes an external review process for projects that are worth more than $50 million, or 25% of council revenue which has not been designated for another purpose.

This review committee's function is to ensure that a council has undertaken appropriate probity and due diligence checks before signing binding contracts.

The process will also consider: the financial viability of the project the council's capacity to enter into such a deal the views of appropriate and independent experts.

For all PPP projects, regardless of size, councils will be required to undertake a risk assessment and forward that assessment to the Department of Local Government for review.

Those projects determined to be high risk will be called-in for assessment by the Project Review Committee in the same way as a project that meets the size/significance threshold.

Under this framework, councils are not being asked to do any more than is prudent and in their own best interests.

Ratepayers and residents cannot afford another Oasis project.

All councils considering PPPs will now be obliged to test the market by seeking expressions of interest for proposals involving them in equity relationships or commercial arrangements with private companies involving council assets or ongoing obligations.

In this way, their communities can be assured that they are getting the best value for money outcome. Certain minimum process and management elements for PPPs will also be required of councils.

To assist councils, guidelines will published by the Director General of the Department of Local Government under the new s.400C of the Local Government Act.

It is anticipated that these will be available early in 2005. The guidelines will, as recommended by Professor Daly, provide for appropriate governance and administrative arrangements for PPPs that include reporting to councils and local communities

Public access to information about the PPP project that is not confidential will be on the same basis as the public has to other council information. In this way, the public accountability of councils involved in PPPs will not be unduly diluted.

The Project Review Committee will have a core membership drawn from the Departments of Local Government, Infrastructure, Planning R Natural Resources, Treasury, Cabinet Office and the Premier's Department.

Depending on the nature of the project proposal and the particular assessment stage, relevant expertise drawn from other agencies or from independent experts from the private sector will be co-opted to the Committee.

A positive assessment from the Committee will be required at three stages for any proposal to advance—initial risk analysis and costing, project plan and contract development.

A council that signs a contract without satisfying the Committee that the (s.400C) Guidelines have been fully complied with, will be in breach of the Local Government Act 1993.

The remedial measures already available under sections 672 (action in the Land & Environment Court) and 435 (surcharging) as well as the investigative and public inquiry powers (ss.430 and 740) will apply.

This message will be reinforced in the Guidelines referred to above.

PPP projects may take the form of a number of different legal entities.

Indeed, as this particular market matures and grows, it is likely that arrangements not even thought of now will become commonplace.

The Act, under s.358, currently provides only for Ministerial approval where a council seeks to form or participate in the formation of a corporation or acquire a controlling interest in a corporation.

This bill seeks to extend this current requirement to other entities and relationships that councils may enter into with a purely commercial rationale.

In seeking such an approval, either from the Project Review Committee or from the Minister, as determined by the nature of the project proposal, it is appropriate that councils, as guardians of public trust and funds, should demonstrate that there is a clear public benefit to be gained from the proposed arrangement.

Another matter that goes to issues of transparency and public accountability is the potential use of financial entities or project vehicles, to circumvent tendering requirements under the Local Government Act, either wilfully or by mistake.

These circumstances arise in only a small number of cases - but their effect on public confidence can be significant. It is important that local government retains the confidence and trust of their communities in this regard.

To this end, this bill gives effect to Professor Daly's recommendation that the tendering provisions of the Act, section 55, be strengthened.

This means that that the community can be assured that councils obtain the best value for money by engaging in market processes and that similar transparency and accountability provisions apply to council/commercial entities as apply to councils.

This means two things:

First, that in selecting project partners for PPPs, councils undertake an expressions of interest process.

Second, once the assessment and contract process of a PPP is complete and approved, Councils and their PPP partners must adhere to the matters specified in the contract. That is, approved projects must not be varied or amended without approval from the Project Review Committee and the Minister.

This means that those works or activities that will be conducted by the public-private entity or the council would not need to re tender for the works/activities to the new project vehicle. However, works or activities outside of the PPP project contract are still required to be put out for tender.

Clearly, councils should not use project vehicles created for a specific outcome as a convenient mechanism for other, non-related projects or needs.

The bill seeks to ensure that this situation does not occur by making it clear that in such situations the tendering provisions of the Act (s.55) apply where councils are involved in some form of partnership with the private sector.

In this way, council obligations in regard to transparency and accountability will continue to apply and the integrity of PPP project vehicles will be upheld.

The bill proposes that this framework apply from 28 June 2004. On that day Parliament was advised that the Government intended to accept the recommendations of the Liverpool City Council Public Inquiry and would legislate to give effect to those recommendations with regard to the management of Public-Private Partnerships.

Councils were informed of by means of a Department of Local Government Circular to Councils on 21 July 2004.

Were the proposed regulatory framework not to apply retrospectively, it is possible that a number of councils, under perceived pressure from potential commercial partners, may fast track projects to specifically avoid its requirements.

Such a headlong rush would not serve the public interest, as it is likely that corners would be cut and attention to detail minimised rather than maximised. It is preferable that councils take a considered approach to the negotiation of PPPs.

The condition that most favours that approach is the certainty that projects in development will need to meet the standards required under the revised framework. Anything else invites precipitous actions, hasty judgments and, potentially, poor or less than optimal outcomes for communities.

In closing, the bill provides for a framework that is no more onerous for councils than they should themselves undertake from the perspectives of prudence, transparency and best practice management of public resources.

I commend the bill to the House.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [2.43 p.m.]: The Opposition does not oppose the Local Government Amendment (Public-Private Partnerships) Bill. The bill seeks to amend the principal Act, the Local Government Act 1993, in five main ways. The bill institutes new requirements for the participation by councils in public-private partnerships. The requirements will be set out in guidelines from the director-general and set out in the legislation to assist councils in areas that need to be addressed. The guidelines will include the requirement for independent assessment of project feasibility—both financial and market, where appropriate—due diligence and risk assessment, appropriate governance, and administrative and project management arrangements. The bill establishes a local government project review committee for the purposes of ensuring local councils entering into public-private partnership projects comply with the guidelines. Any public-private partnership of more than $50 million or 25 per cent of council's annual revenue will be subject to an external review by the project review committee.

The bill provides a call-in power to refer projects to the project review committee to be used if the project does not meet the threshold but is considered to be of high risk. The bill requires a council to invite tenders before it enters into a contract to form a public-private partnership. The Opposition supports that objective and hopes that it will better protect local communities from inappropriate and possibly costly decisions of local councils in relation to the formation of public-private partnerships and the undertaking of such projects. The bill provides that contracts involving entities that are formed by councils will be subject to the same tendering requirements that apply to contracts entered into by councils.

Finally, the bill prohibits a council from forming an entity unless it has the Minister's consent—as is the present case for corporations that are formed by councils—and must demonstrate that the formation of that entity is in the public interest. The Minister's second reading speech states that the bill implements the recommendations of Professor Maurice Daly in his report on the outcome of the Liverpool City Council public inquiry into failed development projects that the council entered into with private developers between 1996 and 2003. Honourable members know that project as the Oasis development.

During the course of his inquiry, Professor Daly found that many local councils lacked the in-house expertise required to successfully negotiate public-private partnership arrangements. He made a number of recommendations to assist councils in that process while protecting community interests from inappropriate projects under such arrangements. Having praised Professor Daly for his work, I must say that as the person appointed to inquire into the local councils in my area and now in the Tweed he would need to do a better job in the Tweed than he did in my area. He did not listen, he did not get it right in my area.

The professor did what he perceived the Minister wanted him to do in the Goulburn area; and if that is why he was sent to the Tweed, I would be pretty disappointed. In the Oasis case, Professor Daly's final report found that the former mayor of the sacked Liverpool council, the general manager and some councillors had engaged in culpable negligence or misconduct and that the activities of the council's joint venture partner, Macquarie Bank, had been opportunistic and predatory. Despite Professor Daly's findings, any local council pursuing a development as ambitious as the Oasis complex was likely to encounter difficulties. The inquiry found that the council had lost control over the land at the heart of the development, Woodward Park, under the deal done with the Bulldogs rugby league football club and the Macquarie Bank.

A number of important lessons have come out of the Oasis project and have formed the basis of the bill. The Opposition certainly hopes that tighter controls over public-private partnerships result from the bill to ensure that local councils are on a professional footing from the outset. Professor Daly, in his examination of the Oasis development, found that probity issues, such as transparency, accountability and due process, were poorly managed—if at all. Yet these are fundamental for all in public office because they are working with community assets.

The Opposition does not oppose the bill because it is greatly needed. However, I draw honourable members' attention to issues in the bill considered by the Legislation Review Committee. The first issue considered by the committee relates to the retrospectivity of proposed section 400N. Under this proposed section, the requirements set out in proposed part 6 will apply retrospectively from 28 June 2004 to any public-private partnership that a council may have resolved to form on or after that date. The Minister's second reading speech states that 2 June 2004 was the day on which the Government advised Parliament that it intended to accept the recommendations of the Liverpool City Council public inquiry and would legislate to give effect to those recommendations relating to public-private partnerships. The speech also states:

> Were the proposed legislative framework not to apply retrospectively, it is possible that a number of councils, under perceived pressure from potential commercial partners, may fast-track projects to specifically avoid their requirements. Such a headlong rush would not serve the public interest...

The committee notes that it will always be concerned to identify where a retrospective legislation has an adverse affect on any person. The committee will also be concerned to identify legislation that is taken to apply from the date on which the Government announced its intention in a particular area. The Opposition shares that concern and also the view of the Legislation Review Committee that where such retrospectivity has an adverse effect on any person, this trespasses on that person's right to rely on the law.

Another concern highlighted by the Legislation Review Committee and shared by the Opposition relates to proposed section 400I (4). This proposed section provides that there is no review of a decision by the review committee as to whether a council has complied with the PPP guidelines in relation to a project. The Opposition shares the committee's view that a review of administrative decisions, especially an external review of administrative decisions, is important in ensuring the appropriate exercise of executive power. This allows a person aggrieved by a decision to seek a review of that decision by an independent authority with the power to determine whether the decision was made properly. The Opposition is seeking an assurance from the Minister that such safeguards are in place. The Opposition does not oppose what is, in the main, a practical and much-needed piece of legislation.

Reverend the Hon. Dr GORDON MOYES [2.53 p.m.]: The purpose of the Local Government Amendment (Public-Private Partnerships) Bill is to amend the Local Government Act 1993 to provide a regulatory framework for councils entering into public-private partnerships. On behalf of the Christian Democratic Party, I commend the bill to the House. The bill seeks to regulate and facilitate the increasing phenomenon of councils entering into contractual arrangements with the private sector in order to provide infrastructure, facilities or services. Public-private partnerships, which are commonly known as PPPs, are arrangements between government and private companies for the provision of services and/or finances by the private sector to public entities. These arrangements are pursued for various reasons, including the potential level of finance that may be secured by public agencies that would otherwise not be available.

The bill addresses the fact that not all councils have appropriate regulatory structures in place to ensure that ratepayers get the best value for money outcome from community assets—although I suggest that every council should have such structures. It also addresses the fact that not all councils have established adequate structures to safeguard the public interest. This bill purportedly gives effect to the recommendations of the public inquiry into Liverpool City Council, which found that the council had lost more than $22 million on the Oasis project. It was envisaged that the Oasis project would include a 35,000-seat football stadium, an indoor basketball stadium, ice rink, water park, apartment complex and leagues club. The project began as a joint venture between Liverpool City Council and Canterbury Leagues Club. The Bulldogs pulled out of the $900 million Woodward Park development last year but Liverpool City Council was able to enter into contractual arrangements with Macquarie Bank for a revamped version of the original plan.

The inquiry, headed by Professor Daly, found that Liverpool City Council had committed to the construction of the Oasis complex without a business plan, without seeing the financial modelling prepared by Macquarie Bank and without fully appreciating the risks involved in delivering the project. Professor Daly also found that the council had not undertaken any analyses of the possible social, economic, environmental and community amenity impacts of the project and had made no move to market-test the proposal. When I first read Professor Daly's findings I could not believe a council would not analyse the risks and community amenity impacts. In the 27 years that I have led Wesley Mission I have built many buildings with the support of public donations and contributions. These have amounted to more than $800 million in developments over the years and more than 400 buildings. In all that time Wesley Mission has never embarked upon a project without first analysing the risks involved, conducting financial modelling, drawing up business plans and the like. At present I am responsible for the completion of another $100 million worth of developments, which had thorough financial modelling and full risk analysis.

The amendment of the Local Government Act 1993 is the best method of instituting a regulatory scheme for local councils. This is because the Local Government Act 1993 is the core Act for the regulation of local and county council functions. The bill will require a council to invite tenders before it enters into a contract to form a PPP. Entities formed by councils will be subject to the same tendering requirements that apply to contracts entered into by councils. This is a must in all areas of council activity. The bill defines an "entity" as any partnership, trust, corporation, joint venture, syndicate or other body, whether or not incorporated. The bill provides that a council must not form an entity except with the Minister's consent. This is the case at present for corporations that are formed by councils.

The requirement to invite tenders is an important initiative. Tenders should always be called for. Much of the scandal in areas of the club industry in recent days would have been avoided if tenders had to be invited for all major financial endeavours by clubs or councils. Inviting tenders allows all those entities capable of providing a required service to submit proposals as to why their services ought to be engaged. This means that there will be a pool of potential parties from which to choose, and invariably proper use of this tender process will lead to the best candidate for a public-private partnership. The bill allows the Director-General of the Department of Local Government to issue guidelines requiring councils to follow specified procedures and processes in relation to all PPPs.

Guidelines will include requirements for the independent assessment of project feasibility—financial and market, where appropriate—due diligence and risk assessment, appropriate governance, administrative and project management of arrangements, as well as an expressions of interest process leading to the selection of preferred parties. It is important that risk analysis and assessment is undertaken of any PPP proposal to be submitted to the Department of Local Government because sometimes what might seem to be an excellent idea or proposal may entail such a high degree of risk that it does not warrant implementation. This is especially the case where the public purse is involved. It makes common sense for such assessments to be required.

Where a project is a "significant project", that is, a project with an estimated cost of more than $50 million, or if it has a high risk, it will be referred to the project review committee. The bill establishes a Local Government Project Review Committee for the purpose of ensuring that the requirements set out in the guidelines are complied with by councils in relation to projects carried out under PPPs. In all of the hundreds of millions of dollars worth of contracts for which I have been responsible in building new buildings—now more than 400 in the last 27 years—we have always submitted the proposal to an external project review committee.

The committee will be chaired by the director-general, who may appoint persons with special expertise as members, including persons from the private sector. Other members will include the secretary of the

Treasury, the directors-general of the Premier's Department, the Department of Infrastructure, Planning and Natural Resources and the Cabinet Office. It suffices to note that any member of this committee who has a conflict of interest arising from a direct or indirect pecuniary interest must inform the committee of that conflict of interest. Where a project is subject to review by the committee, a council may not enter into contracts unless the committee is satisfied that the proposal meets the conditions specified in the PPP guidelines.

The committee will not address the nature or merit of the proposal, but rather whether the council has undertaken the appropriate analysis and market assessment in developing the proposal and ensuring that an appropriate management structure is in place for the conduct of the project. The bill will require councils to include in their annual reports a statement of all PPPs to which they have been a party during the year concerned. That is important for public transparency and accountability. In his second reading speech the Minister for Regional Development, Minister for the Illawarra and Minister for Small Business stated that:

> The bill provides for a framework that is no more onerous for councils than they should themselves undertake from the perspective of prudence, transparency and best practice management of public resources.

I agree with that statement entirely. Without a doubt, the high office undertaken by municipal and shire councillors warrants a regulatory framework that does its utmost to ensure that public funds are used in the most effective and efficient way possible. This bill goes some way towards ensuring that this is the case. The Christian Democratic Party commends the bill to the House.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [3.03 p.m.]: This bill has been prompted by the Oasis development fiasco between Liverpool City Council, the Canterbury rugby league club and Macquarie Bank. Professor Maurice Daly was asked to conduct a public inquiry into Liverpool council. The terms of reference drew Professor Daly to examine the structure of private-public partnerships [PPP] entered into by the council with Macquarie Bank. Professor Daly was critical of the Macquarie Bank, saying that a revamp of the original plan was at best opportunistic and at worst predatory. There was also mention of the fact that the PPP was never put out to public tender. Professor Daly found that the council was out of its depth in going into a PPP with Macquarie Bank, which had greater knowledge and bargaining power. It was also described by Daly as "naïve and inept".

At the end of the whole sorry exercise Liverpool council had lost $22 million of ratepayers' money. Professor Daly devoted an entire volume of his report, including 11 pages of recommendations, to councils and PPPs. In this House on numerous occasions I have expressed my objections to PPPs, and that opposition has not changed. Some years ago the Macquarie Infrastructure Group was involved in the motorway in Melbourne. I became aware of it quite independently when my stockbroker said to me, "We will try to get some of these bonds. This is absolutely the best deal you could ever get. It is government guaranteed and it will have very good returns." I looked at the prospectus from the Macquarie Infrastructure Group, which had a number of projects all over the world when it had bought existing motorways and made a large amount of money.

The prospectus stated some of the risks. Indeed, the Vasco de Gama Bridge in Lisbon, Portugal is owned by the group and its contract guarantees it a certain return even if the tolls do not give that return. The Portuguese Government, which was having difficulty paying the group, had entered into a deal that was not very good for it and the taxpayers were coughing up when there was reluctance to pay on time, and that was seen as a risk. The tone of the document, to be honest, was that the scheme would be easy to repeat because people are very naïve. Certainly, that appears to have been the case in Liverpool and in many other instances.

On 20 October in my contribution to the budget debate I spoke about PPPs or private finance initiatives [PFIs], as they are called in Great Britain. I referred to the analysis in the *British Medical Journal* of the effect of PFIs on the British National Health Service and the fact that the general conclusion was that there was no advantage in them. They had not delivered better health infrastructure for less money. In short, to put not too fine a point on it, the area health services in Britain had been outmanoeuvred and, if not ripped off, had at least gained no benefit from PFIs. The simple fact is that if a government wants to build something and it has access to capital at as low a rate as is available in the world capital market, there is nothing to be gained in terms of interest payments by a PPP.

The State Government and the Federal Government have a dogmatic objection to borrowing for bonds in their own right because they say that they are not taking a risk. In practice, if the PFI or PPP does not make an adequate profit it simply declares bankruptcy and disappears. If the PFI or PPP makes a huge or super normal profit due to extremely favourable contract negotiations it naturally pockets the difference and sends it off to the shareholders. This no-win situation for government is created by the absurd dogma that one must not borrow

money. There is nothing wrong with borrowing money or incurring debt, as was reported recently on the front page of the *Sydney Morning Herald*, provided there is an asset backing for that debt.

It is certainly true that incurring debt for consumption without asset backing is irresponsible. It is also true that there is a finite risk if interest rates go crazy, and it is certainly true that people who have a large debt are frightened of the high interest rates of some years ago. On the other hand, one is betting on the world economy. Everyone is in the same position but the problem is not solved by negotiating contracts in which the Government carries the risk and the PPP takes the profit. Local councils are increasingly taking the lead in getting into bed with private developers for the construction of infrastructure projects. Getting private companies to put up the cash for larger projects is quite often the only way infrastructure can be financed by local councils, because, as we know, the Government has passed off a great deal of its responsibilities to local councils. They have pegged rate rises to the consumer price index—

The Hon. Tony Kelly: They have never been pegged to the CPI. That is not true.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Well, it is pegged.

The Hon. Tony Kelly: It is pegged, but not to the CPI.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: It is certainly not pegged to their costs, or to the extra tasks they must undertake, or in any way commensurate with their responsibilities.

The Hon. Tony Kelly: That is not true.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Borrowing money is often not an option, and the Government has not looked at their projects and provided such money, or even guaranteed the borrowings of such money—which it might be better for the Government to do than embracing these types of arrangements. The result is a selling off of council assets, usually land, or giving it away to developers with some other sort of interest, so that the developers invest and make all the money to be made on the deal. I was involved in trying to stop a PPP taking over Ryde swimming pool on a very long lease. We managed to prevent the council from selling off a corner of it for a Meriton unit block development. The fact is that that has resulted in the price of having a swim at the pool going up immensely.

There really is no excuse for the State Government to embrace PPPs as it has, because the State has the capacity to borrow at very competitive rates, whereas poorer councils cannot. However, local and State governments are inevitably headed in the same direction, so that there will soon be no assets left to sell, and the whole strategy will come badly unstuck. The bill is a paternalistic bill to save local councils from themselves. The only problem is that the State Government's record with PPPs does not inspire much more confidence in any advice it might give. It is worrying that, quietly or even silently, the Government is going ahead with the proposal for the Mater hospital in Newcastle, redefining and minimising some aspects of its function so that the Government can then say that with the new PPP it is getting the same service for less money. Effectively, the Government is interfering in the management of that hospital in order to achieve that goal.

Another shining example is the M2 motorway. Aspects of that contract specifying that the Government will not construct any competitive roadway has stopped completion of the tunnel from Epping to Carlingford, which would have made that a much more useful loop to connect part of south-western Sydney to Chatswood. Everyone says, "Well, nobody goes that route anyway." Of course they do not, because at the moment transport is almost impossible. So, to say that a route is not used by cars—because it is almost impossible to use that route—is no way of assessing what should be done regarding rail projects.

Again, the north-west sector infrastructure is not being built, even though it is badly needed, and it should be constructed as soon as possible. Either the Government is too frightened to borrow—which, as I have already said, is extreme folly—or else it is scared of putting in anything that could allow action by the M2 motorway owners claiming that the Government was putting in competitive infrastructure that was detracting from the profits of those owners. As I said earlier, past experiences with the Macquarie Bank and the big infrastructure groups show that it is almost like taking candy from a baby because, should the Government find a good negotiator, needless to say when the next contract comes up he or she will once again be on the opposite side of the table. So we will always have the experienced dealing with the inexperienced. If the Government wants something it should simply borrow to build it, as it used to do, leaving the taxpayers with an asset that appreciates as it becomes more necessary in a bigger and more valuable city.

The airport rail link, which was supposed to cost taxpayers nothing, has now cost about $700 million. I have been told that the large amount of water leaking into that tunnel currently is being pumped out by the private owners. Presumably those owners will not continue in the long term to lose money in pumping out the tunnel. The fact that the tunnel has construction problems again will result in the cost being picked up by the taxpayer. Somebody asked, "If you want to go from A to B, which is the quickest way?" The answer is, "The way you do not get lost." If you want to build something, the question might be asked, "What is the best quote you can get?" Obviously, the best price would depend on whether it works when it is finished. If you get it cheaper, and it does not work, in the longer term you have paid more.

So the idea that public works cannot be undertaken as cheaply as the private sector can do them may well be the least of the problems. If there are difficulties in the management or fixing of infrastructure problems, surely someone with the appropriate expertise can be found to do that. This absurd idea that the Government must not borrow, must not have debt and must not have assets is nothing more than convenient humbug from those in the American economic establishment who would like to make a profit from any dollar spent on what are properly public sector undertakings. It has also been pointed out to me that the cost of financing the return to those organising all this finance is a not inconsiderable overhead in the process of PPPs.

We have tollways round the city going the same way; we have a cross-city tunnel, costing billions, when a better outcome would have been reached by a light rail system. Again, the lobbying for certain projects over other projects is a quite pernicious effect of this PPP concept. In Perth some progress is being made where light rail is being reintroduced to the transport network. There is concern that the report into Liverpool Council identified dubious practices adopted by Macquarie Bank in relation to the Oasis development. As everyone knows, the Macquarie Bank is one of the State Government's major partners in PPP investment. An article in the *Age* of 15 March this year entitled "Macquarie's enemies" gave quite a detailed analysis of PPPs and indeed of the Macquarie Bank. It is interesting that New South Wales was cited quite considerably in that article. I do not believe there was any such detailed account in any of Sydney's papers. That is a worry.

The Macquarie Bank, through the Macquarie Infrastructure Group, has been involved in numerous road projects, including as a 71 per cent partner in the M1 through the Airport Motorway Group; as a 50 per cent partner in the M4; and as a 50 per cent partner in the M5 toll roads. The Government is using PPPs to build schools.

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): Order! I remind the honourable member that the bill deals with public-private partnerships within local government.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The whole direction of this Government regarding PPPs is fundamentally wrong. That the worst excesses of the even more naïve local councils might be looked at by the relatively naïve State Government does not solve the problem at all. The failure of this strategy of pretending to get PPPs will become evident with the trains at a standstill, the electricity grid collapsing, and so on. The bill represents some progress to avoid a fiasco such as there was with the Oasis development, but it is a fundamentally wrong strategy for the State as a whole.

Ms SYLVIA HALE [3.16 p.m.]: I speak on behalf of the Greens on this bill. The Greens welcome moves to provide better guidance to councils undertaking large projects and partnerships with the private sector. Public-private partnerships—or PPPs as they are often called—have the potential to deliver massive profits to financiers, banks and developers and leave councils and ratepayers lumbered with the risks. Indeed, sheeting the risks home to the public sector has become a defining characteristic of PPPs as secret contracts and commercial in confidence clauses impose penalties where councils and governments reimburse the private partners when projected profits do not eventuate. PPPs have become win-win partnerships for the private sector.

Against this backdrop, this bill will establish a framework for councils entering partnerships, and help reduce the risks of ratepayers being left with the burden of a costly mistake. As Minister David Campbell said in his second reading speech, and as I am sure honourable members of this House are well aware, New South Wales has had more than its fair share of PPP infrastructure projects that have turned out to be spectacular failures, costing the community and taxpayers millions of dollars. The city to airport rail link was one such project. Within six months of opening the company had failed. Poor co-ordination and a lack of financial and legal expertise within government for the development of these contracts has also been blamed for partnership deals that are clearly not in the public interest. Those deals may involve the Government paying substantial indemnities to private partners if, for example, public transport competes with operators on a so-called level playing field.

With Sydney's six existing toll roads, and two more either under construction or in the advanced stages of planning—the cross-city tunnel and the M2 to Gore Hill missing link—there are clear warning signs and lessons from the airport rail link disaster. A vast network of motorways, tolls and road tunnels will be the lasting legacy of the Government. Bob Carr will be remembered as the man who turned Sydney into Los Angeles. While there has been a passenger exodus from our crumbling train system, PPPs have delivered to New South Wales the M5 East and tunnel, the M4, the cross-city tunnel, the Lane Cove Tunnel, and the Eastern Distributor.

Despite unprecedented community resistance all these tunnels and motorways have proceeded, but they have been characterised by dubious or non-existent health studies, repeated breaches of RTA guidelines and EPA standards, and a total lack of transparency. Then there is the debacle of the Oasis project entered into by Liverpool Council. The Oasis project, which has been well documented, has cost the ratepayers of Liverpool $22 million. It is now clear that there were conflicts of interest, and that the proposal was weighted heavily in favour of the developers. As Professor Daly noted in his report, the Macquarie Bank, in particular, was predatory in its approach. Liverpool Council members never should have entered into such a misguided, grandiose project. One can only hope that the bill will prevent other councils from making silly mistakes.

The provisions requiring councils to undertake risk assessment and feasibility studies for large projects worth more than $50 million are based on sound business principles. Any prudent and responsible organisation spending in excess of $50 million should assess such important factors as the ability to pay, whether the project is necessary, the administrative arrangements required to ensure the success of the project, and the social and environmental impacts of the project. PPPs are a way of privatising both the cost and the ownership of public facilities, such as road and rail infrastructure, hospitals, schools and universities. This represents a philosophical departure from traditional methods of funding public infrastructure. Overseas borrowing in Australia in the late nineteenth century allowed for both great economic development and a social structure that helped to produce a modern and egalitarian society.

Public schools, the Commonwealth Bank, the ABC and National Rail provided services to Australians irrespective of their personal wealth. The overriding objective was the provision of high-quality public services, not the maximum possible profit to private shareholders. However, over the past decades new ideas about financing economic and social infrastructure have arisen, driven partly by ideology and partly by necessity. Thus over the past two decades government enterprises have been sold off and new infrastructure projects built with private capital and, more often than not, operated by private companies. Proponents of the PPP approach argue that it is the most effective way for government to meet the huge costs of massive infrastructure development. With both Labor and the Coalition obsessed with small government and budget surpluses, governments increasingly are reluctant to fund essential public works.

As a result we have seen a wholesale decline in public infrastructure investment by government. The consequence has been a stampede by the private sector to projects offering the biggest profit margins with a corresponding flight of equal proportions from areas that offer less profitable returns. A decline in the less profitable parts of the rail network has resulted in a steep fall in services. Privatisation of the airlines, telecommunications and the banking sector has resulted in a corresponding decline in services to the bush and to the public in general. New industry has developed around PPPs, which is pushing policy initiatives in the direction of areas that offer the biggest profit to the private sector. Tunnels, roads and freeways have been the big winners. Railways, schools and hospitals have been the losers.

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): Order! I remind Ms Sylvia Hale that the bill deals with public-private partnerships relating to local government.

Ms SYLVIA HALE: One of the major undertakings of local government is the provision of child care services. But we have seen universities, aged care and child care caught in the middle, with services and facilities improving in some niche areas where profits are good, while other areas that are unable to provide sufficient profits have suffered. Big urban universities have prospered while small regional ones are in crisis. The child care sector has been reshaped significantly with a sharp increase in child care fees, a dramatic fall in community-run or council-run services with a corresponding increase in for-profit services and a failure by private enterprise to provide facilities in those localities where there is insufficient profit, but nevertheless a crying need. PPPs are attractive for the private sector because they guarantee long-term profits with very little or no risk.

Unfortunately, the same cannot be said for the public partners who usually are left to shoulder the costly burden of failed projects. The process of privatising the public sector across Australia has been radical

and far ranging. It is a process that is increasingly unpopular with the electorate, which is something that councils should bear in mind. However, I subscribe to the views expressed by the Hon. Dr Arthur Chesterfield-Evans, who noted that councils are in an extraordinarily difficult position because increasingly they are required to shoulder costs imposed by the Federal and, particularly, State governments, but they are not given the resources to meet those costs.

Research conducted at the Swinburne University of Technology should be of significance to councillors and the government sector in general. In November 2001 in a survey of 1,000 randomly chosen Australians a range of questions were asked with the focus on people's attitudes to the various roles that both public and private sectors should undertake. The question of whether people believed there is a role for profits in the delivery of public services received an unambiguous reply: 88 per cent of those surveyed felt that public services should not be run on a profit-making basis, 65 per cent of whom believed this strongly.

Contracting out might be popular in the Productivity and Competition Commission, but for the vast majority of Australians it is firmly out of favour. As the author of the survey noted, the last 10 years in public administration have been tumultuous, with almost all areas being affected by management reforms, downsizing and contracting out. This was meant to lead to better services that were more customer focused. But only 36 per cent of those surveyed thought that services had improved, while almost 40 per cent felt that they had declined. Adding weight to the latter view is the fact that the group most likely to believe that services had declined were those aged over 50 who had experience of such services.

The report argues that three broad conclusions emerge. First, there is a strong view that private sector firms should not be allowed to provide public services. Second, there is a mixed view about whether, and on what basis, non-government groups should be involved in the delivery of public services. Third, the reforms of the last decade have not won the support of those they were purported to help most—those who consumed them. Some public services are more important than others, for example, policing and illegal functions, and then there are those that might be considered to be essential because all citizens require access to them to live a decent life. Historically many of these have been provided through utilities run along commercial lines, but with a balanced charter that includes important social and environmental constraints on their operation.

When questioned about what role the private sector should play in delivering such services the answers were unambiguous. Despite 20 years of promotion by both major political parties at all levels of government, privatisation enjoys very little public support. Thankfully it appears that a view is developing both within the bureaucracy and the public consciousness that PPPs must be better managed to serve the public good, not the private good at the expense of the public good. The Greens are opposed to the philosophy of privatisation of public assets and to the public sector carrying risks for the private corporations carting away the profits. But we recognise that while PPPs are here they need to be managed as effectively as possible. Therefore the Greens support the bill.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [3.28 p.m.], in reply: I thank all honourable members for their contributions to the debate. The bill provides a regulatory framework within which local government can benefit from public-private partnerships. In doing so the bill requires councils to follow appropriate processes with regard to prudence, transparency and best practice management of public resources. It does not impose any more onerous a framework than councils reasonably should impose on themselves.

The Government acknowledges that the regulation of public-private partnerships in the public interest is an emerging area of policy, particularly in the local government sector. The legislation represents the first step in developing a legislative framework to provide a clear set of guidelines for councils to follow when entering into these sorts of arrangements. The Government is committed to continued consultation with the local government sector on this important issue. The bill contains provisions for the drafting of guidelines to assist councils in following appropriate processes when entering into public-private partnerships. Yesterday the director-general of the Department of Local Government convened a workshop with a number of private and public sector representatives who have expertise in public-private partnerships.

I have received some preliminary feedback that the workshop was very productive and I look forward to a more detailed report in the near future. The Government is also committed to further consultation with local government through the peak bodies the Local Government and Shires Associations and the Local Government Managers Association. I look forward to working closely with all stakeholders to implement the legislation and to address any issues that may arise from it. Ongoing consultation and discussion with councils, business and the

community will ensure that local government in New South Wales has the best possible legislative framework for managing this new area.

I make the comment that the Macquarie Bank was mentioned a few times in relation to Liverpool. My understanding is that it is working closely with the council out there to solve some of the problems alluded to. A number of members referred to the Legislation Review Committee noting that the retrospectivity provisions in the bill may duly trespass on individual rights and liberties. The department issued a circular to all councils on 21 July indicating the Government's acceptance of the recommendations from the Liverpool inquiry and foreshadowing that the proposed legislation would have effect from 28 June.

Since that time a number of councils have inquired of, or met with, the department to clarify the status of projects. To the department's knowledge, no project has been derailed or seriously affected by the retrospective application of prudential requirements foreshadowed in the bill. The bill does not require councils to do any more than would be dictated by normal prudential considerations, regardless of the new regulatory framework and its retrospective application. On this basis it is highly unlikely that any project proposal that has been subjected to an appropriate level of scrutiny by council would be prevented from advancing to contract stage by the retrospective application of the bill's provisions. At worst, there may be some delay associated with the implementation of the new arrangements.

Also, the Legislation Review Committee noted the bill's provisions for non-reviewable decisions, which were also mentioned by the Deputy Leader of the Opposition in his contribution. The Project Review Committee decision bears no relationship to any concept of merit with regard to a project proposal. It simply functions to ensure that entities involving local councils that undertake a significant project by processes to ensure transparency, accountability and the appropriate management of public assets and funds. Should proponents fail to comply with an aspect of the guidelines at any point during the assessment, they would be informed and would be given the opportunity to adjust the proposal or to undertake any remedial action necessary to comply. As long as this does not involve a significant change to the original proposal, the Project Review Committee process would continue.

A significant revamp of the project proposal may be treated as a new project and would then be resubmitted to the Project Review Committee without any reference to its previous incarnation. This structure provides for a de facto mechanism for review of decisions made by the committee. The requirement for compliance with mandatory guidelines with no avenue for review of decisions has many precedents in the Local Government Act 1993 and in other New South Wales legislation. At a State Government level section 22L of the Public Authorities (Financial Arrangements) Act 1987 states that the authorities may enter into or carry out a joint venture without the approval of the Treasurer, with no provision for appeal of the decision. The provisions in this bill are also consistent with the processes required of New South Wales statutory authorities or agencies when they seek to enter into public-private partnerships of significant size. In these cases the project is reviewed by the Budget Review Committee and may not go ahead without that approval. The focus of any councilproponents should be in getting the processes right, not in trying to circumvent it or applying resources to appealing. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Order of the Day No. 3 postponed on motion by the Hon. Tony Kelly.

JUVENILE OFFENDERS LEGISLATION AMENDMENT BILL

Second Reading

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [3.35 p.m.], on behalf of the Hon. John Della Bosca: I move:

That this bill be now read a second time.

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

Leave granted.

The Government is pleased to introduce the Juvenile Offenders Legislation Amendment Bill 2004.

This Bill amends the Children (Criminal Proceedings) Act 1987, the Children (Detention Centres) Act 1987 and the Crimes (Administration of Sentences) Act 1999 to allow better management of young offenders, and where appropriate, their transfer to a juvenile correctional centre.

The Bill reflects recognition by the Government that some older detainees are better suited to the environment of the Department of Corrective Services, either due to the seriousness of their offence or because of their behaviour.

The Bill also reflects the significant changes in the profile of juvenile offenders over the past 10 years. That profile is of more sophisticated, more hardened and violent individuals, with criminal records including gang rape, aggravated assault and murder.

The proposals in the Bill reflect the Government's ongoing commitment to the rehabilitation of young offenders by ensuring that well behaved offenders, who have committed less serious offences, are not tainted by association with older, more sophisticated offenders.

Further, it is the Government's view that those older, more serious offenders are best managed in the secure disciplined environment of Corrective Services. That is the reason for the recent decision to transfer the administration of the Kariong Juvenile Justice Centre to the Department of Corrective Services.

The detainees located at Kariong are the worst behaved in the juvenile justice system. They are there either due to the severity of their offending, or due to a history of disruption or violence in the juvenile justice system. A significant number is aged over the age of eighteen.

They belong in the adult system—however, because they offended as juveniles the Government has taken steps to introduce particular arrangements for them.

The proposals outlined in the Bill will facilitate the smooth functioning of the new Kariong—which will be known as a "Juvenile Correctional Centre".

Kariong Juvenile Correctional Centre will be a specialist facility for offenders in the sixteen to twenty one years category. The Centre will accept transfers from the Department of Juvenile Justice of those older detainees who no longer fit into the juvenile system.

These individuals have either—

- previously been in the adult prison system
- been charged with a serious children's indictable offence
- or are detainees whose behaviour is such that the Director General of the Department of Juvenile Justice is satisfied that it warrants their transfer to the adult prison system.

The Department of Corrective Services already has specialist expertise in dealing with offenders in the eighteen to twenty one year age group—it operates the John Morony Correctional Centre specifically for such offenders.

The Kariong centre will be staffed by 38 uniformed Department of Corrective Services officers who have a wealth of experience in the custodial management of difficult offenders, violent and dangerous young offenders.

The Department of Corrective Services will institute a strict discipline system of privileges and sanctions. Officers will have the disciplinary and use of force powers of their counterparts in the adult system.

If an inmate threatens staff or other inmates with violence, or poses a threat to the security of the correctional centre, they may be placed in segregation. A new segregation unit will be built for this purpose.

A strict system of a hierarchy of sanctions and privileges has been instituted that requires inmates to behave appropriately, comply with directions and undertake necessary education and programs to earn privileges. Should inmates act up they will lose the privileges they have earned.

Those offenders whose behaviour is modified to the point where they are no longer required to be held in a juvenile correctional centre may be transferred back to the Department of Juvenile Justice. An interdepartmental committee will be established to facilitate such transfers.

Honourable members will recall that the previous Minister for Juvenile Justice, the Hon. Carmel Tebbutt, brought forward legislation in 2001 that amended s19 of the Children (Criminal Proceedings) Act 1987.

The amendment at that time, set out in the Children (Criminal Proceedings) Amendment Bill, provided that Courts had to find that "special circumstances" existed if a court sought to order an offender to serve their time in a detention centre beyond the age of 18. These are young people convicted of a serious children's indictable offence—offences such as homicide, aggravated sexual assault, violent robbery and serious drug offences.

That bill also provided that any person sentenced under section 19 was not eligible to serve a term of imprisonment in a detention centre beyond their twenty-first birthday, unless their date of release was within six months of them attaining that age.

That Act became law on 25 January 2002.

The amendments outlined in the current bill further amend s 19. In particular, the section will be amended to provide for new sentencing arrangements that will provide that young people subject to s 19 orders will be required to serve their order as a "juvenile offender", in contrast to the current situation of serving a s 19 order in "a detention centre".

This allows for such a sentence to be served in either a juvenile justice centre, or a juvenile correctional centre. To reflect the primary role of the Department of Juvenile Justice in managing young offenders, all young offenders sentenced by Courts to orders pursuant to section 19 orders will be sent in the first instance to the Department of Juvenile Justice.

A revised section 28 Children (Detention Centres) Act 1987 will allow the Director General of Department of Juvenile Justice, in consultation with the Commissioner for the Department of Corrective Service to administratively transfer appropriate young offenders to a "juvenile correctional centre".

Various safeguards are built into the Bill—

The Department of Corrective Services will implement the same standards as those applied to other juvenile custodial facilities, the Australasian Standards for Juvenile Custodial Facilities, with only slight variations.

Juvenile inmates under the age of eighteen cannot be moved from a juvenile correctional centre to the mainstream prison system without the recommendation of the Serious Offenders Review Council. When hearing such an application, the Review Council is required to co-opt a person who is either a current or former Children's Magistrate, or who is a legal practitioner of at least 7 years standing with experience as an advocate on behalf of children.

Such inmates are permitted to be present at any hearing conducted, and to be legally represented.

Placement is one of the most complex issues in corrections—and it should and will be decided by experienced professionals on a case by case basis. Placing 18 year old offenders with older adult inmates may not always be the best option for their safety and security, education and rehabilitation.

However, I can assure all Honourable members, if an inmate continues to be violent, dangerous and a threat to the security of Kariong then they will find themselves in an adult prison.

In relation to those over the age of eighteen years (which is the usual age that offenders serving sentences of imprisonment enter the adult system) the Commissioner for Corrective Services can move such juvenile inmates to the general prison population in the following circumstances; if the detainee's behaviour warrants it; if the detainee wants to be transferred; if it is in the interests of the inmate to be transferred, or if it is reasonable in all the circumstances.

A further amendment contained in the Bill is to be made to s 28BA of the Children (Detention Centres) Act 1987 to correct an anomaly between detainees on remand and those serving sentences.

Currently, adult aged detainees (those over the age of eighteen) who are serving a sentence as a juvenile and commit an offence in a juvenile justice centre and who are sent to the adult prison system to serve their sentence, are required to serve the balance of any juvenile order in the adult system.

However, those on remand in the juvenile system are not dealt with in the same way. The Bill provides that all detainees—whether on remand, or serving a sentence, will have to remain in the adult system to complete their custody.

The bill will further protect the integrity of our system of juvenile detention centres. This is a system focused on dealing with younger offenders, who are more amenable to the rehabilitative programs it has to offer.

I commend the bill to the House.

The Hon. CATHERINE CUSACK [3.35 p.m.]: Through the Minister's second reading speech, the Government presents this bill as enabling legislation formalising the transfer of Kariong Juvenile Justice Centre from Juvenile Justice to the Corrective Services system. This is a gross understatement of the reach and effect of the bill. It is also claimed that the bill will make it easier to transfer adults to the prison system. This, too, misrepresents the bill. I should like to place on record that two weeks ago I sought a departmental briefing on the bill, a courtesy normally extended to shadow Ministers by the Government in order to assist informed debate in the Parliament. However, the briefing was not granted. The Minister's continued misuse of her power and position to block information does nothing to engender the Opposition's confidence in this bill.

The bigger problem for the Government, and indeed for all of us, is that this important bill, which transforms the juvenile justice framework, is not carefully considered legislation to advance the interests of justice, employees and the rehabilitation of young offenders. The bill was rammed through the Legislative Assembly and rushed into this place in a single day as part of a media strategy to save the skin of the discredited Minister for Juvenile Justice, the Hon. Diane Beamer. Minister Beamer, her staff and Cabinet have no idea of the full implications of this legislation, which is being rammed through the Parliament.

The Minister's mishandling of Kariong Juvenile Justice Centre has become such an embarrassment to the Carr Government that something had to give. It was clear that Minister Beamer had bungled and was not up to the job of fixing the problems. Either the Minister had to go or Kariong had to go. When faced with this choice the Carr Labor Government, in the greatest traditions of the Labor Right, opted for political payback. So it was that at 10.00 a.m. on 3 November, the very day and hour that Legislative Council General Purpose Committee No. 3 was due to take evidence from Kariong staff, the Minister announced the transfer of the facility to Corrective Services and effectively sacked all the staff at the centre.

The Minister said that it was a tough decision. I concede that it was tough for the staff, but from the Minister's perspective it was a cowardly and dishonourable escape from her responsibilities. There was no discussion of the impact on other juvenile justice centres, and no analysis of what would happen to detainees under the age of 18 at Kariong, who were effectively transferred en masse to the prison system. There was no advice as to how this would work. The Minister failed to admit that, as of today, she is still technically responsible for Kariong detainees. Indeed, she has misled many people to believe that the Hon. John Hatzistergos now has this responsibility. All that we heard from her on that day was: "Tough! Tough! Tough!"

The Government's tactics reminded me of a story I read in Fia Cumming's book *Mates*, which charts the rise of a number of members of the New South Wales Labor Right, including the Premier, Bob Carr, and Leo McLeay. It is essential reading for anyone to understand the mentality of this Government. The story concerns Leo McLeay as a new, young Labor organiser, whose salary included a wage and a car. Now there was a pecking order—

The Hon. John Hatzistergos: Point of order: This is very interesting but we still do not know whether the Hon. Catherine Cusack is supporting or opposing the bill. We do not know what her position is. Now she is ranting about Leo McLeay, who had nothing to do with Kariong or juvenile detainees. She can use this interesting story for other social occasions, but not in debate on this bill.

The Hon. CATHERINE CUSACK: To the point of order: The Minister will need to be patient and listen to my contribution in order to ascertain the Opposition's position. I will not respond to his interjections on the matter.

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): Order! That is not speaking to the point of order.

The Hon. CATHERINE CUSACK: I am speaking about the mentality underpinning the bill and the decision to transfer Kariong. I am simply using an analogy, a device frequently used by members when speaking on legislation such as this, and I should be allowed to continue. I have only given one sentence of the analogy.

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): Order! I uphold the point of order on the ground of relevance. The Hon. Catherine Cusack should confine her remarks to the bill. She would be drawing a long bow to comment about a retired member of the Federal Parliament.

The Hon. CATHERINE CUSACK: I think the point of order adequately illustrates the point I was trying to make about the mentality of this Government, whose strong view is that if it does not like listening to something it will squash it. In the case of Leo McLeay, there was a car that he could not have and which did not belong to him, so he drove it into a pillar and wrecked it. It is the mentality of Robert Ray—

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): Order! The member will resume her seat. She might not be happy with my ruling on the point of order, but she will not canvass it. She may continue if she confines her remarks to the bill. If she has further information to give about the bill, the House is more than willing to hear it, but I have ruled on the point of order and she will not refer again to the matters I have directed her not to refer to.

The Hon. CATHERINE CUSACK: The mentality that underpins the Government's management of Kariong is the mentality of Robert Ray, who said, "Kill one, educate 1,000." The mentality that underpins this bill and the Kariong fiasco is the ethics of Graham Richardson, whose biography bears the title *Whatever It Takes.*

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): Order! The Hon. Catherine Cusack will resume her seat. The member continues to flout my ruling. I ask her to please confine her comments to the bill.

The Hon. CATHERINE CUSACK: Madam Deputy-President, can I clarify that you are forbidding me from speaking about the mentality that underpins this legislation and an analysis of that mentality, which is instrumental to our approach to this bill and the remarks that I will make in relation to the Opposition's position on the bill?

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): Order! The Hon. John Hatzistergos took a point of order in relation to comments the member was making in her contribution to this bill. I upheld the point of order and gave my reasons for doing so. By the Hon. Catherine Cusack continuing to refer to matters that were the subject of the point of order, she is flouting my ruling. As I have said, if the Hon. Catherine Cusack wants to make a contribution about Kariong, which is the subject of the bill, she may proceed.

The Hon. CATHERINE CUSACK: In relation to, effectively, the sacking of all of the staff at Kariong, I can only comment that such an action is typical of Labor Party bullying and thuggery. When the Minister for Juvenile Justice, the Hon. Diane Beamer, said that she had made a tough decision by sacking all the staff at Kariong—and thereby dealt with all the whistleblowers—I could not help but think of what a person, whose name I cannot mention, did to a motor vehicle.

What have the Kariong staff endured over the past two years? The Dalton report shows that at the time of Mr Dalton's visits, the majority of the detainees at Kariong—15 out of 28 offenders—were adults. Three of the offenders were over the age of 20 years. Staff have endured humiliation and insults by detainees whose deeds have gone unpunished. I have heard of one worker being grabbed by detainees and having cake smeared through her hair. The manager refused her request that the boys responsible of the attack be punished. I heard that another staff member whose nose was broken by a detainee was forced to apologise to the detainee. That matter has been vigorously denied by the Minister but in fact it is true, according to the staff member whose nose was broken and two witnesses to the event.

Casuals without training have been used in key strategic positions, including in control towers. In the event of an incident in the centre the control tower becomes the command post. One woman has spoken to me of how a casual with barely three months work experience was forced to man the tower. She cried and refused until another officer was sent to show her what to do. It was this use of casuals in the towers that permitted a pensioner group that was in search of a café to proceed through all five electronic gates and enter the inner compound of Kariong. Again, the Minister misled the public about the incident, claiming that the pensioners never entered areas that are accessed by detainees. In fact the pensioners went into the administration building, which is inside the inner compound. If Minister Beamer understood anything about Kariong, she would have understood that.

The staff wanted a hole in the gymnasium wall fixed so that the facility could be used. Because of budget constraints the hole was not fixed. Members can imagine how astonished the staff were when suddenly flat screen televisions were issued to every detainee at a cost of $1,000 each. That issue was not part of any reward or punishment regime; the television sets were just handed out. Adult detainees who wanted to go to gaol were told that they could not do so unless they committed a further offence, such as assaulting a worker. This outrageous situation was documented in an April 2004 discussion paper by the Ombudsman. The detainees were quite open about what was going on, but there was no response to this from the Minister, either through her department or in a signed submission that she made to the Ombudsman.

While staff were being bashed and stabbed, one detainee who was arrested by police for assault was sent to prison but incredibly was returned to Kariong, where he made threats against the same worker he had assaulted. As I have said, Minister Beamer effectively sacked all Kariong staff on 3 November. Permanent staff have a right to apply for a limited number of positions at the Frank Baxter Juvenile Justice Centre, but most of the Kariong staff were casuals. Approximately 60 jobless former staff members and their families are facing a bleak Christmas. The department is seeking to block some of the severance entitlements of long-term casuals. I have received many painful telephone calls from people in tears who face a bleak Christmas and an even bleaker future. Because former permanent staff members of Kariong are able to apply for jobs at the Baxter centre, a large number of casuals have been displaced and are also experiencing anguish. At least 100 workers and their families have had their lives utterly ruined by the Minister's incompetence and her shameless retribution against loyal employees. Those employees include whistleblowers, who believed that the situation was so bad that someone was about to be killed at Kariong.

The brainless, erratic behaviour of this Government was foretold by a person whose name I cannot mention but who deliberately smashed up a car that he was not entitled to—because it was a bloody-minded

thing to do and because he could. It is a chilling and dangerous mentality. It is the same spirit that was exhibited in the middle of November when the Minister for Justice, the Hon. John Hatzistergos, decided to put on a nice big spectacle to show off how tough he is. He invited the media to Kariong to put on hard hats and to film heavy equipment destroying the swimming pool.

The Hon. John Hatzistergos: Point of order: I did not. I did not invite the media.

The Hon. Don Harwin: To the point of order: The Minister was given the courtesy of having his second reading speech incorporated but he nevertheless has felt the need to hurl abuse across the table, just as he periodically does in question time. He should know better than to regard his comments as a point of order; they were an intervention in the debate. He knows that he will make his reply later in the afternoon, and he should wait until then, unless he has a legitimate point of order.

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): Order! I advise the Minister that his comments were more debating points than a point of order. Therefore I do not choose to uphold the point of order.

The Hon. CATHERINE CUSACK: On what advice was destruction of the swimming pool carried out? Presumably, it was done on the advice of a press secretary. No doubt the Government considered that stunt to be an act of genius and a brilliant use of its power, but as the *Central Coast Express Advocate* editorialised:

> We know that there are some tough nuts at Kariong, but does it take a sledgehammer to crack them? It is undeniable that a tougher regime of discipline was needed to restore order at the troubled centre. No more barbecues? Fine, it is not a holiday camp anyway. Daily musters and hygiene checks? Fine, it will reinforce daily discipline and routines. Work assignments? Again, fine, because it will stop the inmates from being totally idle. Tough new visitor checks? Great, because it will stop the drugs and other contraband from getting into the centre. Overalls without pockets? Clever, because it makes it harder to hide drugs. But inmates are also to be rewarded for good behaviour. With summer coming up, the prospect of earning a swim in a nice cool pool would seem to me to be a great inducement for good behaviour.

The impression we are left with is that this Government neglected Kariong, ignored pleas for help from staff, defended the management and the regime, did nothing to ensure that the recommendations of the Ombudsman and of the 2002 Dalton report were implemented—which incidentally included the pocketless overalls—and stood by while staff were bashed and while daily routines and programs fell to bits. The Government did nothing. It did not react at all. But now it has suddenly taken a wild correction to the right and it is guilty of erratic and dangerous policy driving, to say the least. The bill is not considered policy. It is the centrepiece of the Minister's strategy for taking Kariong out of the media.

The Government has undertaken an incredibly pigheaded defence of the management at Kariong. Minister Beamer has defended the management as being professional and effective. She has refused at all times to blame management, so what was the explanation for the cause of these problems? First we were told that there were no problems and it was all in the imagination of the Opposition. It was as if we had Queen Canute sitting on her throne, denying that the tide was coming in. Then it was a problem of reporting; later it was a problem of overtime; and then it was a problem of detainees being too difficult.

Finally, the Government, still backing its management, decided to blame the buildings. For dramatic effect the Minister announced that Kariong could close altogether. The public was, understandably, struck with disbelief. Instead of fixing Kariong, the Minister was going to close it. The Opposition highlighted the effect that closure would have on the rest of the detention centre system if Kariong detainees flowed back into less-secure facilities. I know that upset the Minister, but it was the truthful consequence of her knee-jerk announcement that she was considering closing the facility. However, the juvenile justice system needs Kariong. The blaming of the buildings has been elevated to an art form of dishonesty and deceit.

For example, on a number of occasions the Minister for Juvenile Justice and the Minister for Justice have said that Kariong was built and opened by former Liberal Minister Virginia Chadwick and have made much of the fact that I was employed on Mrs Chadwick's staff at the time. According to the Government I was responsible for the swimming pool and for choosing slippery tiles in the bathroom. That statement, along with almost every other statement by the Government, is completely false.

[*Interruption*]

The Hon. Don Harwin: Point of order: Over a series of weeks the Minister for Justice has hurled personal abuse across the Chamber at the Hon. Catherine Cusack on the very issue, to which she has refrained from replying. The Hon. Catherine Cusack is now replying to all the personal abuse that the Minister has thrown across the Chamber in a disorderly fashion. The Minister does not have the courtesy to listen to the explanation. His conduct is quite disorderly and his interjections are offensive and disorderly. I suggest that you call him to order.

The Hon. John Hatzistergos: To the point of order: I do not regard my description of the Hon. Catherine Cusack as a senior policy adviser to the Hon. Virginia Chadwick as an offensive description. If she feels it is offensive to describe her in those terms, I am happy to withdraw. But I have been provoked by her remarks in this speech and I ask you to take that into account in your ruling.

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): Order! There has been a degree of name calling and slanging by both the Minister and the member with the call by way of interjection and improper speaking. I suggest that debate will proceed more smoothly if members cease interjecting and if members with the call are slightly more temperate in their comments so as not to provoke other members. I uphold the point of order. Interjections are disorderly at all times. I ask all members to be mindful of the time that is consumed by interjections and responses to interjections and points of order that result from interjections.

The Hon. CATHERINE CUSACK: Virginia Chadwick had been Minister for School Education for more than a year when Kariong was opened by the then Minister for Justice, Terry Griffiths. I may have been on Mrs Chadwick's staff at the time, but I am far from certain. In any event, the only juvenile justice issues Mrs Chadwick dealt with at the time related to schools in detention centres, and I must say she did an amazingly good job in that regard. I will share with the House some of the history of Kariong, because it ought be on the public record. And the reasons for its existence ought not be forgotten, as they have a direct bearing on this bill.

When the Greiner Government was elected in 1988, the detention centre system was in a total mess. Only a few of the centres had fences, the staff were extremely badly paid, and no qualifications for staff or staff training were required. Honourable members may remember Frank Walker, a former member of this House. It was his special legacy that the Greiner Government had to clean up, and it was a huge task. The maximum security centre for juveniles was Endeavour House at Tamworth. That notorious prison was built in 1869 and featured a heritage-listed gallows. I visited Endeavour House in 1989 and found the conditions were appalling. An Australian Institute of Criminology paper entitled "Deaths in Custody Australia No. 3—Deaths in Juvenile Detention, 1980-1992", written by Christine Howlett, describes Endeavour House in the following terms:

> This regime was particularly harsh as the amenities available to detainees in their cells were most primitive: open tin cans were used as toilets, there were no washing facilities, yet detainees were given their meals in these cells. Further "privileges" such as phone calls were restricted. Such a regime, apparently contrary to the United Nations Standard Minimum Rules for the Treatment of Prisoners pertaining to accommodation and punishment (1984, especially Rules 12, 31 & 32), was justified by the Superintendent because of feared industrial action by staff who felt threatened by the detainees' behaviour.

The Wran Government had promised for 10 years to close Endeavour House, but when the Coalition was elected to office nothing had been done. There was no plan, no money—absolutely nothing to appropriately house detainees that were described then and today as the "worst of the worst".

The Hon. Eric Roozendaal: They didn't have a swimming pool.

The Hon. CATHERINE CUSACK: Does the Hon. Eric Roozendaal think his comment is funny? Has he ever been to Endeavour House and seen the conditions that Labor—

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): Order! I have warned members about interjections. I have asked members to cease interjecting.

The Hon. CATHERINE CUSACK: All of a sudden the Hon. Eric Roozendaal is an expert on all these matters! I look forward to hearing his contribution. The dire situation in Juvenile Justice when we took office in 1988 was highlighted by the Howlett Paper, which found that nationally there were nine juvenile deaths in custody between 1980 and 1992—five of which were in New South Wales. Three of the four deaths by suicide in New South Wales were associated with Endeavour House. The first death documented was that of Thomas, an Aboriginal youth from Dubbo who died on 23 March 1981 of a heart attack at Minda. The second death was Mark, a non-Aboriginal youth who committed suicide by hanging on 27 July 1987 at Endeavour House. He was aged 16 and had convictions for drug and property offences, motor vehicle theft and absconding.

The third death was Alex, another non-Aboriginal youth who committed suicide at Endeavour House on 3 October 1989. My recollection is that Alex was 16 years of age. His death followed a riot at the centre, which resulted in court proceedings to transfer some detainees to gaol. There was talk of a suicide pact amongst detainees to avoid going to prison.

The fourth death was Dermot, a 17-year-old Aboriginal youth who was detained at Endeavour House at the time of Alex's death. Dermot died in the prison system after being transferred there. Dermot was involved in the final disturbance at Endeavour House, but had requested a transfer from that juvenile facility to the adult gaol at Maitland. However, a few days after this transfer, on 21 October 1989, he was found hanged in his cell at the gaol. In stating his findings in relation to Dermot's death, the Coroner voiced his abhorrence at the conditions under which the detainees had been confined at Endeavour House following the riot. The Coroner was particularly critical of the lack of toilet facilities in detainees' cells. He wrote:

> I think that it is terribly, terribly degrading for a person to be locked in a cell all night with a pan or a bucket for toilet facilities. People—it does not matter whether they are prisoners, it does not matter whether they are hardened criminals, [they] are still entitled to some human dignity and I think the situation regarding toilets in cells, particularly when they were locked in cells for such a long time after the riot was intolerable.

Endeavour House was closed as a juvenile detention facility in December 1989. I will refer to the fifth death in custody in the juvenile system during that period because I believe it will be instructive to do so. Danny, a non-Aboriginal youth, died at the age of 17 on either 24 or 25 December 1990. According to the report, Danny's death was the result of self-inflicted hanging whilst he was detained at Yasmar Detention Centre, where he wanted to be so that he could be closer to his family at Christmas time. Danny was apparently excited about an expected visit from his mother on Christmas Day. However, in a letter found in his cell following his death he expressed the view that his mother probably would not visit him on that important day.

I give credit to the Howlett report. My remarks about those cases reflect the content of the report and accord with my memories. Virginia Chadwick did what no Labor Minister was able to do. She closed Endeavour House in December 1989 and obtained funding for a replacement. In July 1990 Mrs Chadwick was appointed Minister for School Education and the Hon. John Hannaford assumed responsibility for Community Services, including Juvenile Justice. In June 1991, while Kariong was still under construction, Premier Nick Greiner announced a new Juvenile Justice portfolio under Minister Terry Griffiths. On this basis, Juvenile Justice formally separated from Community Services—a decision that Labor Party spokesman Ron Dyer bagged at the time. It is worth noting that Mr Dyer said:

> There is every prospect that juveniles will be treated as harshly as adult offenders are... I think there's every reason to suppose the emphasis will be on punishment rather than rehabilitation. There is also a very grave danger that juveniles will be virtually the fag end of the Department's administration.

According to newspaper reports:

> Mr Dyer said the Corrective Services Department was "totally ill-equipped" to deal with the rehabilitation of young offenders.

Of course, these fears proved to be unfounded as the juvenile facilities were kept completely separate. Minister Griffiths commissioned a special report on the future of juvenile justice by a committee chaired by Marie Bashir. The report was published as a green paper when Wayne Merton was Minister for Justice. It was a remarkable and farsighted document, in many ways as relevant today as it was 10 years ago.

The Government's efforts to deflect blame onto the buildings are uninformed and unconvincing. The Kariong centre that this Government inherited is light years ahead of Endeavour House—that is the Government's record and it was shameful. For the Government to discover suddenly, after 10 years in office, that the stairwells are too noisy and the building is not completely to its liking is a pathetic excuse and a pathetic way of avoiding its accountability. The problems for which the Government is accountable include permitting a welfare mentality to overwhelm the management imperatives at the centre. The overpowering welfare mentality destroyed the discipline routine and stymied efforts to introduce a meaningful regime, where good behaviour was rewarded and bad behaviour was punished. The 2002 Dalton report made recommendations along these lines. Such an environment is craved not only by staff but by detainees, and the management and leadership of Kariong failed to deliver it.

We have given examples of a worker being forced to apologise for his broken nose—an allegation denied by the Government but proven—the spending on pizzas, X Boxes, soft drinks and lollies, and outfitting each room with a flat-screen television. They were all unearned rights of residency. Detainees could opt out of

programs and lounge in their rooms all day. There was no structure or discipline and punishments were frequently watered down. Time in confinement was reduced and detainees were allowed to take doonas, magazines and walkmans into confinement cells. Most pathetic is the fact that the Government had to resort to getting the deputy superintendent of the Goulburn super-max prison to come to Kariong to stop the pizza purchases. What a reflection that is on juvenile justice! What an admission by Minister Beamer that she was incapable of issuing the simplest directives to her staff.

Secondly, part of the ideologically misguided management philosophy involved clinging to the practice of retaining adults in the juvenile system. Indeed, the Ombudsman's discussion paper released in April this year showed that in 1995, 21 per cent of the detention centre population was adult, with no-one aged over 21 years. Today the proportion of adults in a more hardened detention centre population is much higher at 28 per cent, with four aged over 21. The adult population in Kariong includes most of the very serious offenders—the murderers and rapists for whom the public has very little sympathy. Why is the Government doing this? It is no good for the adults, it is no good for the younger detainees and it is no good for the staff. It is not what the community wants. Yet in many respects this bill entrenches the practice further. Why stick doggedly to this policy when it is against everyone's interests, including those of the Government?

A third cause of the crisis is the funding cuts to the Department of Juvenile Justice, mismanagement of industrial relations and reliance on casual staff—at times casuals were rostered to all positions in the Carinya unit, which is the behaviour management unit at Kariong. No wonder those staff did not stand a chance. Where was WorkCover, where was the Public Service Association, and where was the Minister's duty of care to her employees when workers were being bashed by detainees in order to secure a ticket to prison? A pensioner group in search of the café stumbled into the inner compound at Kariong because inexperienced casuals were placed in positions well beyond their level of training and responsibility.

Finally, and most significant, is the naïveté of the Minister for Juvenile Justice, who ignored many, many warnings and operated instead on autopilot. She had evidence of all the problems but took no action. She is unable to point to a single occasion when she intervened to fix the problems. Minister Beamer instead defended the indefensible and expressed full confidence in the professionalism of management at Kariong. She was conning the Parliament and trying to fool the public. This mishandling of the allegations raised by the Opposition caused the evidence to be leaked that proved conclusively that there were major problems in Kariong and that the Minister was covering them up.

I have heard some people say, "Poor Diane Beamer; I feel sorry for her." I have heard people apologise for the Minister, saying, "It's probably not her fault; she's out of her depth." But I say to those people that they should feel no sympathy for the Minister. I point them to the staff whose lives have been shattered by physical assaults by detainees that were a direct and inevitable result of the dysfunctional and dangerous environment that the Minister defended. I urge them to talk to the people who cowered in the darkness of a unit that had been taken over by detainees or to the staff member who was trapped in a headlock embrace by a vicious gang rapist, who held a sharpened implement to the staff member's throat. I urge them to listen to that staff member tell of his paralysing fear as his assailant literally frothed at the mouth and screamed repeatedly, "You are going to die." Outside the unit management made preparations to negotiate while that poor staff member was subject to intense, brutal physical and psychological abuse. I invite any person to speak to this man and to others who have told me the most amazing stories, and then express sympathy for the Minister. This is not a game. It is real life, and the stakes could not be higher or the consequences more serious.

I turn to Minister Beamer's remarks about the bill. Her second reading speech on this bill is one of the poorest I have ever read. The speech does not take us through the legislation in the usual way. Indeed, when it comes to interpreting the provisions of the bill, the Minister's second reading speech is a wholly unreliable document that sheds little light on what is intended and how the bill will operate. I suspect this is because the Minister genuinely does not know what the effects of the bill will be. Key concepts are missing from the speech. For example, the word "responsibility" does not appear even once in the speech or the bill. Which Minister is ultimately responsible for Kariong and the detainees, given that they are not in detention or in prison?

Given that the bill is all about Minister Beamer shedding and avoiding responsibility, it is probably not a surprise that the word "responsibility" has been deleted from all vocabulary relating to the bill. The word "accountability" does not appear in either the second reading speech or the bill. Who is accountable for the management of Kariong, the mix of offenders and the Government's continuing refusal to send adult Kariong inmates to prison? It seems that the word "accountability", like the word "responsibility", and indeed the word "transparency", has no place in the language of the Carr Government. Nor do the words "performance", "crime",

"punishment", "justice" and "victim", none of which are mentioned in the second reading speech or the legislation. I am intrigued as to how a matter of such weight and significance could be discussed without drawing upon any of those concepts.

That issue is particularly significant given that the Legislation Review Committee has referred to Parliament issues arising from new section 41C, which empowers the Minister for Justice to transfer detainees aged under 18 to prison. The committee notes that it is an internationally recognised right of children to be detained separately from adults except when that is not in the best interests of the child. This is a very serious matter that the Government has failed to consider or address in debate about the bill. The Opposition has argued consistently that adults must be separated from children. The inmates of Kariong of greatest concern to the public should be in prison. That is our solution but the Government's solution is to pick up the whole facility—children and all—and dump it into Corrective Services.

The seminal issue for the Opposition is the dishonest and desperate measures that the Government has taken to keep adults in juvenile facilities. The bill before the House provides a new shield for these adults, most of whom are on remand or have been found guilty of homicide, gang rape or aggravated armed robbery. It does this in several ways. The bill creates a new category of "juvenile inmate", and defines such a person as being under 21 years of age. The Opposition believes nobody aged 18 to 21 years is a juvenile; such a person is an adult. This is a fundamental point of difference between the Opposition and the Government. I point out that at least 600 prisoners in this age range are held in the facilities for which the Minister for Justice is responsible, and he has a purpose-built facility at Parklea to manage them. Why is Minister Beamer clinging to the policy of retaining these adults?

[*Interruption*]

That is not what the Minister's web site says. I thank the Minister for that. The Opposition is incredulous at Minister Beamer's defiant defence of these adult offenders, even in the face of her experience and strong community opinion. Why does she keep devising convoluted ways of keeping them out of prison? Why will she not send them where they belong, which is to gaol with all the other adults? The bill amends section 19 of the Children (Criminal Proceedings) Act 1987 and changes the way in which courts direct imprisonment. Previously the court would direct offenders to serve sentences in a detention centre. The new provision requires that they may serve them "as a juvenile offender". In other words, the courts are no longer specifying where the sentence will be served. A new note to be inserted at the end of section 19 (1) states:

> The effect of such an order is that the person to whom the order relates will be committed to a detention centre … There he or she will be detained as specified in the order. In certain circumstances he or she may subsequently be transferred to a juvenile correctional centre pursuant to an order under Section 28 of the Children (Detention Centres) Act 1987.

What that means is that every person sentenced as a juvenile, irrespective of their age—they could be 21 years of age—their behaviour or the nature of their offence, must be sent to a detention centre. They cannot be sent to Kariong, which was the case previously, as all access to Kariong is now in the hands of the bureaucracy. Juvenile offenders must now go to a detention centre first. Given some of the very high profile offenders housed at Kariong, that is utterly inappropriate. I am aware of one person, a prominent member of a south-western Sydney gang who was considered so dangerous that when he was sent to Kariong 30 police, including sharpshooters, were involved in the operation to transfer him from court to Kariong. It appears that this bill will require the police to go on a merry-go-round of detention centre visits, prior to moving these very dangerous offenders to Kariong, while admissions paperwork is completed and transfers arranged with the consent of the Director-General of Corrective Services.

To assist honourable members to understand the nature of the adults to whom I am referring, I can read a list of offences of 12 adult detainees held at Kariong as at 26 October. This document was tabled on 3 November before General Purpose Standing Committee No. 3, with correspondence from Minister Beamer. The document contains the offences. It does not contain detainee names; they are numbered. I seek leave to have the document incorporated into *Hansard*.

The Hon. John Hatzistergos: We object to leave and we would object to the honourable member referring to the document. The document I have just been handed appears to have been tabled before General Purpose Standing Committee No. 3, attached to correspondence apparently received by the committee. It is inappropriate, bearing in mind the take-note debate on that committee report, that the document be incorporated. It should appropriately be raised in the take-note debate. Honourable members cannot refer to something which is before the House in a take-note debate.

The Hon. CATHERINE CUSACK: Detainee 1—

The Hon. John Hatzistergos: I object to the reading of this document because again it refers to something that was before General Purpose Standing Committee No. 3, attached to correspondence. It is inappropriate that the document be tabled or incorporated in *Hansard*. It is inappropriate for the honourable member to refer to something which clearly the committee has deliberated upon and which will be discussed by this House as part of the take-note debate.

The Hon. CATHERINE CUSACK: To the point of order: throughout the Minister's second reading speech she referred to documents such as the Dalton report which were tabled to our committee and which have been substantially drawn upon and referred to by the Minister in the debate on this legislation. It is impossible to even discuss this bill if the information and the content of the consideration of that committee is to be completely deleted. In fact, I suggest that the Minister is almost saying that the whole bill is out of order and should not be considered on the grounds that a committee looked at Kariong, and everything that has been sent to that committee has to be deleted from this debate. It is an absolutely ludicrous proposal.

The Hon. Amanda Fazio: To the point of order: The Hon. Catherine Cusack referred to the report prepared by Vern Dalton into the Kariong centre. The difference between the document being referred to in this point of order and the Dalton report is that the Dalton report was not only made available to General Purpose Standing Committee No. 3 but was also publicly released.

The Hon. CATHERINE CUSACK: I want to clarify that the report tabled was the 2002 Dalton report. In fact, the department and the Minister claimed privilege on the 2004 Dalton report tabled in this Parliament and it has not been made public, even though the Minister at the same time held a press conference and distributed copies of it to the public. The 2004 Dalton report has not been tabled in this Parliament. It is in the Clerk's office under lock and key and also on the desk of every journalist and editor in Sydney. That is the ludicrous situation in relation to privilege on that document.

The Hon. Greg Pearce: To the point of order: Standing Order 92 is relevant. It states:

> (1) A member may not digress from the subject matter of any question under discussion; or anticipate the discussion of any matter shown on the Notice Paper, except an item of private members' business outside the order of precedence—

which the take-note debate is—

> unless, in the opinion of the President there is no likelihood of the motion or order of the day being called on within a reasonable time.

The Hon. Don Harwin: To the point of order: I want to reinforce comments made by the Hon. Greg Pearce about the exception contained in Standing Order 92, which states that there is no likelihood of the motion or order of the day being called on within a reasonable time. As the special adjournment will be moved later today for more than 11 weeks, it is quite clear that it would not be called on within a reasonable time. Bear in mind that this is the last sitting day of 2004, and there will be no discussion of the committee report within a reasonable time.

The Hon. Amanda Fazio: To the point of order: The minutes of 3 November of General Purpose Standing Committee No. 3, when the Hon. Catherine Cusack was present, show that it received in correspondence a copy of a letter from Mr Vern Dalton to the Hon. Diane Beamer, Member of Parliament, and Minister for Juvenile Justice, and I quote from the Dalton Report dated 5 October 2004. It was resolved on the motion of the Hon. Catherine Cusack that apart from the operational procedures document attached to the letter from the Hon. Diane Beamer, which would be made available for perusal by committee members in the Clerk's office, all other documents provided with the Minister's letter—which means the Dalton report—would be made public. That decision was made by that committee on the motion of the Hon. Catherine Cusack on 3 November. So the Dalton report is a publicly available document.

The Hon. CATHERINE CUSACK: Further to the point of order: For the benefit and clarification of the Hon. Amanda Fazio, that included the 2002 Dalton report. The 2004 Dalton report came under a call for papers. It was tabled in this Chamber; privilege was claimed. The Hon. Amanda Fazio will find out from the Clerk that he is not able to release it to the general public.

The Hon. Amanda Fazio: Further to the point of order: Not only is that incorrect but the Minister for Justice and I have also been advised by an adviser for the Minister for Juvenile Justice that the Minister has

made the report available. Apart from that, the point of order is about a single page document that the Hon. Catherine Cusack sought leave to table, and leave was granted. That is what the point of order is about, and that is what I was talking about.

The Hon. CATHERINE CUSACK: Madam Deputy Chair, was leave granted for me to incorporate it in *Hansard*?

The DEPUTY-PRESIDENT (The Hon. Kayee Griffin): My understanding was that leave was not granted.

The Hon. John Hatzistergos: I objected to the honourable member raising or discussing the issue on a similar basis.

The DEPUTY-PRESIDENT (The Hon. Kayee Griffin): Order! To try to clarify the document, the subject of the point of order, does the document that the honourable member seeks to have incorporated form part of the Kariong report, at page 10? Is the document part of what is deemed to be part of the operational procedures document that is attached to the letter from the Hon. Diane Beamer?

The Hon. CATHERINE CUSACK: It is not part of that. The document that I seek to have incorporated in *Hansard* is a document that was tabled before, and agreed to be made public by, General Purpose Standing Committee No. 3 at its meeting on 3 November this year. It is entitled "Young People in Kariong JJC 18 years and over as at 26 October 2004". It does not name the detainees, but it gives numbers for 12 detainees and lists their offences.

The DEPUTY-PRESIDENT (The Hon. Kayee Griffin): Order! It is difficult to fully comprehend the minutes of a meeting of a committee on which many members of this Chamber do not serve. If the Hon. Catherine Cusack wishes to refer to a document that she states has been made public through the committee process, it is a matter for the honourable member to vouch whether that is correct. If the honourable member wishes to use that document on the basis that it has been made public, that is a matter for the honourable member.

The Hon. CATHERINE CUSACK: I will read the document into *Hansard*:

Detainee 1	Homicide
Detainee 2	Homicide
Detainee 3	Murder; Aggravated robbery with wounding; Aggravated robbery.
Detainee 4	Aggravated break & enter with intent to inflict GBH; aggravated Sexual assault in company x 6; Aggravated sexual assault in company and inflicting ABH x 6; Specially aggravated break & enter and commit serious indictable offence.
Detainee 5	Murder; Aggravated robbery; Aggravated robbery with wounding/GBH.
Detainee 6	Sexual intercourse w/o consent x 10; Threat to inflict ABH by means of offensive weapon x 10; Aggravated sexual assault in company; Threaten ABH by weapon x 7; Take/detain person in company with intent to obtain advantage.
Detainee 7	Aggravated sexual assault in company – Threaten ABH by weapon x 7; Agg indecent assault in company; Detain for advantage x 2; Aggravated robbery; Aggravated sexual assault – under 16 x 3; Aggravated indecent assault – under 16 x 2; Aggravated act of indecency – under 16 in company; Act/make omission intent pervert course of justice; Aggravated robbery.
Detainee 8	Murder, Aggravated robbery. Aggravated robbery with wounding.
Detainee 9	Assault with intent to rob whilst in company; Specially aggravated kidnapping; Common assault x 1; Take and drive conveyance without consent of owner x 2; Escape/attempt lawful custody x 2.
Detainee 10	Robbery whilst armed with offensive weapon.
Detainee 11	Murder
Detainee 12	Murder

These detainees should be in the larger prison system. They are all adults, and they should be with the other adults who are in the prison system. Now, before some honourable members start objecting about all the

problems of younger prisoners in the adult system—and by "younger" I mean between 18 and 25 years—I point out that the Coalition recognises that in some respects these younger offenders are a special group. That is why in 1992 we designated Parklea prison as a specialist facility for young offenders in that 18 to 25 years age group. I could read a description of Parklea to the Minister.

The Hon. John Hatzistergos: Wrong. It is a remand centre.

The Hon. CATHERINE CUSACK: I am referring to Parklea, which was designated in 1992 a special facility for young offenders in the age group 18 to 25 years. We ask: Why should not the adults at Kariong be detained with the other 600 or so young offenders in the prison system? It is nonsensical to have the juvenile system cling to them. I foreshadow, on behalf of the Opposition, our desire to move amendments in Committee to rectify this situation.

The detainees in all detention centres that are of greatest concern to the Opposition are the real juveniles, that is, those aged under 18 years. Some of these who ought to be managed in the juvenile system are now being transferred to Corrective Services. I know, as Minister Beamer and Minister Hatzistergos know, that many of these young offenders are suicide risks. They are in Kariong, not because of their offences but because of their behaviour and the inability of the rest of the juvenile system to manage their problems.

These detainees are not being supervised by the specialist Serious Young Offenders Review Panel. Indeed that panel does not exist in the bill and was not mentioned in the second reading speech. It seems to have disappeared altogether—another omission from the Minister's second reading speech! These detainees, once transferred to Kariong, become inmates and are liable to transfer to prison without reference to any juvenile justice authority. There is to be no more oversight by the courts of juvenile transfers to prison. This is a first in Australia possibly since convict days, when there were no distinctions at all between children and adults. In that sense, this bill is a humiliating admission of failure by the Minister and the Department of Juvenile Justice.

The bill strips Minister Beamer of virtually all her ministerial powers in relation to detainees. Her consent is no longer required for any transfers, except in some cases from the prison system back to detention. What a humiliation! And what a vote of no confidence in Minister Beamer by her Cabinet colleagues! What an abrogation of responsibility and accountability—as I have said, two key words that were missing altogether from the Minister's second reading speech.

As a further measure to avoid accountability the bill is not Kariong specific. It seeks to give the Government power to declare any correctional facility to be a juvenile correctional centre without further reference to the Parliament. Given the record of the Government, its mismanagement and its lax regard for the truth, it must think we are idiots to let that type of power slip through unchecked. The Opposition will propose an amendment to ensure that any such proclamation would need to be brought before the Parliament. The Opposition will propose further amendments to give effect to a strong belief that adults must be separated from children. The definition of an adult is 18 years and over, while the definition of a child is under 18 years of age. However, prior to the Committee stage we will seek the support of honourable members to inquire more deeply into the rushed and erratic plans of this Government. I move:

1. That the question be amended by omitting all words after "That" and inserting instead "this bill be referred to a select committee for inquiry and report."

2. That, notwithstanding the generality of paragraph 1, the committee examine in particular the following matters:

   (a) the reasons for, and the consequences of, the transfer of management responsibility for the Kariong Juvenile Justice Centre from the Department of Juvenile Justice to the Department of Corrective Services including the impact on staff at Kariong and Baxter detention centres,

   (b) whether the transition of Kariong Juvenile Justice Centre into a juvenile correctional centre operated by the Department of Corrective Services is the most effective method of addressing management problems at that centre,

   (c) the issue of adult detainees sentenced as juvenile offenders at Kariong and elsewhere in the juvenile detention centre system,

   (d) the classification system and appropriateness of placements for detainees,

   (e) alternatives to the establishment of a juvenile correctional centre,

   (f) the wider implications of incarcerating juveniles in correctional centres, and

(g) management of staff assaults in the juvenile justice system.

3. That, notwithstanding anything contained in the standing orders, the committee consist of six members, comprising:

(a) two Government members,

(b) Ms Cusack and Mr Lynn, and

(c) Revd Dr Moyes and Dr Wong.

4. That the Chair of the committee be Revd Dr Moyes.

5 That the committee report by 29 July 2005.

The Hon. PETER BREEN [4.32 p.m.]: As far back as March 2000 the Ombudsman identified significant problems at Kariong Juvenile Justice Centre. Apparently these problems have escalated since late 2003. We now find the Government introducing legislation to conceal a litany of mistakes made by the department in relation to Kariong. I served with the Hon. Catherine Cusack, the Hon. Charlie Lynn and the Hon. John Tingle on the committee that inquired into Kariong. We were shocked and dismayed by some of the evidence we heard and by the way in which the staff at Kariong were treated. In November 2003 nine offenders barricaded themselves in a room and destroyed property, which resulted in one offender being taken to hospital and two staff suffering minor injuries. In February this year a riot resulted in mattresses being set on fire and 20 people receiving treatment, six of whom required hospitalisation.

There have been constant media reports of staff being abused physically and taunted by detainees because of their lack of authority. Finally there was the comical incident referred to by the Hon. Catherine Cusack, which involved a group of seniors who wound up in the middle of the centre while looking for a coffee shop. I understand the seniors managed to pass through five sets of electronic gates before they were advised that they were at the wrong location. There have been continual reports of staff being frequently assaulted by detainees and undermined by management, episodes of staff apologising to detainees and punishments they imposed being overruled. It is behaviour more closely resembling a schoolies week than a State correctional facility for serious juvenile offenders. These episodes have dismayed and disturbed the public. It is clear that the punishment, rehabilitation and incentive schemes in place at Kariong were ineffective and inappropriate to deal with the calibre of detainees held at the facility.

The Ombudsman's 2000 report recommended that a competent and professional management team was needed to instil a sense of teamwork and professionalism among staff. Evidence taken by General Purpose Standing Committee No. 3 in November reveals clearly that this objective has not been met—not even close. It has taken a near disaster at Kariong to prompt any sort of action from the Government. Kariong staff have been kicked out of their jobs and replaced by Corrective Services people for daring to complain about the conditions in which they were expected to work, conditions that made them vulnerable to physical and mental abuse. The staff members tried all possible avenues to draw attention to the vast number of problems at Kariong. They attempted to alert the Minister to the problems they had with management. When this achieved nothing and the assaults continued, they approached the Public Service Association to intervene, then the Ombudsman and, finally, when all other avenues failed, members of Parliament.

The Government responded to the youth officers and staff at Kariong by suppressing the evidence provided to the committee and announcing that staff would lose their jobs to Corrective Services officers at the same time as the committee began hearing evidence. In fact, both events took place on 3 November at 10.00 a.m. Whistleblower protection for the Kariong staff under current New South Wales law seems severely deficient. In April this year the Ombudsman reported that the New South Wales Protected Disclosures Act fails to achieve two out of its three core objectives: protecting whistleblowers and insuring disclosures are dealt with properly. The Act has failed the staff at Kariong, management failed the staff at Kariong, the Department of Juvenile Justice failed the staff at Kariong and General Purpose Standing Committee No. 3 failed the staff when it chose to suppress evidence given in the hearings.

The problems at Kariong have been shrouded in secrecy. From minimising complaints by staff members about the lawlessness at the centre to reluctantly and hesitantly publishing the Dalton report, the Department of Juvenile Justice has attempted to keep the problems at Kariong out of the public eye. The legislation is a knee-jerk reaction by the Government to conceal the mistakes made at Kariong. The bill must define what it means by a "proposed juvenile correctional centre". What exactly is a proposed juvenile correctional centre? It is wrong to pass legislation that does not state clearly where these young offenders will be held. The Minister should expand on what is meant by a proposed juvenile correctional centre before asking the

House to pass the bill. The bill seeks to facilitate the transfer of young offenders within the juvenile justice system, including to an adult prison, and to revoke special provisions, such as attending employment.

Juvenile justice centres are an important part of the criminal justice system. When the young offender graduates to an adult prison the chances of that person becoming a better criminal are greatly enhanced. Young offenders need the right combination of punishment and rehabilitation, incentives and future opportunities. Although this was not achieved at Kariong I would be cautious in deciding to send young offenders into the company of hardened adult criminals. There is also the question of the appropriateness of allowing juvenile detainees to choose if they want to be transferred to an adult prison. Choosing an adult prison really would not be in their best interests, and the department should recognise this rather than take the easy option in the short term as set out in new section 41C (3) bill. I would also question the suitability of enabling juvenile centres to be managed under principles applied to adult prisons, as set out in new section 3 (1) in item [2] of schedule 2 to the bill. Juvenile justice centres place emphasis on reintroducing young offenders back into society, an objective not always achieved or even emphasised in adult prisons.

Transferring responsibility for Kariong to Corrective Services is an admission of defeat by the Government. It has failed the staff at Kariong and it has failed the detainees. Kariong should have been a place of reform and rehabilitation for these young offenders, but because of incompetent management and defective operational structures detainees now will be subject to an adult prison management system. Their greatest opportunities for reform and rehabilitation will be lost forever. It is a mistake to write off young offenders. The Kariong detainees were entitled to expect education, motivation, incentive, rehabilitation and the chance to start again. Because of the failures of Kariong these detainees will be transferred to an adult prison system characterised by overcrowding and assault. The legislation marks a turning point away from the commitment to rehabilitate young people and, instead, to cement them into a life of habitual crime and prison.

I refer to the case of a prisoner named Bronson Blessington, whose redetermination was dealt with in the Supreme Court last Friday. It is a very interesting case. The prisoner entered the juvenile justice system when he was 14 years old. He was a detainee at a place called Minali Receiving and Assessment Centre in 1988. He was in prison with only one previous conviction, stealing a pair of sunglasses. He ran away from Minali and several days later became caught up with other street kids in the murder of Janine Balding. That was a horrendous crime involving abduction, rape and murder. Blessington was sentenced to life imprisonment.

When he was still in the juvenile justice system and aged 17 he converted to Christianity. His grandparents were Salvation Army officers. This boy went from being a rapist and murderer to literally being transformed in the juvenile justice system. He studied theology at Moore Theological College and in the 16 years that he has been in prison, something like 5,000 prisoner attendances have been recorded at his scripture classes. This is an extraordinary outcome for someone so young in the juvenile justice system and who, through various means, has been rehabilitated. In fact, coincidentally, only yesterday, 8 December, I received an email from a former prisoner called Michael Roberts. I shall take the time of the House to read the email, which states:

> I write in regard to the efforts you have gone to for Bronson Blessington and in pursuit of a fairer legal system for all and I would like to sincerely commend and encourage you for all of that. To place some background on my involvement, basically I met Bronson Blessington in 1996 while serving a three-month sentence in Long Bay prison for a white collar crime. I mistakenly requested protection and so found myself lodging in the segregation section of Long Bay where protection was a rarity and I met Bronson Blessington. Basically he was responsible for my subsequent conversion to Christianity and my life has been vastly more satisfying and fulfilling since. In the eight years that I have been out of prison I have married and have two wonderful children and attend church regularly.
>
> Mike Roberts

He gave his phone number and address. I do not know that man, but he is testimony to the work of this boy in the prison system. The boy is a product of Juvenile Justice and I commend to the House any measures that can be put in place to help young people who go off the rails to find direction and a new way of living their lives. The extent to which Kariong failed to do that is a great disappointment to everyone, but it would be an extreme overreaction to write off juveniles who commit serious crimes by introducing them to the adult prison system. That is a huge mistake. To the extent that this bill seeks to achieve that, I oppose it.

If there is any lesson to be learned from Kariong it should be that young people have to be treated differently. They are not adults. Some of them are the product of broken marriages, some suffer from developmental delay and others have been abused. They must be treated differently, yet they will not be given that opportunity in the adult prison system. For that reason we should not give up on these people, even though they are the worst of the worst. We should be doing something to make sure that they are given special attention and have an opportunity to be rehabilitated.

The Hon. Dr PETER WONG [4.43 p.m.]: In speaking to the Juvenile Offenders Legislation Amendment Bill I will not rely on a massive use of quotes, nor is there a need to do so on this bill. During the past 10 years the history of juvenile justice has been the subject of frequent reports and studies that supply much of the research behind this speech today. No doubt many honourable members will rely upon the valuable and considered work of the award-winning *Daily Telegraph* as the basis of their support for the bill. I do not believe that it is unreasonable for them to also consider the raft of material provided by other experts in the field. These include the report of the Standing Committee on Social Issues entitled "Juvenile Justice in NSW" dated 1992, the report of the Juvenile Justice Advisory Council of New South Wales entitled "Future Directions for Juvenile Justice" dated 1993, the report of the NSW Ombudsman entitled "Inquiry into Juvenile Justice Centres", Volumes 1 and 2, dated 1996, the report of the NSW Ombudsman entitled "Investigation into Kariong Juvenile Justice Centre" dated 2000, the Dalton and Johnston report entitled "Review of Kariong Juvenile Justice Centre" dated 2002, and the Dalton report entitled "Kariong Juvenile Justice Centre" dated 2004.

Unfortunately, there have been many other reports that we have not had the privilege of seeing, such as the Shier documents and evaluations by the Department of Corrective Services. Such important material should be made available to all honourable members. I look forward to the day when a royal commission finally makes the documents publicly available. This bill should concern every member in this House and the other place. It is a particularly nasty bill and is one of the most retrograde steps taken in the penal history of this State. I am alarmed that the bill thrusts the onus of responsibility for what has occurred at Kariong solely on the young inmates and shifts the blame away from the workers and management at Kariong. In doing so it exonerates the Department of Juvenile Justice and the Government from any blame and responsibility.

This exoneration will have a detrimental effect upon the amenity of society for the citizens of New South Wales. It will ensure that the Department of Juvenile Justice will not have to evaluate its appalling standards and abilities and will continue to avoid fulfilling its task of rehabilitating young people who have gone astray. The department will continue to simply shrug its shoulders and release meaningless statements such as, "the youth of today are much more dangerous and damaged than in the past." Anyone who has studied criminology and the history of youth crime in this country would know only too well that statistics show that we are no worse off today than at any time in the past. Drug and alcohol addiction, pack rape, murder, crime and vice have remained constant.

We need only to hark back to the young larrikins of Sydney town whose attacks on police were so brazen and constant as to lead to the New South Wales constabulary being among the first police forces in the world to be issued with firearms. Around the time of the Second World War young men of the ages of those in Kariong today whom we remember as the razor gangs were heavily involved in the cocaine trade, murder, prostitution and extortion rackets. Claims by the Department of Juvenile Justice and the Government that young people today are worse than in the past does a tremendous disservice to those young people who have fallen foul of the law at a young age. More importantly, it does a disservice to the wider community, which is constantly being given false and misleading information in order to exonerate itself of any blame or responsibility.

We need a department that works, that has ability and that sets high standards of professionalism. A department that pays mere lip-service and releases false and misleading information in order to justify its failures is not something in which the taxpayers of New South Wales can have any confidence. This is the heart of the matter. People have been misled into believing that the failure at Kariong is not just the responsibility of the young people there but is a fundamental failure of the welfare model ideal. The welfare model has been put forward as being too soft. Young people at Kariong are portrayed as taking advantage of that soft model to unreasonably influence the adult employees of the State, as if they have been somehow brain damaged by the welfare model and turned into pliable automatons. Nothing could be further from the truth when one reads the reports that are publicly available.

Generally, the welfare model has never existed in the juvenile justice system, and Kariong in particular. In fact, certain cliques of staff have done everything possible to undermine the welfare approach in order to keep Kariong as a punitive and correctional facility. To shift the onus of blame onto Kariong and to push for a tough but disciplinary style total institution may result in the implementation of a more media-manageable environment, but it will achieve absolutely nothing for the safety and wellbeing of the general public. Furthermore, to argue that the young people at Kariong are manipulating the system in order to be moved into the adult correctional system so that they can buy cigarettes and be allowed to spend up to $100 a week on buy-ups totally misses the point.

The reality is that these inmates are not as stupid as we are led to believe. There are many reasons why many of them would prefer to be in an adult correctional facility. It would be more credible to suggest that many

seek to get away from a clearly dysfunctional system that lacks any serious programs for rehabilitation, education and self-improvement.

It is clear that many of the young offenders at Kariong wish to get away from the dictatorial staff who think their job is to make young offenders suffer in a stifling atmosphere of aggressive punishment and ceaseless boredom. Far from the services that the Department of Juvenile Justice advertises that these young people receive, the few services that exist are run under a regime of mismanagement, staff infighting and a system that is directionless and disorientated. Somehow we expect these highly disturbed and dysfunctional children to be rehabilitated in a system that is as clearly disturbed and dysfunctional as they are. Why would they not riot in a place like that—a place that the Minister herself has tellingly described in her second reading reply as a "regime"?

I have never previously mentioned Government briefings in this place. However, today I am compelled to do so. The staffer who gave me the briefing on this bill on Tuesday stated, "The legislation is to maintain the integrity of the juvenile justice system." That was just the phrase I was looking for to encapsulate the fear that this bill engenders in me. How can one maintain the integrity of the juvenile justice system by removing from it what should have been its flagship centre—a centre where one would expect to see the highest level of professionalism, integrity, programming and opportunities for relocation of young offenders? That decision is nothing less than simply astonishing and it is something that the Government is yet to explain. As no such explanation has been forthcoming, one can only believe that the Government intends to maintain the integrity of the juvenile justice system by making Kariong some type of modern equivalent of the Grafton gaol of the past.

I remind honourable members that the Grafton gaol was designed to instil fear and terror into the hearts and minds of adult offenders to institute good order and discipline throughout the rest of the gaol system. The Nagle royal commission found that offenders in the Grafton gaol had their human rights violated simply to maintain integrity throughout the rest of the gaol system. The fact that that is the current intention of the new and improved Kariong has been confirmed by Minister Beamer's own words:

> The Government is pleased to introduce these amendments. They reinforce the fact that in no way has Kariong been lost from the juvenile justice regime. To the contrary, these changes send a palpable message to other detainees in our system. The centre that deals with the highest risk end juvenile offenders now provides a compelling focus throughout the system.

I was also shocked when the swimming pool and barbecue area at Kariong were destroyed by the Hon. John Hatzistergos MLC, reflecting some sort of tough display by the Government that reinforces this disturbing intention by Minister Beamer. Surely the Minister for Justice cannot for one moment seriously believe that the destruction of government property will teach the inmates anything—or does he? I hope that he was responding to departmental advice and did not dream that up all by himself because the only real thing it tells the inmates is that they have riled the Government. The young offenders finally won the battle at Kariong by highlighting the failures of this Government to rectify the longstanding problems with the juvenile justice system, and Kariong in particular, but this is where the danger of the situation resides: while they have won the battle, clearly they cannot win the war.

Despite at least eight reports into deficiencies within the juvenile justice system, members of this House have never been allowed to see many of them because they show the Government's failures. The inability of the Government to manage juvenile justice and Kariong has been demonstrated by what the Government no doubt perceives to be a bunch of ignorant little thugs. I remind honourable members that this is a very dangerous situation. It will create a situation that brings wounded personalities and pride to the forefront as the driving forces behind the Government's debunked public policies on juvenile justice. Public policy should be driven by proper and impartial consideration and planning. At present it is being driven by retribution and payback. The results are obvious and are reflected in the dangerous legislation that is now before the House.

This bill sends a message to the administrators that if the legislation rides roughshod over fundamental human rights, the actions of administrators and staff under this legislation likewise will treat such rights with contempt. These points may seem to be strong charges to make, but they are not made in isolation or without consideration of the past practices of the total institutions of the Department of Corrective Services, child welfare authorities and the juvenile justice system. Mr Vernon Dalton's reports are particularly revealing of the staffing, training and management problems at Kariong. Mr Dalton is well qualified to make such judgments, given the fact that he was a previous commissioner of the Corrective Services Commission.

The Ombudsman has published a number of reports into deficiencies within the juvenile justice system. The latest report to the Parliament, if anyone is interested, is only four years old. I am concerned that the reports

have attracted little comment and debate. I have never seen a press release run to 12 pages prior to presentation of this report, or since, nor have I ever seen one by such an important office as the Ombudsman so succinctly titled "Blueprint for Reform", on the first page, and "Department of Juvenile Justice of Shame" on subsequent pages. That the Department of Juvenile Justice and the Minister have failed to undertake the reform measures as outlined by the Ombudsman is evidenced by the loss of Kariong to the juvenile justice system.

More alarming for me is the contempt that the Department of Juvenile Justice has clearly shown to the office of the Ombudsman and, by extension, the public of New South Wales whom that office exists to serve. The contempt by administrators and staff of the Department of Juvenile Justice is amply displayed not only by direct references in the Ombudsman's reports to the obstructive and abusive behaviour by staff toward the Ombudsman during previous inquiries, but also by the very existence of recommendation B. 55 of the special report to Parliament under section 31 of the Ombudsman Act, "Investigation into Kariong Juvenile Justice Centre", which states that the department should:

> Provide the Ombudsman with an explanation as to why so many of the recommendations of the 1996 Ombudsman report were not properly implemented in relation to Kariong, as detailed throughout this report...

To provide members with some idea of the problems that have infected Kariong—problems which, I emphasise, were not of the making of the young people there—I cite some extracts from statements made by the Ombudsman. I do so to point out some of the misguided beliefs of some members who argue that the problems in Juvenile Justice are the result of social welfare rather than the enforcement of a punitive and control approach to juvenile corrections. It is clear from all the available evidence that a social welfare approach in Juvenile Justice has never existed. Some of the concerns that have been raised by the Ombudsman are as follows:

> There was much evidence of totally inappropriate punishments. Denying detainees family contact or vocational training is counterproductive and mean.
>
> 76% of detainees... had substantially less contact with their families than that recommended under UN standards.
>
> There are insufficient facilities to provide adequate supervision and care of detainees with special needs. In too many cases, detainees are confined for long periods of time in substandard accommodation and removed from social contact and interaction.
>
> ... boredom is one of the noticeable elements of life for young people in detention centres.
>
> The inquiry found that in many centres, existing management strategies have become indistinguishable from disciplinary systems. They have merged into one large mechanism used by staff to control and dominate detainees.
>
> The centre's deep dysfunction... primarily relate[s] to deeply rooted mistrust, factionalism, suspicion and ambivalence among staff. This can only be addressed by strong leadership by the department's senior management.
>
> The absence of any specialist programs or interventions to manage the behaviour of these "difficult" detainees is particularly concerning as Kariong has always been expected to accommodate and manage such detainees.
>
> Kariong's management and staff requirements, training and supervision were found to be seriously deficient.
>
> Staff commonly were unwilling... to cooperate with this investigation for fear of reprisals from other staff... Other staff were very visibly hostile to the Ombudsman and showed little respect for Ombudsman officers. This gave credence to the common description given by staff and management of the existence of a small group of staff who are physically aggressive and intimidating towards detainees and staff.

I conclude with the following statement of Ms Moss: "The closed, negative culture of the centres must be changed." I agree there is evidence of a social welfare model at work in Juvenile Justice, but not in the way it has been portrayed and as members have been led to believe. Today, 30 per cent of the inmates under Juvenile Justice have been in the care of the Minister for Community Services, as have 40 per cent of the adult prison population. Those prisoners are drawn from 0.2 per cent of the general population. This is a public policy failure of incredible proportions. The Government's failure to address this horrible overrepresentation will ensure that our so-called corrective institutions will continue to fail. Placing children into facilities such as Kariong will not fix this problem.

Pursuant to sessional orders business interrupted. The House continued to sit.

The Hon. Dr PETER WONG: Likewise, transferring Kariong to Corrective Services continues a long and sad tradition of handing over these poor children and these institutions from the Department of Community Services to the Department of Juvenile Justice and finally, as adults, to Corrective Services.

The Hon. Patricia Forsythe: That is a very forward step, not a backward step.

The Hon. Dr PETER WONG: A forward step? In what way?

The Hon. Patricia Forsythe: The creation of the Department of Juvenile Justice was a forward step.

The Hon. Dr PETER WONG: Previously the St Heliers prison, the Tamworth prison, the Norma Parker Correctional Centre and even the Eastwood Corrective Services Academy were child welfare institutions. That young people seek to escape the grasp of those who pretend to work under a welfare model and fight to get into Corrective Services—which is exactly what has occurred at Kariong—is a sad indictment of our society.

Debate adjourned on motion by the Hon. Ian West.

NSW SELF INSURANCE CORPORATION BILL

Second Reading

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [5.02 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The Bill reconstitutes the NSW Insurance Ministerial Corporation as the NSW Self Insurance Corporation and clarifies its functions and powers as the provider of self insurance arrangements for government agencies. The purpose for reconstituting the Corporation is to provide a more robust legislative framework for managing liability claims with an assessed cost in excess of $4 billion and for managing the funds set aside to meet these claims.

The NSW Insurance Ministerial Corporation was originally constituted by section 24 of the *Government Insurance Office (Privatisation) Act 1991* for the purpose of receiving and managing residual assets, liabilities, rights and obligations of the Treasury Managed Fund, the Pre Managed Fund Reserve, the Governmental Workers Compensation Account and the Transport Accidents Compensation Fund. These had been part of the business undertaking of GIO Australia Holdings Limited when it was in Government ownership.

The Treasury Managed Fund is a scheme of self insurance which protects the insurable assets and exposures of its members. Fund members include all public sector agencies financially dependent on the Consolidated Fund, all public hospitals and a number of statutory authorities. The three other schemes are now closed and the residual liabilities are being managed through the Corporation.

Since the GIO's privatisation in 1992, the GIO has been retained by the Corporation as the manager of the four schemes. Contracts with GIO General Limited, which is now a subsidiary of Suncorp Metway Insurance Limited, expire on 30 June 2005.

The Corporation, which is administered by the NSW Treasury, is taking the opportunity to implement fundamental reforms to the arrangements by which claims management services are provided to government agencies in New South Wales.

It is intended to create a contestable market for the provision of services. This is to be achieved by unbundling the range of activities currently incorporated under one contractual arrangement into separate contracts for:

- actuarial and information services;
- risk management services;
- insurance broking services; and
- claims management services, which themselves will be broken down by line of business to encourage up to five providers to tender for these services.

Unbundling current activities in such a manner will maximize the opportunity for prospective entrants to bid, under open tender, for services or clusters of services in which they are likely to have a competitive advantage. This is seen as critical to fostering efficiency gains and reducing government liability costs.

The Corporation has, since the privatization of the GIO, simply operated under the broad charter conferred under the *Government Insurance Office (Privatisation) Act 1991*. However, with the move to a more complex form of management including multiple non-government service providers there is a need to clearly specify the functions, powers and operating arrangements of the Corporation.

The Bill reconstitutes the Corporation as the NSW Self Insurance Corporation, a title intended to convey clearly the nature of the primary functions for which it has responsibility. The Corporation will be managed by the Minister, who will be the Treasurer, and the Minister will be able to delegate the exercise of any of the functions of the Corporation to other persons. This power is necessary to underpin contracts for the claim management, actuarial, risk management and other professional services required to effectively manage liability claims.

> As provided under clause 11, the financial transactions of the Corporation will be conducted through a Self Insurance Fund which is to be established in the Special Deposits Account. The operations of the Corporation will be subject to the scrutiny of the Auditor-General.
>
> This Bill provides a comprehensive and robust framework to support reforms aimed at achieving better outcomes in the management of property and liability risks of the Government. Provision is made in clause 18 for a review of the Act after a period of five years, to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. The Minister will be required to report to Parliament on the outcome of the review.
>
> I commend the Bill to the House.

The Hon. PATRICIA FORSYTHE [5.02 p.m.]: The Opposition does not oppose the NSW Self Insurance Corporation Bill. In reply to debate at the second reading stage of the bill in the other place the Minister for Tourism and Sport and Recreation, on behalf of the Minister for Infrastructure and Planning, noted:

> The sole purpose of the bill is to provide greater clarity of the functions currently undertaken by the NSW Insurance Ministerial Corporation and the bill will, in fact, provide more certainty to successful tenderers before entering contracts.

As the House would be aware, the NSW Insurance Ministerial Corporation [IMC] was a body corporate constituted in 1991 at the time that the GIO was privatised. A number of funds, schemes and accounts relating to the self-insurance of certain liabilities of the State and authorities of the State were transferred from the GIO to the newly constituted IMC; therefore, that body has been in existence since 1991. The Opposition accepts that the purpose of the bill is to provide clarity, or as the Government said "robust legislative framework", to manage liability claims with assessment costs in excess of $4 billion and to manage the funds set aside to meet those claims. For tenderers entering into contracts the bill provides a codification of the functions of the corporation, and the Opposition believes that that is in the best interests of all contractors. The bill sets out the role and place of the corporation. Other than that there are no shifts in policy, there is no budget implication, and the Opposition does not oppose the bill.

Ms SYLVIA HALE [5.04 p.m.]: I speak in this debate on behalf of the Greens. This bill puts in place the legislative mechanisms to allow the Government to provide self-insurance to some general government budget dependent agencies and trading enterprises. I understand those include the Treasury Managed Fund, the Pre Managed Fund Reserve, the Governmental Workers Compensation Account and the Transport Accidents Compensation Fund. The bill will enable companies to tender to provide some elements of the scheme to those enterprises and agencies with the system then administered by the New South Wales Treasury. That is an innovative approach, and the Greens congratulate the Government on exploring models for self-insurance.

Last night during debate on the Home Building Amendment Bill I spoke in favour of a return to a government-run insurance system for home warranty building insurance. Such an approach is already in operation in Queensland and is strongly supported by the building industry and consumers in that State. In Queensland the insurance industry does not hold consumers and the building industry to ransom. The Queensland Government has not gone down the privatisation path with quite the same zealous enthusiasm as this Government has. In Queensland a government-run insurance system provides builders with cheap, accessible insurance and consumers with the protection they need. The scheme is run on a cost-recovery basis and does not place an undue financial strain on the State's coffers. In New South Wales the crisis in building insurance prompted the Government to conduct an inquiry in 2003. The Grellman inquiry, as it was known, received submissions from a wide range of stakeholders. The Royal Australian Institute of Architects submitted to the inquiry:

> … the only alternative system in Australia that appears to be working is the Queensland model which operates as a first resort scheme rather than a last resort scheme as in NSW and provides for ongoing education of builders.

The Master Builders Association is also highly supportive of the Queensland approach. A similar government-run system is desperately needed in New South Wales; indeed, it would simply be a reintroduction of the government-run system that was scrapped in 1997. Instead, from this Government we have seen privatisation and a total capitulation to the insurance industry. Against that backdrop it is welcome to see the Government adopting a self-insurance model as proposed in the bill. The Greens hope that this is a precursor of things to come; a small sign that the Government is finally coming to its senses. This is a positive step by the Government to re-establish the NSW Insurance Ministerial Corporation as the NSW Self Insurance Corporation. As I have already said, the model proposed in the bill is a creative approach that allows the Government to run a system without having to provide all the expertise. The Greens look forward to the Government exploring similar creative self-insurance models for other areas of the insurance market.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.08 p.m.]: I have spoken a number of times about the notion that the Government needs to take more responsibility for insurance. Insurance is not a cash

cow for the financial services industry; it is a sharing of risk for a public good. The sale of the GIO was a serious error and it was not sold at a good time. Very little was obtained for the benefit of New South Wales from that sale and there was a loss of expertise. The Insurance Ministerial Corporation [IMC] was constituted pursuant to section 24 of the Government Insurance Office (Privatisation) Act 1991. When the GIO was in existence it managed the Government's insurance needs and administered the Treasury Managed Fund [TMF], the Pre Managed Fund Reserve, the Governmental Workers Compensation Account and the Transport Accidents Compensation Fund.

The three funds other than the TMF are now closed and their residual liabilities are being managed through the IMC by GIO, which is now a subsidiary of Suncorp Metway. The TMF is a self-insurance scheme owned and underwritten by the New South Wales Government. Its members are public sector agencies that depend on the Consolidated Fund, public hospitals and a number of statutory authorities. I note that the TMF is managing medical liability at far less cost per doctor than the medical insurers can manage. According to the Treasury, as of June 2003 the TMF's assets exceeded its liabilities. This is because the Government contributed an additional $824 million to the fund in 2002-03. The TMF provides cover in the areas of workers compensation and public liability and for property, motor vehicles and other miscellaneous risks. The New South Wales Self Insurance Corporation Bill seeks to reinvent the TMF as the New South Wales Self Insurance Corporation. Its stated purpose is:

> … to establish a robust framework for existing self insurance arrangements for government agencies … it is necessary to facilitate competitive tendering for claims management and other professional services.

At present GIO manages the four schemes and the Government wants to be able to contract out and further segment their management beyond GIO by competitive tender. Given recent revelations, "competitive tender" is often a contradiction in terms. The new corporation will be managed by the Treasurer, who will be able to delegate the exercise of any functions of the corporation to other persons.

The contracting out of government services will be a big issue in coming years, as will the use of public-private partnerships. This will affect hospital, school and transport services adversely as the Government tries to reduce spending of essential services. Unfortunately, the sale of the farm is well advanced—the Coalition had better win the next State election or there will be no farm left to sell. The services referred to in this bill have already been contracted out to GIO so sharing them around will not, in theory, have any effect on government employees and should save money if the tender system is to be competitive. The Auditor-General will oversee the operation of the new corporation, and I look forward to his first audit to see whether the Government's claims are true.

I am concerned that the use of a number of insurance companies has not made for good management of the New South Wales workers compensation system. I have spoken in the past about the woeful management of claims and the insurer's response that the terms of its contract—under which it is paid to perform certain functions rather than achieve certain financial results—are to blame for its extremely poor management performance. Conversely, it is not always a good idea to accept the cheapest tender as insurance companies are very good at simply not paying people—it is in the fine print. As I said earlier, the essence of insurance is mutual risk and offering safety to the public. It is not a financial transaction. If the Government decides to accept the cheapest tender, the insurer that is most inclined to keep the premiums and least inclined to pay the injured will win every time. As a consequence the Government will achieve a better financial result for its self-insurance efforts but at the cost of those who are injured.

I believe there is no substitute for having the necessary expertise in house. Although this bill forces the Government to consider the insurance issue, it does not recapture the expertise provided by a government insurer, who could, through market intervention, greatly change the nature of that market in several areas. The reinsurance repercussions of September 11 have made Australia very much a price taker on the world stage. The insurance industry is run out of Zurich, and Australia has only a tiny fraction of world premiums. So one cannot help but feel that in many cases premiums are set with no regard to Australian risk, and as a result Australia has been getting a very bad deal. Although I appreciate that putting out to tender GIO's management of the Government's self-insurance function may save money, I believe this bill does not go far enough in delivering a more realistic and socially progressive approach to insurance in New South Wales.

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [5.14 p.m.], in reply: I thank honourable members for their contributions to the debate and commend the New South Wales Self Insurance Corporation Bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Orders of the Day Nos 5 to 9 postponed on motion by the Hon. Carmel Tebbutt.

UNIVERSITY LEGISLATION AMENDMENT BILL

Second Reading

The Hon. CARMEL TEBBUTT (Minister for Community Services, Minister for Ageing, Minister for Disability Services, and Minister for Youth) [5.17 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The University Legislation Amendment Bill 2004 proposes amendments to each of the ten Acts establishing the State's public universities.

The amendments will ensure New South Wales universities can demonstrate to the Commonwealth Government that they comply with the National Governance Protocols for Higher Education Providers.

For the information of members, because of the document's particular relevance to this Bill, I will now table copies of the National Governance Protocols for Higher Education Providers.
The National Governance Protocols are part of the Commonwealth Grant Scheme Guidelines issued by the Federal Government under its Higher Education Support Act 2003.

The Protocols were tabled in both Houses of the Australian Parliament on 21 June 2004.

The Higher Education Support Act 2003 provides, at section 33-15, that higher education providers who satisfy the Commonwealth Minister they meet the requirements of the Protocols, will have their basic Commonwealth Grant Scheme funding increased.

If the Commonwealth Minister is satisfied the requirements of the Protocols are met, universities will receive increases in the basic grant of 2.5 per cent in 2005, 5 per cent in 2006 and 7.5 per cent in 2007.

It is estimated that New South Wales universities' share of the additional funding would be in the order of $104 million over the period 2005 to 2007.

Members would be aware, the Carr Government has long been concerned about the financial health of our universities under the Howard Government.

That is why we have moved quickly to have a Bill drafted, in consultation with the State's public universities, the National Tertiary Education Union and the National Union of Students, to ensure that NSW universities do not miss out on this additional, badly needed funding.

Turning now to the Bill itself, the amendments to each of the State's university Acts (other than the Australian Catholic University Act 1990) are set out in ten separate schedules containing near-identical provisions.

The only variations are those which take account of minor, local, or pre-existing differences between our public universities.

A significant change to the constitution of governing bodies relates to the current arrangement where each governing body includes one member of the Legislative Council, elected by that Council, and one member of the Legislative Assembly, elected by that Assembly.

This arrangement can no longer continue.

Protocol 5 prevents current members of State or Commonwealth parliaments from also being members of university governing bodies, unless they are specifically selected by the governing body.

However, it is interesting to note, that after discussions with my colleague, the Hon Dr Andrew Refshauge, all NSW universities have written to indicate that they value the input of the MPs on their governing bodies and would like them to stay.

The Bill implements this change by removing from all university governing bodies the special categories of membership for parliamentarians.

These two membership categories will generally be replaced with two additional Ministerial appointees, with a total of six Ministerial appointees on each university governing body.

It is important to that the Bill continues to provide for individual Parliamentarians to be appointed as members of university governing bodies provided they are nominated by the governing body.

The other significant changes are designed to meet the requirements of National Governance Protocols 5 and 6.

These Protocols require that:

- financial and commercial expertise is always present among the membership;
- external, independent members (that is non-student, non-staff members) are always in a clear majority;
- non-elected members must possess the ability to contribute to the effective working of the governing body;
- universities must adopt systematic procedures for nominating prospective appointed members;
- governing bodies do not exceed 22 members in total; and
- member's terms overlap and should not exceed 12 years, unless specifically agreed to by the majority of the governing body.

These requirements are all implemented through various straightforward provisions in the sections of the Bill dealing with the constitution of governing bodies.

These requirements of Protocols 5 and 6 have a significant consequential impact.

To help universities meet these Protocols, the Bill provides governing bodies with as much flexibility as possible in deciding their own membership characteristics and numbers, with only minimum requirements set in the legislation.

For those universities that wish to do so, and that have the full support of their governing bodies, the Bill allows universities themselves, through their by-laws, to determine the final make-up of their governing bodies, provided the membership does not exceed the maximum of 22 members.

This flexibility is designed to ensure that universities can always meet the requirements of Protocols 5 and 6, no matter what the circumstances.

Subject to the maximum membership limit, the Bill allows governing bodies to appoint as many members of their own choosing as they feel necessary to meet either the requirements of the Protocols or perceived skill shortages.

This is a change from the current arrangements where all but one of the university governing bodies can appoint only a single member of their own choosing.

The Bill also allows governing bodies to vary the numbers or method of selecting graduate members, or members of Convocation as they are traditionally defined at some universities.

The Bill provides for one or more non-student, non-staff graduate or Convocation members to be either elected or appointed to the governing body.

This represents a significant freeing up of the current arrangements, where the number and method of selecting graduate or Convocation members is set in the Act, and cannot be varied to meet changing needs and circumstances.

Where a university governing body decides that its graduate members should be appointed through a process defined in its by-laws, such appointments will be made by the governing body.

At their request, and in consultation with all other NSW universities, differing provisions have been made for the University of Sydney and the University of New South Wales so that they largely retain their existing situations in relation to graduate members.

Although the Bill provides the other eight New South Wales universities with the option of changing their governing body appointed or elected graduate member arrangements, there is no compulsion to do so.

The Bill has been drafted in such a way that universities are free to maintain exactly their current arrangements if they are serving them well.

This is an important point because there have been some erroneous assertions made along the lines that the Government is doing away with graduate elections.

It is clear from the Bill that this is not the case, and universities are free to maintain current graduate numbers and to hold elections as the method of selecting graduates.

The key point is that the decisions will be made by the universities' governing bodies themselves.

Although the Bill provides universities with the capacity to decide these aspects of their governance for themselves, it also requires that their decisions be given legislative force and effect through by-laws, which must be tabled in the other place.

The requirement is important because it provides a means for the Minister to be assured that the decisions being implemented are a true expression of the will of the governing body.

It is also important because it provides legislative assurance to any members whose position on the governing body is determined through these provisions.

By-laws also present an opportunity for public scrutiny of these important decisions of universities.

Protocol 2 requires universities' governing bodies to adopt a statement of their primary responsibilities. The Protocol mandates a number of features that these statements must include.

This statement of responsibilities is not something that can be legislated. It is the responsibility of the governing body itself to implement. However, the Bill does assist university governing bodies to adopt such a statement.

Similarly, the sections in the Bill relating to governing bodies' oversight of controlled entities are intended to ensure that when universities implement Protocol 10, they are acting in accordance with, and are mandated by, their legislation.

One of the National Governance Protocols which clearly places the onus for implementation onto universities' legislation is Protocol 3.

Protocol 3 is already partly provided for in the existing NSW legislation.

This Protocol requires that the duties of governing body members be specified in universities' legislation and that members must always act in the best interests of the university, honestly and in good faith.

Protocol 3 also requires that each university governing body must have only three official members the Chancellor, Vice-Chancellor and the Presiding Member of the Academic Board(s); and that other than these three official members, each member must be appointed or elected ad personam.

It mandates that there be provisions to ensure conflicts of interest are disclosed and avoided; that there be safeguards to limit the liability of members who have acted in good faith.

In addition, Protocol 3 requires any member who is disqualified from acting as a director under Part 2D.6 of the Corporations Act automatically loses office;

and that governing bodies have the power, by a two-thirds majority, to remove any member who breaches these duties. Each NSW university Act already includes provisions that cover many of these areas.

The Bill includes provisions designed to implement the remainder of Protocol 3.

To this end, it lists the duties of governing body members in a new Schedule to each of the Acts. These duties include the requirement that members must carry out their duties in good faith, for a proper purpose and in the best interests of the university as a whole.

The Bill requires that governing body members act honestly and with reasonable care and diligence; and so as to not improperly use their position, nor information acquired through their position, to gain an advantage or cause detriment to the university.

The Bill broadens the existing New South Wales conflict of interest provisions, which are currently in the context of universities' commercial activities only, to all aspects of governing bodies' responsibilities.

The Bill establishes more detailed provisions, requiring members of governing bodies to disclose and register any relevant material interest, and preventing them from participating in discussion or determination of matters in which they have such an interest, except with the specific approval of the governing body.

Unlike Protocol 3 itself, the proposed NSW provisions relating to the dismissal of members who are deemed to have breached these duties include some basic protections against misuse of this power, as well as natural justice requirements.

Under the provisions of the Bill, removal from office may only be effected at a meeting for which notice has been duly given, including to the member concerned of the proposal to remove him or her.

To remove a member, the two-thirds majority must be a majority of the current membership of the governing body, not merely a majority of a particular meeting; and the member proposed to be dismissed must be given a reasonable opportunity to reply to the motion before it is put to the vote.

The Bill also enhances the existing vacation of office provisions, in line with Protocol 3, to add that any member who is or becomes disqualified from managing a corporation under Part 2D.6 of the Corporations Act automatically loses office.

When there is a change in university governing body membership, it is vital that there be a continuity of skills and experience.

That is why in the Bill, implementing Protocol 6, members' terms of office are required to overlap and to not exceed 12 years in total unless a majority of the governing body agrees.

> Finally, the Bill includes savings and transitional provisions to provide university governing bodies with the means of transferring smoothly to their new governance arrangements.
>
> Consultation on the draft Bill has taken place with Chancellors and Vice-Chancellors of NSW public universities.
>
> Chancellors and Vice-Chancellors were responsible for further consultation within their own institutions.
>
> The Universities generally support the Bill as currently drafted.
>
> The National Tertiary Education Union and the National Union of Students were also consulted.
>
> While they were not supportive of many aspects of the National Governance Protocols, they are supportive of the maintenance of the current levels of academic staff and student representation on university governing bodies, and of election as the method of selecting them.
>
> This Bill will enable the adherence to the National Governance Protocols by our public universities in NSW and as such, will allow their share of $404 million to flow to them.
>
> The University Legislation Amendment Bill is an affirmation of the NSW Government's commitment to universities' autonomy and independence.
>
> It grants universities freedom to govern themselves in the way they see fit, while also ensuring that appropriate and effective governance arrangements are in place.
>
> I commend the Bill to the House.

The Hon. DON HARWIN [5.17 p.m.]: The University Legislation Amendment Bill proposes amendments to each of the 10 Acts that established the State's public universities in order to satisfy the requirements of the Commonwealth's national governance protocols for higher education providers. Last year the Federal Minister for Education, Science and Training unveiled approximately $1.5 billion in additional funding for higher education over four years as part of a comprehensive reform package. One of the initiatives in the package was a set of national governance protocols designed to develop best practice in university governance arrangements. In a media release at the time of the package's launch, Dr Nelson remarked:

> Universities are not businesses but nevertheless manage multi-million dollar budgets and need to be run in a business-like fashion. Anachronistic governance arrangements, in which universities can have up to 35 council members... are often not conducive to sound decision making.

He went on to explain that the national governance protocols:

> … strengthen university governance by increasing the responsibilities of university councils in overseeing commercial activities, requiring councils to discharge these responsibilities in a transparent way and ensuring the protection of the public interest.

This bill makes changes relating to the functions and responsibilities of the governing bodies of the universities in accordance with the new protocols. In particular, the bill amends the compositions of university councils. The bill provides that a council have a maximum of 22 members, who are required to have financial and commercial expertise and experience, in accordance with the university by-laws, which also set out procedures regarding the nomination of appointments. The bill removes the current requirement that a council include a member of Parliament. That will be of great interest to many members and former members of Parliament have served on university councils.

The composition of councils in all the Acts will be as follows: the chancellor; the vice-chancellor; the presiding member of the academic senate, or the deputy presiding member in those instances in which the vice-chancellor is the presiding member; six external persons appointed by the Minister; one or more external persons, as prescribed by the by-laws, appointed by the council; two members of the academic staff, elected by the academic staff; one member of the general staff, elected by the general staff; two students who are not members of the academic or general staff, elected by the students; and one or more external persons, as prescribed by the by-laws, who are graduates of the university, elected by the graduates.

This arrangement allows for councils to exercise both greater flexibility and increased autonomy in the selection of their members. Currently, most universities are able to appoint to their council only one member of their own choosing. Under the new system, all universities, subject to the maximum membership limit, will be empowered, through their by-laws, to select members who meet skills shortages, address an imbalance or in some other manner address the needs of the council in changing circumstances. Through compliance with the national governance protocols brought about by this bill, the process by which university councils are appointed will become more open and transparent. Importantly, compliance with the protocols also subjects the functions of these councils to greater accountability.

The bill lists the duties of council members, including requirements that they are to act in the best interests of the university, to exercise care and diligence, to disclose material interests to avoid a conflict of interest, to not improperly use either their position or information acquired through their position to gain an advantage or to cause detriment to the university. The bill also provides for the removal of a council member from office for breach of duty if such a motion is supported by a two-thirds majority of members. The bill also notes generally the obligations of the university governing bodies under the Annual Reports (Statutory Bodies) Act 1984. The bill amends the Acts of the following higher education institutions: Charles Sturt University, Macquarie University, Southern Cross University, the University of New England, the University of New South Wales, the University of Newcastle, the University of Sydney, the University of Technology, Sydney, the University of Western Sydney, and the University of Wollongong.

In bringing these 10 university Acts into compliance with the national governance protocols the bill ensures that these higher education institutions will now qualify for additional funding included alongside the protocols initiative in the Commonwealth Government's reform package. Under the Commonwealth Grants Scheme, the basic grant to those universities complying with the protocols will increase by 2.5 per cent in 2005, by 5 per cent in 2006 and by 7.5 per cent in 2007. This will amount to an additional $404.3 million, of which it is estimated that universities in New South Wales will receive $104 million. This clearly demonstrates the Howard Government's commitment to making major investments in the building of world-leading education and training institutions; a commitment that the New South Wales Opposition wholeheartedly supports.

Equally important to securing access to this additional funding is the transparency and accountability of both the appointment processes and operational records relating to the governing bodies of our universities. The selection of university council members, the manner of their appointment and the record of their service should all be open to scrutiny. The national governance protocols developed by Minister Nelson ensure that governance in our higher education sector is open, accountable and streamlined—in other words, that it follows best practice.

Amendments have been foreshadowed for this bill and, rather than take up time in Committee speaking each time an amendment is moved, I will make a number of general observations based on correspondence sent to the Opposition and put them on the record now. The Vice-Chancellor of the University Western Sydney wrote to the honourable member for North Shore, who is the shadow Minister for Education and Training, to thank her for identifying an anomaly in the drafting of this bill that could have put the university's funding at risk. Had the sloppy drafting of this legislation not been rectified, the University of Western Sydney Bill would have been outside the governance protocols. The vice-chancellor wrote:

> Dear Ms Skinner
>
> This is just a short note, first of all, to thank you for your support for the amendments for the University Legislation Amendment Bill 2004 to ensure that the University of Western Sydney is compliant with the National Governance Protocols … Your continuing support for the University is very much appreciated.

On behalf of the Opposition I thank the vice chancellor for her letter. It has been our pleasure to support the University of Western Sydney in that way. The Greens have foreshadowed a large number of amendments, none of which the Opposition will support. The outcome of the Greens amendments will be a shift away from the national governance protocols in ways that are either unnecessary or, in fact, contrary to the protocols. That has been reflected in a letter sent to the Opposition by the University of Sydney and in a letter sent by the New South Wales Vice-Chancellors Committee to the Premier. William Adams, Registrar of the University of Sydney, an excellent institution of which I am proud to be a graduate, wrote:

> Dear Mrs Skinner …
>
> I write to you in your capacity as Shadow Minister for Education and Training in reference to the above draft legislation and in particular to the amendments to the legislation which have recently been proposed by the Greens …
>
> As you may be aware the Senate of the University of Sydney has expended very considerable effort to ensure that it is able to conform to the requirements of the new Governance Protocols incorporated in the Commonwealth Government's recent higher education reform package. With other NSW universities we have also consulted with the Minister over the legislative changes required to ensure that the University's enabling legislation conforms with the requirements of the Protocols …
>
> My purpose in writing is to express concern on behalf of the University of Sydney that if the amendments to the legislation proposed by the Greens are adopted the composition of the Senate of the University will no longer conform to the requirements of the Governance Protocols. This in turn will threaten the very considerable level of Commonwealth funding which is contingent on the University achieving conformance with the Protocols. I seek your support in ensuring that the legislation is passed in a form which allows the University to achieve the required conformance.

Professor Ross Milbourne, Committee Convenor of the New South Wales Vice-Chancellors Committee, who is also Vice-Chancellor of the University of Technology, Sydney, wrote to the Premier. A copy of that letter was sent to the Opposition. It is worth noting the advice of Professor Milbourne, which states:

> I am writing on behalf of the New South Wales Vice-Chancellors, in relation to the amendments proposed by the Greens for the University Legislation Amendment Bill …
>
> We view the Greens' proposed amendments with alarm. The amendments are completely unworkable and will severely restrict the governance role of University Councils.
>
> Moreover, the Greens' amendments are in direct contradiction to the Federal Government Protocols upon which supplementary funding to Universities depend. If passed, the Greens' amendments would deny NSW Universities Federal Government funding in the vicinity of $50 million.

My advice is that in fact even more would be at stake than that. Then he goes on to say:

> We ask you to work to ensure that the Legislation is passed without the amendments proposed by the Greens.

That is certainly the position that the Opposition is taking in Committee. The bill provides for our State's 10 public universities to comply with the new protocols, and so I am pleased to advise that the bill will have the Coalition's wholehearted endorsement.

The Hon. PATRICIA FORSYTHE [5.32 p.m.]: It is now 3½ years since I raised in this House the need for universities to reform their governance. On that occasion I noted that on the very day that honourable members were debating the disallowance of a regulation involving the position of the chancellor of the University of Sydney, in contrast a Tasmanian university was moving to a very streamlined and modern approach to university governance. I have followed with interest the debate that has taken place over some time.

I have been well aware of considerable discussion behind the scenes in relation to the national governance protocols that the Federal Minister for Education, Science and Training believes are important to the future of universities in Australia. I am perhaps one of few honourable members—although I know my colleague the Hon. Don Harwin is another—who are active members of the alumni of our universities. I have not had the opportunity to serve on the council of my university; I have never been so appointed by this House. As a former student of the University of Newcastle, as part of my philosophy of giving back to those institutions that have given much to me, I regularly participate as a member of the working party, Sydney chapter, of our alumni group. So I come to this debate as one who takes pride in being a graduate of my university and who believes in the role of the universities, but who also acknowledges that we need to pay attention to the issue of governance.

I am also well aware that, behind the scenes, committees of vice-chancellors have had their own views about governance. This legislation seeks to prescribe that universities may have a governing body of no more than 22 members. Having served at one time on the State executive of the Liberal Party, when we had about 45 members, and to have seen it reduced to 20, I am one of those who well understand the value of a reduction in the size of a governing body, providing it can be assured that the sum of all groups who make up the whole body are well represented.

I believe the vice-chancellors would have had a smaller body—perhaps of 18, which I understand they had been considering for some time—but, fortunately, their views have not prevailed, and the Minister for Education, Science and Training, the Hon. Brendan Nelson, accepted the views of many of the university alumni groups that it was important that, in representation on governing bodies, there had to be a role and place for alumni. Indeed, I wrote to the Minister on 5 March this year on behalf of a number of people from a number of universities who were concerned that the national governance protocols may impact on alumni participation in university governance. The Minister's reply, dated 19 April, states in part:

> I cannot agree more on the role of alumni and the valuable contribution that alumni make to university life not only in NSW universities but at universities across Australia. Please let me assure you that the Protocols do not restrict alumni participation on university governing bodies and there was never the intention to do so.

The Minister goes on to say that the protocols clarify the duties and responsibilities of members of governing bodies and set some parameters for them. I passed that letter to people from the University of Newcastle, the University of New South Wales and the University of Sydney who were taking an active interest in this developing legislation. They were put at ease by the strength of the Minister's support for the role of the alumni. The legislation before us today acknowledges the place of alumni. No other group has as much to lose from

damage to the reputation of a university than its alumni, because the very currency of our degrees is told not by the day on which we received our testamur but by the reputation of the university at any time.

In saying that I choose my words carefully, because I have been viewing with alarm the inquiry that the Independent Commission Against Corruption has been undertaking into certain events that apparently have occurred at the University of Newcastle. I am alarmed because the reputation of my university—which means my degree—is very much on the line. I suspect that out of that inquiry the reputations of some individuals will be very much called into question. But that apart, we have to consider whether we have been well served by the large council that has been in existence, or more particularly by the practices of the university.

As I have not been a member representing the Parliament on the university council I cannot comment, but this House and the other House are represented on that council. Those council members may be able to answer some questions as to how we have reached a situation where the Independent Commission Against Corruption investigation is taking place. Could it have been that members of the council effectively have had the wool pulled over their eyes on many occasions, perhaps because they were presented with a large volume of papers relevant to council meetings, and perhaps at very short notice? Perhaps presiding officers of the council have not been allowing council members adequate time for discussion. Whether that or something else is behind the problem, each of the members of the council had a responsibility to inform themselves of the activities of the university.

It is with some concern that I await the findings of the Independent Commission Against Corruption. I believe that my university's reputation already has been put at risk by the sort of evidence that has been presented to the inquiry. For me, this legislation could not come quickly enough. I believe it better clarifies the roles and functions of councils. I hope that a number of universities have learnt lessons from recent events, and that when we move forward we do so in a positive way. Today, our universities are multi-million dollar enterprises. It is time we revisited the issue whether it is appropriate to have people in a voluntary and benevolent role, or whether multi-million dollar businesses require a professional approach. But that may be a debate for another day.

We should not step away from the fact that universities are businesses, that pure research in remote ivory towers is not now the reality, will not be their future, and would not serve us well. Universities, however we view them, must maintain their autonomy and their capacity for robust research, strong conclusions and robust participation in debate. I would not want it any other way. But at all times I would want those who are charged with providing governance on behalf of all members of a university—current students and staff, former students and staff—to do so responsibly in the knowledge that the decisions they make today impact on people who may well have long departed an institution, but who carry the name of that institution through their degrees.

Reverend the Hon. FRED NILE [5.40 p.m.]: I am pleased to support the University Legislation Amendment Bill, which relates to the Commonwealth legislation, the Higher Education Support Act 2003, that laid down requirements that universities must meet if they are to qualify for increased Commonwealth funding. I left school when I was 15 and started work as a junior storeman. I never thought I would have the opportunity to study at university, but I appreciated the years I spent at the University of Sydney and the various courses I took, including ancient history and philosophy. I especially appreciated my membership of the Sydney University Regiment, in which I was a platoon commander. Later I studied as an external student at the University of New England. I also appreciate the opportunity the Labor Government gave me to represent it on the Council of the University of Wollongong.

My spies tell me there was some controversy about my nomination in Caucus, but I am glad the nomination went ahead and that I had the opportunity to serve on the Council of the University of Wollongong for four years. I was involved in seeking to appropriately distribute the university's $100 million plus budget in relation to staff, their conditions and their futures as well as the conditions of students. I believe I made a positive contribution. However, the bill states that the amendments will impose requirements on the composition of university governing bodies, including limiting their membership to no more than 22 members. Perhaps the Minister can clarify the point that refers to removing the requirement that includes members of Parliament, allowing the Minister to appoint members of Parliament as members only if on the nomination of the governing body, requiring the majority of its members to be external to the university, requiring its members to possess certain expertise and experience, and requiring procedures for the nomination of appointed members to be set out in the university's by-laws.

I have been in this place for 23 years and I know that members of the House, regardless of whether there is a Labor or Coalition government, have always been interested in representing the Parliament on a

council or senate of university. Liaising between the controlling body of a university and the Parliament, which represents the people, is a positive relationship. The amendment neither abandons nor removes members of Parliament, but according to some members it seems to raise a doubt as to whether they will be appointed. The bill will amend the Charles Sturt University Act, the Macquarie University Act, the Southern Cross University Act, the University of New England Act, the University of New South Wales Act, the University of Newcastle Act, the University of Sydney Act, the University of Technology Act, the University of Western Sydney Act and the University of Wollongong Act.

If the legislation is not passed, the Federal funding that universities can receive will be affected. If the Commonwealth Minister is satisfied that requirements of the protocols are met, universities will receive increases in the basic grant of 2.5 per cent in 2005, 5 per cent in 2006 and 7.5 per cent in 2007. The Commonwealth Minister stated that universities complying with the protocols would share in an additional $404 million nationally over the 2005 to 2007 period. We know that all universities are struggling with rising costs and other pressures. Any additional Federal funding would be greatly appreciated. Therefore, the Christian Democratic Party is very pleased to support the bill.

Ms LEE RHIANNON [5.45 p.m.]: The Greens support increased funding for universities. Therefore, we support the intention of the bill to comply with the national governance protocols for higher education providers to ensure that New South Wales universities get an estimated $104 million over three years from the Federal Government. The Greens have always campaigned to increase public funding to ensure that universities are not driven to rely on non-government funding at the expense of their independence and integrity. I was concerned to hear a speaker for the Coalition assert that the Greens amendments would put such funding at risk. But they are only scare tactics in response to the Greens amendments, which really will strengthen the bill. We will move amendments in Committee to strengthen democracy within university governing bodies, and to underline the role of universities as public institutions where intellectual freedom and institutional autonomy are guaranteed.

I assure honourable members that not one of these amendments would jeopardise Commonwealth funding to New South Wales on condition of complying with the protocols. I thank the National Tertiary Education Union for their assistance in preparing this material. Good governance in universities is crucial. It is particularly important when faced with a Federal Government bent on bulldozing universities towards a deregulated, privatised higher education system. Federally the Greens have worked hard to stop Howard's attacks on universities. We have seen fee increases, funding cutbacks—stripping around $5 billion from the sector since Howard Government came into office—and reforms to create a two-tiered university system with universities relying increasingly on private funds to deliver education services.

Universities are now starved of funds. Research is increasingly about raising funds for universities rather than growing knowledge. Demand for university places is unmet and a place in universities can be bought, not earned on merit. But our Federal colleagues must brace themselves for an even more sinister attack on universities during the Federal Government's fourth term. The agenda is set: banning strike action, limiting union involvement in negotiating staff salaries, ending compulsory student unionism, and extending the use of workplace agreements. The State Government is not preparing to fight this attack, to protect workers, or to support the integrity of universities as important public institutions. Instead, the New South Wales Minister for Education and Training claims the dubious credit of suggesting to Brendan Nelson that New South Wales transfer all responsibilities for its 11 publicly funded New South Wales universities to the Federal Government.

The Minister calls the role of the States in our universities a relic of the past. He is set to abandon tertiary education, one of our most precious resources, to be manhandled and mistreated by Canberra. This certainly shows the bankruptcy in this Government in one of the areas in which it claims to be so committed—education. This is a very bad plan. It removes the checks and balances, and it would jeopardise the independence of universities. It is opposed by Premier Beattie in Queensland, who has said that the Federal Government cannot be trusted with universities. It is also opposed in Western Australia by the National Territory Education Union, the Australian Vice-Chancellors Committee and students. Universities will be sucked into the vortex called Canberra, defenceless and less adequately supported by the State Government's involvement in matters like accreditation, appointments to governing bodies, financial auditing and oversighting by the Ombudsman. Associate Professor Dr John Carmody, a member of the Council of the University of New South Wales, wrote last year in an excellent paper entitled "Good unis are communities, not businesses" as follows:

> The Federal piper wants to call a tune of few notes and will use control of its payments to achieve it. When there are only a relatively few chiefs who are like-minded … a consensus with Canberra would all too readily be attained.

The Commonwealth, reflected in this bill today, wants to reduce the influence of State governments and to transplant private sector corporate governance principles into the university sector, while reducing the influence of elected representatives. With these dark clouds looming, it is critical that we have strong, independent and fearless governing councils with skilled and equipped membership. It is in that spirit that I will move amendments in Committee. We need to strengthen, not weaken, the role of university staff, students and alumni on our governing bodies. As the heart of the university system, these groups should be well represented. They bring academic, organisational and experiential expertise.

The Greens do not support the holus bolus transplanting of private sector corporate governance principles into the university sector, as the Federal Government is attempting. Universities are not private corporations producing private goods. They must still be accountable to government and to the community by virtue of the legislation that establishes them and the public funding they receive. The Carr Government has rolled over to the Commonwealth's demands, like it will roll over and give its responsibilities for universities to Canberra. The demands of the protocol leave a sour taste in the mouth because they show that the Federal Government does not respect existing councils.

In recent years there has been significant downsizing of government bodies and a shift in composition, with expertise being favoured over representation. This bill entrenches these developments further. This can be dangerous because although governing bodies at times may take a limited and cautious approach, their work is critical to the progressive development of our universities. Although the Greens value commercial acumen in universities in these times, we question whether co-opted expert members, as required by the bill, will see as strong a stake in the accountability and quality of universities as previously. We fear poorer decision making in relation to what the Greens believe should be the core business of universities, that is, teaching and research. Our amendments are designed to strengthen the involvement of staff, students and graduates in our universities because they have the best understanding of how universities function. Dr Carmody stated:

> Public funding should not imply political submission. Australia has a more open system, with … councils acting as buffers between scholarship and politics on behalf of the society at large.

He agrees with the Greens that it is crucial for governing bodies to be active and representative in order to succeed in their obligations to keep universities ethical and intellectually successful. Being active means being open to real debate. Being representative means representing the range of social stakeholders in our universities. I understand that the Government is bound by the protocols to remove the current requirement for elected parliamentary representatives to sit on governing bodies. The Greens believe parliamentarians have the potential to make a real difference to the work of a governing body because they are elected by the people, they represent the wider community and they can act as a strong link between universities and government. I believe that the majority of parliamentary representatives from diverse parties have demonstrated that over the years.

Parliamentary members have contributed to the integrity of councils. I have heard praise of the work of the Hon. Peter Primrose on the Council of the University of New South Wales, the Hon. Ian West and Barbara Perry on the Council of Macquarie University and Tony Windsor on the Council of the University of New England, to name but a few. These members can be a useful, independent source of power for universities. They give universities leverage and are particularly valuable for regional universities where their relationship with the local community is strong. Without these members of Parliament the Commonwealth is in a much better position to take control of our universities.

I will be interested to hear from the Minister whether the Government will make a commitment to appointing members of Parliament, on nomination of governing bodies, out of the six external appointments he can make following enactment of the bill. The Greens are also concerned with amendments in the bill that set a limit of 12 consecutive years in office for appointed or elected members, except where the governing body otherwise resolves. The Greens concede the value in limiting terms to ensure rigorous democracy and that long-serving members do not continue as sycophantic apologists for senior management, commercial interests or the Government.

However, the Greens have problems with the provision that will allow the governing body to make exceptions to this rule. When faced with the possibility of an extended term if members of governing bodies behave or toe the line, there is the risk that members will be compliant in order to retain their position on the council. There should not be an exception to the rule. Members should continue on the council with no limit or, if there is a limit, the provision for an exception should be removed because it could be dangerous. I understand that the amendment is one of the Commonwealth's requirements, but I ask the Minister in reply to confirm that the amendment with respect to the 12-year term will not apply retrospectively and that the Government will

work with universities to make clear that the discretion of governing bodies to allow an extension beyond the 12-year term should not be exercised in practice in the interests of healthy democracy on governing bodies. I look forward to moving amendments in Committee and to making a positive contribution toward improving the bill. Although I understand that the major parties will not support the amendments, I appeal to them to judge them objectively.

Reverend the Hon. Dr GORDON MOYES [5.57 p.m.]: The Universities Legislation Amendment Bill amends a number of Acts establishing and governing New South Wales universities to facilitate the compliance of these universities with the national governance protocols for higher education providers. The Christian Democratic Party, through my leader, has indicated support for the bill. The 10 Acts affected by the bill establish and regulate the following universities: Charles Sturt University, Macquarie University, Southern Cross University, the University of New South Wales, the University of New England, the University of Newcastle, the University of Sydney, the University of Technology, the University of Western Sydney and the University of Wollongong.

Compliance with national governance protocols is necessary for the universities to share in the additional $404 million allocated for the nation's universities by the Commonwealth Government for the period 2005-07. Minister Refshauge's second reading of the bill indicated that it is not known specifically how much will be allocated to New South Wales' public universities. However, it is estimated that the amount will be in the order of $104 million over a three-year period. Each schedule to the bill targets one of the 10 universities proposed to be affected. The provisions contained in each schedule hardly vary between the universities. The nature of the discrepancies between schedules lies in minor local or pre-existing differences between the universities.

The bill primarily focuses on making modifications to the constitution of the governing body of each university. Among the more salient changes are the following modifications. The bill will remove its elected representatives of the Legislative Assembly and Legislative Council as a specific category of membership. It is important to note, however, that these provisions do not prevent university governing bodies from selecting members of the New South Wales Parliament for appointment either by the governing bodies or by the Minister. The bill increases the number of ministerial appointments from four to six, which apparently is to compensate for the potential loss of members of Parliament from the governing body. The bill institutes a requirement for at least one graduate member to be included with each governing body, with each governing body able to determine, through bylaws, the final numbers of graduates and whether they are elected or appointed.

It is interesting that the University of Sydney and the University of New South Wales have graduate numbers and methods of appointment entrenched in their respective legislation. Importantly, the bill makes provision for the inclusion of appointed members with financial and commercial expertise on each governing body, and that is a good move. It is a requirement that external members, non-staff and non-students are always in the majority. Universities, the National Tertiary Education Union and the National Union of Students have been consulted on the proposed amendments. The unions have concerns about some aspects of the bill. The Deputy Premier stated:

> Consultation on the draft bill has taken place with chancellors and vice-chancellors of New South Wales public universities. Chancellors and vice-chancellors were responsible for further consultation within their own institutions. The universities generally support the bill as currently drafted. The National Tertiary Education Union and the National Union of Students were also consulted. While they were not supportive of many aspects of the national governance protocols, they are supportive of the provisions in the bill relating to student and staff representation.

I endorse my leader's support for this bill.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [6.00 p.m.]: Under section 33.15 of the Commonwealth Higher Education Support Act 2003, New South Wales universities are required to meet the requirements of the Commonwealth's National Governance Protocols for Higher Education Providers to qualify for Commonwealth funding. This bill amends all governing Acts of New South Wales universities. The bill will alter the composition of all tertiary governing bodies and will limit membership to no more than 22 members. Provisions will remove the requirement that the governing bodies of universities include members of Parliament, but will allow the Minister responsible to appoint members of Parliament only if on the nomination of the governing body. Other amendments require the majority of a governing body to be external to the university, requiring its members to possess certain expertise and experience and requiring procedures for the nomination of appointed members to be set out in the university's by-laws.

The functions of the university's governing body include overseeing the university's performance, mission statement, strategic directions, annual budget and business plan and risk management across the university, approving and monitoring the university's systems of accountability, ensuring that the university's grievance procedures and associated information are accessible to the public, performance review, and even adopting mission statements in the corporate world. Provisions will also specify members' duties on governing bodies and will now allow for the removal of a member for breach of duty by motion supported by a two-thirds majority of the governing body. However, there is an aspect of this legislation that warrants some concern. By-laws drawn up under this bill with respect to the terms of elected members provide that the maximum incumbency for a member of the governing body is 12 consecutive years unless the governing body resolves otherwise.

This is a retrospective provision of the bill, which unfortunately was not picked up by the Legislation Review Committee. As I was active in promoting the establishment of this committee, I express some disappointment. There is absolutely no need to make this legislation retrospective. Retrospectivity is a repugnant governance principle and something that the Australian Democrats oppose totally. The terms for all universities should be counted from the date the legislation is passed, not prior to its commencement, which is provided in this bill. When legislation was passed to make judges retire at 65 it was absolutely proper not to make that legislation apply retrospectively to existing incumbents—otherwise it would have been open to the interpretation of being a political move that was aimed at getting rid of dissident judges. The same principle should apply here. The limited terms in the legislation are open to interpretation as having been put there at the request of certain chancellors and vice-chancellors who want to get rid of their most constructive critics.

Retrospective legislation is never desirable. It should be introduced only in situations of most serious need, but that is not the case in this instance. There is a personal overriding provision if a governing body so decides, but this is very odd as it would give an existing governing body the right to say which of its number could present themselves to the electorate and which could not. I am also concerned about excessive ministerial power in the legislation because the Minister will be able to appoint a higher proportion of ministerial nominees to governing bodies than ever before. I note the requirement for the Minister to consult with the 10 universities on ministerial appointments, which was in the earlier draft legislation, but that provision has been deleted from the final version that has been presented to Parliament. That begs the question: Why is this so? I seek leave to incorporate an article by Robin Fitzsimons in the *Sydney Morning Herald* dated 6 September 2004 entitled "Free thinkers must be allowed educational autonomy".

Leave granted.

"A university is not a branch office of a ministry of education. Independence is crucial." The reflections of a former British minister for education trained in medieval history might seem removed from Australia. But the man in question—Chris Patten, best known to many as the last governor of Hong Kong—is now the elected chancellor of Oxford University.

In NSW the autonomy and electoral accountability of universities is under threat from the State Government, with proposed legislation aimed at increasing executive government appointments to university governing bodies and removing the existing entrenched rights of most university members—the graduates—to elect council members, unless the education minister determines otherwise by regulation.

The NSW legislation has been prompted by the financial need to comply with Federal Government governance protocols, but goes far beyond its requirements. There is nothing in the protocols which demands either more government representation on university governing bodies or fewer directly elected members.

At the University of Sydney, for example, the numbers of senate members which the minister will have an unfettered right to appoint will double to six from three. The right of graduates to elect at least five senate members is entrenched in legislation.

Now the education minister may determine by regulation whether these "graduate" positions will be elected or appointed by the rest of the senate or by the minister. And an increased government presence will in turn help determine other senate positions, such as the chancellor and vice-chancellor. There is enormous potential for self-replicating and irremovable cliques—the antithesis of "good governance".

The function of a university is to question, dissent, invent—and to educate. That is why Patten says their independence from government is crucial. There is no government representation on the councils of Oxford or Cambridge universities, for example.

Such independence has long underpinned the quirky creative contribution of universities to human progress and liberty—not to mention national wealth creation. Like the judiciary, universities best serve their communities and humanity when they are independent of government.

Two important principles underpin the governance protocols. One is the need for administrative accountability to the governing body. But this accountability is only proper if the governing bodies are accountable to the broad university membership, including graduates. This is why most senate members at Sydney University have been chosen by direct election.

A second important principle of the federal reforms is diversity: universities of equal esteem have different strengths, with different histories, missions, even traditions of graduate involvement.

Why then should the legislation for all state universities be the same? The draft legislation undermines core principles of the Federal Government reforms by making governing bodies less accountable to members of universities, and it may potentially increase the extent to which they are creatures of the government of the day.

A chancellor is a university ambassador who must embody and promote academic values, not corporate mechanics. Perhaps Australian universities should follow the example of Oxford and elect their chancellors by direct graduate suffrage.

There has been an extraordinary lack of consultation on the planned legislation. True, the State Department of Education and Training has hastily and quietly consulted university councils. But what about the wider university membership, including graduates, who have not been consulted? Does the State Government not realise that on "constitutional issues" you do not enable an existing governing body to have a final say on its own composition? Otherwise, no board minority would be safe from having its electoral status diminished or extinguished by a board majority.

And why does the minister regard graduates as less competent than staff, students, other council members, or indeed himself, to choose university council members?

The process of producing the governance changes has raised serious questions about government relying on governance advice from chancellors and vice-chancellors. The former have no existing statutory role in university governance other than as council members, and the latter may not wish for a governing body which is less rather than more compliant.

These are questions of principle and prudence. Sydney University is blessed by independent-minded government appointees and our vice-chancellor. But it was not always so.

Australia has a reputation as a "sporting superpower". We are not yet an academic superpower. But we can be—and we must aim to be. We must let universities serve their communities by playing to their individual strengths. Our future financial wellbeing demands it.

Robin Fitzsimons is the graduate representative on the Sydney University senate.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: It is interesting that the designation of university members frequently refers to students and staff. That is remarkable because it ignores the largest group of university members in the older universities—the graduates. At the University of Sydney, in a historical sense, graduates always have been considered to constitute the university. In current periods of financial stringency it is interesting that graduates, who potentially are a major source of funds, are not encouraged to bond to their alumni. As a graduate of both the University of Sydney and the University of New South Wales I receive a great deal of correspondence requesting such funds. The mind-set that excludes graduates as university members was also pervasive in the relevant government department which prepared the initial draft of legislation but which did not entrench existing graduate elections.

Some universities fought very hard to have their existing complement of graduates directly elected and the elections entrenched in the Act rather than in by-laws. That certainly was the case with the University of Sydney. The proposal to have an additional general staff member in lieu of a ministerial appointment or other membership category on governing bodies can be considered in several ways. On the one hand it may be thought that the Government has too much power over universities through ministerial appointments, which will be increased by two everywhere as the former legislative appointments are replaced by ministerial appointments, and, on the other hand, in an academic institution, such as the University of Sydney, where the principal decisions revolve around how best to position the university internationally, there is a much stronger case for a ministerial appointment being replaced by a directly elected graduate or member of the academic staff.

Graduates represent the strongest case because they are by far the largest university constituency with by far the largest number of actual voters. Nearly 10,000 graduates voted at the last alumni election. It is interesting to note that in relation to the University of Sydney, former Premier Greiner cut graduate representation from 10 to 5 in 1989 while the number of ministerial appointees remained the same, except that one position was reserved for nomination by the Senate as a minor compensation. This legislation will give the Minister unprecedented power over tertiary education in New South Wales because of the unprecedented high number of ministerial appointments. I believe that this is dangerous. I do not understand why the obligation for the Minister to consult the governing bodies of universities regarding the appointments was deleted after the first draft was sent to universities.

Although there is a danger in governing bodies appointing too many of their own number and becoming self-replicating cliques, the greater danger is that, by default, the Minister will informally consult one senior university member—for example, a chancellor or a vice-chancellor—who will thereby have a controlling influence over his or her own council. At least an open process of consultation with the governing body would guard against that type of insularity, even if at the end of the day the Minister does not accept the advice. There is also arguably a conflict between the concept of community representation and autonomy. It must be said that in practical terms the elected graduates and the existing government or legislative appointments cover a fair range of community interests.

The election of graduate, staff and student representatives is an essential component of accountability. The Greens amendments contain some very good suggestions, particularly one which seeks to ensure that intellectual freedom and institutional autonomy are guaranteed and protected in relation to the external and internal functions of the university. That principle is somewhat contradicted by the large numbers of unfettered ministerial appointments. Some universities are concerned about why this bill will make it easier for a governing body to rid itself of an elected dissident than it would be for a company board to do so. The Government also should closely examine conflicts of interest when making appointments. Generally it makes sense for appointees not to have a pre-existing primary identification with a principal competing institution. If legislators are among the ministerial appointments, it would seem sensible to me to follow the old Australian National University principle of appointed legislators being selected from different political parties.

The Greens proposals are the same for all universities, but do not necessarily take account of the diversity of missions of the institutions. Quite rightly, regional universities put a greater focus on their local communities than supra-regional universities, which draw Australians from all geographical constituencies and which serve a more international purpose. The University of Sydney has had important connections with its local community—a disadvantaged community—through the Settlement Project. That connection was mentioned during debate on the Redfern-Waterloo Authority Bill.

I am informed that the Greens amendment would have the effect of creating more internals—that is, members of staff or students—than externals, and that would be incompatible with the Federal Government's protocols. However, that amendment needs to be supported. The making of limited terms retrospective is repugnant, and that is a huge problem. In that regard, I previously cited the retirement laws. I have some problems with this bill and I hope that the Greens amendments, particularly the key amendments, will be supported. I will endeavour to move an amendment to cut the retrospectivity of limited terms.

The Hon. JAN BURNSWOODS [6.10 p.m.]: I am a member of the board of the University of Western Sydney and the bill was discussed at yesterday's board meeting at that university. I stress that while many people, including me, are opposed to much of what the Federal Government has tried to do with university governance, we are now at the stage where the bill has to be passed. If it is not passed the Federal Government's supplementary funding to universities core grants over three years—that is, 2.5 per cent per annum—will not be forthcoming. Supplementary funding is contingent upon compliance. This matter was of particular concern to the University of Western Sydney following the necessity for a late amendment concerning deputy chancellors. Within only the past day or two the University of Western Sydney was formally notified that the amended clause is satisfactory to the Department of Education, Science and Training, and therefore the university is eligible for funding as from 1 January.

These matters are hugely important to universities. It may well be that much of the motivation behind some points raised by Ms Lee Rhiannon and the Hon. Dr Arthur Chesterfield-Evans is well based, but I urge them to not proceed along their foreshadowed track. Every New South Wales university and vice-chancellor has asked for the amendments to be defeated. On 25 November the universities wrote to the Premier in this regard, stating that some of the proposed amendments are in direct contradiction to the Federal Government's protocols; others interfere with the autonomy of universities or would be completely unworkable; and some would mean a considerable process of amendment of university by-laws.

It is not appropriate that at the very last moment amendments are raised that threaten the financial situation and governance of universities, particularly at this time of the year when it is difficult for universities to deal with any changes. Some of us may not like some of the changes foisted upon universities and the New South Wales Parliament by the Federal Government. I join with the members of the board of the University of Western Sydney, and of other universities, in urging the House to reject the amendments. Whether we like them or not, in themselves they are a contradiction of the claims made and interfere with the flexibility and autonomy of universities. The amendments would create enormous problems in a variety of ways and would definitely

ensure that that badly needed money would not flow at the beginning of next year. I urge honourable members to bear in mind that the amendments must be defeated in Committee.

The Hon. CARMEL TEBBUTT (Minister for Community Services, Minister for Ageing, Minister for Disability Services, and Minister for Youth) [6.14 p.m.], in reply: I thank all honourable members who contributed to this debate. I will address the issues that have been raised when the amendments are dealt with in the Committee.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1to 5 agreed to.

Ms LEE RHIANNON [6.13 p.m.], by leave: I move Greens amendments Nos 1, 19, 34, 52, 67, 77, 92, 104, 119 and 130 in globo:

No. 1 Page 3, schedule 1. Insert after line 6:

[2] Section 7 Object and functions of University

Omit section 7 (1). Insert instead:

(1) The object of the University is serving the public interest through the promotion, within the limits of the University's resources, of scholarship, research, free and critical inquiry, the right of all stakeholders in the University (including staff and students) to comment on the decisions of the Council with respect to the management of the University, the interaction of research and teaching, and academic excellence.

No. 19 Page 16, schedule 2. Insert after line 6:

[2] Section 6 Object and functions of University

Omit section 6 (1). Insert instead:

(1) The object of the University is serving the public interest through the promotion, within the limits of the University's resources, of scholarship, research, free and critical inquiry, the right of all stakeholders in the University (including staff and students) to comment on the decisions of the Council with respect to the management of the University, the interaction of research and teaching, and academic excellence.

No. 34 Page 30, schedule 3. Insert after line 6:

[2] Section 6 Object and functions of University

Omit section 6 (1). Insert instead:

(1) The object of the University is serving the public interest through the promotion, within the limits of the University's resources, of scholarship, research, free and critical inquiry, the right of all stakeholders in the University (including staff and students) to comment on the decisions of the Council with respect to the management of the University, the interaction of research and teaching, and academic excellence.

No. 52 Page 44, schedule 4. Insert after line 6:

[2] Section 6 Object and functions of University

Omit section 6 (1). Insert instead:

(1) The object of the University is serving the public interest through the promotion, within the limits of the University's resources, of scholarship, research, free and critical inquiry, the right of all stakeholders in the University (including staff and students) to comment on the decisions of the Council with respect to the management of the University, the interaction of research and teaching, and academic excellence.

No. 67 Page 58, schedule 5. Insert after line 6:

[2] Section 6 Object and functions of University

Omit section 6 (1). Insert instead:

(1) The object of the University is serving the public interest through the promotion, within the limits of the University's resources, of scholarship, research, free and critical inquiry, the right of all stakeholders in the University (including staff and students) to comment on the decisions of the Council with respect to the management of the University, the interaction of research and teaching, and academic excellence.

No. 77 Page 71, schedule 6. Insert after line 6:

[2] Section 6 Object and functions of University

Omit section 6 (1). Insert instead:

(1) The object of the University is serving the public interest through the promotion, within the limits of the University's resources, of scholarship, research, free and critical inquiry, the right of all stakeholders in the University (including staff and students) to comment on the decisions of the Council with respect to the management of the University, the interaction of research and teaching, and academic excellence.

No. 92 Page 85, schedule 7. Insert after line 6:

[2] Section 6 Object and functions of University

Omit section 6 (1). Insert instead:

(1) The object of the University is serving the public interest through the promotion, within the limits of the University's resources, of scholarship, research, free and critical inquiry, the right of all stakeholders in the University (including staff and students) to comment on the decisions of the Senate with respect to the management of the University, the interaction of research and teaching, and academic excellence.

No. 104 Page 98, schedule 8. Insert after line 6:

[2] Section 6 Object and functions of University

Omit section 6 (1). Insert instead:

(1) The object of the University is serving the public interest through the promotion, within the limits of the University's resources, of scholarship, research, free and critical inquiry, the right of all stakeholders in the University (including staff and students) to comment on the decisions of the Council with respect to the management of the University, the interaction of research and teaching, and academic excellence.

No. 119 Page 112, schedule 9. Insert after line 6:

[2] Section 8 Object and functions of University

Omit section 8 (1). Insert instead:

(1) The object of the University is serving the public interest through the promotion, within the limits of the University's resources, of scholarship, research, free and critical inquiry, the right of all stakeholders in the University (including staff and students) to comment on the decisions of the Board with respect to the management of the University, the interaction of research and teaching, and academic excellence.

No. 130 Page 126, schedule 10. Insert after line 6:

[2] Section 6 Object and functions of University

Omit section 6 (1). Insert instead:

(1) The object of the University is serving the public interest through the promotion, within the limits of the University's resources, of scholarship, research, free and critical inquiry, the right of all stakeholders in the University (including staff and students) to comment on the decisions of the Council with respect to the management of the University, the interaction of research and teaching, and academic excellence.

Two members have suggested that the amendments threaten the eligibility of universities receiving funding under the new Federal regime. I was disappointed to hear Ms Burnswoods comment that the amendments have been raised at the last minute. Although today is the last day of sittings for this year and we are rushing through so many bills, the amendments have been available for the scrutiny of members since 17 November.

The Hon. Jan Burnswoods: But not available for consultation with the universities; that was my point.

Ms LEE RHIANNON: Yes, there was widespread consultation. I am concerned that we are hearing a regurgitation of comments, in fact scare tactics, about the amendments. When the bill is proclaimed and becomes law we will end up with a system under which the free spirit of universities, the quest for knowledge, will be lost to a great degree as councils become cliques of power rather than bodies committed to free and critical thought. I was concerned to hear Ms Burnswoods intervene in that way. I urge members who argue that the autonomy and funding of our universities is under threat from these amendments to identify those threats because we have received advice time and time again that that is simply not so.

The amendments embody changes to the objects of universities. When people consider universities' traditional place in our society most would think of them as places where open and free inquiry is conducted for the wider good. The amendments propose a new object to the effect that universities should serve the public interest. How could anyone oppose that proposition? The major parties intend to vote down this very sensible proposal. The amendments, if passed, would make universities responsible for critical inquiry as well as free inquiry. Once again, how could anyone disagree with that proposition? Is that not why universities were established in the first place?

Further, we believe universities should promote the right of all stakeholders, including staff and students, to comment on the decisions of governing bodies with respect to the management of a university. That is the background to the amendments before the Committee. I invite those members who I believe are running a scare campaign about the Greens amendments to identify clearly how they will damage the new funding regime and the autonomy of our universities. They clearly will not, and I look forward to hearing members' contributions to the discussion.

The Hon. CARMEL TEBBUTT (Minister for Community Services, Minister for Ageing, Minister for Disability Services, and Minister for Youth) [6.21 p.m.]: The Government opposes the Greens amendments. The bill as it stands satisfies protocol No. 1. The amendments are outside the requirements of the national governance protocols and go beyond what is necessary. The objects and functions of New South Wales universities are already wide ranging and democratic in intent. They are clearly directed towards ensuring a focus on academic excellence, scholarship, research and free inquiry. Changes such as those proposed in the amendments would require wide consultation. The Government does not support the amendments.

Amendments negatived.

Ms LEE RHIANNON [6.22 p.m.], by leave: I move Greens amendments Nos 2 to 5, 20 to 23, 35 to 38, 53 to 56, 68 to 71, 78 to 81, 93 to 97, 105 to 108, and 131 to 134 in globo:

No. 2 Page 4, schedule 1 [2], proposed section 9 (1) (e), line 4. Omit "one person". Insert instead "2 persons".

No. 3 Page 4, schedule 1 [2], proposed section 9 (1) (e) (i), line 5. Omit "is a member". Insert instead "are members".

No. 4 Page 4, schedule 1 [2], proposed section 9 (1) (e) (ii), line 7. Omit "has". Insert instead "have".

No. 5 Page 4, schedule 1 [2], proposed section 9 (1) (e) (iii), line 9. Omit "is". Insert instead "are".

No. 20 Page 16, schedule 2 [2], proposed section 9 (1) (e), line 31. Omit "one person". Insert instead "2 persons".

No. 21 Page 16, schedule 2 [2], proposed section 9 (1) (e) (i), line 32. Omit "is a member". Insert instead "are members".

No. 22 Page 16, schedule 2 [2], proposed section 9 (1) (e) (ii), line 34. Omit "has". Insert instead "have".

No. 23 Page 17, schedule 2 [2], proposed section 9 (1) (e) (iii), line 1. Omit "is". Insert instead "are".

No. 35 Page 31, schedule 3 [2], proposed section 10 (1) (e), line 6. Omit "one person". Insert instead "2 persons".

No. 36 Page 31, schedule 3 [2], proposed section 10 (1) (e) (i), line 7. Omit "is a member". Insert instead "are members".

No. 37 Page 31, schedule 3 [2], proposed section 10 (1) (e) (ii), line 9. Omit "has". Insert instead "have".

No. 38 Page 31, schedule 3 [2], proposed section 10 (1) (e) (iii), line 11. Omit "is". Insert instead "are".

No. 53 Page 45, schedule 4 [2], proposed section 9 (1) (e), line 6. Omit "one person". Insert instead "2 persons".

No. 54 Page 45, schedule 4 [2], proposed section 9 (1) (e) (i), line 7. Omit "is a member". Insert instead "are members".

No. 55 Page 45, schedule 4 [2], proposed section 9 (1) (e) (ii), line 9. Omit "has". Insert instead "have".

No. 56 Page 45, schedule 4 [2], proposed section 9 (1) (e) (iii), line 11. Omit "is". Insert instead "are".

No. 68 Page 58, schedule 5 [2], proposed section 9 (1) (e), line 32. Omit "one person". Insert instead "2 persons".

No. 69 Page 58, schedule 5 [2], proposed section 9 (1) (e) (i), line 33. Omit "is a member". Insert instead "are members".

No. 70 Page 58, schedule 5 [2], proposed section 9 (1) (e) (ii), line 35. Omit "has". Insert instead "have".

No. 71 Page 59, schedule 5 [2], proposed section 9 (1) (e) (iii), line 1. Omit "is". Insert instead "are".

No. 78 Page 72, schedule 6 [2], proposed section 9 (1) (e), line 4. Omit "one person". Insert instead "2 persons".

No. 79 Page 72, schedule 6 [2], proposed section 9 (1) (e) (i), line 5. Omit "is a member". Insert instead "are members".

No. 80 Page 72, schedule 6 [2], proposed section 9 (1) (e) (ii), line 7. Omit "has". Insert instead "have".

No. 81 Page 72, schedule 6 [2], proposed section 9 (1) (e) (iii), line 9. Omit "is". Insert instead "are".

No. 93 Page 85, schedule 7 [2], proposed section 9 (1) (b), line 20. Omit "6". Insert instead "5".

No. 94 Page 85, schedule 7 [2], proposed section 9 (1) (e), line 32. Omit "one person". Insert instead "2 persons".

No. 95 Page 85, schedule 7 [2], proposed section 9 (1) (e) (i), line 33. Omit "is a member". Insert instead "are members".

No. 96 Page 85, schedule 7 [2], proposed section 9 (1) (e) (ii), line 35. Omit "has". Insert instead "have".

No. 97 Page 86, schedule 7 [2], proposed section 9 (1) (e) (iii), line 1. Omit "is". Insert instead "are".

No. 105 Page 99, schedule 8 [2], proposed section 9 (1) (e), line 6. Omit "one person". Insert instead "2 persons".

No. 106 Page 99, schedule 8 [2], proposed section 9 (1) (e) (i), line 7. Omit "is a member". Insert instead "are members".

No. 107 Page 99, schedule 8 [2], proposed section 9 (1) (e) (ii), line 9. Omit "has". Insert instead "have".

No. 108 Page 99, schedule 8 [2], proposed section 9 (1) (e) (iii), line 11. Omit "is". Insert instead "are".

No. 131 Page 127, schedule 10 [2], proposed section 9 (1) (e), line 4. Omit "one person". Insert instead "2 persons".

No. 132 Page 127, schedule 10 [2], proposed section 9 (1) (e) (i), line 5. Omit "is a member". Insert instead "are members".

No. 133 Page 127, schedule 10 [2], proposed section 9 (1) (e) (ii), line 7. Omit "has". Insert instead "have".

No. 134 Page 127, schedule 10 [2], proposed section 9 (1) (e) (iii), line 9. Omit "is". Insert instead "are".

The Greens are concerned that the Government, in ensuring that New South Wales complies with the Commonwealth protocols, has overstepped the changes that Minister Nelson requires. The Minister for Community Services claims that the bill makes minimal changes to ensure compliance with the protocols, but this is not a minimum position. The Greens amendments increase from one to two the number of non-academic university staff members who must be elected to university governing bodies. I hope we would all agree that general staff are critical to the functioning of universities, but the reality is that they are often overlooked, taken for granted and poorly treated. These amendments are necessary because general staff remain underrepresented on university governing bodies, as the figures show. On average, there are only 1.35 positions for general staff on governing bodies around Australia.

I remind members that the Greens amendments will not apply to the University of Western Sydney, as legislation already provides for equal numbers of academic and general staff on the board of that institution. I put it to those members who have argued that these amendments will be damaging and knock us out of the Commonwealth funding to explain why a provision should apply to the University of Western Sydney but not to other universities. The Greens have received clear advice that incorporating the amendments in the bill would not cause any problems: it would not affect Minister Nelson's requirements. I urge those members who were critical of the Greens' position to give us their arguments.

The Hon. CARMEL TEBBUTT (Minister for Community Services, Minister for Ageing, Minister for Disability Services, and Minister for Youth) [6.25 p.m.]: The Government does not support the Greens amendments.

The Hon. DON HARWIN [6.25 p.m.]: The Opposition does not support the Greens amendments. I will put on the record the views of Dr Jessica Milner Davis, a member of the University of New South Wales

council, and of Robyn Fitzsimons in relation to this bill. The Opposition believes these amendments are not necessary and will produce anomalies in the size and composition of councils, particularly at universities with different arrangements. Dr Jessica Milner Davis has pointed out that the amendments would cause a big problem on the University of New South Wales governing body. The protocols specify that there must be a majority of external members on the council, but the University of New South Wales will have to choose someone to leave that body. The position of that particular university would be most unsatisfactory if these amendments were passed.

Amendments negatived.

Ms LEE RHIANNON [6.27 p.m.], by leave: I move Greens amendments Nos 6, 24, 39, 57, 82, 109, 120 and 135 in globo:

No. 6 Page 4, schedule 1 [2], proposed section 9 (1) (g), line 20. Omit "one". Insert instead "2".

No. 24 Page 17, schedule 2 [2], proposed section 9 (1) (g), line 12. Omit "one". Insert instead "2".

No. 39 Page 31, schedule 3 [2], proposed section 10 (1) (g), line 22. Omit "one". Insert instead "2".

No. 57 Page 45, schedule 4 [2], proposed section 9 (1) (h), line 32. Omit "one". Insert instead "2".

No. 82 Page 72, schedule 6 [2], proposed section 9 (1) (h), line 30. Omit "one". Insert instead "2".

No. 109 Page 99, schedule 8 [2], proposed section 9 (1) (h), line 32. Omit "one". Insert instead "2".

No. 120 Page 113, schedule 9 [2], proposed section 12 (1) (h), line 27. Omit "one". Insert instead "2".

No. 135 Page 127, schedule 10 [2], proposed section 9 (1) (g), line 20. Omit "one". Insert instead "2".

These amendments increase to a minimum of two the number of graduates of the university to be represented on governing bodies. Members have spoken of the important role that graduates play. If they are to be true to their fine words on the subject they should support our amendments, which will enshrine their commitment to alumni representatives. The arguments that I have given previously apply in this case. We have received advice that the amendments could be accepted and there would be no problem complying with Minister Nelson's requirements. I have received a letter from Dr Jessica Milner Davis, to whom Mr Harwin referred, that sets out very clear reasons why and how graduates play such an important role on university governing bodies. She states:

> I believe there is a very strong support, widely among UNSW graduates, for the following views:
>
> - That for reasons of principle, current practice, and future potential, any proposal tending to diminish present alumni participation in and sense of responsibility to contribute to the governance of UNSW should not be supported.
>
> - An endorsement of the view enunciated by UNSW Council that election is the appropriate method of selection for a number of council members drawn from non-ministerial and parliamentary stake-holder groups, including importantly, UNSW graduates.
>
> - A belief that, at a time when UNSW is about to introduce life-long e-mail and other forms of improved communication with its alumni, it is not sensible to contemplate winding back full alumni involvement via formal elections. Ways should rather be found to make existing processes clearer, more vital and participatory …
>
> In response to proposals apparently being entertained by some Australian universities and governments to reduce alumni participation and to displace broad alumni responsibility for selecting members that serve on governing bodies, I would wish to advise against such a course of action in the strongest possible terms.

Many members have spoken again and again about the role of alumni. I would have hoped that they would have supported these amendments because alumni provide an invaluable bridge between the university and the world outside. Mrs Forsythe spoke of the importance of safeguarding the reputation of universities. Those members who have advanced that position surely would agree that a minimum of two alumni is needed. Alumni understand the needs of their own universities but they cannot, like internal members, be so readily accused of a conflict of interest. So there is a real advantage in having alumni. This is where there is inconsistency in the argument that is being put forward by many members who are saying how dangerous these amendments are. The University of New South Wales and the University of Sydney have requirements in place for two or more alumni members to be on the governing body. So there is, unfortunately, a consistency of inconsistency when it comes to some of the arguments members are putting forward. I commend the amendments to the House.

The Hon. CARMEL TEBBUTT (Minister for Community Services, Minister for Ageing, Minister for Disability Services, and Minister for Youth) [6.32 p.m.]: The Government does not support these amendments. There has already been significant consultation on the bill and all the universities and their communities are

satisfied with the bill as drafted. The bill was amended in relation to graduate representation at the University of Sydney and the University of New South Wales as a result of this consultation. These amendments would reduce the flexibility that governing bodies have to meet the specific expertise requirements of the national protocols.

Amendments negatived.

Ms LEE RHIANNON [6.33 p.m.], by leave: I move Greens amendments Nos 7, 8, 12, 13, 16, 17, 18, 25, 26, 30, 31, 40, 41, 45, 46, 49, 50, 58, 59, 63, 64, 83, 84, 88, 89, 110, 111, 115, 116, 121, 122, 126, 127, 136, 137, 141 and 142 in globo:

No. 7 Page 4, schedule 1 [2], proposed section 9 (1) (g) (iii), line 27. Omit "or appointed by the Council".

No. 8 Page 4, schedule 1 [2], proposed section 9 (3), lines 32 and 33. Omit all words on those lines.

No. 12 Page 8, schedule 1 [11], proposed clause 1 (1) (d), lines 29-31. Omit "(in the case of an elected member) or specified in the member's instrument of appointment (in the case of an appointed member)".

No. 13 Page 9, schedule 1 [11], proposed clause 2 (j), lines 37-39. Omit "or a member appointed under section 9 (1) (g), ceases to be qualified for election or appointment". Insert instead "ceases to be qualified for election".

No. 16 Page 13, schedule 1 [15], proposed clause 43 (1) (b), lines 22-24. Omit "(b) or (7) is taken to be appointed as a member under new section 9 (1) (b), (g)". Insert instead "(7) is taken to be appointed as a member under new section 9 (1) (b)".

No. 17 Page 13, schedule 1 [15], proposed clause 43 (1) (c), lines 26-28. Omit "9 (6) (a), (b) or (c) is taken to be elected as a member under new section 9 (1) (d)". Insert instead "9 (5) (b) or (6) (a), (b) or (c) is taken to be elected as a member under new section 9 (1) (g), (d)".

No. 18 Page 14, schedule 1 [15], proposed clause 43 (6) (e), line 23. Omit "appointed". Insert instead "elected".

No. 25 Page 17, schedule 2 [2], proposed section 9 (1) (g) (iii), line 19. Omit "or appointed by the Council".

No. 26 Page 17, schedule 2 [2], proposed section 9 (3), lines 24 and 25. Omit all words on those lines.

No. 30 Page 22, schedule 2 [13], proposed clause 1 (1) (d), lines 16-18. Omit "(in the case of an elected member) or specified in the member's instrument of appointment (in the case of an appointed member)".

No. 31 Page 23, schedule 2 [13], proposed clause 2 (j), lines 23-25. Omit "or a member appointed under section 9 (1) (g), ceases to be qualified for election or appointment". Insert instead "ceases to be qualified for election".

No. 40 Page 31, schedule 3 [2], proposed section 10 (1) (g) (iii), line 29. Omit "or appointed by the Council".

No. 41 Page 31, schedule 3 [2], proposed section 10 (3), lines 34 and 35. Omit all words on those lines.

No. 45 Page 36, schedule 3 [12], proposed clause 1 (1) (d), lines 16-18. Omit "(in the case of an elected member) or specified in the member's instrument of appointment (in the case of an appointed member)".

No. 46 Page 37, schedule 3 [12], proposed clause 2 (j), lines 23-25. Omit "or a member appointed under section 10 (1) (g), ceases to be qualified for election or appointment". Insert instead "ceases to be qualified for election".

No. 49 Page 41, schedule 3 [17], proposed clause 34 (1) (b), lines 11-13. Omit "(a) or (b) or (6) is taken to be appointed as a member under new section 10 (1) (g),". Insert instead "(b) or (6) is taken to be appointed as a member under new section 10".

No. 50 Page 41, schedule 3 [17], proposed clause 34 (1) (c), lines 15-17. Omit "(5) (a), (b) or (c) is taken to be elected as a member under new section 10 (1) (d)". Insert instead "(4) (a) or (5) (a), (b) or (c) is taken to be elected as a member under new section 10 (1) (g), (d)".

No. 58 Page 45, schedule 4 [2], proposed section 9 (1) (h) (iii), line 39. Omit "or appointed by the Council".

No. 59 Page 46, schedule 4 [2], proposed section 9 (3), lines 5 and 6. Omit all words on those lines.

No. 63 Page 50, schedule 4 [11], proposed clause 1 (1) (d), lines 16-18. Omit "(in the case of an elected member) or specified in the member's instrument of appointment (in the case of an appointed member)".

No. 64 Page 51, schedule 4 [11], proposed clause 2 (j), lines 23-25. Omit "or a member appointed under section 9 (1) (h), ceases to be qualified for election or appointment". Insert instead "ceases to be qualified for election".

No. 83 Page 72, schedule 6 [2], proposed section 9 (1) (h) (iii), line 37. Omit "or appointed by the Council".

No. 84 Page 73, schedule 6 [2], proposed section 9 (3), lines 1 and 2. Omit all words on those lines.

No. 88 Page 77, schedule 6 [11], proposed clause 1 (1) (d), lines 3-5. Omit "(in the case of an elected member) or specified in the member's instrument of appointment (in the case of an appointed member)".

No. 89 Page 78, schedule 6 [11], proposed clause 2 (j), lines 11-13. Omit "or a member appointed under section 9 (1) (h), ceases to be qualified for election or appointment". Insert instead "ceases to be qualified for election".

No. 110 Page 99, schedule 8 [2], proposed section 9 (1) (h) (iii), line 39. Omit "or appointed by the Council".

No. 111 Page 100, schedule 8 [2], proposed section 9 (3), lines 5 and 6. Omit all words on those lines.

No. 115 Page 104, schedule 8 [11], proposed clause 1 (1) (d), lines 16-18. Omit "(in the case of an elected member) or specified in the member's instrument of appointment (in the case of an appointed member)".

No. 116 Page 105, schedule 8 [11], proposed clause 2 (j), lines 23-25. Omit "or a member appointed under section 9 (1) (h), ceases to be qualified for election or appointment". Insert instead "ceases to be qualified for election".

No. 121 Page 113, schedule 9 [2], proposed section 12 (1) (h) (iii), line 34. Omit "or appointed by the Board".

No. 122 Page 113, schedule 9 [2], proposed section 12 (3), lines 39 and 40. Omit all words on those lines.

No. 126 Page 118, schedule 9 [15], proposed clause 1 (1) (d), lines 21-23. Omit "(in the case of an elected member) or specified in the member's instrument of appointment (in the case of an appointed member)".

No. 127 Page 119, schedule 9 [15], proposed clause 2 (k), lines 29-31. Omit "or a member appointed under section 12 (1) (h), ceases to be qualified for election or appointment". Insert instead "ceases to be qualified for election".

No. 136 Page 127, schedule 10 [2], proposed section 9 (1) (g) (iii), line 27. Omit "or appointed by the Council".

No. 137 Page 127, schedule 10 [2], proposed section 9 (3), lines 32 and 33. Omit all words on those lines.

No. 141 Page 131, schedule 10 [11], proposed clause 1 (1) (d), lines 29-31. Omit "(in the case of an elected member) or specified in the member's instrument of appointment (in the case of an appointed member)".

No. 142 Page 132, schedule 10 [11], proposed clause 2 (j), lines 37-39. Omit "or a member appointed under section 9 (1) (g), ceases to be qualified for election or appointment". Insert instead "ceases to be qualified for election".

These amendments consolidate councils and senates as democratic institutions. The amendments require that graduates are elected. That is certainly something that one would hope people would not regard as madly revolutionary, but clearly some do. Members need to be aware that if they fail to support these amendments they will be imposing a dangerous and undemocratic process on universities' governing bodies. Without elections we are opening up a system under which graduates are selected in a way that will entrench certain ruling cliques. That will be inevitable. Free and independent thought will be hard to achieve if these amendments fail. Again, I remind members that the University of New South Wales and the University of Sydney already have requirements under the bill for graduate elections. If it is good enough for those two universities, why is it not good enough for the other universities? I am still waiting to hear the arguments on that.

The Hon. CARMEL TEBBUTT (Minister for Community Services, Minister for Ageing, Minister for Disability Services, and Minister for Youth) [6.35 p.m.]: The Government does not support these amendments.

Amendments negatived.

Ms LEE RHIANNON [6.35 p.m.], by leave: I move Greens amendments Nos 9, 27, 42, 60, 72, 85, 98, 101, 112, 123 and 138 in globo:

No. 9 Page 5, schedule 1 [2], proposed section 9. Insert after line 16:

(9) The Minister, in consultation with the Council, is to develop measures to encourage community representation and diversity in the membership of the Council (including in relation to women and indigenous people).

No. 42 Page 32, schedule 3 [2], proposed section 10. Insert after line 16:

(9) The Minister, in consultation with the Council, is to develop measures to encourage community representation and diversity in the membership of the Council (including in relation to women and indigenous people).

No. 42 Page 32, schedule 3 [2], proposed section 10. Insert after line 16:

No. 60 Page 46, schedule 4 [2], proposed section 9. Insert after line 27:

(9) The Minister, in consultation with the Council, is to develop measures to encourage community representation and diversity in the membership of the Council (including in relation to women and indigenous people).

No. 72 Page 60, schedule 5 [2], proposed section 9. Insert after line 16:

(8) The Minister, in consultation with the Council, is to develop measures to encourage community representation and diversity in the membership of the Council (including in relation to women and indigenous people).

No. 85 Page 73, schedule 6 [2], proposed section 9. Insert after line 23:

(9) The Minister, in consultation with the Council, is to develop measures to encourage community representation and diversity in the membership of the Council (including in relation to women and indigenous people).

No. 98 Page 87, schedule 7 [2], proposed section 9. Insert after line 7:

(7) The Minister, in consultation with the Senate, is to develop measures to encourage community representation and diversity in the membership of the Senate (including in relation to women and indigenous people).

No. 101 Page 90, schedule 7 [10], line 4. Omit "(8)". Insert instead "(9)".

No. 112 Page 100, schedule 8 [2], proposed section 9. Insert after line 27:

(9) The Minister, in consultation with the Council, is to develop measures to encourage community representation and diversity in the membership of the Council (including in relation to women and indigenous people).

No. 123 Page 114, schedule 9 [2], proposed section 12. Insert after line 20:

(9) The Minister, in consultation with the Board, is to develop measures to encourage community representation and diversity in the membership of the Board (including in relation to women and indigenous people).

No. 138 Page 128, schedule 10 [2], proposed section 9. Insert after line 16:

(9) The Minister, in consultation with the Council, is to develop measures to encourage community representation and diversity in the membership of the Council (including in relation to women and indigenous people).

These amendments ask the Minister, in consultation with governing bodies, to encourage community representation and diversity in membership of governing bodies, including women and indigenous people. As governing bodies shrink and the Commonwealth imposes more strictures on their composition, it is even more critical that membership reflects our community make-up. Members have spoken about the importance of this, particularly for our rural universities, and these amendments would ensure that that comes about.

The Hon. CARMEL TEBBUTT (Minister for Community Services, Minister for Ageing, Minister for Disability Services, and Minister for Youth) [6.36 p.m.]: This series of amendments seems to ignore the fact that the bill provides for a nominations process to operate for all appointed members, with the university and the Minister required to work collaboratively in making the appointments. The amendments also ignore the fact that each university will need to amend its by-laws and provide details of the nominations process. Diversity in membership is important, but that is provided for already in other ways.

Amendments negatived.

Ms LEE RHIANNON [6.37 p.m.], by leave: I move Greens amendments Nos 10, 28, 43, 61, 73, 86, 99, 113, 124 and 139 in globo:

No. 10 Page 6, schedule 1 [3], proposed section 19 (1B), line 19. Insert at the end of the line:

, and

(m) to ensure that the University fulfils its roles as a public institution, including its broader community roles and responsibilities, and

(n) to ensure that intellectual freedom and institutional autonomy are guaranteed and protected in relation to the external and internal functions of the University, and

(o) to recognise the vital role that the students and staff of the University play on the governing bodies of higher education institutions and their right to take part in such governing bodies and to criticise the functioning of higher education institutions, including their own (as referred to in the *Recommendation concerning the Status of Higher-Education Teaching Personnel*, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in November 1997), and

(p) to ensure that essential information about the operation of the University is made available to all members of the Council, and

(q) to allow staff of the University who are also involved in governance functions of the University (whether as members of the Council or otherwise) appropriate relief from their staff duties for the purposes of such involvement and compensation for expenses (such as childcare expenses) incidental to such involvement.

No. 28 Page 19, schedule 2 [3], proposed section 16 (1B), line 11. Insert at the end of the line:

, and

(m) to ensure that the University fulfils its roles as a public institution, including its broader community roles and responsibilities, and

(n) to ensure that intellectual freedom and institutional autonomy are guaranteed and protected in relation to the external and internal functions of the University, and

(o) to recognise the vital role that the students and staff of the University play on the governing bodies of higher education institutions and their right to take part in such governing bodies and to criticise the functioning of higher education institutions, including their own (as referred to in the *Recommendation concerning the Status of Higher-Education Teaching Personnel*, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in November 1997), and

(p) to ensure that essential information about the operation of the University is made available to all members of the Council, and

(q) to allow staff of the University who are also involved in governance functions of the University (whether as members of the Council or otherwise) appropriate relief from their staff duties for the purposes of such involvement and compensation for expenses (such as childcare expenses) incidental to such involvement.

No. 43 Page 33, schedule 3 [3], proposed section 16 (1B), line 19. Insert at the end of the line:

, and

(m) to ensure that the University fulfils its roles as a public institution, including its broader community roles and responsibilities, and

(n) to ensure that intellectual freedom and institutional autonomy are guaranteed and protected in relation to the external and internal functions of the University, and

(o) to recognise the vital role that the students and staff of the University play on the governing bodies of higher education institutions and their right to take part in such governing bodies and to criticise the functioning of higher education institutions, including their own (as referred to in the *Recommendation concerning the Status of Higher-Education Teaching Personnel*, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in November 1997), and

(p) to ensure that essential information about the operation of the University is made available to all members of the Council, and

(q) to allow staff of the University who are also involved in governance functions of the University (whether as members of the Council or otherwise) appropriate relief from their staff duties for the purposes of such involvement and compensation for expenses (such as childcare expenses) incidental to such involvement.

No. 61 Page 47, schedule 4 [3], proposed section 16 (1B), line 35. Insert at the end of the line:

, and

(m) to ensure that the University fulfils its roles as a public institution, including its broader community roles and responsibilities, and

(n) to ensure that intellectual freedom and institutional autonomy are guaranteed and protected in relation to the external and internal functions of the University, and

(o) to recognise the vital role that the students and staff of the University play on the governing bodies of higher education institutions and their right to take part in such governing bodies and to criticise the functioning of higher education institutions, including their own (as referred to in the *Recommendation concerning the Status of Higher-Education Teaching Personnel*, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in November 1997), and

(p) to ensure that essential information about the operation of the University is made available to all members of the Council, and

(q) to allow staff of the University who are also involved in governance functions of the University (whether as members of the Council or otherwise) appropriate relief from their staff duties for the purposes of such involvement and compensation for expenses (such as childcare expenses) incidental to such involvement.

No. 73 Page 61, schedule 5 [3], proposed section 15 (1B), line 19. Insert at the end of the line:

, and

(m) to ensure that the University fulfils its roles as a public institution, including its broader community roles and responsibilities, and

(n) to ensure that intellectual freedom and institutional autonomy are guaranteed and protected in relation to the external and internal functions of the University, and

(o) to recognise the vital role that the students and staff of the University play on the governing bodies of higher education institutions and their right to take part in such governing bodies and to criticise the functioning of higher education institutions, including their own (as referred to in the *Recommendation concerning the Status of Higher-Education Teaching Personnel*, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in November 1997), and

(p) to ensure that essential information about the operation of the University is made available to all members of the Council, and

(q) to allow staff of the University who are also involved in governance functions of the University (whether as members of the Council or otherwise) appropriate relief from their staff duties for the purposes of such involvement and compensation for expenses (such as childcare expenses) incidental to such involvement.

No. 86 Page 74, schedule 6 [3], proposed section 16 (1B), line 27. Insert at the end of the line:

, and

(m) to ensure that the University fulfils its roles as a public institution, including its broader community roles and responsibilities, and

(n) to ensure that intellectual freedom and institutional autonomy are guaranteed and protected in relation to the external and internal functions of the University, and

(o) to recognise the vital role that the students and staff of the University play on the governing bodies of higher education institutions and their right to take part in such governing bodies and to criticise the functioning of higher education institutions, including their own (as referred to in the *Recommendation concerning the Status of Higher-Education Teaching Personnel*, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in November 1997), and

(p) to ensure that essential information about the operation of the University is made available to all members of the Council, and

(q) to allow staff of the University who are also involved in governance functions of the University (whether as members of the Council or otherwise) appropriate relief from their staff duties for the purposes of such involvement and compensation for expenses (such as childcare expenses) incidental to such involvement.

No. 99 Page 88, schedule 7 [3], proposed section 16 (1B), line 13. Insert at the end of the line:

, and

(m) to ensure that the University fulfils its roles as a public institution, including its broader community roles and responsibilities, and

(n) to ensure that intellectual freedom and institutional autonomy are guaranteed and protected in relation to the external and internal functions of the University, and

(o) to recognise the vital role that the students and staff of the University play on the governing bodies of higher education institutions and their right to take part in such governing bodies and to criticise the functioning of higher education institutions, including their own (as referred to in the *Recommendation concerning the Status of Higher-Education Teaching Personnel*, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in November 1997), and

(p) to ensure that essential information about the operation of the University is made available to all Fellows, and

(q) to allow staff of the University who are also involved in governance functions of the University (whether as Fellows or otherwise) appropriate relief from their staff duties for the purposes of such involvement and compensation for expenses (such as childcare expenses) incidental to such involvement.

No. 113 Page 101, schedule 8 [3], proposed section 16 (1B), line 35. Insert at the end of the line:

, and

(m) to ensure that the University fulfils its roles as a public institution, including its broader community roles and responsibilities, and

(n) to ensure that intellectual freedom and institutional autonomy are guaranteed and protected in relation to the external and internal functions of the University, and

(o) to recognise the vital role that the students and staff of the University play on the governing bodies of higher education institutions and their right to take part in such governing bodies and to criticise the functioning of higher education institutions, including their own (as referred to in the *Recommendation concerning the Status*

of Higher-Education Teaching Personnel, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in November 1997), and

(p) to ensure that essential information about the operation of the University is made available to all members of the Council, and

(q) to allow staff of the University who are also involved in governance functions of the University (whether as members of the Council or otherwise) appropriate relief from their staff duties for the purposes of such involvement and compensation for expenses (such as childcare expenses) incidental to such involvement.

No. 124 Page 115, schedule 9 [5], proposed section 22 (1B), line 35. Insert at the end of the line:

, and

(m) to ensure that the University fulfils its roles as a public institution, including its broader community roles and responsibilities, and

(n) to ensure that intellectual freedom and institutional autonomy are guaranteed and protected in relation to the external and internal functions of the University, and

(o) to recognise the vital role that the students and staff of the University play on the governing bodies of higher education institutions and their right to take part in such governing bodies and to criticise the functioning of higher education institutions, including their own (as referred to in the *Recommendation concerning the Status of Higher-Education Teaching Personnel*, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in November 1997), and

(p) to ensure that essential information about the operation of the University is made available to all members of the Board, and

(q) to allow staff of the University who are also involved in governance functions of the University (whether as members of the Board or otherwise) appropriate relief from their staff duties for the purposes of such involvement and compensation for expenses (such as childcare expenses) incidental to such involvement.

No. 139 Page 129, schedule 10 [3], proposed section 16 (1B), line 19. Insert at the end of the line:

, and

(m) to ensure that the University fulfils its roles as a public institution, including its broader community roles and responsibilities, and

(n) to ensure that intellectual freedom and institutional autonomy are guaranteed and protected in relation to the external and internal functions of the University, and

(o) to recognise the vital role that the students and staff of the University play on the governing bodies of higher education institutions and their right to take part in such governing bodies and to criticise the functioning of higher education institutions, including their own (as referred to in the *Recommendation concerning the Status of Higher-Education Teaching Personnel*, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in November 1997), and

(p) to ensure that essential information about the operation of the University is made available to all members of the Council, and

(q) to allow staff of the University who are also involved in governance functions of the University (whether as members of the Council or otherwise) appropriate relief from their staff duties for the purposes of such involvement and compensation for expenses (such as childcare expenses) incidental to such involvement.

The Greens support the new functions for governing bodies set out in this bill. We believe that they would benefit from the following additional functions to promote good governance: to ensure the university fulfils its role as a public institution, including its broader community roles and responsibilities; to ensure that intellectual freedom and institutional autonomy are guaranteed and protected in relation to the external and internal functions of the university; to recognise the vital role that university students and the staff of the universities play on the governing bodies and their right to participate in governing bodies and to criticise the functioning of higher education institutions, including their own; to ensure that essential information about the operation of the university is made available to all members of the council to allow university staff who are also involved in the governance functions of the university, whether as members of the governing body or otherwise, appropriate relief from their staff duties for the purpose of such involvement and compensation for all expenses, such as child care costs incidental to such involvement. I commend the amendments to the Committee.

The Hon. CARMEL TEBBUTT (Minister for Community Services, Minister for Ageing, Minister for Disability Services, and Minister for Youth) [6.38 p.m.]: The Government does not support these amendments.

The functions of council sections are already wide ranging. The amendments are not necessary to implement the national governance protocols and would need to be fully consulted on.

Amendments negatived.

Ms LEE RHIANNON [6.40 p.m.], by leave: I move Greens amendments Nos 11, 29, 44, 62, 74, 87, 100, 114, 125 and 140 in globo:

No. 11 Page 6, schedule 1. Insert before line 20:

[4] Section 19 (2A) and (2B)

Insert after section 19 (2):

(2A) The Minister, after consultation with relevant stakeholders (including the Council, the students and staff of the University and student and staff unions), is:

(a) to issue guidelines to the Council with respect to its good governance, and

(b) to review the guidelines at least every 3 years.

(2B) The Council must exercise its functions in accordance with the guidelines referred to in subsection (2A).

No. 29 Page 19, schedule 2. Insert before line 12:

[4] Section 16 (2A) and (2B)

Insert after section 16 (2):

(2A) The Minister, after consultation with relevant stakeholders (including the Council, the students and staff of the University and student and staff unions), is:

(a) to issue guidelines to the Council with respect to its good governance, and

(b) to review the guidelines at least every 3 years.

(2B) The Council must exercise its functions in accordance with the guidelines referred to in subsection (2A).

No. 44 Page 33, schedule 3. Insert before line 20:

[4] Section 16 (2A) and (2B)

Insert after section 16 (2):

(2A) The Minister, after consultation with relevant stakeholders (including the Council, the students and staff of the University and student and staff unions), is:

(a) to issue guidelines to the Council with respect to its good governance, and

(b) to review the guidelines at least every 3 years.

(2B) The Council must exercise its functions in accordance with the guidelines referred to in subsection (2A).

No. 62 Page 48, schedule 4. Insert before line 1:

[4] Section 16 (2A) and (2B)

Insert after section 16 (2):

(2A) The Minister, after consultation with relevant stakeholders (including the Council, the students and staff of the University and student and staff unions), is:

(a) to issue guidelines to the Council with respect to its good governance, and

(b) to review the guidelines at least every 3 years.

(2B) The Council must exercise its functions in accordance with the guidelines referred to in subsection (2A).

No. 74 Page 61, schedule 5. Insert before line 20:

[4] Section 15 (2A) and (2B)

Insert after section 15 (2):

(2A) The Minister, after consultation with relevant stakeholders (including the Council, the students and staff of the University and student and staff unions), is:

(a) to issue guidelines to the Council with respect to its good governance, and

(b) to review the guidelines at least every 3 years.

(2B) The Council must exercise its functions in accordance with the guidelines referred to in subsection (2A).

No. 87 Page 74, schedule 6. Insert before line 28:

[4] Section 16 (2A) and (2B)

Insert after section 16 (2):

(2A) The Minister, after consultation with relevant stakeholders (including the Council, the students and staff of the University and student and staff unions), is:

(a) to issue guidelines to the Council with respect to its good governance, and

(b) to review the guidelines at least every 3 years.

(2B) The Council must exercise its functions in accordance with the guidelines referred to in subsection (2A).

No. 100 Page 88, schedule 7. Insert before line 14:

[4] Section 16 (2A) and (2B)

Insert after section 16 (2):

(2A) The Minister, after consultation with relevant stakeholders (including the Senate, the students and staff of the University and student and staff unions), is:

(a) to issue guidelines to the Senate with respect to its good governance, and

(b) to review the guidelines at least every 3 years.

(2B) The Senate must exercise its functions in accordance with the guidelines referred to in subsection (2A).

No. 114 Page 102, schedule 8. Insert before line 1:

[4] Section 16 (2A) and (2B)

Insert after section 16 (2):

(2A) The Minister, after consultation with relevant stakeholders (including the Council, the students and staff of the University and student and staff unions), is:

(a) to issue guidelines to the Council with respect to its good governance, and

(b) to review the guidelines at least every 3 years.

(2B) The Council must exercise its functions in accordance with the guidelines referred to in subsection (2A).

No. 125 Page 116, schedule 9. Insert before line 1:

[6] Section 22 (2A) and (2B)

Insert after section 22 (2):

(2A) The Minister, after consultation with relevant stakeholders (including the Board, the students and staff of the University and student and staff unions), is:

(a) to issue guidelines to the Board with respect to its good governance, and

(b) to review the guidelines at least every 3 years.

(2B) The Board must exercise its functions in accordance with the guidelines referred to in subsection (2A).

No. 140 Page 129, schedule 10. Insert before line 20:

[4] Section 16 (2A) and (2B)

Insert after section 16 (2):

(2A) The Minister, after consultation with relevant stakeholders (including the Council, the students and staff of the University and student and staff unions), is:

(a) to issue guidelines to the Council with respect to its good governance, and

(b) to review the guidelines at least every 3 years.

(2B) The Council must exercise its functions in accordance with the guidelines referred to in subsection (2A).

These amendments propose that the Minister, in consultation with relevant stakeholders, including the council, the students and staff of the university and student and staff unions, issue guidelines with respect to good governance. Governing bodies should exercise their functions in accordance with these guidelines, and these should be reviewed at least every three years. With the increasingly complex environment in which universities operate good governance is not an easy task, as we have seen in many examples in universities in this State. But as universities become more commercialised, getting good governance right becomes increasingly important, and guidelines would provide valuable assistance. I commend the Greens amendments to the Committee.

The Hon. CARMEL TEBBUTT (Minister for Community Services, Minister for Ageing, Minister for Disability Services, and Minister for Youth) [6.42 p.m.]: The Government does not support these amendments. The Acts for each university, and the changes proposed in this bill, already provide each university with its key guidelines for good governance. That is the key purpose of the Act and by-laws of each university. Each university's amended by-laws, following the passage of this bill, will address the more detailed procedural aspects of governance. The amendments are not necessary and are not supported.

The Hon. DON HARWIN [6.42 p.m.]: These amendments propose that the Minister, in consultation with relevant stakeholders including the council, students and staff of the university and student and staff unions, issue guidelines with respect to good governance. Governing bodies should exercise their functions in accordance with those guidelines, which should be reviewed at least every three years. That is the intent of the amendments. With the increasingly complex environment in which universities operate, good governance is not an easy task but as universities become more commercialised getting good governance right becomes increasingly important, and these guidelines are thought to provide that valuable assistance. There is some merit in the idea of best practise governance guidelines but in fact they would be better developed on a national basis. Developing a separate set of guidelines for each institution, let alone each State, is not the best way to go.

Amendments negatived.

Ms LEE RHIANNON [6.42 p.m.], by leave: I move Greens amendments Nos 14, 32, 47, 65, 75, 90, 102, 117, 128 and 143 in globo:

No. 14 Page 10, schedule 1. Insert after line 6:

[13] Schedule 1, clause 6

Insert at the end of the clause:

(2) The Council must ensure that all meetings of the Council are open to the public unless the Council determines, in relation to a particular meeting, that the whole or part of the meeting should be closed to the public due to the sensitivity (commercial or otherwise) of the business to be conducted at the meeting.

(3) Any person is entitled to inspect the minutes of the meetings of the Council (other than minutes for any meeting or part of a meeting that is closed to the public) at any reasonable hour.

No. 32 Page 23, schedule 2. Insert after line 31:

[15] Schedule 1, clause 6

Insert at the end of the clause:

(2) The Council must ensure that all meetings of the Council are open to the public unless the Council determines, in relation to a particular meeting, that the whole or part of the meeting should be closed to the public due to the sensitivity (commercial or otherwise) of the business to be conducted at the meeting.

(3) Any person is entitled to inspect the minutes of the meetings of the Council (other than minutes for any meeting or part of a meeting that is closed to the public) at any reasonable hour.

No. 47 Page 37, schedule 3. Insert after line 31:

[14] Schedule 1, clause 6

Insert at the end of the clause:

(2) The Council must ensure that all meetings of the Council are open to the public unless the Council determines, in relation to a particular meeting, that the whole or part of the meeting should be closed to the public due to the sensitivity (commercial or otherwise) of the business to be conducted at the meeting.

(3) Any person is entitled to inspect the minutes of the meetings of the Council (other than minutes for any meeting or part of a meeting that is closed to the public) at any reasonable hour.

No. 65 Page 51, schedule 4. Insert after line 31:

[13] Schedule 1, clause 6

Insert at the end of the clause:

(2) The Council must ensure that all meetings of the Council are open to the public unless the Council determines, in relation to a particular meeting, that the whole or part of the meeting should be closed to the public due to the sensitivity (commercial or otherwise) of the business to be conducted at the meeting.

(3) Any person is entitled to inspect the minutes of the meetings of the Council (other than minutes for any meeting or part of a meeting that is closed to the public) at any reasonable hour.

No. 75 Page 65, schedule 5. Insert after line 6:

[13] Schedule 1, clause 6

Insert at the end of the clause:

(2) The Council must ensure that all meetings of the Council are open to the public unless the Council determines, in relation to a particular meeting, that the whole or part of the meeting should be closed to the public due to the sensitivity (commercial or otherwise) of the business to be conducted at the meeting.

(3) Any person is entitled to inspect the minutes of the meetings of the Council (other than minutes for any meeting or part of a meeting that is closed to the public) at any reasonable hour.

No. 90 Page 78, schedule 6. Insert after line 17:

[12] Schedule 1, clause 6

Insert at the end of the clause:

(2) The Council must ensure that all meetings of the Council are open to the public unless the Council determines, in relation to a particular meeting, that the whole or part of the meeting should be closed to the public due to the sensitivity (commercial or otherwise) of the business to be conducted at the meeting.

(3) Any person is entitled to inspect the minutes of the meetings of the Council (other than minutes for any meeting or part of a meeting that is closed to the public) at any reasonable hour.

No. 102 Page 91, schedule 7. Insert after line 36:

[13] Schedule 1, clause 6

Insert at the end of the clause:

(2) The Senate must ensure that all meetings of the Senate are open to the public unless the Senate determines, in relation to a particular meeting, that the whole or part of the meeting should be closed to the public due to the sensitivity (commercial or otherwise) of the business to be conducted at the meeting.

(3) Any person is entitled to inspect the minutes of the meetings of the Senate (other than minutes for any meeting or part of a meeting that is closed to the public) at any reasonable hour.

No. 117 Page 105, schedule 8. Insert after line 29:

[**12] Schedule 1, clause 6**

Insert at the end of the clause:

(2) The Council must ensure that all meetings of the Council are open to the public unless the Council determines, in relation to a particular meeting, that the whole or part of the meeting should be closed to

the public due to the sensitivity (commercial or otherwise) of the business to be conducted at the meeting.

(3) Any person is entitled to inspect the minutes of the meetings of the Council (other than minutes for any meeting or part of a meeting that is closed to the public) at any reasonable hour.

No. 128 Page 119, schedule 9. Insert after line 39:

[18] Schedule 1, clause 6

Insert at the end of the clause:

(2) The Board must ensure that all meetings of the Board are open to the public unless the Board determines, in relation to a particular meeting, that the whole or part of the meeting should be closed to the public due to the sensitivity (commercial or otherwise) of the business to be conducted at the meeting.

(3) Any person is entitled to inspect the minutes of the meetings of the Board (other than minutes for any meeting or part of a meeting that is closed to the public) at any reasonable hour.

No. 143 Page 133, schedule 10. Insert after line 6:

[13] Schedule 1, clause 6

Insert at the end of the clause:

(2) The Council must ensure that all meetings of the Council are open to the public unless the Council determines, in relation to a particular meeting, that the whole or part of the meeting should be closed to the public due to the sensitivity (commercial or otherwise) of the business to be conducted at the meeting.

(3) Any person is entitled to inspect the minutes of the meetings of the Council (other than minutes for any meeting or part of a meeting that is closed to the public) at any reasonable hour.

These amendments will promote accountability and transparency by requiring governing bodies to ensure that all meetings are open to the public unless it is determined otherwise in relation to a particular meeting that the whole or part of the meeting should be closed to the public because of the sensitivity, commercial or otherwise, of the business to be conducted at the meeting. That is a basic and sensible requirement and it was certainly how the council of which I was a member operated at the University of New South Wales. These amendments will also promote accountability and transparency by allowing any person to inspect the minutes of the meetings of the council, other than minutes for any meeting or part of a meeting that is closed to the public, at any reasonable hour. Again these are basic recommendations that when put in place will clearly help universities be more accountable and help avoid some of the unpleasant and damaging problems that have arisen, for example, those at the University of New South Wales and the University of Newcastle. I commend the Greens amendments to the Committee.

The Hon. CARMEL TEBBUTT (Minister for Community Services, Minister for Ageing, Minister for Disability Services, and Minister for Youth) [6.43 p.m.]: The Government does not support these amendments. The operating procedures of university governing bodies are detailed in university by-laws, generally through standing orders. University by-laws will be amended and updated following the passage of this bill and the by-laws are the appropriate place for such matters.

Amendments negatived.

Ms LEE RHIANNON [6.44 p.m.], by leave: I move Greens amendments Nos 15, 33, 48, 66, 76, 91, 103, 118, 129 and 144 in globo:

No. 15 Page 10, schedule 1 [13], proposed clause 1. Insert after line 15:

(2) However, nothing in subclause (1) prevents an elected member of the Council from representing the views of the member's constituency.

No. 33 Page 24, schedule 2 [15], proposed clause 1. Insert after line 9:

(2) However, nothing in subclause (1) prevents an elected member of the Council from representing the views of the member's constituency.

No. 48 Page 38, schedule 3 [14], proposed clause 1. Insert after line 9:

(2) However, nothing in subclause (1) prevents an elected member of the Council from representing the views of the member's constituency.

No. 66 Page 52, schedule 4 [13], proposed clause 1. Insert after line 9:

(2) However, nothing in subclause (1) prevents an elected member of the Council from representing the views of the member's constituency.

No. 76 Page 65, schedule 5 [13], proposed clause 1. Insert after line 15:

(2) However, nothing in subclause (1) prevents an elected member of the Council from representing the views of the member's constituency.

No. 91 Page 78, schedule 6 [12], proposed clause 1. Insert after line 26:

(2) However, nothing in subclause (1) prevents an elected member of the Council from representing the views of the member's constituency.

No. 103 Page 92, schedule 7 [13], proposed clause 1. Insert after line 9:

(2) However, nothing in subclause (1) prevents an elected Fellow from representing the views of the Fellow's constituency.

No. 118 Page 106, schedule 8 [12], proposed clause 1. Insert after line 1:

(2) However, nothing in subclause (1) prevents an elected member of the Council from representing the views of the member's constituency.

No. 129 Page 120, schedule 9 [18], proposed clause 1. Insert after line 9:

(2) However, nothing in subclause (1) prevents an elected member of the Board from representing the views of the member's constituency.

No. 144 Page 133, schedule 10 [13], proposed clause 1. Insert after line 15:

(2) However, nothing in subclause (1) prevents an elected member of the Council from representing the views of the member's constituency.

These amendments recognise that while members of governing bodies have a duty to carry out their functions in good faith and in the best interests of the university as a whole, they should not be prevented from representing the views of their constituencies. This right is a healthy and productive one. A member's knowledge of his or her constituency is one primary reason why he or she sits on the university governing bodies. It contributes to the wellbeing of universities as public bodies representing the interests of various stakeholders. I believe these are important amendments, partly because of my own experience at the University of New South Wales, where we were frequently told that we were not representing our own constituency and that what came first was our position on the council. These amendments will go a considerable way towards clarifying the role that members of councils play—and it can be a much more useful role if they are representing their own constituency. I commend Greens amendments to the Committee.

The Hon. CARMEL TEBBUTT (Minister for Community Services, Minister for Ageing, Minister for Disability Services, and Minister for Youth) [6.45 p.m.]: The Government does not support these amendments. We do not believe they are necessary.

Amendments negatived.

Schedules 1 to 10 agreed to.

Title agreed to.

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

HOME BUILDING AMENDMENT BILL

REDFERN-WATERLOO AUTHORITY BILL

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

PARLIAMENTARY ETHICS ADVISER

The DEPUTY-PRESIDENT (The Hon. Kayee Griffin): I report the receipt of the following message from the Legislative Assembly:

Madam PRESIDENT

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

That the appointment of Mr Ian Dickson as Parliamentary Ethics Adviser, as resolved by the House on 11 December 2002, be extended up to 22 February 2005.

The Legislative Assembly requests that the Legislative Council pass a similar resolution.

Legislative Assembly
9 December 2004

JOHN AQUILINA
Speaker

BUSINESS OF THE HOUSE

Suspension of Standing Orders

Motion, by leave, by the Hon. John Hatzistergos agreed to:

That standing orders be suspended to allow consideration of the Legislative Assembly's message relating to the Parliamentary Ethics Adviser at a later hour of the sitting.

Order of Business

Motion by the Hon. John Hatzistergos agreed to:

That consideration of the Legislative Assembly's message stand as an order of the day for a later hour of the sitting.

CRIMES AMENDMENT (CHILD PORNOGRAPHY) BILL

Second Reading

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [6.51 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The Government is pleased to introduce the Crimes Amendment (Child Pornography) Bill 2004. Child pornography involves material that describes or depicts the sexual or physical abuse of children. It is abhorrent because its production usually involves the abuse and exploitation of children, and because in the hands of paedophiles it can be used in ways that put children at risk. Child pornography can reinforce a paedophile's perception that paedophilia is normal, and it can be shown to children as part of a process of what is called grooming for future abuse. All members of this House would be aware that police across the nation have been involved in Operation Auxin, targeting Internet child pornography. This operation has resulted in large numbers of arrests in recent months and highlighted the serious nature of child pornography offences.

The main purpose of the bill is to increase the maximum penalties for child pornography offences. It is important that courts give effect to the principles of general deterrence and denunciation in cases involving child pornography by imposing substantial sentences, and the bill gives them the capacity to do so. Those who possess child pornography, though they may not directly harm any child, provide a market for those who produce and distribute this material. If the courts can provide effective deterrence to people who possess child pornography, this market may be eliminated, and the impetus to produce child pornography, and to abuse children in its production, will be reduced. These principles have been recognised and articulated in the Canadian courts in the case of *R v Stroempl*, where the Court of Appeal in Ontario made the following comments:

> The evil of child pornography lies not only in the fact that actual children are often used in its production, but also in the use to which it is put. ….

It is used to "reinforce cognitive distortions" (by rationalising paedophilia as a normal sexual preference); to fuel their sexual fantasies (for example, through masturbation); and to "groom" children, by showing it to them in order to promote discussion of sexual matters and thereby persuade them that such activity is normal.

The possession of child pornography is a very important contributing element in the general problem of child pornography.

…The trial judge was right in his observation that if the courts, through the imposition of appropriate sanctions, stifle the activities of prospective purchasers and collectors of child pornography, this may go some distance to smother the market for child pornography altogether. In turn, this would substantially reduce the motivation to produce child pornography in the first place.

By increasing the maximum penalties for these offences, the Government is sending a clear message to the courts that child pornography should not be tolerated. The bill also expands the definition of child pornography to encompass violence and torture against children. The bill makes the possession of child pornography an indictable offence with no statute of limitations; removes the need for classifying material suspected of being child pornography; and clarifies that prosecutions which commenced before material was classified are still valid by making a retrospective amendment.

I will now outline the principal provisions of the bill. A new section 91H is inserted into the Crimes Act by item [4] of schedule 1. The new offences contained in that section, entitled production, dissemination or possession of child pornography, were previously covered by sections 578B and 578C. The maximum penalties are substantially increased: possession of child pornography will carry five years instead of two years, and production or dissemination of child pornography will carry 10 years instead of five years. Child pornography is defined as material that depicts or describes, in a manner that would in all the circumstances cause offence to reasonable persons, a person under, or apparently under, the age of 16 years: (a) engaged in sexual activity, or (b) in a sexual context, or (c) as the victim of torture, cruelty or physical abuse, whether or not in a sexual context. The definition of "material" to be inserted by item [2] of schedule 1 is a broad one that will cover objects, photographs, films, printed matter, and images on computer screens.

The definition of child pornography is new. The current definition relies on material being classified as "RC", or "refused classification", under the Commonwealth Classification (Publications, Films and Computer Games) Act 1995 on the basis of its offensive description or depiction of a person who is or looks to be under 16. The new definition will remove the classification requirement. The requirement to classify material has been unnecessarily onerous in many cases where it is clear that the material is child pornography. The new definition will allow courts to make their own determination as to whether material is or is not child pornography. It is similar to the definitions already used in a number of other States and Territories.

A depiction or description of a child in a sexual context is a broad category that would cover, for example, situations where a child is depicted in an indecent pose or watching another person engaged in sexual activity. The requirement that the material must, in all the circumstances, be offensive to reasonable persons ensures that innocent family photographs of naked children, for example, will not be captured. The inclusion of material in which a child is a victim of torture, cruelty or physical abuse ensures that abuse which is not purely sexual, but is still offensive, is covered.

The bill contains five defences that are available to the reworked offence. The first defence is that the defendant did not know, and could not reasonably be expected to have known, that he or she produced, disseminated or possessed child pornography, as the case requires. This would exempt from liability a person who passes on a computer disk without knowing that a pornographic image was buried in one of its files. The requirement that a defendant establish that he or she could not reasonably be expected to have known that they produced, disseminated or possessed child pornography means that a defendant cannot escape liability simply by asserting that they did not know the material contained child pornography. It adds an objective element to the defence.

The second defence is that the material was classified under the Commonwealth legislation, other than as RC. This applies both to material that had been classified before the alleged offence, and to material classified later. If material is approved by the classification authorities, a court should not then be able to hold that it is child pornography. The third defence is available where the defendant was acting for a genuine child protection, scientific, medical, legal, artistic or other public benefit purpose, and the conduct was reasonable for that purpose. In determining whether the defence was available, regard will need to be had to the circumstances in which the material was produced, used or intended to be used. This defence would cover, for example, news or current affairs programs reporting images of children injured in a war, or medical texts, if that material has not been classified. It would also cover people who report cases of child abuse to the authorities.

The fourth and fifth defences apply to law enforcement officers and classification officers who are acting in the course of their official duties. There is an additional defence which applies only to the offence of possession of child pornography. The defence is available where the material came into the defendant's possession unsolicited and the defendant, as soon as he or she became aware of its pornographic nature, took reasonable steps to get rid of it. A prime example of where this defence would apply is where a person receives unsolicited or spam email containing child pornography, and he or she attempts to delete it as soon as they realise what it is.

The defence applies equally to unsolicited hard copy materials. Item [3] of schedule 1 redrafts the offence of using a child for pornographic purposes in section 91G of the Crimes Act. It doubles the maximum penalties. The offence will carry 10 years where the child is aged 14 or over, and it will carry 14 years where the child is under 14. The redrafted offence provides separate offences for children aged over and under 14, and it allows an alternative verdict for the lesser offence where, in a trial for an offence against a child under 14, the jury is not satisfied that the child is in fact under 14.

The definition of pornographic purposes in the new section 91G (3) reflects the categories in the definition of child pornography in proposed section 91H. Both sections expand what may be the commonly understood concept of what is pornography to include material involving physical abuse. Items [5] to [10] of schedule 1 delete the existing child pornography provisions, leaving section 578C as an offence of publishing indecent articles, and ensuring that a person cannot be charged with child pornography offences and with publishing an indecent article in respect of the same matter. Item [11] of schedule 1 contains the provision clarifying the current offence of possession of child pornography under section 578B.

The controversy of this amendment is well known, and has been substantially exaggerated. For the record, let me say that police legal services sought the advice of the Crown Advocate to clarify whether the commencement of any prosecution was in doubt because they had not yet been classified. The Crown Advocate advised that a court was unlikely to accept an argument that a person cannot be charged before classification, but recommended, however, for abundant caution that a retrospective clarifying amendment would put the matter beyond doubt. That was simply commonsense, and the Government is happy to act to put this matter beyond doubt.

The amendment clarifies that section 578B (4) (b), as in force prior to this legislation, does not prevent, and is taken never to have prevented, process being issued or served, or a person pleading guilty or a plea of guilty being accepted, or sentence being passed after a plea of guilty, without the material having been classified. This amendment will have a retrospective effect and will, therefore, apply to all offences alleged to have been committed before the new legislation commences, including those for which proceedings are now on foot. Schedule 2 makes consequential amendments to a number of other Acts by inserting references to proposed section 91H. As promised, the offence will now be an indictable offence, able to be dealt with in the District Court by a jury. The most serious cases will be dealt with in this way.

Item [2] of schedule 2.3 amends the evidentiary provision in section 58 of the Classification (Publications, Films and Computer Games) Enforcement Act 1995. It clarifies that a certificate issued under the Commonwealth classification legislation can state not only the current classification status of something, but also a classification status at any previous date. Item [1] of schedule 2.3 ensures that the section applies to offences under the Crimes Act. These amendments achieve a uniformity with other States both in terms of penalty and content of the offence. They are a warning to any person possessing or disseminating child pornography or involved in its production that their offending will be dealt with seriously by the courts. I commend the bill to the House.

The Hon. GREG PEARCE [6.51 p.m.]: The Opposition does not oppose this bill. Indeed, the Opposition supports it wholeheartedly as it arises, essentially, as a result of the Leader of the Opposition bringing to the Government's attention—and public attention, for that matter—a defect in the law that potentially opened loopholes for people accused of child sex crimes. The Leader of the Opposition bravely withstood a torrent of abuse from the Government as soon as he raised these issues. However, in introducing this legislation, the Government has now accepted the concerns raised.

An issue arose during Operation Auxin, a recent police operation that targeted Internet child pornography. The results of that operation were startling for all of us, and I refer to the Attorney's comments in the other place in relation to those charges. Unfortunately, the Attorney's response to this issue being raised was to attack the Leader of the Opposition. Indeed, the Attorney's risible concession in his second reading speech in the other place to the matters raised is not complimentary of the Attorney. As I said, the Opposition does not oppose the bill; in fact, we support the bill and want it passed as soon as possible.

Reverend the Hon. FRED NILE [6.53 p.m.]: On behalf of the Christian Democratic Party I am pleased to support the Crimes Amendment (Child Pornography) Bill. As has been said, the bill was introduced after concern was expressed about persons who have been charged with possession of child pornography that may or may not have been classified. Under the existing legislation, child pornography must be classified under the Commonwealth Classification (Publications, Films and Computer Games) Act 1995. As honourable members know, all the States originally had the power to classify materials, but they handed that power to the Commonwealth. For some reason, which I find difficult to understand, the Commonwealth has only a small number of people involved with classification, and that has resulted in a bottleneck involving about 700 cases across Australia. The Commonwealth's classification body must classify this material and determine the charges, which I understand will be many once the material has been classified.

The problem made me think that perhaps we should re-establish a New South Wales classification body. This would give some certainty to the issue and some continuity to the decisions made with regard to classification. As I understand the legislation as it is presently drafted, judges and/or juries will make decisions as to what is child pornography if material is not classified by the Commonwealth body. That may result in two different interpretations, certainly by a jury. In one case a jury may say that some material is child pornography, and another jury may say it is not child pornography. When public servants were handling classifications they followed strict definitions about what is and what is not child pornography, and that seemed to eliminate uncertainty and resulted in more consistent decisions.

I understand that this legislation will ensure that cases that are proceeding now will be finalised and people will be charged with offences. The purpose of the legislation is to ensure that that happens. Therefore, we support the bill, which is, in a sense, a knee-jerk reaction to a problem that has arisen with child pornography classification. The Government may need to further consider whether a State process should be put in place, or whether it should at least force the Commonwealth to set up a more speedy system by which material can be shown to a Commonwealth officer in Sydney and a decision can be made within 24 hours as to whether it is child pornography. I do not see why that should not be possible. I am sure the State and Commonwealth governments and their current leadership, the Hon. Bob Carr and the Hon. John Howard, could give this matter a high priority and ensure that sufficient funds are allocated to fund the appointment of classification officers.

The bill provides for more serious cases of possession of child pornography to be dealt with in the District Court. There was some question as to whether that would simply mean that a judge always made the decision or whether a jury would decide in some cases. The better system would probably be for a judge to make such decisions, which would bring some consistency to the process. One concern I have about this child

pornography issue is that according to media reports Commonwealth and State police were able to identify the 700-odd people who were engaged in child pornography in Australia only as a result of information provided by the Federal Bureau of Investigation [FBI]. I am pleased that the FBI is co-operating with our police agencies to provide information, but I ask—and many people have asked me the same question—why our Federal and State police were not aware that a minimum of 700 people were using credit cards to access child pornography? If the FBI had not advised Australian authorities, would action have been taken in Australia? Leaving aside the tip-off from the FBI, does that mean that the State and Federal police do not have as a priority the identification of people using child pornography?

Who is conducting those investigations? How many officers are involved? That is a matter of widespread community concern, because the 700 people in Australia who have been identified are only those who use credit cards. The FBI, though United States of America agencies, in concert with other international police forces, was able to follow the credit card sequence, identify these people and track down the source, which in this particular network involved a mafia operation in Russia. We know that child pornography rackets are operating in all countries. I would guess that even in Australia people are producing child pornography using Australian children. I know that police authorities here have been looking very closely at background information and other indications in available material to determine whether there is any evidence of Australian children being used for child pornography. It is not easy to identify locations, but on occasions certain items are written in a specific language or contain newspaper covers or other materials that indicate where photographs are being taken. I imagine those who produce this pornographic material take great care to reduce the possibility that they will be identified, because obviously they will be apprehended if such material identifies a particular venue.

We are very pleased that the bill increases penalties. Earlier legislation provided for prison sentences of 12 months or various fines for using children to produce pornographic material. Because of widespread community concern, this legislation will amend the Crimes Act 1900 and other legislation to increase the penalty for possession of child pornography from two years to five years. There has been some discussion that the Premier of Queensland mentioned a penalty of 10 years for such an offence. So there may be further developments when State Attorneys General meet the Commonwealth Attorney-General in the future and hopefully increase penalties to more than five years. The legislation will increase the penalty for producing or disseminating child pornography from 5 years to 10 years—which is analogous to penalties for possession of a drug as opposed to those for dealers. For persons who actually use a child for pornographic purposes the penalty will increase from 7 to 14 years where the child is under 14 years, and from 5 to 10 years where the child is 14 years and more.

At this stage the definition of child pornography involves the use of material that depicts or describes a person as less than 16 years. However, I note from a reading of the *Hansard* debate of 1995 that the Coalition Opposition, led by the Hon. John Hannaford, put up a very strong case that child pornography be classified as pornography involving children under 18 years. That argument was strongly supported by the Liberal and National parties. The Coalition parties argued their case strongly because their proposal would remove any doubt about the age of the child. However, that proposal was not supported by the Labor Government of that time.

The legislation replaces the current definition of child pornography with a definition of material that depicts or describes a person who is or appears to be under 16 years engaged in sexual activity, or in a sexual context—the original terminology—but the definition now adds "or as the victim of torture, cruelty or physical abuse (whether or not in a sexual context) in a manner that would in all the circumstances cause offence to reasonable persons". We fully support the expansion of the definition of child pornography. To my mind, it would always have included those other aspects, although they were not of a sexual nature, but perhaps someone with a clever lawyer could get them off a charge. I think it would be difficult to avoid being charged if one were producing material showing a child being tortured, even if that is not in a sexual context. Nevertheless, the new definition removes any shadow of doubt by including a child victim of torture in the definition.

It is also important to include in the definition a person who appears to be under 16 years. We know that some producers of child pornography may be using a person of 18 years or more who is not fully sexually developed and is depicted as a schoolchild for the purpose of child pornography. The viewer, or paedophile type of person, would see that young person as a child, even though the person is more than 16 years of age. It is important when defining child pornography to cover those producing child pornography and depicting a female or male as being under 16 years, irrespective of their actual age.

I think that covers the main aspects of the legislation, which we fully support. I urge the Government to follow up my earlier questions as to why there seems to be such little action regarding child pornography in Australia. When we have 700 cases dealing with credit card pornography, there must be child pornographic material being sold in some adult porn shops or distributed through networks not involving credit cards, such as in magazines, videos, films or on the Internet. I urge the Government to ensure the New South Wales police force has a very effective, well resourced and manned unit to pursue those who possess or produce child pornography in New South Wales, and thereby set an example for Australia and the rest of the world. We are very pleased to support the Crimes Amendment (Child Pornography) Bill.

Ms LEE RHIANNON [9.07 p.m.]: The Greens support the bill. Child pornography is abhorrent and its proliferation as a result of the Internet, which has opened up new ways for paedophiles to reach and abuse children, requires that we work together to stop it. The burgeoning market for child pornography obviously comes at a great expense for those children involved in its production. We need to act globally to stop the disturbing stream of images from around the globe, many of which are increasingly coming from poor countries. The Greens support the fine-tuning and extension of definitions contained in the bill and efforts to remove impediments to effective prosecutions. I note the increased penalties for these offences and the intention that they have a deterrent effect and hope they prove effective.

We also support the new defences in the bill, recognising that our response to child pornography through the criminal justice system should be both effective and just. Increasing penalties for producing, disseminating and possessing child pornography is highly symbolic. Measures like this are obviously attractive to the public. They make good headlines—something this Government has long recognised. The Greens call on the Government to invest also in more subtle, but equally important, responses to the problems of child pornography. For example, experts recognise that there is still much to be done in Australia to understand the problem of online child pornography. The research literature on adults who have a sexual interest in children has not yet caught up with new technologies. This creates a problem in deciding how matters should be prioritised for investigation and prosecution, and developing responses to the treatment of offenders.

Tony Krone, a research analyst at the Australian Institute of Criminology, says we need research to help investigate this area to be able to predict the extent to which an offender found with child pornography might be involved with other levels of offending. The institute has also identified the need for more research around issues such as whether victims of child pornography can be identified to prevent ongoing abuse. What is the extent of recidivism among offenders and the most effective way to rehabilitate them? Is there a causal link between the use of child pornography and the physical abuse of children? The Greens call on the Government to commission research to properly understand how we can best combat online child pornography. In this way we can make sure that the approach we take on child pornography in New South Wales is as effective as possible.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [7.10 p.m.]: The Opposition's contention is that the main reason for this bill is that some of the charges brought against persons caught during Operation Auxin may not be sustainable. The problem that was identified was that an element of the charges was tied to the classification system, that is to say, material seized must have been classified as pornographic by the Office of Film and Literature Classification [OFLC]. The problem is that images of child pornography from sources such as the Internet would not go through the classification system.

Only material submitted for sale or exhibition, or seized by customs, would go through the OFLC. To say that the material is classified is a little misleading because child pornography material will be refused classification. This bill will bypass the perceived classification problems by introducing its own definition of child pornography. Under the Commonwealth Classification (Publications, Films and Computer Games) Act there are separate classifications for publications and for film and computer games. Publications are defined in that Act as:

> Any written or pictorial matter, but does not include:
>
> (a) a film; or
>
> (b) computer games; or
>
> (c) an advertisement for a publication, a film or a computer game.

Publications have three classification categories, one of which is unrestricted. That category, which is broad, includes magazines such as *Inside Sport* and *Picture*. Some magazines are required to have an M labelling that advises the material is not suitable for people under 15. There is then category 1 restricted, category 2 restricted

and refused classification. The publications categories refer to sexual activity between consenting adults. The RC classification applies to publications that describe or depict acts in such a way that is likely to cause offence to a reasonable adult who is or who looks like a child under 16, whether or not that person is engaged in sexual activity. Publications will be classified as RC if they promote or provide instruction in paedophile activity; if they contain descriptions or depictions of child sexual abuse or any other exploitative or offensive descriptions; or depictions involving a person who is or who looks like a child under 16.

Films and computer games, including computer-generated images, on the other hand, have seven categories of classification. They are G, PG, M, MA, R, X and RC. With regard to children being depicted, the X film category does not permit any depictions of non-adult persons, including those aged 16 and 17, nor of any adult persons who look like they are under 18. It does not permit persons 18 years or over to be portrayed as minors. The film category RC will refuse classification to the promotion or the provision of instruction in paedophile activity and depictions of child sexual abuse or any other exploitative or offensive depictions involving a person who is or who looks like a child under 16. The bill now adds its own definition as to what constitutes child pornography. It is:

> … material that depicts or describes, in a manner that would in all the circumstances cause offence to reasonable persons, a person under (or apparently under) the age of 16 years:
>
> (a) engaged in sexual activity, or
>
> (b) in a sexual context, or
>
> (c) as the victim of torture, cruelty or physical abuse (whether or not in a sexual context).

This definition is a combination of the publication and film definitions of the OFLC guidelines because it deals with material defined as, "… film, printed matter, electronic data or any other thing of any kind (including any computer image or other depiction)". A different classification test is used by the OFLC rather than the reasonable persons test in this bill. It is the application of the standards of morality, decency and propriety generally accepted by reasonable adults. There are also exemptions for films deemed to have literary, artistic or educational merit. *Lolita* by Nabakov comes to mind in this category.

A problem arises with creating a new definition for child pornography, in that a new defence under proposed section 91H (4) (b) is that the material has been classified by the OFLC under the Commonwealth Act as other than RC. The tests are different and the definitions are different between the Commonwealth Act and this bill. It will be open to defence lawyers to argue that this inconsistency makes the charges and the law invalid. The danger is that this legislation will not do what its makers intended.

The Hon. Peter Breen proposes to move some amendments that purport to solve the problem. They seek to reinstate the requirement to have the material classified before proceedings come to court. That solves half the problem. We are still left with inconsistent tests. Which test is the OFLC to apply? If it applies its own tests will that satisfy the court? It may, but it will not satisfy the defence. The bill increases the penalties for child pornography offences and provides for the hearing of more serious cases in the District Court. The increase in sentences will make New South Wales laws uniform with Victoria, Queensland, South Australia, Western Australia and the Australian Capital Territory when all jurisdictions have introduced their reforms.

The maximum penalty for possession of child pornography will be five years. Presently it is two years. The maximum penalty for dissemination will be 10 years. Presently it is five years. As with most increases in penalties, they will make very little difference to the rate at which those offences are committed. Early detection of child sex offenders must be the ultimate aim of any government endeavour in this area, so fewer people are committing these crimes, which are rightly viewed as abhorrent by any civilised society. I will support the Breen amendments, but we must attempt to prevent crime occurring in the first place rather than simply increase penalties which, of course, is much simpler.

The Hon. DAVID CLARKE [7.16 p.m.]: The Crimes Amendment (Child Pornography) Bill is a step in the right direction in the war against child pornography. The most fundamental duty of any civilised society is protection of its most vulnerable, and the most vulnerable in our society include our children. Protection of children is a sacred duty of our society. Children are entitled to the innocence of their youth. Every person should be able to look back on their childhood years as happy years and years of good memories. If they cannot, society or someone in society has failed them.

The use of children in pornography is almost a crime beyond description. It is a crime without recall in its perversity and corrosiveness. The most desolate place in hell is reserved for those who engage in it.

Unfortunately, it appears that each passing week brings forward more evidence of widespread child pornography rackets. There is the extensive use of children in brothels, in many cases abused in a state of virtual slavery. There is the growing use of children in pornographic films and printed material. In recent years the Internet has become a real El Dorado for the purveyors of child pornography. Sodom and Gomorrah are alive and well in New South Wales and Australia.

Every day the media brings forward further details of this growing industry. Only a few weeks ago an Australia-wide police operation resulted in 191 arrests. Some 380 computers containing two million pornographic images of children were seized. In a separate but recent incident a child pornography library of 350,000 images was discovered. In recent weeks newspapers have been filled with articles with captions like, "World Wide Web of Sex Fiends", "Child Centre owner labelled a charmer", "Pornography Taskforce Raids 400 Properties", "Police Charge Net Paedophiles", and only recently we opened our newspapers to be faced with an article headed, "Trial of Depravity Led Back to Russian Mafia Stronghold."

The truth is that all the evidence points to child pornography as a large and flourishing industry and, accordingly, it needs to be confronted, fought and defeated on a wide front and on many levels. No one action and no one piece of legislation will bring this evil industry to an end. The Crimes Amendment (Child Pornography) Bill is one instrument to be used in this ongoing war. Among other things, the bill increases the maximum penalty for the production or dissemination of child pornography; the possession of child pornography; and the use of a child for pornographic purposes. The bill should be supported.

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [7.19 p.m.], in reply: I thank honourable members for their contributions and support for the bill. The Hon. Greg Pearce indicated that the bill was a reaction to comments made by the Leader of the Opposition, but nothing could be further from the truth. Although the low maximum penalty was highlighted recently by Operation Auxin, New South Wales has moved for consistency in penalties, consistency in definition of what constitutes child pornography and consistency in procedure on a nationwide basis. Reverend the Hon. Fred Nile indicated that the bill should confine child pornography to a person under 18 rather than a person under 16. The age that has been chosen is consistent with the age in Queensland, South Australia, Tasmania and Western Australia. The offences of possession and dissemination of child pornography relate to subjects who are or apparently are under 16. The age of consent in New South Wales is 16.

Reverend the Hon. Fred Nile: Who decides the classification?

The Hon. JOHN HATZISTERGOS: That depends upon the nature of the offence and what court it is before. Ultimately it is a matter for the court to determine.

Reverend the Hon. Fred Nile: The District Court?

The Hon. JOHN HATZISTERGOS: If it is the District Court, the decision of the jury will be guided by the judge.

Motion agreed to.

Bill read a second time and passed through remaining stages.

[*The Deputy-President (The Hon. Kayee Griffin) left the chair at 7.20 p.m. The House resumed at 8.00 p.m.*]

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Orders of the Day Nos 11 to 20 postponed on motion by the Hon. John Hatzistergos.

PARLIAMENTARY ETHICS ADVISER

Consideration of Legislative Assembly's message of 9 December.

Motion by the Hon. John Hatzistergos agreed to:

That the appointment of Mr Ian Dickson as Parliamentary Ethics Adviser be extended to 22 February 2005.

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

LAW ENFORCEMENT (POWER AND RESPONSIBILITIES) AMENDMENT (IN-CAR VIDEO SYSTEMS) BILL

Second Reading

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [8.04 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

I am pleased to introduce the Law Enforcement (Powers and Responsibilities) Amendment (In-car Video Systems) Bill 2004.

One of the Recommendations of Justice Wood of the Royal Commission into the NSW Police was that all dealings between police and citizens be electronically recorded.

The In-Car Video system (ICV) comprises both digital video and audio components capable of recording interactions between police and the community.

The significant benefits of ICV are that it enhances officer safety and provides an accurate independent witness to events, protecting both police and members of the public against unfounded allegations of improper conduct and behaviour.

Currently there is no prohibition on the recording of video images in NSW. However, recording conversations by means of a listening device is an offence under the *Listening Devices Act 1984* unless both parties consent.

The bill therefore creates an exemption from the *Listening Devices Act* to enable police to use ICV to audio-record interactions with members of the public regardless of whether consent is given.

I would now like to describe the technical aspects of the ICV system. The system consists of two video cameras, a recorder, a monitor, a wireless microphone and control mechanisms to allow an audio and video recording to be made.

One camera is able to point forward, the other backwards. The monitor and control centre are mounted within easy reach of the driver's seat. A wireless microphone is worn on the lapel of an officer to allow the audio recording of events outside the car.

The ICV system commences recording automatically when the primary lights are turned on, the alert button is pressed or the radar is locked on. Additionally, the ICV system can be manually activated via the master switch or the remote microphone.

Approximately 350 highway patrol vehicles will be fitted with ICV with the rollout to be completed by mid 2005. ICV is not only limited to highway patrol officers but will extend to any police officer using a vehicle fitted with ICV.

ICV has been trialled in the Holroyd Local Area Command and the results are encouraging. There have been no negative comments from members of the public in relation to the use of ICV and since the pilot commenced there have been no complaints in relation to officer behaviour.

I would now like to take the opportunity to address the specific features of the bill.

Where highway patrol vehicles have been fitted with ICV it will be a requirement that ICV record any situation where that vehicle is pursuing or otherwise following another vehicle with the intention of stopping or detaining that vehicle. This would include traffic stops or situations where a highway patrol car is required to intercept a vehicle escaping from the scene of a crime.

Additionally, ICV will be used in situations where a vehicle has been pulled over and police are investigating an offence arising out of that stop. The offence may not necessarily be traffic related but may be, for example, drug related.

The use of ICV will also include Random Breath Testing where an officer is conducting such stops within the immediate vicinity of their police vehicle.

Any police officer, not just the driver of a particular police vehicle, will be able to utilise the ICV system.

Whilst the bill removes the necessity for consent to the audio recording this does not mean that the recording will be done in secret. Either immediately before recording of a conversation commences or as soon as practicable after recording has commenced police will be required to inform members of the public that their conversations are being audio recorded.

There will be no compulsion on individuals to answer police questions.

Once an officer arrests a person, the audio component of the ICV system must be turned off at the first reasonably practicable opportunity. The inclusion of the wording 'the first reasonably practicable opportunity' is intended to ensure police officers' safety. If an arrested person is violent towards police and has to be subdued then an officer must be able to contain that person before switching off the audio component of the ICV.

Similarly, if the arrested person is part of a group and police are continuing to exercise investigative or other powers in relation to that group or vehicle it will, under this bill, be permissible for both components of the ICV to continue recording as long as the arrested person is removed from the area that is being captured by the ICV.

It is important to understand that the use of the term 'arrest' in this bill, for example at section 108E, means the officer telling the person that they are under arrest and not just by the fact of the person's vehicle being pulled over or detained. This is the same position taken under Random Breath Testing legislation where the police officer's use of stop and Random Breath Testing powers does not constitute an arrest (until the person show positive).

A person is not under arrest merely because their vehicle has been pulled over and they are being audio and visually recorded by ICV. It is clearly intended that ICV be used to audio record the initial or 'front end' interaction between an officer and a member of the public.

Persons who have been recorded on ICV will be able to view the recordings at a police station.

Recorded events will be stored for a minimum of 2 years.

In conclusion this bill will ensure that police are able to audio record conversations via the use of ICV regardless of whether all parties to the conversation consent. The proposed legislative improvements will enhance officer safety and provide an accurate record of events capable of protecting both police and members of the public against unfounded allegations of improper conduct and behaviour. I commend this bill to the House.

The Hon. DAVID CLARKE [8.05 p.m.]: The Law Enforcement (Power and Responsibilities) Amendment (In-car Video System) Bill is not opposed by the Opposition, and I will not speak on it at length. The bill provides the legal basis for police vehicles to be fitted with the in-car video system, which consists of a digital video and audio components that will assist police in obtaining evidence relating to police pursuits by, among others, highway patrol officers. The bill flows from a recommendation made by the Wood Royal commission into the New South Wales Police that dealings between police and citizens should be recorded electronically.

The specific purpose of the bill is to amend the Law Enforcement (Powers and Responsibilities) Act 2002 to require the use of police in-car video equipment [ICV] when the police vehicle fitted with equipment is being used for police activities involving the following of a vehicle with the intention of stopping a vehicle, or involving a vehicle and the driver and occupant of a vehicle that has been stopped or detained by police; to require ICV equipment to be used to record any conversation the driver of the police vehicle has with a person who is the driver or occupant of a vehicle stopped or detained after informing the person that the conversation will be recorded, subject to the proviso that a conversation with the person is not to be recorded after the person is arrested; and to protect recordings made with ICV equipment from unauthorised or corrupt disclosure.

The bill is a step in the right direction. It will assist police in the discharge of their duties, and it will serve to give greater protection to members of the public. It will serve to protect both police and the public from allegations of improper conduct. It will assist in providing better evidence for court proceedings. It will assist in evidence for police pursuits. It will provide safety benefits to police, and it will provide anticorruption processes that will benefit the public. The bill creates an exception from the Listening Devices Act 1984 to enable police to use the new IVC system to audio record police dealings with members of the public regardless of whether consent is given. The IVC is a technically advanced system, which will bring significant improvement to this area of police work. It should have a major impact. The Minister for Police has announced that 344 highway patrol vehicles will operate with the system by the middle of 2005.

It is unfortunate that calls for the installation into police vehicles of video cameras have gone unheeded in New South Wales for 10 years, during which time the police and the public, whose interest in this area should be in alignment, could have received a great benefit. Be that as it may, we now have the legislation and it must be supported. Many other recommendations have been made over the years by appropriate bodies that also would assist the police highway patrol in their work. Some of these have been outlined elsewhere by the shadow Minister for Police, Peter Debnam. The Minister for Police now needs to turn his attention to these other pressing areas. All in all, the bill will be of significant benefit in the detection of crime, the provision of evidence and the protection of the rights of members of the public.

Ms LEE RHIANNON [8.08 p.m.]: The Greens have a number of concerns with the privacy aspects of the bill and we will move several amendments in Committee. To avoid any misunderstanding, I emphasise that our amendments will not knock out the substantial aspect of the bill, which is the videoing from a police vehicle. However, they will put in place privacy requirements. Our main concerns do not relate to the technical aspects of the capturing of footage with the in-car video system, nor the principle of using the system to record police interaction with the public. Our real concerns centre around the lack of thought given to how the footage would be stored, how it would be retrieved, for how long it would be kept and how the police department would manage the many potential misuses of the footage.

In his second reading speech the Minister referred to the way in which the in-car video system will protect both police and members of the public. I question how much consideration has been given to protecting the public's right to privacy. As I understand, the Government will not support my amendments. I would be interested to hear the Minister's comments on this point. It is very important that he share with us how the public's right to privacy will be protected. Currently, police enjoy huge exemptions to the State's privacy legislation via the grey areas created by their privacy exemptions for all but administrative and education purposes. This bill widens that grey area by failing to place limits on police use of this system. By not building proper restrictions into this bill the Government has left the people's right to privacy open to abuses, whether it was unintended or otherwise.

I get the feeling that this has been an oversight. It seems to be one of those pieces of legislation that the Government has put together hastily and the basics are not covered. The Greens amendments are an attempt to instil measures that will bring some clarity to the administration of this system and to try to restrict the potential misuses of this footage. We should acknowledge that the potential for misuse is very real. We have all seen enough examples of that ourselves. The bill should have specified more closely the ways that the footage could be used. However, accepting that the footage will be gathered, I have more important concerns about the way the footage will be stored and used.

Let us not get carried away with the idea that an audiovisual record will serve as irrefutable evidence. Video lies. It can distort the truth and it can be doctored. Let us not forget that a police officer can "accidentally" turn off the camera or step out of the frame of the video. Whatever the merits of gathering this footage, we strongly believe that once the footage is stored in a database its use should be limited to the monitoring of police. That is what we have been told is the main intent and there should be mechanisms in place to ensure that is the case. The Government's briefing implied that was the case, but the bill does not go far enough to make sure it is limited to that use. Once the footage is stored as digital media in a database, it can be searched and reused many years down the track for police purposes and for other unrelated and unintended purposes.

For example, an insurance company could seek to use the footage to try to prosecute someone. The Roads and Traffic Authority could use it to try to revoke a person's driver's licence. The footage could be used in civil proceedings against the police. It could be leaked to the media or sold to the media in years to come. Times change, and if these audiovisual records are permitted to languish in a police database, they could be used for strange purposes in years to come. One day you might find yourself in an episode of "Australia's Funniest Police Stop and Searches". The bill does not adequately address these potential other uses for the footage. The Greens amendment addresses citizens' rights to privacy. Our amendments ensure that audiovisual records are not used for any purpose other than for the monitoring of police and that the footage that is not used in any proceedings is destroyed after two years. If footage is used in police proceedings, it is reasonable to keep that footage. The Greens allow for that. However, if footage is recorded but never used, it seems reasonable that the footage is destroyed after a period of two years.

The other major privacy concern that is not spelt out in the bill is the way that citizens' names will be associated with these digital audiovisual files that will be stored in a police database. Let me give an example of what could happen. Mr Hatzistergos could be a passenger in a car that is pulled over by police. I do not believe Mr Hatzistergos would want that footage stored in a database with his name linked to it. When a police officer looks up "Mr Hatzistergos" in the database the footage pops up.

The Hon. John Hatzistergos: Why do you single me out?

Ms LEE RHIANNON: Because I thought that you might respond, as you have.

The Hon. John Hatzistergos: I know I am one of your favourites.

Ms LEE RHIANNON: Why do you assume you are one of my favourites?

The Hon. John Hatzistergos: I can see that.

Ms LEE RHIANNON: How can you assume these things?

The Hon. John Hatzistergos: It is a process of osmosis.

Ms LEE RHIANNON: You must not have listened in your biology lessons, because you are way off the mark when it comes to osmosis.

The Hon. John Hatzistergos: Did you actually put my name in your speech?

Ms LEE RHIANNON: Yes, I thought about it, quite a lot. It is a very good example.

The Hon. John Hatzistergos: It is a bit terrifying.

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): Order! I remind Ms Lee Rhiannon that she should address her comments to the Chair and not to individual members. Members should not interject to distract the member with the call.

The Hon. John Hatzistergos: I was provoked.

Reverend the Hon. Fred Nile: She is quoting his name all the time.

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): Order! The reference was in a hypothetical sense and, therefore, was not a breach of the standing orders. Ms Lee Rhiannon should ignore interjections.

Ms LEE RHIANNON: Thank you, Madam Deputy-Chair, for your ruling.

The Hon. John Hatzistergos: You could be in the car too.

Ms LEE RHIANNON: That is even more interesting—Mr Hatzistergos and Ms Rhiannon in a car together.

The Hon. John Hatzistergos: That is not likely.

Ms LEE RHIANNON: You are the one who suggested it, not me. Similarly, I do not think Mr Hatzistergos would want other government agencies down the track being able to access that record either. So the Greens amendment seeks to tighten up the rules governing whose details get associated with or linked to these files when they are stored in the database. I hope that other members will see that this bill is not straightforward, as the Opposition members hoped when it was debated in the Legislative Assembly on Tuesday. I urge members to recognise the serious privacy implications contained in this bill, to question the Government's motives for trying to push this bill through, to support the Greens' attempt to restrict the potential misuses of this footage and to better protect the public's rights to privacy. I emphasise again to members it is not about knocking out the in-car videos; it is about getting much-needed privacy requirements in place.

Reverend the Hon. FRED NILE [8.16 p.m.]: The Law Enforcement (Powers and Responsibilities) Amendment (In-car Video) Bill 2004 is a simple bill. It will require the use of police in-car video equipment when a police vehicle fitted with the equipment is being used for police activities involving the following of a vehicle with the intention of stopping the vehicle or involving a vehicle and the driver or occupant of a vehicle that has been stopped or detained by the police. This is a most important piece of legislation. I am looking at it from a completely opposite direction than the previous speaker. The provisions of the bill will provide protection to police, who have had many false accusations made against them. Investigation of such complaints involves many hours of time of the Ombudsman or other investigative bodies who finally decide that there is no basis for the complaint. This bill will short-circuit that complaints system by proving there is no evidence as a basis for the complaint.

One of my sons was a highway police officer. The highway police regularly had false complaints made against them by drivers they stopped for speeding and other offences. The offenders would reverse the situation and accuse the police officer of using bad language or being heavy-handed, trying to intimidate the police who were carrying out their duties. I see this technology as a very important process that will enable the police to carry out their duties fairly. Obviously, there is no way in which they can abuse their role, and I do not believe that the majority of police do. This bill will stop those frivolous and phoney complaints that are made against police officers.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [8.18 p.m.]: Justice Wood is highly respected in his quest to eradicate corruption from the police force. His recommendation to make all dealings with police transparent in that a record exists by the use of the best technology available is laudable. I note the comments of Reverend the Hon. Fred Nile that the use of in-car videos will protect police against false and malicious allegations.

I was interested in the interaction between Ms Lee Rhiannon and the Minister, who took offence at the example given that he may be in a car with somebody. Former Privacy Commissioner Chris Puplick told me that photographing vehicles going through traffic lights in Holland caused some concern because the shots were taken front-on, showing people in the front seat. This could lead to blackmail; for instance, a driver photographed with a female passenger who was not his wife could face dire consequences. However, Chris Puplick pointed out that people walking around the streets of Sydney, going in or out of buildings and railway stations, are photographed about 50 times a day. Face recognition software makes it possible to construct a pattern of someone's life, which increases the risk of blackmail.

The bill seeks to improve transparency and reduce corruption and false allegations by police or against police, but it is an invasion of privacy. People should be able to live their lives without fear of their every movement being monitored. People need not have committed a crime to be unwilling to have every aspect of their lives opened to scrutiny by outsiders, who may or may not have malicious intent. The foreshadowed amendments of the Greens stipulate how the video must be used and who must use it. I notice that a penalty has not been set for the use of video recordings. A recording that fell off the back of a truck or slipped onto the Internet by way of an email could do considerable harm.

The bill may solve transparency concerns, but if the technology undermines the privacy of individuals so that their every action is studied and judged by others, perhaps that is regrettable. I am not sure that the problems that the bill seeks to address justify this degree of technology. I understand that both sides of the House and some crossbenchers support the bill. Nonetheless, I have some misgivings about it.

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [8.23 p.m.], in reply: I thank honourable members for their contributions to the debate. Numerous objections to the bill have been outlined, but I shall deal with those in Committee. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 3 agreed to.

Ms LEE RHIANNON [8.25 p.m.], by leave: I move Greens amendments Nos 1 to 5 in globo:

No. 1 Page 3, schedule 1, proposed section 108A. Insert after line 11:

ICV recording means any recording of visual images or sound made pursuant to this Part and includes a copy of such a recording and any part of any such recording or copy.

No. 2 Page 5, schedule 1, proposed section 108E. Insert after line 7:

(4) The Commissioner of Police must ensure that any recording of a conversation between a police officer and a person that is made inadvertently or unexpectedly after the person's arrest is destroyed as soon as practicable.

No. 3 Page 5, schedule 1, proposed section 108G, lines 13-15. Omit all words on those lines. Insert instead:

108G Keeping and destruction of ICV recordings

The Commissioner of Police must ensure that each ICV recording:

(a) is kept for a period of 2 years after it is made, and

(b) is destroyed at the end of that 2 year period or (if it is being used at the end of that period) is destroyed once it is no longer being used.

No. 4 Page 5, schedule 1, proposed section 108H (2), lines 23-26. Omit all words on those lines.

No. 5 Page 5, schedule 1. Insert after line 31:

108I Privacy protection

(1) When an ICV recording is kept in a database, the recording must not be cross-referenced or otherwise linked in the database to the name of any person other than a police officer or the person who was the driver of the vehicle in connection with the stopping or detaining of which the recording was made.

(2) An ICV recording may be kept and used by NSW Police only for one or more of the following purposes:

(a) in connection with an investigation relating to or leading to criminal proceedings against any person,

(b) for the conduct of criminal proceedings against any person,

(c) in connection with an investigation of any conduct of a police officer,

(d) for the conduct of disciplinary proceedings against a police officer.

(3) The Commissioner of Police must ensure that an ICV recording is not released except:

(a) to a police officer or other member of NSW Police for the purpose of the exercise of official functions, or

(b) to the Police Integrity Commission, or

(c) for the purpose of the conduct of any criminal proceedings, or

(d) for the purpose of the conduct of any disciplinary proceedings against a police officer.

The Greens amendments will not jeopardise the use of in-car video systems but will ensure that the necessary privacy requirements are upheld. I say "necessary" because in the twenty-first century we have certain standards with respect to privacy. The amendments seek to deny government departments, government agencies, private companies and organisations from having access to the footage. The amendments provide that the footage should be destroyed after two years to prevent misuse of the footage, whether intended or unintended. The Greens believe that after two years the usefulness of the footage as a means to monitor interaction between police and the public is diminished. This does not include footage that has been used in any proceedings. The amendments seek to ensure that only the driver's name is linked to the footage.

Currently no limits have been set on how the records of footage can be linked to passengers or associates of the driver. The amendments provide that any footage taken inadvertently after arrest must be destroyed as soon as possible because the bill fails to deal with the storage of such footage. These safeguards are needed for the privacy of passengers, arrested persons and the community in general. I hope that all honourable members share the concerns of the Greens with respect to this bill. If the amendments do not receive Government support, one wonders about its agenda because these are not radical measures. They merely put in place some basic requirements without interfering with the intent of the bill, that is, in-car videoing. I hope that the Minister responds and does not cut short his response, as he did at the end of the second reading debate.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [8.27 p.m.]: I put on record my support for the amendments. Some limit should be placed on how long video footage is kept, who can use the footage and for what purpose. These are modest privacy requirements and I hope that the Government and the Opposition see their way clear to supporting them.

Reverend the Hon. FRED NILE [8.28 p.m.]: I have one concern about the amendments, that is, one is never sure what action a citizen may take over a period of time. Someone could make a complaint, the matter could be referred to the Ombudsman, but the evidence may have been destroyed. Flexibility is required in the maintenance of the records, which must be securely held, and unauthorised persons should be prevented from accessing those records.

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [8.29 p.m.]: The Government is unable to support any of these amendments. The Government rejects Greens amendment No. 1 for the reason that the wording is already located in proposed section 108H (2). This amendment, in conjunction with Greens amendment No. 4, merely seeks to move the definition of ICV recordings from its proper position under the section dealing with corrupt disclosure and the use of ICV recordings.

The Government rejects Greens amendment No. 2 for the reason that the inadvertent or unexpected recording of a conversation in the period between a person's arrest and the first reasonably practicable

opportunity for the police officer to discontinue recording the conversation may provide critical evidence of a scuffle or another altercation. The inclusion of the wording "first reasonably practicable opportunity" in subsection 2 is intended to ensure the police officer's safety. If an arrested person is violent towards police and has to be subdued, then an officer must be able to contain that person before switching off the audio component of the ICV. To destroy the audio recordings of what could be heard of an assault against police would seem to prejudice officers in the execution of their duties. Conversely, it could destroy evidence supporting a complaint by a member of the public against a police officer.

In relation to Greens amendment No. 3, at a general level the evidentiary value of ICV recordings may not necessarily be known within two years from recording. The Government is happy with the bill as it stands in this respect. In relation to proposed Greens amendment No. 5, this is also unable to be supported by the Government. Existing mechanisms ensure ICV recordings are identified and stored by reference to the relevant police vehicle serial number only. The storage and use of ICV recordings in these circumstances is governed by the Privacy and Personal Information Protection Act 1988. The release of ICV recordings in these circumstances is already governed by this legislation.

The Hon. DAVID CLARKE [8.32 p.m.]: The Opposition will not support the amendments proposed by the Greens.

Ms LEE RHIANNON [8.32 p.m.]: I request that questions be put on my amendments seriatim.

Amendment No. 1 negatived.

Amendment No. 2 negatived.

Amendment No. 3 negatived.

Amendment No. 4 negatived.

Question—That amendment No. 5 be agreed to—put.

The House divided.

Ayes, 5

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

Noes, 24

Ms Burnswoods	Mr Jenkins	Mr Tingle
Mr Catanzariti	Mr Lynn	Mr Tsang
Mr Clarke	Reverend Dr Moyes	Mr West
Mr Colless	Reverend Nile	Dr Wong
Mr Costa	Mr Oldfield	
Ms Cusack	Ms Parker	
Mrs Forsythe	Mrs Pavey	*Tellers,*
Miss Gardiner	Mr Pearce	Mr Harwin
Mr Hatzistergos	Mr Roozendaal	Mr Primrose

Question resolved in the negative.

Amendment No. 5 negatived.

Schedule 1 agreed to.

Title agreed to.

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

TABLING OF PAPERS

The Hon. John Hatzistergos tabled the following papers:

(1) Annual Reports (Departments) Act 1985—Report of the Department of Housing for the year ended 30 June 2004.

(2) Annual Reports (Statutory Bodies) Act 1984—Report of the Aboriginal Housing Office—Volumes 1 and 2—for the year ended 30 June 2004

(3) Registered Clubs Act 1976 and Royal Commissions Act 1923—Report entitled "Inquiry in relation to Penrith Rugby League Club Limited, conducted by Ian Temby AO QC", dated December 2004.

Ordered to be printed.

JUVENILE OFFENDERS LEGISLATION AMENDMENT BILL

Second Reading

Debate resumed from an earlier hour.

Reverend the Hon. Dr GORDON MOYES [8.42 p.m.]: The purpose of the Juvenile Offenders Legislation Amendment Bill is to amend three Acts, the Children (Criminal Proceedings) Act 1987, the Children (Detention Centres) Act 1987 and the Crimes (Administration of Centres) Act 1999. The acts will be amended to enable offenders who are dealt with under the Children (Criminal Proceedings Act 1987 to be required to serve any sentence of imprisonment imposed on them either at a detention centre or at a proposed juvenile correctional centre; to modify the scheme established under the Children (Detention Centres) Act 1987 for the transfer of juvenile offenders between detention centres and correctional centres; and to provide further management of juvenile offenders within the correctional centre system under the Crimes (Administration of Centres) Act 1999 including, in particular, the establishment of juvenile correctional centres within that system.

This bill amends section 19 of the Children (Criminal Proceedings) Act 1987. Currently Section 19 deals with the court directing imprisonment to be served in a detention centre. The bill removes any reference to the phrase "in a detention centre" in section 19, thereby removing as a first option, so to speak, a direction by a court that imprisonment be served in a detention centre. Any reference to the phrase "in a detention centre" will be replaced with the phrase "juvenile offender centre". The Children (Criminal Proceedings) Act currently does not guarantee that all juvenile offenders will serve their sentence in a detention centre because the court has a discretion that may be exercised in such a way that the juvenile offender does not serve a sentence of imprisonment in a detention centre.

The bill will introduce a note at the end of section 19 (1) which will state that the effect of an order made pursuant to section 19 is that the person to whom the order relates will be committed to a detention centre and will be detained as specified in the order, but in certain circumstances the person who is subject to the order may "subsequently be transferred to juvenile correctional centre pursuant to an order under section 28 of the *Children (Detention Centres) Act 1987*". Notes do not form part of the legislation but serve as guidelines to interpretation of the provisions. In the opinion of the Council of Social Service of New South Wales [NCOSS] the use of the term "juvenile offenders" masks the intention of the bill, which is to reconfigure at least part of the juvenile justice system to a corrections and punishment system that is based upon adult prison models.

The reality is that juvenile correctional centres will be created to address the current lack of effectiveness of juvenile justice centres in managing hard young offenders such as those featured in the recent case involving Kariong. My experience earlier in life as a parole and probation officer convinces me that many juvenile offenders are too old and too violent to serve their sentences in a juvenile justice centre. Kariong has brought that reality to the fore. Unfortunately the adult prison model is the best option for juvenile offenders who are too old and too violent for the juvenile justice system. The choice of rehabilitation programs is much more extensive in the adult prison system than it is in the juvenile justice system, so members of Parliament are faced with a real dilemma in deciding what is best for those who are too old or too violent.

The bill amends the definitions in the Children (Detention Centres) Act to include the terms "correctional centre", which will be given same meaning as it is given in the Crimes (Administration of Sentences) Act, "juvenile inmate", which applies to an inmate who is under the age of 21 years, and "older detainee", which means a detainee who is of or above the age of 16 years. The inclusion of new definitions hints at a new system for the management of juvenile offenders. The Department of Corrective Services will manage

juvenile correctional centres. The problem with that is that the Department of Corrective Services has a record that is less than adequate in a number of respects. For example, in 2002-03, New South Wales recorded the highest rates of offenders returning to prison of all the prisons throughout Australia. In the same period the recidivism rate of the Department of Correctional Services was 22 per cent above the average rate of all State and Territories. Prison overcrowding remains a critical issue in the New South Wales prison utilisation rate. New South Wales prisons are 7.7 per cent above the Australian average. The out-of-cell hours per day for New South Wales prisoners are lower than the Australian average.

Prisoner-on-prisoner assault rates in New South Wales prisons in 2002-03 were the highest of any jurisdiction in Australia and 59 per cent above the Australian average. Levels of overcrowding and the prevalence of sexual assault and other forms of abuse within the adult prison system are matters of serious concern. Three hundred adult prisoners between 18 and 25 years of age—which is roughly the age of offenders who will be the subject of this legislation—were interviewed in a study that showed that 25 per cent had been sexually assaulted and 50 per cent had been physically assaulted while imprisoned. This does not present a good picture of what the prisons system can do for young people who are too old and too violent. The Commissioner of Corrective Services will be given an active role in the management of juvenile inmates. For example, the Commissioner of Corrective Services, with the consent of the director general, will be able to direct the transfer of a juvenile inmate from a juvenile correctional centre to a detention centre. Further elucidation on the new juvenile correctional centres will be given later on.

The bill provides the Director General of the Department of Juvenile Justice, with the consent of the Commissioner for Corrective Services, discretion to direct the transfer of an older detainee from a detention centre to a juvenile correctional centre. Such a transfer may occur in a number of instances, including when "the Director-General is satisfied that the detainee's behaviour is or has been such as warrants the making of such an order." That is a very wide discretion. The Council of Social Service of New South Wales has stated:

> There appears to be no safeguard to ensure that the director-general has given adequate regard to the whole circumstances of the young person. The director-general is given wide discretion relating to the circumstances warranting transfer. Given that the transfer effectively moves the young person from the day-to-day management of juvenile justice to an adult correction institution, a much tighter definition is warranted.

However, the discretion is wide under the current legislative regime. The Minister has wide discretion to transfer persons from detention centres to prisons. For example, the Minister may direct the transfer of a person from a detention centre to a prison where the Minister is satisfied that the person is not profiting from any discipline and instruction in the detention centre and, for any other reason, is not a suitable person to detain in a detention centre. Such a transfer must occur with the consent of the Minister administering the Crimes Act 1999.

Under the bill, the Director-General of Juvenile Justice and the Commissioner for Corrective Services are involved. Section 28BA, as a whole, deals with certain persons serving the balance of their detention orders in prison. The section relates to persons who have committed a detention order offence at the age of 18 years or older. A detention order offence is defined as "escaping or attempting to escape from lawful custody, failing to comply with conditions of leave or failing to return after leave expires, or after medical treatment, or any other offence, except misbehaviour committed within a detention centre". The bill deletes subsections (4), (5) and (6), which allow for such a person to make an application to the Children's Court to serve the balance of a detention order in a detention centre rather in a prison.

The removal of this right of appeal is significant. However, it must be pointed out that the offender, being 18 years old or more, is an adult and not a child. If an older offender commits a detention order offence, he or she must be aware of the ramifications of such an offence. It is common that persons in such situations will endeavour to push boundaries until they receive some kind of reaction. A person who has committed a detention order offence is pushing boundaries and attempting to escape the consequences of his or her actions. Allowing a person in this situation to remain in a detention centre will not ensure that the person learns the appropriate lesson.

I turn to the third of the relevant Acts, the Amendment of Crimes (Administration of Sentences) Act. There are a number of important proposed measures in relation to this Act. Section 41C allows the commissioner to order that a juvenile inmate—an inmate under 21 years—be transferred from an adult correctional centre to a juvenile correctional centre. This provision also allows for a juvenile inmate to be transferred from a juvenile correctional centre to an adult correctional centre in certain situations. First, the Minister must make the order. Second, the order is to be made on either the commissioner's recommendation, if the juvenile inmate is of or above the age of 18 years, or on the Review Council's recommendation if the juvenile inmate is under the age of 18 years.

The commissioner or the Review Council may make a recommendation for the transfer of a juvenile inmate if satisfied that any of the following exists: the inmate wishes to be transferred; the inmate's behaviour is or has been such that he or she should be transferred; it is in the inmate's best interests that he or she be transferred; the association of the inmate with other juvenile inmates at the juvenile correctional centre constitutes or is likely to constitute a threat to the personal safety of any other person, a threat to the security of the juvenile correctional centre; or is a threat to the good order and discipline within the juvenile correctional centre.

The Minister responsible for making the order to transfer is the Minister for Corrective Services and not, as one might expect, the Minister for Juvenile Justice. In cases in which the juvenile inmate is over 18 years of age it makes sense to allow for the transfer of these inmates to an adult correctional centre. These juvenile inmates are no longer children and thus should not be subject to the system in place for children.

However, and most importantly, if the juvenile inmate is under the age of 18 years, the Review Council may recommend that the inmate should be transferred. There is a specific procedure to be followed by the Review Council in making a transfer of a juvenile inmate to an adult correctional centre. Among other things, the Review Council is to conduct an inquiry to decide whether to recommend the transfer of a juvenile inmate from a juvenile correctional centre to an adult correctional centre.

For the purposes of this inquiry, the juvenile inmate may be represented by a lawyer, and the Review Council must co-opt a person who is either a Children's Court Magistrate or former Children's Court Magistrate, or a legal practitioner of seven years standing who has experience as a child advocate. In my opinion, the process to be followed by the Review Council is a sufficient safeguard against the wanton transfer of juvenile inmates aged below 18 years to adult correctional centres.

Proposed section 225A gives the Governor discretion to proclaim correctional centres as "juvenile correctional centres". This discretion is necessary to implement the new scheme envisaged by the Government. However, in general terms, the real concern is that the problems of Kariong and any other such centres are now being passed over to corrective services rather than being fixed. I have a real fear that this could be the beginning of the end of juvenile justice.

Kariong Detention Centre has repeatedly been in the news in recent weeks. I spoke to a former Chief Magistrate of the Children's Court, Mr Rod Blackmore OAM, who has demonstrated a life-long commitment to caring for children and who understands the problem of serious offenders among children. We spoke at what used to be called, euphemistically, "Endeavour House" at Tamworth. Quite appropriately, it was closed and Kariong was opened.

We can look beyond the physical nature of the facility at Kariong. There has been a great deal of discussion about the kind of facility, the height of windows, and so on. However, the real issue is that a great many of the inmates detained at Kariong should not have been there in the first place. That is an oversight because the programs for those inappropriately detained there are directed towards the treatment of children rather than older, violent, sophisticated offenders whose offences have the same, or often worse, negative effect in the community as do those of many adult offenders.

We are not talking about a great number of persons. The last figure I noted, which may be out of date, was 72 males and seven females over the age of 18 years in detention in New South Wales. However, I am unaware how many of these young adults in detention are completing sentences that were imposed before they were 18. No doubt that information is available to the Minister.

However, we should be clear that, whether or not they were legally children when they committed their offences, they are now adults. I have been endeavouring to convince governments for a long time that it is wrong in principle and improper management to detain young adults in the same facility as children.

There has been much of talk about detaining young adults in the same facility as older adults, but the reverse is also a concern. I have examined the United Nations rules—referred to as the Beijing Rules—because Australia was in the forefront of recommending their substance. It is pertinent to ask how exactly these adults came to be in juvenile detention centres. To suggest that they are there because their offences were committed as juveniles alone is simply an absurdity.

As an illustration of this absurdity and the system's dependence upon an arbitrary age barrier—18 in this State—I ask honourable members to imagine a group of offenders setting out to commit rape. The group are

aged 16, 17 and 18. If they are found guilty, those who were 18 will be imprisoned without discretion as to their place of incarceration. Those who were 16 or 17, but probably 18 by the time of trial and sentence, are entitled to the consideration of discretion as to imprisonment or detention, even if their participation was worse than those who were a year or so older.

As to management and treatment measures, adults gather no self-esteem by continuing to be treated as children, yet they gain that hierarchical "eminence" in the eyes of juvenile inmates that is endemic in all correctional systems. Adults are there because the higher courts are given a discretion under part 2, division 4, of the Children (Criminal Proceedings) Act to direct that a person who was a juvenile at the time of committing an offence, but who is an adult when sentenced, may serve their sentence in a detention centre, at least until the age of 21 years, or, in the case of other indictable offences, to either direct imprisonment or detention.

The sentencing processes of the higher courts should be examined; they are not specialists in juvenile law. Apparently a judge can be easily persuaded by an offender's counsel, or by the low-key terms of pre-sentence reports prepared for juvenile justice offenders—I have written many over the years—or by the lack of input into the sentencing process by prosecutors, or by the misguided sense that an offender will better redeem himself in detention rather than in gaol.

The Children's Court has no discretion when sentencing a young adult for an offence committed while a juvenile—the only penalty is detention. The problems currently at Kariong can be identified strongly with the underlying issues noted above. The solution is for there to be a purpose-built separate gaol for young adults aged 18 to 24. In the middle 1990s Parklea was established for that purpose, but it seems to have not been persisted with exclusively for that purpose.

In summary I refer to the excellent presentation by the Hon. Catherine Cusack. The Christian Democratic Party supports the bill in general but has some reservations, as I have outlined. The Hon. Catherine Cusack is seeking to set up a select committee of inquiry, an alternative, but that would be at the cost of the bill. The Christian Democratic Party believes that the bill should not be held up and that the amendment moved by the Hon. Catherine Cusack should be carried, but not at the cost of the bill. The bill needs to be passed so that the Corrective Services staff, who have the unenviable job of oversighting Kariong and other places, will have the protection of the law. I will therefore move an amendment in similar terms to that moved by the Hon. Catherine Cusack, but with the proviso that the bill be passed before a select committee of inquiry is established. I move:

That the amendment of Ms Cusack be amended by omitting all words after "That" at the commencement and inserting instead:

"the question be amended by the addition of the following paragraphs:

2. The provisions of the Juvenile Offenders Legislation Amendment Bill 2004, as passed by the House, be referred to a select committee for inquiry and report.

3. That, notwithstanding the generality of paragraph 2 the committee examined in particular the following matters:

(a) the reasons for, and the consequences of, the transfer of management responsibility for the Kariong Juvenile Justice Centre from the Department of Juvenile Justice to the Department of Corrective Services including the impact on staff at Kariong and Baxter detention centres,

(b) whether the transition of Kariong Juvenile Justice Centre into a juvenile correctional centre operated by the Department of Corrective Services is the most effective method of addressing management problems at that centre,

(c) the issue of adult detainees sentenced as juvenile offenders at Kariong and elsewhere in the juvenile detention centre system,

(d) the classification system and appropriateness of placements for detainees,

(e) alternatives to the establishment of a juvenile correctional centre,

(f) the wider implications of incarcerating juveniles in correctional centres, and

(g) management of staff bustled issues in the juvenile justice system.

4. That, notwithstanding anything contained in the standing orders, the committee consist of six members, comprising:

(a) two Government members,

(b) Ms Cusack and Mr Lynn, and

(c) Revd Dr Moyes and Dr Wong.

5. That the Chair of the committee be Revd Dr Moyes.

6. That the committee report by 29 July 2005.

The intent of my amendment is that the bill be passed into law and then the committee of inquiry be established.

The Hon. JOHN TINGLE [9.03 p.m.]: As a member of General Purpose Standing Committee No. 3, which conducted the inquiry into Kariong, I have some fairly definite views on what should be done about that centre. I agree with many of the points raised by my colleague on that committee, the Hon. Peter Breen, regarding the dreadful things that are happening at Kariong. Obviously the witnesses' evidence was given in camera and cannot be discussed in this Chamber or in any other public domain, but so much about Kariong is on the public record that there can be very little doubt about what needs to be done. I acknowledge the detailed analysis of the bill by Reverend the Hon. Dr Gordon Moyes, which very clearly set out the situation from a legislative point of view.

However, we also need to look at the real problem with Kariong. We know it houses the worst cases in the juvenile justice system but unfortunately all the public reports indicate that it is more like a holiday camp than a detention centre. Punishments at Kariong are limp; they include depriving an inmate of biscuits for dinner. I guess the worst thing about Kariong is that the staff appear to be impotent: they are unarmed, are often assaulted, and work in unacceptable circumstances. I understand that it is impossible to adequately enforce the discipline that is necessary in that or any other place of detention. There has been public criticism about the lack of action by middle and upper management to do something about that.

Having said that I agree with much of what the Hon. Peter Breen said about the dreadful happenings at Kariong, I disagree with him on his opposition to the bill. He suggested that with a bill such as this we have to understand that we are dealing with children. At Kariong we are dealing not just with children but with children who have committed crime. But, most of all, we are dealing with young adults who should not be there at that stage of their lives. That fact has inhibited the ability to exercise adequate control over those inmates. I see the bill as an appropriate response to the evidence given in camera.

Everyone would have to agree that no single bill will fix the endemic social, and perhaps psychological, problems that beset a place with inmates such as those at Kariong. The bill must be the first step to not only controlling the detainees but also improving Kariong so that it is run properly. The central purpose of this bill fulfils the very necessary need to separate older detainees whose age would normally place them in an adult prison had a court not sentenced them to Kariong.

The bill is necessary to give the Corrective Services officers, who have taken over the running of Kariong, the power they need to adequately control the facility. The proposed referral by the Hon. Catherine Cusack to a select committee has a great deal of merit, because it covers ground that is not allowed to be covered by General Purpose Standing Committee No. 3 in the original resolution of the House.

On examination, in some ways that resolution was quite limiting. We definitely need to improve transparency of what has happened and what is happening at Kariong. We definitely need also to strip away some of the hysteria, much of it media generated, about what is really happening at Kariong. However, if the proposed referral were carried as it stands, it would sideline the bill until the second half of 2005. Although I believe that the referral is a good idea in essence, I do not believe that Kariong can be left in suspended animation for that length of time.

Therefore, I am grateful that Reverend the Hon. Dr Gordon Moyes has moved to amend the amendment, because it will allow the bill to be enacted and then an inquiry to be held. It is worthy of support. The proposed make-up of the select committee probably has to be reconsidered, because it will be crucial to the outcome of the inquiry. The bill needs to be supported because I believe we need it now.

The Hon. PATRICIA FORSYTHE [9.07 p.m.]: Much in this bill is an abrogation of the principles that have underpinned juvenile justice for a long time. I would like to be a fly on the wall when the bill arrives at the Executive Council for signature. Indeed, it would make for a fascinating meeting if the Minister for Justice and the Minister for Juvenile Justice were to accompany the bill for that purpose. I am very mindful of the excellent important work undertaken by the Juvenile Justice Advisory Council in the early 1990s. The green paper produced by the advisory council entitled "Future Directions for Juvenile Justice in New South Wales" is one of the most important and insightful documents to provide guidelines that governments should note about managing juvenile offenders.

In considering this bill it is important to look at the advice provided to former governments and the policies they formulated. I am sure that at the appropriate time the Minister will take the opportunity to do that, rather than make quiet but sniping interjections. I refer to the section in the green paper entitled "Transfer of Older Offenders". I am sure that honourable members are aware that the Juvenile Justice Advisory Council was then chaired by Dr Marie Bashir, an eminent psychiatrist whose wisdom was insightful and important.

The Hon. Ian West: Point of order: I refer to standing order 91, Rules of debate, and to paragraph (2), which states that a member may not refer to the Queen or the Governor in debate for the purpose of influencing the House in its deliberations.

The PRESIDENT: Order! If the Hon. Patricia Forsythe is merely referring to Professor Bashir's eminence as a psychiatrist, she is in order. But the Hon. Ian West is correct: A member cannot criticise the Governor except by way of substantive motion.

The Hon. John Hatzistergos: Point of order: It goes beyond that. Standing order 91 does not relate only to referring disrespectfully to the Queen or the Governor. It goes on to say:

> … or for the purposes of influencing the House in its deliberations.

The Hon. Patricia Forsythe is not entitled to use the name of the Governor for the purpose of attempting to acquire some credibility for the case that she is attempting to present in an endeavour to sway members in this place. That is what she is trying to do. She has tried to do it twice: once by referring to what might happen—

The Hon. PATRICIA FORSYTHE: She?

The Hon. John Hatzistergos: I am sorry—the Hon. Patricia Forsythe. The honourable member did it first when she referred to the Executive Council and then she alluded to the fact that she would comment further.

The Hon. PATRICIA FORSYTHE: To the point of order: I am well aware of the standing orders. There is no way that I would seek to invoke the Governor in debate. In opening my speech I merely remarked that I would enjoy being a fly on a wall at Executive Council meetings. We cannot ignore the fact that the current Governor in a previous life chaired the Juvenile Justice Advisory Council. I am referring the House to advice that that council gave to a previous government. We could not debate this issue without referring to the green paper.

The PRESIDENT: Order! As I ruled earlier, the Hon. Patricia Forsythe may only refer to Her Excellency the Governor's experience as a psychiatrist. Standing Order 91 (2) is quite clear. It states:

> A member may not refer to the Queen or the Governor… for the purposes of influencing the House in its deliberations.

The reference of the member to the Executive Council is out of order.

The Hon. PATRICIA FORSYTHE: Thank you, Madam President. I will be mindful of your ruling. I refer honourable members to advice that the Chairman of the Juvenile Justice Advisory Council gave the Government when it presented the green paper on 24 August 1992. The letter accompanying the green paper is signed "Dr Marie R. Bashir, A.O, Chairman." Pages 192 and 193 contain significant sections about the transfer of older offenders. I said at the outset that I believe the current arrangements are an abrogation of the principles that have underpinned juvenile justice for a considerable period. In that section of the report the Juvenile Justice Advisory Council says that the key objective is:

> To ensure the minimal transfer of juvenile offenders to the adult correctional system.

The report recommended:

> There be legislative amendment to provide that the transfer of juveniles or young persons in custody to an adult correctional centre be only as a last resort and subject to a Court Order, including classified juveniles and irrespective of age.

Recommendation No. 241 states:

> Transfers by the Order of the Minister remain for emergency situations as a temporary measure until the matter could be heard by the court.

The report further recommends:

> A monitoring system be introduced by the Office of Juvenile Justice for ensuring the minimal use of transfers from Juvenile Justice Centres to adult correctional centres.

By way of background, the report noted that between June 1991 and June 1992 only two persons under 18 years of age were transferred to an adult correctional centre by an order of the court. Both were transferred to the Long Bay Prison Hospital for urgent medical attention not available within any juvenile justice centre. That direction has guided governments for a long period. It is a very important principle.

This is a Labor Government and the Australian Labor Party wears its social justice credentials on its sleeve. But this legislation has nothing to do with justice. It is about the absolute failure of juvenile justice policy under this Government ever since Labor came to power in 1995. It is the result of appalling administration made worse by the fact that the current Minister for Juvenile Justice is the weakest link in a very weak chain of Ministers. I have no compunction in saying that this is not good legislation. Lest the Opposition be accused of not allowing forward movement on some important juvenile justice issues, we will support the bill. However, I believe the amendment of the Hon. Catherine Cusack, which was further amended by Reverend the Hon. Dr Gordon Moyes, is an important step forward. It will give us an opportunity to test much of that which underpins the direction that the Government has taken.

I spent some time researching the literature on this subject in an effort to understand what might constitute good public policy to underpin this legislation. No research points to the fact that moving young people to the adult correctional system will prevent crime or restore young people. For a long period the essence of juvenile justice has been based on two very important pillars: first, the restoration of young people; and, secondly, crime prevention. I am not sure that anything we will do tonight will restore young people or prevent crime. But we are faced with an extraordinary situation: a clear breakdown in good management and law and order at the Kariong juvenile centre. Is it about bricks and mortar—as the Minister would have us believe day after day in question time—or is it about something far more fundamental?

I believe it is about a series of weak Ministers, culminating in the current Minister, who is the weakest of them all. In 1996 those Ministers received important advice from the Ombudsman, who repeated the advice in a second report to the Government in 2000. The Auditor-General made similar comments to the Government in 1999 and 2000. At every turn the Government was told what it needed to do to fix the problem. At no point is it referred to as bricks and mortar, as some sort of flawed physical environment. At every point it has been about management—

The Hon. John Hatzistergos: You haven't been reading those reports.

The Hon. PATRICIA FORSYTHE: I have been reading those reports, and I will return to them. For the benefit of the Minister I will refer to some of the issues. The 2000 Ombudsman's report comments on "the events surrounding four serious disturbances at the centres on 11, 21 and 23 March and 18 April 1999". In the first place I point out that age is not necessarily the issue here because in that report the average age of the detainees at the centre at the time of those four significant disturbances was 17.5—a point made by the Ombudsman.

I refer next to some of the background points. First, we should note the difficulties encountered by the Ombudsman in trying to get to the bottom of the problems. Under the heading "Difficulties encountered" the Ombudsman noted that the investigation was hampered by departmental records that were frequently inadequate, out of date or incomplete, and some that could not be found. Here we have a government supposedly in charge of a system that does not keep records appropriately, whose records are out of date or incomplete. Those records relate to disturbances, to the case management of individual detainees in the system and, presumably, to the working conditions of many of the staff because at the heart of this investigation were the enormous staff problems that led to the Sherlock-Shier inquiry.

Indeed, in the same report the Ombudsman noted that a number of staff had difficulty recounting their experience of the riots because many had become deeply distressed by witnessing others, or being involved in, pulling detainees from burning cabins, dodging rocks, et cetera. The Ombudsman stated:

> Other staff were visibly hostile to the Ombudsman and showed little respect for the Ombudsman officers.

So the staff who were meant to be administering a system of law and order, when faced with having to deal with authority—that is the Ombudsman—showed little respect. What did the Government do about that? Why do we

now have this situation? The answer is because we are trying to blame the problems on a physical issue, a bricks and mortar issue, when they relate to much more significant issues. The report stated further:

> This gave credence to the common description given by staff and management of the existence of a small group of staff who were physically aggressive and intimidating towards detainees and staff.

But the problems could have been solved much earlier. The issue was never properly addressed. The report refers to attitudes and behaviours of a segment of Kariong staff, not to the actions of the detainees. It states:

> This report strongly criticises the attitudes and behaviours of a segment of Kariong staff. It does not, however, condemn all the staff …

The Hon. John Hatzistergos: You want them reappointed?

The Hon. PATRICIA FORSYTHE: No, we actually want a system of juvenile justice that works, a system that is in the best interests of restoring young people—

[*Interruption*]

The DEPUTY-PRESIDENT (The Hon. Eric Roozendaal): Order! I remind members that interjections are disorderly and should be ignored.

The Hon. PATRICIA FORSYTHE: I want to come to the issue of bricks and mortar because as part of this report the Ombudsman noted that detainees in the most privileged of the four accommodation units declined to become involved in any of the riots and effectively managed themselves for periods when staff were required elsewhere in the centre. The report states:

> The contrast between the privileges and activities available to this group and those of other groups is marked. The personal motivations, experience and maturity of this group may well have differed to detainees in the less privileged Keiran units.

I say that because media reports have made much of the filling in of the swimming pool, of the taking away of so-called privileges. The Ombudsman said in 2000 that there was a group of detainees in Kariong who seemingly had access to some privileges by virtue of their behaviour and their maturity. That meant they did not feel a need to be part of the center. That would seem to show that the issue is not whether the place has a swimming pools; there are a lot of other issues. The Minister used the expression "holiday camps", as if something was inherently wrong in Kariong. The problem was not Kariong but the way in which management failed. There is nothing wrong with being strong and having a very clear set of rules. In fact, that is what the Ombudsman's report, at every point, suggested was lacking. Why did that happen? I quote again from the Ombudsman's report:

> Kariong's management and staff recruitment, training, supervision and support were found to be seriously deficient.

That is what is wrong with this system. That is why we are debating this legislation tonight. The Government has failed in its management, it has failed in its staff recruitment, it has failed in its training, it has failed in its supervision, and it has failed in the support of its staff. That is why there were riots. But what is the Government's solution? To put it all onto the detainees, when in fact report after report has highlighted a lack of training, lack of management direction and limited accountability which permitted "work practices and morale to decline".

The Ombudsman's report refers to evidence of a small but dominant group of staff who intimidated others and undermined line management. This is not about the juveniles in the centre; this is about the staff, the work environment and the failure of management. Yet we heard from the Minister for Juvenile Justice, who at all times sought to defend the management, that it was never a problem of management. At the end of the day it is the juveniles who are going to pay the price for appalling management and for a Minister who simply could not get it together. The Ombudsman referred to security, and said:

> Kariong's physical security and safety systems had fallen into disuse and disrepair. Some security equipment had not been maintained or replaced for years.

Remember that this is a report from the year 2000, and this Government had been in office for five years, so when we talk about these problems we are talking about the administration of the Carr Government in dealing with juvenile justice.

The Hon. John Hatzistergos: It is hard when the place is built on the side of a hill.

The Hon. PATRICIA FORSYTHE: This is not about where Kariong was built, but the fact that the Government did not spend sufficient money or put sufficient effort into Kariong. Management was allowed to run riot and the system failed. By way of interjection the Minister said it was built on the side of a hill, but that is not the issue. One need only to refer to volume 2 of the 1999 Auditor-General's report in relation to major maintenance, which stated:

> Expenditure on maintenance and repairs during 1998-99 was $1.5m, which was well below the budget of $3.1m and significantly less than 1997-98 actual expenditure of $3.5m. Major maintenance work of $3.4m planned for 1998-98 at Yasmar and Kariong Centres was not undertaken due to a delay in obtaining Ministerial approval for Yasmar, and because of detainee disturbances at Kariong.

When looking at problems in the system, the Minister should look at his own administration since 1995. The Government did not spend the available funds, and there have been many reports about that, for example, the reports by the Ombudsman and the Auditor-General. The Government was always going to do things. In 1999 the Auditor General said:

> A recovery plan for Kariong has been developed by the Department to enhance security, occupational health and safety.

In his report of March 2000 the Ombudsman set out a series of dot points and then said that the department provided its progress report on the implementation of the recommendations made in the report. The reality is there was never any progress. How many reports from the Ombudsman or the Auditor-General are needed to establish that since the Government came to office in 1995 it has done nothing to advance the interests of juveniles at Kariong or the principles that should underpin justice for young people? Why did they riot in 1999? The Ombudsman said that there were many reports, not only one. One has to look at the criticisms of management and staff; it is not only the juveniles who were involved. I am the first to admit that some of the people who are in these centres have committed extraordinary crimes and they need to be managed well. But the only solution from the Government is to put them in the correctional centre. We know that from 1992-93 the Juvenile Justice Advisory Council gave clear directions to the Government in the green paper. For confirmation of that one need only look at the recommendations in the report of the Standing Committee on Social Issues in relation to juvenile justice in 1993.

I note that earlier tonight the Hon. Dr Peter Wong made a ludicrous suggestion that the creation of the Department of Juvenile Justice was a backward step. I suggest that he refers to the green paper, the work of the Juvenile Justice Advisory Council and the work of the Standing Committee on Social Issues. He should read the recommendations of both those committees in 1992 to 1993 when the Coalition was in office. He would understand that the Opposition knew that something had to be done about juvenile justice in this State to deal with youth crime and to put in place a regime that would restore young people. It was about crime prevention.

We believed that it was appropriate to try to keep young people out of prison but we had to face the fact that young people were in the prison system. That is why the Coalition established Parklea and put in place a regime for 18- to 25-year-olds. I look forward to the Minister telling us in reply what he will do about issues such as rape in gaol. What will he do about young men who will now be in the adult correctional service? Under the Coalition system they may well have been kept in Kariong because that is why it and Parklea were created. A regime should be in place for them. Many of these young people will not go to Parklea. They will go to Goulburn, for example. In New South Wales in 2004 we have much to be proud of about the rule of law and justice, but in the proposed system there are no guarantees about law and justice,

Ms LEE RHIANNON [9.35 p.m.]: The Greens have considerable concerns about this bill. We will support the Opposition's motion to refer the bill to a select committee for inquiry. I foreshadow that I will move an amendment to the Opposition's motion. We support moving this bill to a committee because it is yet another tough-on-kids, tough-on-crime measure characteristic of the Government. It has been labelled the new punitiveness, but with this Government there is, sadly, nothing new about it.

[*Interruption*]

The Hon. Catherine Cusack: Point of order: The Minister has relentlessly heckled speakers from the moment the second reading debate began. He did that throughout the speech of the Hon. Patricia Forsythe and now he is interjecting and heckling Ms Lee Rhiannon. I ask that you call him to order again and allow the speakers to say their piece.

The Hon. John Hatzistergos: On the point of order: I did not call this bill the new punitiveness, and I take exception to Ms Lee Rhiannon referring to it in those terms.

The Hon. Patricia Forsythe: To the point of order: The Minister will have a right of reply, whether or not he takes exception to what is said. Other than that, all interjections are disorderly.

The Hon. Dr Arthur Chesterfield-Evans: To the point of order: The Minister's response is irrelevant. The fact that he finds something offensive does not justify an interjection. Many honourable members find much of what is said in this Chamber offensive, and we have to put up with it.

The DEPUTY-PRESIDENT (The Hon. Eric Roozendaal): Order! I remind members that all interjections are disorderly. Given the lateness of the hour might I suggest that all members take a deep breath and get on with the rest of the debate.

Ms LEE RHIANNON: Thank you, Mr Deputy-President, and thank you, Miss Cusack.

The Hon. John Hatzistergos: What does that mean?

Ms LEE RHIANNON: I do not know what the problem is with the Minister, I am sorry. He does not stop. The comments are extraordinary. It is all about himself. I was saddened to see the television images of the pool at Kariong being filled in and the barbecue dismantled. That stunt reminds us that the Government emphasises symbolism over substance. It knew the television crews would love the image, and indeed they did. The Government has failed in its responsibility to fix the running sores at Kariong that have been persistently identified. Instead, it has taken the easy, and in this case acceptable, option of victim blaming.

The Government guessed the public would support the changes in administration at Kariong and accept the lie that the fault for all that has gone on there rests with the young people inside. In September, the Government, under pressure from the Opposition, called for another inquiry into Kariong. It did not ask the Ombudsman to conduct the inquiry, which would have been an efficient option. After all, the Ombudsman's office has already completed two reports in the past eight years about Kariong. Let us remember that most of the Ombudsman's past recommendations have been ignored. Instead, the Government asked Mr Vern Dalton, the former Commissioner of Corrective Services, to investigate.

Mr Dalton interviewed management and staff at Kariong, its school principal, the Public Service Association representatives and a number of other non-identified parties. It is extremely disappointing that he did not speak to any of the young people at Kariong. Just because they are incarcerated does not mean that their views should be ignored. Dalton's report reflects a poor investigation job with the voices of these young people silenced as a result. There have been problems at Kariong culminating in a number of riots. For those honourable members who believe a riot justifies the extreme actions taken by the Government I urge them to consider the views of Dr Chris Cunneen, a prominent legal academic and chairperson of the Juvenile Justice Advisory Council, which advises the Minister. Dr Cunneen stated:

> Riots have been a feature of the operation of the juvenile institutions since the first reformatories were established in the 19th century. We should acknowledge the point of desperation that is reached when prisoners decide to rebel in a situation where they are largely without power. Riots are first and foremost rebellions against the conditions of incarceration.

The welfare of young people within the juvenile justice system and what is in their best interests should be at the centre of this debate. Sadly, it has not been. The Minister's mantra for justifying this action is that the Kariong centre houses the State's worst and most difficult young offenders. Vern Dalton claims that the children and young people at Kariong are in custody for much more serious and violent offences than was the case 10 years ago. I have attempted to get statistics from the Department of juvenile justice to test this assertion, but, not surprisingly, they were not forthcoming. Indeed, the advice I received was that everything other than the current statistics has been archived.

But whatever the case, we are talking about juveniles, and the regime they are incarcerated under should be different from that which operates in gaols in this State. The Minister, the Government and the media have stereotyped the children and young people at Kariong. It is important to consider the early lives of these young people. The New South Wales Department of Juvenile Justice web site gives a sense of their past and the effect it has had on them. While these young people may be the most difficult for the juvenile justice system to manage, that is not surprising as they are the most damaged. They often come from disadvantaged backgrounds. They have grown up in disrupted families where parenting skills are poor and erratic, with problems compounded by a low income, and where educational attainment is poor.

In 2003 the Department of Juvenile Justice surveyed the health of a group of young people in detention. Some of the findings were disturbing. While young people are known to talk down their experience of abuse, it

was found that 42 per cent reported physical abuse, 11 per cent reported sexual abuse, 38 per cent reported emotional neglect and 34 per cent reported physical neglect. Three-quarters had left school before finishing year 9, 88 per cent reported mild, moderate or severe symptoms consistent with a clinical mental health disorder, 17 per cent had cognitive functioning scores consistent with a possible intellectual disability, and 19 per cent of males and 24 per cent of females had seriously considered attempting suicide. Research shows that these young people's life experiences demand highly intensive, careful rehabilitation and support. It is not appropriate to hand them over to a brutalising adult system or some strange hybrid arrangement dreamt up overnight by the Government.

The Hon. John Hatzistergos: You're very cruel.

Ms LEE RHIANNON: I acknowledge the Minister's interjection, which is fairly aimless. It shows that he is hard up for an argument to support what the Government is doing. We have a responsibility as a society to establish the support systems that will help these young people get educated, get a job and reconnect with society. We should be protecting and defending their rights. I urge the Minister for Justice not to lower himself again to distorting my remarks here, as I understand he has done recently with respect to my comments about Goulburn gaol. The Greens certainly realise the necessity of detaining the children and young people at Kariong. Their loss of freedom is their punishment. But their sentence does not include an abuse of all their rights.

When the Government boasts, through the media, of toughening up, daily musters, strip searches and lockdowns it is showing that it is willing to use these young people in an attempt to gain a political advantage, and the result is that Kariong, under this bill, will become a juvenile correctional facility. It will be a specialist facility for offenders aged 16 to 21 years, accepting transfers from the Department of Juvenile Justice on the basis that it is satisfied that it warrants their transfer to the adult prison system. While this bill seems to be designed for Kariong, there are no limits on how many juvenile correctional centres the Government may establish in the future. I urge the Minister to comment on that and tell us the Government's plans when he replies to the debate. If the Government does not have any plans, I ask the Minister to put that on the record.

The Government has a history of killing off government agencies that cause it anguish. With this new direction in the bill, the Department of Juvenile Justice may well be the next on the list. The Government wants this bill passed before Christmas so that Government members can sit down to their Christmas dinners, unconcerned that they will get a call from the *Daily Telegraph* about Kariong. It is all about staying out of the headlines, particularly in the *Daily Telegraph*. But conditions inside Kariong for young people at Christmas may not be so cheery. The Minister for Juvenile Justice gives no indication of whether some of the innovative juvenile justice rehabilitation programs will continue with her new regime. Will the school, which even Dalton commended in his report, remain open, or will it also be deemed too luxurious and go, along with the barbecue and the pool?

What will post-release services look like for these young people? Will they get the vocational training they require? What about official visitors? We have been told Corrective Services will implement the Australasian Standards for Juvenile Custodial Facilities, with only slight variations. Just how the standards will be met has not been explained. That is why the Greens seek to have these important social issues addressed by sending this bill to a committee for inquiry. The Minister for Juvenile Justice has in desperation, through this bill, devolved some of her ministerial responsibility to the Minister for Justice. The bill skews and disassembles lines of ministerial and departmental responsibility. We do not know who will be ultimately responsible for what happens in these juvenile correctional facilities—the Minister for Justice or the Minister for Juvenile Justice.

The Minister for Juvenile Justice, in her second reading speech, used the future tense to give the impression that the change of administration at Kariong was yet to occur. She tried to escape the fact that this bill is a ludicrous patch-up job for what has already happened. In November young people at Kariong became part of the Corrective Services system through the holus bolus transfer of responsibilities to the Commissioner for Corrective Services. That conflicts with the Juvenile Justice portfolio's stated philosophy that every young person be treated as an individual and that interventions be developed in accordance with their individual needs. That is despite the intention of the court, when the juveniles were initially sentenced, that they remain in the juvenile justice system. The Greens do not think that it is safe to presume that the Corrective Services administration will do a better job than Juvenile Justice. It is a big ask to change a system designed for adults to suit young offenders. The culture of corrections is not about rehabilitation. The adult system is poorly funded and riddled with problems such as overcrowding, high recidivism rates and violence.

[*Interruption*]

The Minister knows what the figures are. Young people in the New South Wales justice system should be supported by well-trained, specialised staff. They need facilities to meet their unique health and education needs. There is less chance that this will happen as a result of this proposed hybrid system. Dalton and the Ombudsman underlined the need for specially trained staff. Corrective Services staff were rushed to Kariong in early November. How could they have been adequately trained in time? During an earlier contribution the Minister interjected and said something to the effect that the Government is not giving up on these young inmates. But everything in this bill suggests that that is indeed what the Government is doing, because these young people are being pushed into an adult system that has not been developed to cater for them.

The bill will provide great flexibility so that young people can be moved through the corrections system, subject to few safeguards. The director-general is given a generous raft of grounds on which he can justify a decision to transfer a young person from detention to a juvenile correctional centre. Of particular concern is that clause 28 (2) (d) allows the director-general to make a transfer if "the detainee's behaviour is or has been such as warrants the making of such an order". Extraordinary discretion is embodied in this provision. It undermines any idea that the young offender has rights, and makes it very difficult for a decision to be challenged. There is no requirement that the Minister approve the transfer, or any safeguards to protect the young person from an abuse of administrative power. The new clause 28 gives no automatic right to an advocate or to legal advice in the face of a transfer, or the right to make an application to the Children's Court to ensure judicial scrutiny of the director-general's decisions.

The bill also amends the Crimes (Administration of Sentences) Act to facilitate transfers of young persons from a juvenile to an adult correctional centre. This can happen by order of the Minister, on a recommendation of the Corrective Services Commissioner or the Serious Offenders Review Council, depending on the person's age. The corrective services Minister, not the juvenile justice Minister, considers these applications. The ground on which a decision is made again is extremely broad. The tests apply in the alternative, with only one criterion needing to be satisfied—for example, if the inmate wants to be transferred, or if it is in the inmate's best interests, or if the inmate's behaviour is said to justify the transfer. Young people have no right to apply to the court to review a transfer to an adult prison before it happens. If transfers of young persons to the adult correctional system are to occur, those decisions should be made by our court system. They should not be administrative decisions. The decision should be transparent and subject to review, with a right to legal representation. There are no such basic "luxuries" in this bill.

The Greens support the Opposition's call for the bill to be referred to a select committee. Members of the Legislative Assembly were not given time to analyse the bill in a way that is respectful of the democratic process. This bill amends three significant Acts. It will affect people's fundamental rights. Its potential impact is too important to avoid proper scrutiny. The bill is at odds with principles embodied in international law, including the Convention on the Rights of the Child and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty—the Beijing rules. If Kariong is a detention centre of last resort for children and young people, we as a society should be able to debate what happens within its walls. The Government has provided no such opportunity.

There has been very poor consultation on this bill. I understand the Minister's own Juvenile Justice Advisory Council was not consulted. Nor was the Youth Justice Coalition, a team of talented and committed lawyers working with juvenile offenders. This bill has serious implications for the entire juvenile justice system. An inquiry would give people with a keen interest and expertise in the subject matter of the bill time to be able to comment on it. I would now like to move my amendments to the motion of Ms Cusack. I move:

That the amendment of Ms Cusack be amended as follows:

No. 1 Paragraph 2 (f). Omit the sub-paragraphs and insert instead:

(f) the wider social implications of incarcerating juveniles in juvenile correctional centres run by the Department of Corrective Services.

No. 2 Insert after paragraph 2 (g):

(h) whether incarcerating juveniles in juvenile correctional centres achieves reduced recidivism, rehabilitation and compliance with human rights obligations.

Mr Deputy-President, having received advice, I seek leave to withdraw the amendment that I have just moved because I have made a mistake in procedure.

Leave granted.

Amendment, by leave, withdrawn.

Ms LEE RHIANNON: I move:

That the amendment of Mr Gordon Moyes be amended as follows:

No. 1 Paragraph 3 (f). Omit the subparagraph and insert instead:

(f) the wider social implications of incarcerating juveniles in juvenile correctional centres run by the Department of Corrective Services.

No. 2 Insert after paragraph 3 (g):

(h) whether incarcerating juveniles in juvenile correctional centres achieves reduced recidivism, rehabilitation and compliance with human rights obligations.

If the amendment moved by Mr Gordon Moyes lapses, I would then seek to move exactly the same amendment to Ms Cusack's amendment. Imposing tough law and order measures on young offenders will not alleviate the problems that they face. The bill represents the thin, or maybe not so thin, end of the wedge in terms of the Government's attempts to treat our young people as adult criminals. We need considered solutions to the problems identified at Kariong, not a short-term fix. At best, that is what the bill is—but I would not even regard it as a short-term fix.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [9.56 p.m.]: The problems at Kariong have been longstanding and the current interest in them was certainly catalysed by the Hon. Catherine Cusack's demand for an inquiry, and her naming of 18 people who would give evidence of what was occurring at Kariong. It was perhaps an unfortunate start to the inquiry that only 6 of the 18 people named chose to come forward. On that day, another witness was heard.

The Hon. Catherine Cusack: The problem was that some were sacked on the day the inquiry was due to start.

The Hon. Jan Burnswoods: Point of order: The utter hypocrisy of the Hon. Catherine Cusack is demonstrated by the fact that earlier she carried on about interjections. Mr Deputy-President, I ask you to remind the honourable member that interjections are disorderly.

The DEPUTY-PRESIDENT (The Hon. Eric Roozendaal): Order! I remind honourable members that interjections are disorderly.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I acknowledge the interjection. It must be recognised that the older detainees who have been in the juvenile justice system for a considerable time and are at least physically mature are a very tough group. Clearly, the juvenile justice model—which is far more of a welfare model than a punitive model—has been coming up against some difficult people who have more formed lives. They are difficult to manage in that they form adverse role models for younger persons and are looking forward to moving on to the adult gaol where, on my understanding, they will feel that they have achieved manhood by being recognised as criminals in a gaol. In some strange way, that shows that they have grown up—it is an affirmation of their maturity.

The Kariong report is largely hidden. It is, however, significant. I do not propose to deliver a take-note speech on the report at this stage. The Hon. John Tingle voted with the Labor members of the committee to keep the evidence in camera. The Hon. Peter Breen and the Liberal members wanted the transcript available, presumably on the basis that it could be disguised. I had intended to speak before the Hon. John Tingle tonight—

The Hon. Amanda Fazio: Point of order: A take-note debate on the Kariong report has been set down for next year. It is fair enough for members to make passing reference to the report in this but it should not be referred to in the detail with which the Hon. Dr Arthur Chesterfield-Evans is referring to it. I ask you to direct him to cease debating the Kariong report because it is due to be debated next year, not tonight.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: To the point of order: I said I did not intend to make a take-note speech tonight but I wanted to refer to some key points in the report because, after all, it does

provide insight into the Kariong centre. I merely want to refer to some points and to elucidate the situation at Kariong as it relates to this legislation.

The Hon. Amanda Fazio: Further to the point of order: The Hon. Dr Arthur Chesterfield-Evans has just argued against his own stance in saying that he does not want to talk about it, yet he continues to do so. He has obviously read the report and he can use the information he has obtained from reading it to frame his comments, but he cannot refer to it in detail. From what I have heard of the member's speech thus far, almost half of what he has said is not factual anyway. I ask you to call the honourable member to order and direct him not to debate the Kariong report. It is not appropriate to do so at this time.

The DEPUTY-PRESIDENT (The Hon. Eric Roozendaal): Order! I have carefully considered the arguments. The Hon. Amanda Fazio has made a strong case. The Hon. Dr Arthur Chesterfield-Evans should confine his remarks to the subject matter of the bill before the House.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The Hon. Amanda Fazio said I was not being factual. That is because the points I was making were not part of the report. The way that information was handled is important, but that is not referred to in the report. The essence of the problem is that young offenders face difficulties when confronted with older adolescent offenders who are more in the mould of adult prisoners. There were problems with upper and middle management at Kariong and the situation worsened over the past few years.

It was pointed out to me by Tony Vinson—and this is also mentioned in the report—that young offenders like to access more things in gaol: they smoke cigarettes, they have more friends in gaol, the lifestyle is easier and mixing with ethnic groups may be easier. There were advantages for detainees who aspired to the adult system. This clash of cultures resulted in low staff morale at Kariong. The system at Kariong changed from one of control to one of care, and some witnesses—perhaps the older guard—felt that change exposed staff to a greater danger of assault. Effectively the system was dysfunctional in the adolescent section of juvenile justice, and this bill is the Government's response to that problem.

I am unable to elucidate the details, because a take-note debate on the report will take place when the Parliament resumes next year. However, one could hardly go into too much detail about the report as it has only three and a quarter pages. Be that as it may, I suggest that the solution to the problems at Kariong—and we are not sure exactly what they are—is not to place kids in adult prisons. Considerable research has been conducted into prisons in Australia. I first came across Tony Vinson in my university days when he was a young lecturer. He talked about indices of social disadvantage from where crime came. He said that the way to prevent crime was to act on that social disadvantage and help people in a positive, affirmative action way.

In 2003 a health survey of young people in custody in New South Wales was conducted. A paper was presented at a conference held in Sydney on 1 and 2 December 2003 that was convened by the Australian Institute of Criminology in conjunction with the New South Wales Department of Juvenile Justice. The topic discussed was Juvenile Justice: From Lessons of the Past to a Road Map for the Future. The paper was prepared by Mark Allerton from the Department of Juvenile Justice, Dianna Kelly from the University of Sydney, Una Champion from Corrections Health and Tony Butler from Corrections Health. On 2 December 2003 the *Sydney Morning Herald* reported in an article by Nick O'Malley:

> … the health and wellbeing of prisoners aged between 10 and 18 paints a grim picture.
>
> Researchers from the Department of Juvenile Justice … found almost half of the 242 young people surveyed had a parent who had been in jail—11 per cent had parent in jail at the time of the survey—a condition called "the read a tree detention" by the Juvenile Justice Minister, Diane Beamer.
>
> …
>
> Wild the number of young people imprisoned had dropped from an average of 510 in 1995 to 210 today due to diversionary measures, she said the over-representation of indigenous young people in custody remained, "to our great shame … much too high.

The Minister was quoted in the *Sydney Morning Herald* as advocating a humane approach, stating that the Government was pleased that it had reduced the number of people in detention to less than half the number eight years previous. That was a very progressive result compared with the results achieved in the adult prison system. So, one would have to say that the juvenile justice system was working better than the adult system.

The survey looked at the experiences of these young people. It found that they had experienced family relationship problems; neglect; physical, emotional and sexual abuse; behavioural disturbance; social, emotional or educational difficulties; abuse of alcohol or other drugs; isolation from mainstream society; and dependence on delinquent peer groups. The aim of the survey was to examine the physical and mental health status of young people and to compare these findings with patterns of misbehaviour, history of abuse or neglect and family background, service utilisation and history of offending. It also compared the health status of young people in custody with that of age-matched community peers.

It was a cross-sectional study that surveyed all nine juvenile justice centres. It involved 76 per cent of offenders, with 242 participants. The survey studied the physical health of detainees, and conducted physical assessments, a health questionnaire, and psychometric and intellectual testing. Twenty-seven people refused to participate and 50 were excluded, giving a participation rate of 76 per cent. The mean age for young men was 17 years, with the range being 14 to 21 years. The mean age for young women was 16 years, with the range being from 15 to 18 years. Forty two per cent of participants were Aborigines.

Data relating to the social background of participants was significant: 9 per cent had a deceased parent, 43 per cent had a history of parental imprisonment, 11 per cent had a parent currently in prison, 48 per cent had a history of being in care, 34 per cent were not living in the family home prior to custody, 10 per cent were parents of one or more children, 71 per cent had close friends to talk to, and 19 per cent lived with a person with a physical or mental health problem affecting their daily life.

The health survey of young people in custody found that 17 per cent of young men and 6 per cent of young women had more than 10 sexual partners, 49 per cent of young men and 57 per cent of young women either never used condoms or used them less than half the time with casual partners, and the median age for first sexual experience was 14 for both men and women. Some 35 per cent of young men and 53 per cent of young women had tattoos, 68 per cent had been tattooed by a non-professional and 21 per cent had been tattooed while in custody. Some 80 per cent had been drunk before the age of 16, 21 per cent of young men and 56 per cent of young women drank in the hazardous to harmful range, and 46 per cent of young men and 71 per cent of young women engaged in weekly binge drinking prior to custody. Some 20 per cent of young people in custody were unable to stop drinking once they started.

The survey found that 21 per cent of young people in custody had a history of injecting drug use, 17 per cent of young men and 47 per cent of young women. Some 38 per cent of injecting drug users had shared equipment in the past 12 months, 59 per cent had been under the influence of drugs and alcohol at the time of offending, 62 per cent had committed a crime to get drugs or alcohol and 51 per cent reported that drugs had caused them problems. As a likely consequence of drug use, 9 per cent had hepatitis C antibodies and 23 per cent were intravenous drug users. Smoking was significant in that 95 per cent had a history of smoking, 77 per cent smoked on a daily basis before custody, 58 per cent were current smokers, although it is illegal in juvenile justice centres, and the mean age of commencement was 12 years old. Smoking is a major spur for a lot of young people in custody wanting to go to adult detention centres. Some 25 per cent began smoking before they were 10 years old.

The survey found that 54 per cent of young people in custody endorsed items on the childhood trauma questionnaire, which suggested underreporting of abuse, trauma or neglect, and 66 per cent had experienced some sort of abuse or neglect during childhood. The results of the Wecshler Abbreviated Scale of Intelligence [WASI] was significant. The average WASI score for young people was 82, which meant that 74 per cent were below the normative average compared to 25 per cent from the standardisation sample. I am not quite sure of the extent to which the WASI test is intrinsic and to what extent education improves it, but the educational disadvantage is absolutely huge. The mean age of leaving school was only 14.5 years, and six months before custody 82 per cent of inmates were not attending school. Some 91 per cent had been suspended from school, 20 per cent were victims of bullying at school and 51 per cent were perpetrators of bullying at school.

It is a picture of extreme disadvantage. A summary of Adolescent Psychopathology Scale results indicate that 84 per cent of young people in custody reported symptoms consistent with a clinical disorder and 37 per cent had mild, moderate or severe symptoms consistent with a personality disorder. Some 19 per cent of males and 24 per cent of females seriously attempted suicide, and 15 per cent of males and 11 per cent of females had attempted suicide in the 12 months prior to the interview. That is the degree of disadvantage that has to be faced, and that is why the humane model is extremely important. The extent to which that can be prolonged into adolescence before they achieve the objective of saying, "I am an adult criminal. I am going into an adult gaol to prove it" must be tested. The bill is premature. I quote a letter from the Council of Social Service of New South Wales, which states:

> The Bill has been introduced with no consultation with community organisations and consumer groups involved with troubled and disadvantaged young people and the youth justice system.
>
> It has been bludgeoned through the Legislative Assembly and, with it amending several existing pieces of legislation, there may be either negative "unintended consequences" that have not been revealed through a lack of opportunity to examine the Bill.
>
> The Bill is an inappropriate response to a management failure at Kariong resulting in a knee jerk hand over to adult corrections, rather than the Government taking responsibility for sorting out the Department of Juvenile Justice.
>
> NCOSS is writing to all the Legislative Council crossbench members and to the Shadow Juvenile Justice Minister, seeking an agreement to refer the Bill to a select Upper House Committee for thorough examination and the opportunity for relevant external stakeholder groups and the public to present their views.

I seek leave to table a briefing note from NCOSS, which expands on that point.

Leave granted.

Document tabled.

This matter must be referred to a committee, as suggested by the Hon. Catherine Cusack, before the legislation passes through the House. There is no point passing the legislation and then asking the committee to look at it after the horse has bolted so that the committee may comment on the horse's backside in the distance. The bill is the result of a knee-jerk reaction and poor policy. There is not much point referring the bill to a committee after it has passed through this House.

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [10.16 p.m.]: I thank honourable members for their contributions to this important debate. No doubt, interest in these sorts of matters will be high on the agenda of the Parliament next year when we resume. I will respond to some of the points made in the course of debate. I listened patiently and with great interest to the contribution of the Hon. Catherine Cusack, who seems to have—I would not say an obsession—more than a keen interest in Kariong in recent times. I did not intend to dwell upon her role in the planning of Kariong, but notwithstanding her attempts to downplay her involvement in its development—

The Hon. Duncan Gay: Come on. Play the issue, not the person.

The Hon. JOHN HATZISTERGOS: Let us get this clear. She mentioned that the reason Kariong was established was the appalling condition of Endeavour House, which was described by the Hon. Catherine Cusack in her speech. The Coalition Government reopened that centre not long after it was closed as a detention centre. It is now Tamworth Correctional Centre. Despite all the things she says about the institution that was condemned, when the Coalition was in government it was quite happy to reopen it is an adult correctional centre, which is its current role. It is important that people understand that in the week before the announcement that Kariong would be established as a maximum-security facility for juveniles, some 25 inmates escaped from correctional centres across New South Wales. The headlines were damning. The Hon. Catherine Cusack remembers it because she was in the office of the Minister at the time. A press release was issued on 14 February 1990—

The Hon. Catherine Cusack: Can I just clarify? Are you saying the week before Kariong was opened?

The Hon. JOHN HATZISTERGOS: No, the week before the Coalition Government announced that it was going to establish a detention centre at Kariong.

The Hon. Catherine Cusack: I don't understand the timing.

The Hon. JOHN HATZISTERGOS: I can show the honourable member the newspaper articles. They are here.

The Hon. Catherine Cusack: Can you say when?

The Hon. JOHN HATZISTERGOS: On 14 February 1990, when the Hon. Catherine Cusack was still working for the Minister—

The Hon. Duncan Gay: Point of order: My point of order relates to relevance. The Minister is talking about events that happened when a previous government was in office some 14 years ago. This bill is

contemporary, yet the Minister is wasting the time of the House. I request that he be drawn back to the bill. The hour is late and, frankly, we have had enough of his nonsense.

The Hon. JOHN HATZISTERGOS: To the point of order: I am responding to issues that were raised in the debate. This issue about the establishment of Kariong as a maximum-security facility was clearly raised in debate by the Hon. Catherine Cusack.

The Hon. Amanda Fazio: To the point of order: In her comments on this bill, the Hon. Catherine Cusack spoke chapter and verse about events that happened in the 1970s and in the late 1980s when she was a staffer for the former Liberal Coalition Government. If the Deputy Leader of the Opposition had been in the Chamber and heard her comments he would not have taken his point of order. I ask that his point of order be rejected.

The Hon. Catherine Cusack: To the point of order: The comments I made referred to juveniles in maximum-security facilities. Kariong was established in September 1991. The Minister is now referring to statistics in April 1990. I fail to see the relevance of his remarks either to my comments or to the bill.

The Hon. JOHN HATZISTERGOS: They are highly relevant because the decision to construct the Kariong maximum security facility, which she has attempted at great pains to distance herself from—

The Hon. Catherine Cusack: That is not true.

The Hon. JOHN HATZISTERGOS: Here is the press release from your Minister, the one that you were working for as senior policy adviser.

The DEPUTY-PRESIDENT (The Hon. Eric Roozendaal): Order! I remind the Minister that his contribution must be relevant. I note the debate has been fairly wide-ranging and that a degree of latitude has been extended to members in this regard. However, I ask members to be sensible.

The Hon. JOHN HATZISTERGOS: When the decision was made on 14 February 1990 to establish Kariong Juvenile Justice Centre as a maximum-security facility, the then Minister for Family and Community Services issued a press release announcing it. I will come to some of the details later. I want to quote the last paragraph of that press release. Listen to this:

> Completion of the complex will mean that never again will a Family and Community Services Minister have to transfer difficult-to-handle offenders into the adult prison system.

I do not know whether the Hon. Catherine Cusack typed this, but in 1990, when the former Government established the centre, it said that there would never be a transfer out of Kariong. As to the establishment of facilities, the Hon. Catherine Cusack said she was not in the office that was responsible at the time that Kariong was opened. At the time she was working for the then Minister for Education, who only had responsibility for schools in detention centres. Guess what? Kariong was established without a school, again due to the advice of the Hon. Catherine Cusack. Let me get her involvement quite clear. She not only had an involvement in the construction of the centre, which was condemned by the Ombudsman in the 2000 report as to critical features of its design; she also had the policy initiative to tell the then Minister not to establish a school at Kariong.

I wish to deal with some other issues that were raised. During debate the Hon. Catherine Cusack rambled on about Endeavour House. We have all seen the pictures of her former boss towering over the scale model of Kariong. What is the Opposition's position, and I use that term generously, other than massive confusion and contradiction? We can tell that is the situation from the rambling contribution of the Hon. Catherine Cusack. I distinguish the contribution of the Hon. Patricia Forsythe, which had much more substance to it. I will refer to her contribution in a moment. What is this bill actually about? Whether or not they like it, Opposition members should understand one thing: the Department of Corrective Services is at Kariong. The agreement that has been signed between the Director-General, the Commissioner of Corrective Services and the two Ministers lasts for three years.

The Opposition will not stop that agreement by failing to pass this legislation. The Department of Corrective Services is there. Three main aims of this bill will be achieved by transferring the function of the Kariong facility to the Department of Corrective Services. The three aims, which are critical to the Department of Corrective Services, are, firstly, Corrective Services officers will have the power, which it has in adult facilities, to be able to discipline juvenile inmates on analogous grounds. Secondly, it will have the power to

respond to disturbances by juveniles analogous to that used in adult correctional centres. Thirdly, the bill will make it quicker and easier to transfer intransigent juvenile detainees and others who are unsuited to the system at Kariong.

If the Opposition wants to defer this bill, as the Hon. Catherine Cusack does, to the middle of next year, it will defeat those three aims. The powers to discipline, the powers to be able to exercise effective control and the powers to be able to transfer inmates from Kariong to the adult system, if necessary, will be removed. When analysing the contribution of the Hon. Catherine Cusack in this debate, let me do it in the context of her statements about Kariong. There have been a number of them. On 22 September the Hon. Catherine Cusack told the House "Stronger discipline is needed." Now she is seeking to prevent that discipline by trying to knock over the bill.

The Hon. Catherine Cusack: That is not true.

The Hon. JOHN HATZISTERGOS: That is what the honourable member said.

The Hon. Catherine Cusack: Point of order: The Minister is totally misleading the House. As the Minister said, Corrective Services is there. Stronger discipline is in place. That is exactly what we were calling for. Deferring this bill will not overcome stronger discipline in Kariong.

The DEPUTY-PRESIDENT (The Hon. Eric Roozendaal): Order! There is no point of order. The Minister may continue.

The Hon. JOHN HATZISTERGOS: The honourable member clearly does not understand what I have been saying. It is the discipline system of Corrective Services that is going to Kariong. That is what we are seeking under this bill. It will only happen when this legislation is passed. The Opposition is trying to knock it over.

The Hon. Catherine Cusack: You have already got it with the memorandum.

The Hon. JOHN HATZISTERGOS: Rubbish. On 16 September the Hon. Catherine Cusack said in the House that the workers at Kariong needed the powers "afforded to police and Corrective Services officers". But by opposing this bill she will obstruct those powers that she said on 16 September should go to Corrective Services officers. Then at a press conference on 4 November she said—

The Hon. Catherine Cusack: All this money you spend on monitoring and that is the best you come up with.

The Hon. JOHN HATZISTERGOS: Just sit there and take it. On 4 November the Hon. Catherine Cusack said—

The DEPUTY-PRESIDENT (The Hon. Eric Roozendaal): Order! I call the House to order.

The Hon. Jan Burnswoods: Mr Deputy-President, would you ask the Hon. Catherine Cusack to turn her microphone off so that we can hear the Minister, rather than her screeching?

The DEPUTY-PRESIDENT (The Hon. Eric Roozendaal): Order! Members will cease their banter across the Chamber. The Minister will be heard in silence.

The Hon. JOHN HATZISTERGOS: In a press conference on 4 November the Hon. Catherine Cusack said, "These detainees should be in prison." Now she is seeking to hold up the legislation that could potentially facilitate that course, if it were necessary. In a media release on 13 September she said that when she met with disgruntled Kariong staff recently, "I was told that a high number of casual staff were contributing to the danger." Now she is decrying their redundancy. She is saying they should not be made redundant, having previously said that high numbers of them were contributing to that situation. It is obvious in the analysis of the Opposition that it has no position on this issue. It argues on the one hand that there should be more discipline, more control and a system to transfer, yet on the other hand it wants to hold up the bill through a committee process. This bill will allow those things to happen—things that the Opposition has been decrying.

I have no problem with a committee being set up. There have been so many committees and inquiries that another one does not matter. The motion of the Hon. Catherine Cusack has virtually nothing to do with the

bill. It contains interesting philosophies about whether certain things work and social analysis about which system is better, but nothing about the three factors she seeks to hold up by her amendments. This demonstrates that she has no idea what is happening. Her default amendments suggest that the Opposition will get really tough on offenders who are over 18, that there is no place for them in the juvenile system and they must go up immediately to an adult correctional centre. That is an interesting position for the Opposition to take. The situation was different when the Hon. Catherine Cusack was senior policy adviser to the Hon. Virginia Chadwick. At that time juvenile detainees who were sentenced did their whole sentence—

The Hon. Catherine Cusack: Can't you argue the merit of the case? Why do you have to keep arguing about personal things? Can't you argue the merit of the issues before the House?

The Hon. JOHN HATZISTERGOS: You had no policy advice then and you have none now. When the Hon. Catherine Cusack was senior policy adviser people did their whole time in juvenile detention. They were sentenced and they stayed there. That situation continued until 2001, when this Government passed legislation to place the cap of 21 years or slightly longer if their parole was to expire within six months of them turning 21. At that time the Hon. Patricia Forsythe made an interesting contribution to the debate. She was sacked as the shadow Minister for Juvenile Justice. I do not know why because she was such a brilliant contributor to that portfolio.

[*Interruption*]

The Hon. Amanda Fazio: Point of order: My point of order is the same as the point of order taken by the Hon. Jan Burnswoods. The hypocrisy of the Hon. Catherine Cusack in complaining about the Minister's comments when she has done nothing but whine, moan and interject since the Minister's factual account of issues raised in the debate is appalling. I ask that she be called to order so that we can hear the Minister's reply in silence.

The DEPUTY-PRESIDENT (The Hon. Eric Roozendaal): Order! All members get the gist.

The Hon. JOHN HATZISTERGOS: It is important to remember that when Virginia Chadwick was Minister people served their whole sentence in juvenile detention, and that remained the case until the legislation was changed in 2001. Not only did people remain in juvenile detention but also the Minister issued a press release in February 1990 stating that the difficult-to-handle offenders would never again go to the adult system. In other words, they would stay in the juvenile system. That was the position of the Coalition until the Hon. Carmel Tebbutt changed the situation in 2001. In debate on the bill to provide that people over 21 would no longer remain in the juvenile justice system, the Hon. Patricia Forsythe made a very interesting contribution, which I shall share with the House. It is important to have her wisdom, because it is the only wisdom the Opposition has shown on this issue. She said:

> We must be mindful that some young people who commit horrible crimes have particular needs and that transfer to an adult prison will present special problems for them.

She told the House how she had appealed to the Minister to keep a particular detainee, who was over 21, in juvenile detention. She said:

> All the evidence pointed to the fact that this person would make an excellent citizen upon his release … in some circumstance we must look beyond the letter of the law and consider the circumstances.

Why the Opposition got rid of her as the Juvenile Justice spokesman for the Opposition, I do not know. Her statements demonstrate her coherence and logic, compared to the rambling nonsense from the Hon. Catherine Cusack, who was responsible for construction of this centre, which was built on the side of a hill and was condemned by the Ombudsman in successive reports in 2000. She has said that there was plenty of money to buy all the inmates flat-screen televisions for their rooms. I have been to Kariong and they do not all have flat-screen televisions. The only reason the centre has flat-screen televisions is that they cannot be used as hanging points.

The Hon. Catherine Cusack does not want detainees to have televisions—not even flat-screen ones—but she would love them to have a dip in the swimming pool. Her criticism about the administration of Corrective Services is that the pool has been filled in. The pool not only has been filled in but also has been covered up. Grass will grow over it and before long the detainees will be mowing it. That is the new regime we have put in place. Some detainees want to work and some want to learn. Those who want to work will go to the

school that the Hon. Catherine Cusack believed should not be there. Quite a number of them will get an education from the school that the Hon. Catherine Cusack did not see fit to advise Virginia Chadwick, when she was Minister for Education and Training, should be built in the first place.

This whiz-bang centre was built at a cost of $11 million, yet as adviser to the Minister the Hon. Catherine Cusack did not include a school. What a joke of an administration this must have been under the former Coalition Government! When will the taxpayers get any value out of the money they were paying the Hon. Catherine Cusack for her involvement in this fiasco of the early 1990s? One can see the incoherence with respect to Kariong at that time. I could go on and on about the Opposition. The Hon. Patricia Forsythe referred to problems with staff. We have resolved those problems. The Department of Corrective Services has moved in and is operating the centre. We do not intend to run an oppressive, punitive system, but a system that will be orderly and structured and will provide opportunities for offenders to address their offending behaviour and to be educated.

I shall address some issues raised by some of the more sensible contributors to the debate rather than dwell on the one that I would wish to have excluded from that descriptor. The Hon. Jon Jenkins raised the potential for detainees to return to the juvenile system from the adult system. I assure the House that the path from the juvenile system to adult prison is not a one-way street. If inmates respond well to the adult system and modify their behaviour, they may certainly return to the juvenile system. In fact, that is an important carrot in the system of privileges and sanctions for those who wish to return.

I am advised that there are already a number of young inmates who may be able to return to the juvenile system in the not too distant future, and I wish them well if they succeed in doing so. The review of the legislation was also raised. I can announce tonight, because it is in the bill, that there will be a statutory review, not only of this legislation but the entire Crimes Administration of Sentences Act, pursuant to section 273 of the Act. The legislation includes the provision of a five yearly statutory review. The report will be tabled in Parliament and will include any provisions passed by the Parliament tonight in relation to the juvenile legislation.

That brings the operations of Kariong under the legislation that operates with respect to the adult system. They can all be independently reviewed and people can put forward submissions, which will be independently analysed. The Council of Social Service of New South Wales or any other agency can put their case, the report will be tabled and the Government will respond to it in the appropriate way. In order that the sections can be reviewed, the corresponding sections of the Children (Detention Centres) Act and the Children (Crimes Procedures) Act amended by this bill will also need to be examined. The report on that review will be tabled later next year.

The Hon. Dr Peter Wong raised the important issue of programs for young offenders and the grave overrepresentation of State wards in our correctional system. The Department of Corrective Services has developed a plan for operating the centre as a correctional centre. There will be safeguards to ensure that the centre is a distinct correctional centre for juvenile offenders. We will not breach the international conventions referred to by some honourable members. It will be a juvenile correctional centre for the purpose of the legislation and it will be administered as such. It will not be gazetted just as another correctional centre. That is why we have put specific provisions in the legislation, which the Hon. Catherine Cusack in her default amendments wants to gut, to gazette it as a juvenile correctional centre. With respect to State wards, in a report that addresses offending behaviour, MacFarlane and Murray state:

> At present there are no statistics available on the number of wards in adult prisons. Our observations, particularly at the Mulawa Correctional Centre where there are a large number of mothers, suggest that they make up a significant part of the women's population.

The Department of Corrective Services indicated in a submission to the Select Committee on the Increase in Prisoner Population that many inmates have had contact with the Department of Corrective Services with a high proportion of those being persons who have been in the care of the State. I want to assure the Hon. Dr Peter Wong that the Government takes this matter seriously. In many correctional systems statewide and in the Kariong juvenile justice system a number of programs are made available to inmates to assist them to turn around their lives.

Let me make it clear that for approximately 30 inmates at Kariong there is a dedicated welfare officer—the one that Catherine Cusack sought to defame earlier in question time today—an alcohol and other drugs counsellor, a psychologist, and health staff as required, in accordance with our staffing profile. Inmates

will participate in a structured day between the hours of 8.00 a.m. and 4.00 p.m., and specified hours for attendance at school or completion of assessment tasks, or participation in programs. Other designated hours are provided for activities and meal breaks.

The Department of Education and Training will continue to provide and fund educational programs. Kariong is staffed like a small school. There is a principal, a deputy principal, three full-time teachers, three part-time TAFE teachers, one senior teacher's assistant, two teacher's assistants, one Aboriginal teacher's assistant and a part-time teacher's assistant. Other therapeutic programs, such as counselling, anger management, alcohol and other drug counselling will be provided. I want to put on the record the very good work the Department of Corrective Services does with its programs for young offenders.

This is not a business that we are strangers to. People go around criticising us as though we do not know what it is to look after a young offender. We have, as has been correctly pointed out, a very large number of young offenders in the system. Indeed, in the juvenile justice age group of particularly 16 to 21, we have more people in the adult system than Juvenile Justice has in its whole system. We are people who are familiar with, and I am aware of, the demands and challenges of dealing with these young offenders. And we do not give up on them. Some of them are difficult; some of them do have behavioural issues; some come from very troubled and difficult backgrounds. But we try to address their offending behaviour and try to give them opportunities.

So often I go around the State visiting correctional centres and am taken aback by the dedication and professionalism of the staff and the enthusiasm which they manage to get out of offenders whom previously the world had given up on—or inmates who felt that the world had given up on them. We run special programs for young adult male offenders and we have done so since 1991. I have commented before in this House that one of John Hannaford's most decent initiatives was introducing the Young Offenders Program, and it continues to this day. It is one of the most successful programs in the Department of Corrective Services and operates out of John Morony Correctional Complex and Oberon Young Offender Correctional Centre, for suitable 18- to 25-year-olds.

The program has produced some of the most outstanding figures in terms of recidivism. I know the committee is going to look at this issue, but the recidivism rate for program participants who have not previously been imprisoned is 8 per cent, much lower than the general recidivism rate. The recidivism rate for participants who have previously been imprisoned is 32 per cent—again, much lower. I do not regard recidivism rates, incidentally, as a benchmark for correctional systems because I think they can be infiltrated by things such as more effective policing and other issues such as that. In any event, those statistics, to the extent that they show anything, do indicate some encouraging trends.

These percentages compare very favourably with the overall recidivism rate for the State of 46 per cent. We also have the special Yetta Dhinnakkal Program for young Aboriginal offenders aged 18 to 30 years at Brewarrina Correctional Centre. The program content includes education, rural training, arts and crafts, cultural awareness and community projects. This program has a recidivism rate of 27 per cent. That percentage also compares favourably with the overall State recidivism rate. The success of this program is due to its emphasis on instilling in the inmates cultural, social, educational and employment skills. The program has been so successful that a second centre has been committed to be built by the Government and has been planned for Tabulum. I have announced that to the House previously.

I want to explain the careful safeguards we are putting in place to protect the interests of the inmates. The bill is part of a systemic approach to the management of young offenders. The Department of Corrective Services has developed and is implementing comprehensive plans for operating the centre as a juvenile correctional centre. There are safeguards to ensure that the centre will be a distinct correctional centre for juvenile offenders. The following measures will ensure that juveniles in the juvenile correctional centre will continue to be managed in a manner appropriate to their age and developmental needs.

Juvenile correctional centres will maintain the same standards as juvenile justice centres except for some variations. These standards are set out in the Australasian Juvenile Justice Administration Standards for Juvenile Custodial Facilities. These standards are based on the United Nations Convention on the Rights of the Child. Prior to the handover a bridging workshop was conducted jointly by the Department of Corrective Services and the Department of Juvenile Justice for all staff being stationed at Kariong—it was in response to a matter raised by Ms Rhiannon. In fact, we will be working with the Department of Juvenile Justice in training their staff in area detention centres through the excellent work that is carried out in the Brush Farm Academy at Eastwood, a centre which is renowned internationally for its excellence in training correctional staff, and staff

involved in detention facilities, not only in New South Wales and interstate but in a number of countries. I was there last week. We had a delegation from China that was coming here for training assistance.

Each juvenile inmate will be individually case-managed, just as are all other juvenile detainees. Each juvenile inmate upon arrival at Kariong will undergo a needs and risk assessment. The assessment will cover medical condition, the risk of reoffending, literacy and numeracy, risk of self-harm and external threats. An additional visitor will be appointed to advocate on behalf of the inmates at the juvenile correctional centre. The current Official Visitor has returned positive reports to the Minister in relation to the welfare of young people in Kariong over the last four weeks. The safeguards adequately address the need to maintain a separation between the adult and the juvenile systems. The Legislation Review Committee has made comments in relation to this bill's ability to uphold the United Nations Convention on the Rights of the Child. In particular, it made reference to Article 37C, which states:

> A child deprived of liberty shall be separated from adults unless it is considered in the best interests of the child not to do so and shall have the right to maintain contact with his or her family through correspondence and visits.

Under this Government the current justice system has sought to uphold this article, despite the reservation that Australia maintains in relation to the provisions in Article 37. Whilst the management of the detainees in Kariong will now be undertaken by a service that has responsibility for operating adult prisons, juvenile offenders are still being kept in a separate facility that has been designed for their needs, subject to the qualifications that I mentioned earlier in relation to the contribution the Hon. Catherine Cusack.

This Government took steps to maintain a separation of juveniles from adults in 2001 by amending the legislation that I referred to, the Children (Criminal Proceedings) Act. The 2001 amendment ensured that young offenders sentenced as juveniles are maintained in juvenile custody until they attain the age of 21, unless they finish their sentence or their non-parole period within six months of their twenty-first birthday. In conclusion, the Government urges the passage of this bill. There is nothing to be gained and everything to be lost in falling for the nonsense that the Hon. Catherine Cusack has tried to hoodwink us about.

It is little wonder she kept her amendments secret, kept in a closeted envelope that she would not reveal until halfway through her speech. We could not even get the amendments out of her to find out what they were. What this is about is trying to build some sort of grand coalition. She wants anyone over the age of 18 chucked out of the juvenile justice system. She has just revealed that, but she wants the members of the crossbench who might be able to support her cause but who may not agree to that particular amendment not to be somehow put off by her position in relation to wanting to transfer those people out of the juvenile correctional centre.

She is playing a two-edged sword, and it is a political one. It is about stopping correctional officers having the powers and being able to exercise discipline, as they do in the adult correctional system. It is in effect about stopping those people who are over 18 from being able to be transferred into the adult system, if that is the appropriate decision.

The Hon. Catherine Cusack: I do not follow a word of that.

The Hon. JOHN HATZISTERGOS: The three things you are trying to hold up are the three issues you were advocating for. You advocated more discipline, but tried to stop correctional officials from exercising that discipline as it operates under that system. The second thing you wanted to do, if you recall, was to have the people who are in charge of these inmates to have the same powers as Corrective Services officers and police. You are stopping that by not allowing this bill to go through. The third thing you say you want is to have an easier method of transferring the over-18s out of the system. You want to hold up this bill, which will enable that to happen.

The Hon. Catherine Cusack will not stop the Department of Corrective Services from being there because, as I have said, it has already been agreed that the memorandum will operate for three years. I do not know what the Hon. Catherine Cusack is trying to achieve by her amendment, but I think it is revelatory of her position that she has not articulated how she thinks Kariong ought to be run. Instead, she has proposed a committee to advise her on what her position ought to be. Incidentally, the position she has adopted is completely contradictory to the position of her predecessor, who I thought was more talented than she is and who made a much better contribution.

Amendment of Ms Lee Rhiannon to the amendment of Reverend the Hon. Dr Gordon Moyes agreed to.

Question—That the amendment of Reverend the Hon. Dr Gordon Moyes as amended be agreed to—put.

The House divided.

Ayes, 29

Ms Burnswoods	Ms Griffin	Mr Pearce
Mr Catanzariti	Mr Hatzistergos	Mr Roozendaal
Mr Clarke	Mr Jenkins	Ms Tebbutt
Mr Colless	Mr Kelly	Mr Tingle
Mr Costa	Mr Lynn	Mr Tsang
Ms Cusack	Reverend Dr Moyes	Mr West
Ms Fazio	Reverend Nile	Dr Wong
Mrs Forsythe	Mr Oldfield	*Tellers,*
Miss Gardiner	Ms Parker	Mr Harwin
Mr Gay	Mrs Pavey	Mr Primrose

Noes, 5

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

Question resolved in the affirmative.

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

Amendment of the Hon. Catherine Cusack as amended agreed to.

Motion as amended agreed to.

Bill read a second time.

In Committee

Clauses 1 to 5 agreed to.

The Hon. CATHERINE CUSACK [11.03 p.m.], by leave: I move Opposition amendments Nos 1 to 10 in globo:

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

[1] Definitions

Insert in alphabetical order in section 3 (1):

juvenile correctional centre has the same meaning as it has in the *Crimes (Administration of Sentences) Act 1999*.

No. 2 Page 3, schedule 1, lines 7-29. Omit all words on those lines. Insert instead:

[2] Section 19

Omit section 19. Insert instead:

19 Court to direct imprisonment to be served as a juvenile

(1) This section applies to a person to whom this Division applies who is under 18 years of age.

(2) A court that sentences such a person to imprisonment in respect of an indictable offence must make an order directing that, while the person is under 18 years of age, the sentence be served by the person as a juvenile offender.

(3) The warrant of commitment that is issued under section 62 of the *Crimes (Sentencing Procedure) Act 1999* in relation to the sentence:

(a) must indicate that the sentence is the subject of an order under this section, and

(b) must, despite the provisions of that section, commit the person to whom it relates to a detention centre or a juvenile correctional centre.

No. 3 Page 3, schedule 1. Insert after line 29:

[5] Section 33 Penalties

Omit section 33 (1) (g). Insert instead:

(g) it may, subject to the provisions of the *Crimes (Sentencing Procedure) Act 1999*, make an order committing the person for such period of time (not exceeding 2 years) as it thinks fit:

(i) in the case of a person who is under the age of 18 years, to the control of the Minister administering the *Children (Detention Centres) Act 1987*, or

(ii) in the case of a person who is of or above the age of 18 years, to the control of the Commissioner of Corrective Services.

No. 4 Page 5, schedule 2, line 15. Omit "21". Insert instead "18".

No. 5 Page 7, schedule 2, lines 5-8. Omit all words on those lines. Insert instead:

(1) The Director-General, by order in writing made with the consent of the Commissioner of Corrective Services:

(a) may direct the transfer of an older detainee who is under the age of 18 years from a detention centre to a juvenile correctional centre, or

(b) may direct the transfer of an older detainee who is of or above the age of 18 years from a detention centre to a correctional centre.

No. 6 Page 8, schedule 2, lines 3-13. Omit all words on those lines. Insert instead "Omit the section.".

No. 7 Page 9, schedule 2, line 32. Omit "amendment". Insert instead "repeal".

No. 8 Page 11, schedule 3. Insert after line 12:

[3] Section 4 Application of Part

Insert after section 4 (1) (a):

(a1) any person the subject of an order under section 33 (1) (g) of the *Children (Criminal Proceedings) Act 1987* by which a court has committed the person to the control of the Commissioner of Corrective Services, and

[4] Section 4 (1) (e)

Insert "(a1)," after "(a),".

No. 9 Page 11, schedule 3, line 31. Omit "21". Insert instead "18".

No. 10 Page 12, schedule 3, line 7, to page 14, schedule 3, line 23. Omit all words on those lines.

The effect of these amendments is to separate adults from children in the juvenile justice system. The issue is whether a child is a person aged less than 21, which is the case in various parts of this legislation, or whether a child is a person aged less than 18. In the past, a degree of leniency has been exercised to the effect that a person who has committed an offence as a juvenile—that is, a person under the age of 18—will be convicted and treated as a juvenile even after that person has turned 18, 19, 20 and 21.

The Opposition believes that there is an excessive number of adults in juvenile justice system facilities designed to accommodate children. Indeed, the number of adults in the juvenile justice system is about 28.2 per cent—that is 88 adults of a total of 312 detainees. At Kariong, at the time of the Dalton report, 15 of 28 offenders were adults, three of whom were older than 20. During the second reading debate I read out the details of the offences of the 12 adult detainees at Kariong as at 26 October 2004. The Opposition believes that is excessive. The sophistication and the nature of these people is such that they should be in the prison system with the other 600 young offenders between the ages of 18 and 21.

I draw the attention of the Committee to the paper written by the Ombudsman and released in April 2004 entitled "Discussion Paper: Review of the Children (Criminal Proceedings) Amendment (Adult

Detainees) Act 2001". As the Minister said, that legislation was passed in 2001 with the support of all political parties. It was introduced by the former Minister for Juvenile Justice, the Hon. Carmel Tebbutt. In her second reading speech the Minister said:

> This bill seeks to amend the Children (Criminal Proceedings) Act 1987 to provide for the automatic transfer to prison of persons convicted of a serious children's indictable offence when they turn 18 years of age. These offences include homicide, aggravated sexual assault, violent robbery and serious drug offences.

The Ombudsman reviewed that legislation and found that, despite the Parliament's desire to see all those people transferred, a total of 53 people aged between 18 and 21—that is, adults—were ordered by the courts to complete their sentences in juvenile justice facilities, and only 13 were directed to prison. Of those 13, only one was directed to prison before the age of 19, three before the age of 20, two before the age of 21, and seven at the age of 21 or more. Someone has driven a truck through the exceptional circumstances provided for in the legislation, because virtually everyone appearing in court as a juvenile is being sent to a juvenile justice facility. The Ombudsman examined "section 19 orders", which is the term applied to adults in juvenile justice facilities, particularly at Kariong. He referred to the seven juvenile detainees who were transferred earlier and said:

> The seven juvenile detainees... all of whom were Lebanese and had been convicted of sexual assault offences, were moved from the same juvenile detention centre within a ten-month period. All went to prison prior to the dates specified on their section 19 order. Two groups of young men were involved in separate incidents in juvenile detention in October and November 2002, both of which involved the detainees arming themselves with weapons and keeping staff as hostages, according to the reports and interviews conducted with staff and the detainees. Four of the five were then charged with criminal offences committee as adults. At interview, four of these five offenders reported that they had deliberately committed these offences in order to be moved to prison.

This happened under the legislation that the Government claimed was going to solve all the problems. The report continues:

> The other two detainees instigated assaults, were subsequently charged with offences, and then were sent to prison on remand. A staff member reported that one of the two had assaulted a detainee just seriously enough so as to be charged with an adult offence, after previous applications to the Department of Juvenile Justice to transfer to Corrective Services had failed.

Detainees were begging the department to let them go to prison. On 16 September I asked the Minister for Justice about adults in the juvenile justice system being transferred to the Department of Corrective Services. He replied:

> I do not think I have refused anyone who wants to come to prison... If an application comes from the Minister for Juvenile Justice recommending that someone should come into the custody of the Department of Corrective Services, it is always given favourable consideration as far as possible.

The problem has been the lack of applications made by the Department of Juvenile Justice. The detainees want to move and the Minister for Justice wants that to happen, but the Department of Juvenile Justice has not been lodging applications. Reverend the Hon. Dr Gordon Moyes referred earlier to Rod Blackmore, a former Children's Court magistrate who retired in 1995, who referred to the importance of not having adult offenders mix with juvenile offenders:

> As management and treatment measures, the adults gather no self-esteem by continuing to be treated as children, yet gain that hierarchical "eminence" in the eyes of juvenile inmates that is endemic in all correctional systems.
>
> The adults are there because.
>
> (a) the higher courts are given a discretion under Part 2, Division 4, of the *Children (Criminal Proceedings) Act* to direct... that a person who was a juvenile but now an adult when sentenced may serve his sentence in a detention centre, at least until the age of 21 years; or in the case of other indictable offences to either direct imprisonment or detention.

I will not detail the legal reasons for an adult being in detention, as I have already outlined those. The key point made by Mr Blackmore is that the problems at Kariong can be identified strongly with the underlying issues noted above. Therefore, a solution is a separate gaol for young adults, those aged from 18 to 24. As the Minister said, that is why Parklea was created by the Coalition and why those responsibilities were transferred to the John Morony centre.

As Mr Blackmore said, the key issue is that adults do not benefit by being in a facility designed for children and children certainly do not benefit by having them there. The Opposition believes that someone has driven a truck through the leeway that was previously given to courts for special circumstances and, therefore, we no longer trust either the Department of Juvenile Justice or the way the system is operating. Therefore, we

seek to draw this black and white distinction whereby only people aged under 18 can be kept in a juvenile detention centre and people over the age of 18 must be held in a prison.

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [11.10 p.m.]: The Government will not support the amendments for fairly obvious reasons. We are persuaded by the argument put so eloquently in 2001 by the Hon. Patricia Forsythe when she said that she was keen to see a particular detainee who was over 21 remain in the juvenile detention system. She said, "All of the evidence pointed to the fact that this person would make an excellent citizen upon his release." She also said, "In some cases we must look beyond the letter of the law and consider the circumstances." I should point out that—

The Hon. Don Harwin: Point of order: The Minister is quoting verbatim from a speech he quoted in his speech in reply. He is being tedious and repetitious and I ask you to call him to order.

The Hon. JOHN HATZISTERGOS: To the point of order: It is important to repeat the speech in the presence of the Hon. Patricia Forsythe, who spoke so well in the debate—much better than the shadow Minister.

The CHAIRMAN: Order! If the quote is relevant to the amendments it is in order. The Minister shall bear that in mind should he wish to continue to quote from the speech.

The Hon. JOHN HATZISTERGOS: Tedious and repetitious! I am being distracted by the Hon. Melinda Pavey, for whom I have a great deal of time. I notice she has been working out in the gym, as has Barry O'Farrell. I do not know whether than means there is some synergy there.

The Hon. Melinda Pavey: What about you?

The Hon. JOHN HATZISTERGOS: I always work out there. I am being distracted.

The Hon. Patricia Forsythe: She should say one nice thing about the Minister.

The Hon. JOHN HATZISTERGOS: The Hon. Patricia Forsythe is irritating me. She should sit down.

The CHAIRMAN: Order! I remind the Hon. Melinda Pavey that interjections are disorderly at all times. The member is already on one call to order and if she continues to interject, I will not hesitate to call her to order for a second time.

The Hon. JOHN HATZISTERGOS: Under this bill persons aged 18 or older can be transferred by an order of the Minister on the advice of the Commissioner for Corrective Services. That would cover all the difficult circumstances we previously had when court orders interfered with appropriate—

The Hon. Patricia Forsythe: Not out of detention centres.

The Hon. JOHN HATZISTERGOS: This bill relates to the juvenile correctional centre. If someone is brought into the juvenile correctional centre and it is appropriate that they be moved on, it will need a decision of the Minister on the recommendation of the Commissioner for Corrective Services. That is an appropriate way to deal with the issue.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.13 p.m.]: I am amazed at the approach of the Opposition which, effectively, is saying that everyone between 18 and 21 who had the option of being in a juvenile justice centre will now go to an adult model of treatment. That is what will happen in most cases under these amendments. If we talk about the juvenile justice system model endeavouring to reform, we ought to get that in place in the younger age groups and then work on the late adolescents, those between 18 and 21. I am amazed that the Opposition, which I thought was trying to be progressive, supports the amendments. The amendments should be opposed.

Amendments negatived.

The Hon. CATHERINE CUSACK [11.15 p.m.]: I move Opposition amendment No. 11:

No. 11 Page 15, schedule 3. Insert after line 2:

(4) Sections 40 and 41 of the *Interpretation Act 1987* apply to a proclamation under this section in the same way as they apply to a statutory rule.

This amendment relates to the manner in which the Government makes a proclamation of a facility becoming a juvenile correctional centre. The bill, as written, is not Kariong specific but seeks to create a system in which a facility such as Kariong may be proclaimed to be a juvenile correctional centre. Theoretically any number of facilities could be proclaimed to be juvenile correctional centres, and this simple amendment means that the proclamation needs to be treated in the same way as a statutory rule laid before the House so that Parliament has an opportunity to examine it. It is a straightforward amendment and I hope all members support it.

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [11.16 p.m.]: The Government opposes the amendment. The Government has no intention of creating another juvenile correctional centre beyond Kariong. It is fairly obvious why the amendment cannot be supported: it does not operate at the moment and Parliament cannot disallow the proclamation of a correctional facility, nor does it do that for a Juvenile Justice facility. It would be appalling if one day a government decided to close Kariong and build another juvenile correctional centre and a view was taken by a majority of the House that notwithstanding the construction of that new facility, it could not be proclaimed as a juvenile correctional centre. In other words, all of the expenditure could be committed, the decision could be made, the place could be established, but it could not be gazetted or proclaimed as a juvenile correctional centre.

That would result in the same kind of situation as that which occurred at the time Russell Cox escaped from Katingal. As Katingal was not gazetted as a correctional facility Cox was acquitted of the charge of escaping lawful custody because the facility was not properly proclaimed. From time to time at any detention centre or correctional facility the perimeters and boundaries are changed. That has happened on a number of occasions since I have been the Minister. The premises that are proclaimed to be a correctional facility have to be amended or changed, and no doubt government will do that with Parklea when the compulsory drug treatment centre is changed. From time to time proclamations need to be changed.

I give the Committee an assurance that the Government has no intention of doing that with Kariong. There is no need to go beyond the decision that is the subject of the bill. If that proposal were put in place it would make things difficult for any government. Through this bill Parliament has had an opportunity to debate the merits and concept of juvenile justice as opposed to juvenile correctional models, and has resolved to do that. To try to straitjacket it and say that the model will never be changed, and that it has to be on a certain latitude and longitude, is to hamstring future governments.

The Hon. Catherine Cusack: No, the proclamation—

The Hon. JOHN HATZISTERGOS: Hold on! As I said, Kariong is not an ideal maximum-security facility, and that is obvious from reports published by the Ombudsman. Down the track there may need to be changes to its perimeter; I do not know. Years down the track a future government may decide to close it and build another facility. It could not be established with any certainty unless the government had the numbers to have it proclaimed without having it disallowed. That would make it unworkable and would also mean that the flexibility in relation to this facility would be grossly affected by the sort of issue I raised earlier in the event that there needed to be changes.

As I said, it could lead to a situation where a place is operating and functioning but is not gazetted or proclaimed as a juvenile correctional centre. Although I understand that some honourable members may be concerned that Corrective Services is taking over Juvenile Justice, that is not the Government's intention. I also point out that this legislation will affect only that section of the juvenile justice population aged from 16 to 21 years. Of course, the juvenile justice population comprises a younger age group but juvenile correctional facilities operate only for those aged from 16 to 21 years. Only one other centre accepts persons in that category; all the other facilities accept persons from a broader age category and we have no intention of taking them over. For those reasons I urge the Committee to oppose the amendment.

Amendment negatived.

Schedules 1 to 3 agreed to.

Title agreed to.

Bill reported from Committee without amendment and report adopted.

Third Reading

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [11.22 p.m.]: I move:

That this bill be now read a third time.

I advise the House that the Government's nominees on the proposed parliamentary committee will be the Hon. Eric Roozendaal and the Hon. Amanda Fazio.

Motion agreed to.

Bill read a third time.

JURY AMENDMENT BILL

Second Reading

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [11.23 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The Government is pleased to introduce the *Jury Amendment Bill 2004*.

One of the central attributes of trial by jury is that juries bring the conscience of the community to bear on issues in a trial in a way that a single judge cannot.

However, recent cases have demonstrated the danger that a jury's verdict might be determined, not by the evidence and the relevant law, but by external factors, such as personal experiments or inquiries or prejudicial material bearing on the case.

It is a fundamental principle of our criminal law system that an accused is given a fair trial and that she or he is judged on the evidence given in Court.

In the last 12 months the NSW Court of Criminal Appeal has overturned two major Supreme Court criminal convictions. One was a murder conviction (*R v K* [2003] NSWCCA 406) and the other was a conviction for sexual assault in company (R v *Skaf & Skaf* [2004] NSWCCA 37). In each case the Court of Criminal Appeal held that the jury's verdict had been tainted by the misconduct of jurors.

Recently in the District Court in Sydney, a trial was aborted after 24 court days because jurors had disregarded the clear direction of the Judge not to search the Internet, conduct private views of the scene of the crime or discuss the matter with anyone who is not a fellow juror.

Each of these matters require a retrial. A retrial creates significant hardships for the witnesses and their families, for the accused, for the Police and for everyone as a taxpayer who has to fund these trials. It is particularly distressing for a victims of horrific crimes such as sexual assault.

As a result of the two cases in the Court of Criminal Appeal, the Court and the Jury Taskforce recommended amendments to the Jury Act. The Criminal Law Review Division of the Attorney General's Department also sought the views of the Office of the Sheriff, the Law Society of NSW, the NSW Bar Association, the Public Defender's Office, the Legal Aid Commission, the Office of the Director of Public Prosecutions, the Chief Judge of the District Court and the Chief Justice of New South Wales in developing these legal provisions. The Bill incorporates suggestions and recommendations arising from this consultation process.

The *Jury Amendment Bill* seeks to reduce the incidence of retrials resulting from jury misconduct. The creation of a new offence of juror misconduct is accompanied by non-legislative changes, including stronger directions from Judges to juries and improvements in juror education. The Bill will discourage jury misconduct and improve the procedures for investigating jury misconduct without discouraging participation in this important civic duty. There will also be broader prohibitions on soliciting information from a juror.

In terms of the Legislative Provisions, there are three main parts to these amendments.

Firstly, the Bill creates a new offence of jurors conducting their own inquiries.

Secondly, the Bill expands the scope of the current offences of soliciting information from a juror and jurors disclosing information.

Thirdly, the Bill empowers the Office of the Sheriff to investigate jury irregularities and report back to the court.

In relation to prohibiting jurors from conducting their own enquiries, a new offence is created under section 68C which prohibits jurors from making an inquiry for the purpose of obtaining information about the accused or about any matter relevant to the trial. This prohibition applies to jurors in criminal trials and lasts until the jury has given its verdict or the judge has discharged the person.

Prohibited inquiries are defined to include asking a question of another person, conducting research, including using the Internet, viewing or inspecting a place or object and conducting experiments. It is also an offence to ask another person to conduct these inquiries. However, inquires authorised by the court, such as the handling of exhibits in the jury room are not prohibited. It is also not an offence to make an inquiry of another juror.

The maximum penalty will be two years imprisonment and a fine of 50 penalty units.

This offence will provide an appropriate deterrent to jurors who are tempted to disregard the directions of the judge. More serious instances of jury misconduct, such as the acceptance of a bribe, could be prosecuted as contempt of court, or perverting the course of justice; offences which have much higher maximum penalties.

A new section 55DA provides that a judge may examine a juror on oath to determine whether a juror has made prohibited inquiries. A juror will not be able to refuse to answer questions from the judge on the basis that the answers may incriminate them, however, the long standing protection against self incrimination is retained by providing that the answers given cannot be used against the juror in future prosecutions.

The certificate granted to prevent the admission of answers in a subsequent prosecution of the juror is modelled on the provisions of the *Evidence Act 1995*. This allows a Court to find out whether an irregularity has occurred, without a juror refusing to answer questions. A juror may still be prosecuted on the basis of other evidence, such as the testimony of other jurors. In most cases there will be other evidence against the juror because it is likely that the judge's questioning would arise out of material drawn to the judge's attention.

As to broadening of the prohibition on soliciting information from jurors, the second main improvement made by the Bill is to expand the scope of the current offences of soliciting information from a juror and jurors disclosing information.

The current section 68A of the Act prohibits the soliciting of information from a juror about jury deliberations.

Section 68B prohibits the disclosure by the juror of any information about jury deliberations.

Deliberations of a jury are defined to include statements made, opinions expressed, arguments advanced or votes cast in the course of jury deliberations.

Items [2] and [4] extend these prohibitions to encompass all aspects of the activities undertaken by the jury in discharge of their duties, and not simply the final deliberative process after retirement.

This will extend the prohibition to include asking a juror whether they considered any extraneous material, and to question jurors about any part of their decision-making.

The prohibitions against soliciting information from a juror and disclosing information by a jury do not extend to jurors making inquiries of fellow jurors.

The final improvement to the Bill is to provide a power to the Office of the Sheriff to investigate jury irregularities.

Item [7] inserts a new section 73A which empowers the Office of the Sheriff, at the request of the Court, to investigate and report back to the Court on a matter where a serious irregularity is suspected to have occurred.

This new section will formalise a process whereby the trial Court or appeal Court can ask the Sheriff to investigate a suspected irregularity. It is the function of the Sheriff to inform the Court of the nature of an irregularity. The Court will use this information to determine whether to discharge a jury, or whether to allow an appeal against a conviction.

It must be emphasised that the principal function of the Sheriff's investigation is to inform the Court of the nature of any irregularity, which may have affected a jury's verdict. It is not the place of the Sheriff to investigate a criminal offence; although any information they gather will be used to assist the police in any subsequent investigation.

Where it is reasonably suspected that an offence under s68C has occurred, the matter should be referred to the police for investigation and prosecution.

The Bill contains a comprehensive set of amendments that are necessary to deter jurors from disobeying judges instructions.

I commend the bill to the House.

The Hon. GREG PEARCE [11.23 p.m.]: The Opposition does not oppose the Jury Amendment Bill, which amends the Jury Act 1977 to prohibit improper inquiries by jurors and the disclosure of information by jurors. The Opposition has been calling for a bill of this type for some time. The latest demonstration of the need for this legislation occurred fairly recently, when a trial in the District Court was aborted after 24 days because jurors disregarded the direction of the judge not to search the Internet or do other things. Juries are vital to the criminal justice system. They play a vital role in our system and are an important safeguard, especially in the

criminal law. It is important that jurors base their findings on the facts rather than disobey the rules and take account of extraneous information.

The bill creates a new offence prohibiting inquiries by jurors outside the courtroom in relation to an accused or any other matter relevant to the trial. The maximum penalty for this offence is 50 penalty units or imprisonment for two years, or both. It introduces a new section to provide that a judge may examine a juror on oath to determine whether a juror has made prohibited inquiries. The judge may issue a certificate to jurors so that evidence given to the judge cannot be used against them in any prosecution. The bill expands the offences of soliciting information from a juror and of jurors disclosing information about all aspects of the jury's decision making rather than just the final deliberations in the jury room. It also gives the Office of the Sheriff the power, at the request of the court, to investigate suspected jury irregularities and report back to the court. The court will then use the information to determine whether to discharge a jury or whether to allow an appeal against a conviction.

I note that during debate in another place the honourable member for Epping, the shadow Attorney General, raised various issues that were communicated to him by the Law Society of New South Wales regarding some perceived shortcomings in the drafting of the legislation and in the way that it would operate. It is fair to say that the Attorney General dismissed those concerns when he replied to the debate. He said that he thought the legislation was sufficiently clear and that the Law Society's concerns were unfounded. One of the issues is that the bill will be accompanied by instructions to jurors, which the Judicial Commission is apparently rewriting in clearer language and will be included in the relevant trial bench book.

That rewrite must take place as soon as possible, particularly given the concerns raised during the second reading debate and by the Law Society. One hopes that these offences will never occur and that the bill's strength will never be tested. One also hopes that the instructions to be included in the new trial bench book will be sufficient to ensure that jurors understand their obligations fully so that there is no recurrence of the problems that occur when jurors frolic around searching for additional evidence, as happened in the case that formed the basis of this bill. The Opposition does not oppose the bill.

Ms LEE RHIANNON [11.28 p.m.]: The Greens support the Jury Amendment Bill. It is an important bill because we have seen in this past year that the misconduct of jurors can impact heavily on criminal proceedings and have costly consequences—both the monetary cost of conducting a retrial or an appeal, and the personal cost to a victim's wellbeing when his or her case is prolonged by a retrial. We agree that it has become necessary for a judge to be able to compel jurors to give evidence about their conduct, even though it will incriminate them, because of the serious consequences that have resulted from juror misconduct.

The Greens will always work to protect our rights and civil liberties from being eroded, and we acknowledge that jurors currently enjoy the right to silence. So we welcome the fact that when jurors are compelled to answer questions about their conduct they are protected from subsequent prosecution. But we note also the concerns of the Law Society of New South Wales that parts of the bill are unclear, and we join the Opposition in asking the Attorney General to address those issues. Having said that, the Greens will not move any amendments to the bill.

It is important to acknowledge that most jurors who break the law are probably only trying to better inform themselves so that they can do a good job. However, even with the best intentions, when a juror's actions result in a mistrial, the emotional and financial costs have proved to be very high. The jury system is such an important part of our criminal justice system that the measures contained in this bill have become necessary to ensure public confidence in the ability of jurors to meet their responsibilities. The Greens hope that the outcome of this bill will be that all jurors are equally informed that during a trial they are all considering the same evidence.

It is all very well for Attorney Gneral Debus to say that a considerable amount of information is already available to jurors. But the circumstances of the bill bring into question how effectively that information informs jurors of their obligations. Jurors in the sexual assault trial of *R v Skaf and Skaf* in 2004 went to the park where the alleged assault had taken place so that they could view the lighting conditions for themselves. Despite the considerable information those jurors had received, they went ahead and conducted their own investigations. I am sure that they regret the stress and anguish that their actions must have caused the victims and the victims' families and friends. The information regime clearly failed those jurors and it failed the women who had to endure the whole trial only to see the convictions overturned.

To his credit the Attorney General announced these new laws to stop jurors from conducting their own investigations during trials, following the Skaf case. The laws were a necessary response to those events and the Greens welcomed the announcement. But at the time we also called for much broader reform to this State's

sexual assault laws. In September this year I spoke outside the Criminal Court of Appeal, where two men convicted of the gang rape of two women in Ashfield last year appealed against their convictions on the grounds of a miscarriage of justice. They had sacked their lawyers during the trial and then appealed because they were not able to cross-examine the victims of their crime. The Attorney General rightly stopped the accused from being able to cross-examine the victims, but the case still made it to appeal, and the two women had to endure the appeal hearing and the surrounding publicity.

Imagine what those women were thinking as the perpetrators of that crime tried to exploit the law so they could avoid going to prison. The Greens have already supported two significant changes to the original Criminal Procedure Act. One change was to allow the use of closed circuit television so that the victims did not have to be in the same room as their accusers. The other was an amendment to stop accused rapists who represent themselves from cross-examining their alleged victims. We now give our support to this attempt to prevent the misconduct of jurors resulting in a mistrial. But we also take this opportunity to repeat our calls for the Government to institute a major overhaul of sexual assault laws. In New South Wales less than than 1 per cent of sexual assaults lead to conviction. Increasingly, those convicted are appealing on minor points of law.

The State's sexual assault laws are becoming increasingly complex, and the conduct of jurors is only one area that requires urgent attention. This goes to the heart of the need for reforms that I would like to follow the Jury Amendment Bill. Our legal system is based on laws developed hundreds of years ago, and many myths about sexual assault are deeply embedded in those often misogynist, unjust and ineffective sexual assault laws. The Government must bear some responsibility for the fact that sexual assault rates are not decreasing and that the rate of conviction is not increasing. The Greens support the ongoing call of the Rape Crisis Centre for a high-level committee to be established to construct a legislative and management framework for complaints of sexual assault that is fair and just and that is tailored to meet the needs of women who report sexual assaults. For example, victims should be protected from improper, demeaning or degrading questioning when they are giving evidence.

The law should be amended to stop the questioning of victims about their sexual history, reputation or experience. Evidence of any history of sexually violent behaviour by the accused should be allowed to be presented by the prosecution. The laws surrounding the onus of consent should be changed from the victim having to prove she did not give consent to the accused having to prove he got consent. Most importantly, multiple rape cases should have the one hearing to ensure that victims of rape only have to give evidence once, and there should be pre-trial hearings for all sexual assault matters. The Government should follow the Jury Amendment Bill with a review of the sexual assault laws. It is time for the Government to give a wholehearted response to the problems that surround the way sexual assault cases are handled, to commit to a review of the legislation that governs our sexual assault laws, and to pursue new ways to meet the needs of the estimated 100,000 women who suffer sexual assault each year in this country.

The Hon. PETER BREEN [11.34 p.m.]: I support the Jury Amendment Bill. A few weeks ago I had the pleasure of attending the Sydney Theatre Company production of *Twelve Angry Men*, a New York play written by Reginald Rose and directed by Guy Masterson. The play is the story of 12 jurors, all men, considering the fate of a young man accused of murdering his father. They begin their deliberations with 11 jurors voting for conviction and one supporting an acquittal. As the play progresses, the one juror arguing for an acquittal beats and cajoles the other 11 until finally the accused is acquitted. I thought about the Jury Amendment Bill as I watched the play because the main protagonist said he had visited the crime scene to check the lighting, and he also purchased a knife identical to the murder weapon.

Both of those activities would be a breach of the proposed legislation and attract a maximum penalty of $5,500 or two years imprisonment. In other words, when jurors show any sort of initiative to try and determine the issues they are asked to resolve, they will be severely penalised. I would like to think that those provisions are intended to protect an accused person, although I suspect the Government is more interested in preventing trials being aborted. It is a regrettable fact that a criminal trial does not always uncover the truth, and sometimes the rules of evidence are used selectively by the prosecution and defence. In my experience, a criminal trial is designed to facilitate the wheels of justice rather than determine what happened. Usually the jurors are the last people in a trial to know what is going on, and the temptation to seek explanations outside the jury room and the court is often a strong one. Jurors in the future will be sleuths at their peril.

The bill will also extend the operation of the existing law so far as soliciting information from a juror is concerned. In my opinion these provisions are a bit precious and contrary to the robust and often widely published circumstances of a jury trial. Not only will it be an offence to ask a juror how he or she voted, but it

will also be an offence to ask the person how they formed their opinion to acquit or convict. I can think of a few notorious cases that would come to grief under the provisions. For example, the National Party members on Joh's jury would be in trouble, as would the juror in the second trial of Phuong Ngo. The Phuong Ngo juror held out against the other 11, later describing his fellow jurors as racist and uneducated. Wicked free speech of this kind will not be tolerated under the bill for the duration of a trial.

I note that proposed section 68B (1) makes it an offence for a juror to disclose information during a trial—and I emphasise "during". My reading of that provision is that the juror remains free to disclose the information at the conclusion of the trial. I certainly hope that is the correct reading of the bill, since there should be no impediment to free and open discussion after the accused has been acquitted or convicted, as the case may be. People ought to be aware on some level of what transpires in a jury room if only for their own edification at the time they are called to jury service. In a recent case involving radio broadcaster John Laws, a juror did not commit an offence by talking on air about the deliberations of a jury, but the broadcaster committed an offence by soliciting the information from the juror. The bill will not change the law as it applies to that situation. Indeed, the juror will be free to explain how the jury reached its decision, provided the juror does so after the trial.

The reason we have laws to prevent jurors going outside the jury room or the court is to guard against the possibility that a person may be convicted on evidence he or she has not had the opportunity to test. Issues that arise as a result of an Internet search or a private inspection of the crime scene by a juror, for example, will necessarily inform the opinion of a juror. But it would be quite unfair to the accused for the juror to decide the accused was guilty without the accused having the opportunity to answer the juror's observations. It would be a clear case of the juror convicting the accused on the basis of opinion rather than evidence. The rules of evidence protect the rule of law as well as the rights of the accused to a fair trial.

I was interested to read in the Attorney General's response to the debate in the other place that jurors today are given comprehensive information in the lead-up to the trial. That has not always been the case. Over the years I have heard many jurors lament the paucity of information they receive about the jury process. The Attorney noted that a handbook for jurors is being finalised to provide information about the trial process, suggesting that the Government is only now addressing the problem of juror information. I have always held the Government responsible for failing to recognise the responsibility that jurors bear to maintain the wheels of justice. It appears from the new handbook and the legislation before the House that the Government is finally doing something to educate jurors. I support the bill.

Reverend the Hon. Dr GORDON MOYES [11.40 p.m.]: I speak on behalf of the Christian Democratic Party on the Jury Amendment Bill, which will make it an offence for jurors to conduct inquiries outside the evidence in a trial, allow the Sheriff to investigate jury misconduct and broaden some existing offences. In particular, it will be an offence to solicit information from, or harass, a juror or former juror for the purpose of obtaining information about how a juror, or the jury, formed any opinion or conclusion in relation to an issue arising in a trial or coronial inquest. The bill will also prevent the disclosure of such information in certain circumstances. The bill will enable the Sheriff to investigate any irregularities in the conduct of jury members in a criminal trial that may affect, or have affected, the jury verdict. The Christian Democratic Party commends the initiatives in this bill.

Ms Lee Rhiannon gave some well-known examples in Australia where jurors have caused mistrials. This bill has been introduced to address some weaknesses inherent in the provisions of the Jury Act 1977 that deal with jury misconduct. The deficiencies in the current legislation have brought about the need for courts to order retrials, which involve significant time and costs for all involved. In particular, these retrials have burdened victims, as the Hon. Peter Breen indicated, with additional distress because of the necessity to give evidence again in a second or third trial. The additional workload for the judicial system is another adverse consequence. Any reasonable initiative to tighten controls on juries to benefit the effective conduct of trials in the judicial system ought to be adopted. It is not only important to have 12 good and true persons; we must make sure the system works.

The Court of Criminal Appeal has recently ordered retrials as a result of jury misconduct. In the matter of K, a juror accessed information on the Internet about another murder charge faced by the accused. In the matter of Skaf, jurors attended the scene of the crime at night to conduct experiments in relation to the lighting. In addition, a District Court judge discharged a jury after 24 court days, when the foreman advised him that one juror had accessed information in relation to the accused on the Internet and another juror had visited the scene of the crime and formed a decision in relation to the verdict based upon the view of the juror's spouse and

discussions with that spouse. Before this bill was introduced, consultations on the recommended changes to the Jury Act were conducted with a number of persons and organisations, including the Chief Justice, the Chief Judge of the District Court, the office of the Director of Public Prosecutions, the New South Wales Law Society and the Public Defender's Office.

One of the offences under the current Act is the solicitation or harassment of jurors or former jurors in relation to information about jury deliberations. The proposed new offence prohibits solicitation or harassment in relation to information about how a juror, or a jury, formed any opinion or conclusion in relation to an issue arising in a trial or inquest. We are all accustomed to seeing door-stop interviews after a trial on American television when jurors are asked how they voted and why they voted that way. As mentioned by Tony Stewart in the second reading speech in the Legislative Assembly, offences under existing section 68B will be extended to encompass all aspects of the activities undertaken by the jury in discharge of tits duties, and not simply the final deliberative process after retirement.

The bill will make it an offence for a juror to undertake a private inquiry about a trial matter. "Making an inquiry" is defined to include asking a question of any person, conducting any research, viewing or inspecting any place or object, and conducting an experiment or causing someone else to make an inquiry. That is a significant provision. Jurors must restrict themselves to an evaluation of the material presented in the trial and not venture out of the confines of the court to substantiate their opinions. The bill also empowers the Office of the Sheriff to investigate whether the verdict of a jury in a criminal trial may or may not have been affected because of improper conduct by a juror or jury members, and to report the outcome of the investigation to the court. Importantly, the investigation must be conducted with the consent of or at the request of the Supreme Court or District Court, and may only be prompted if there is reason to suspect that the verdict may have been affected by the improper conduct of a juror or jurors.

One of the issues considered by the Legislation Review Committee is the scope of protection against self-incrimination. Proposed section 55DA compels a juror to give evidence during an examination conducted by a judge under that section whether or not the evidence may tend to prove that the juror committed the offence of making private inquiries about a trial matter. But if the judge is satisfied that the evidence may tend to prove that the juror has committed such an offence, the judge is to give the juror a certificate that prevents that evidence being used against the juror in any proceeding for the offence. As stated by the committee, it must be emphasised that the right against self-incrimination should only be eroded when it is overwhelmingly in the public interest to do so. However, I tend to agree with the committee's view that the proposed position does not trespass unduly on personal rights or liberties because of the limitation on the use of self-incriminating answers and also because of the significant public interest in the fair conduct of trials. I encourage honourable members to vote for the Jury Amendment Bill.

The Hon. JON JENKINS [11.46 p.m.]: I want to place a few thoughts about the Jury Amendment Bill on the record. I am not a believer in the adversarial legal system. A system in which guilt or innocence is, to a large extent, determined by how many Queen's Counsel are present or how much money an accused can afford to pay is not a good system. Is it the best system we have? I do not know, but I certainly have some reservations about it. It is hard enough to get people to serve on juries, and now they will be punished if they do a natural thing—that is, make inquires about the case that is being heard to satisfy some nagging questions that they are prevented from asking during the court hearing. In other words, they may have to rely upon a selective presentation of evidence by the legal representatives of the parties. I am also concerned about proposed section 68B (2), which provides:

> (2) A person (including a juror or former juror) must not, for a fee, gain or reward, disclose or offer to disclose to any person information about:
>
> (a) the deliberations of the jury, or
>
> (b) how a juror, or jury, formed any opinion or conclusion in relation to an issue arising in a trial coronial inquest.

Some court hearings would be extraordinarily traumatic events to an ordinary person who has been taken off the street and subjected to incredibly disturbing forensic evidence.

The Hon. Peter Breen: Judges and barristers.

The Hon. JON JENKINS: And judges, barristers and politicians. It would be an extremely traumatic event and to write a book may be a matter of self-cleansing. Anyone writing such a book should be forewarned that if they do so they will be guilty of an offence if they make a profit from the sale of the book.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [11.48 p.m.], in reply: Trial by jury is the central tenet of our criminal justice system. However, when juries disregard the clear instructions given to them by the trial judge the process under which an accused person is tried is not a fair one. A jury must decide its verdict on the evidence given in court when the accused is present. An accused is entitled to hear the evidence and, through counsel, test the evidence by cross-examination. When a juror or juries conduct their own inquiries the trial process is undermined as neither the accused nor the Crown are present when they undertake their experiments.

Making inquiries about an accused, such as accessing the Internet, allows jurors access to material that is strictly inadmissible according to the laws of evidence. When an accused is not given a fair trial a retrial will be necessary. This is extremely costly to the community and extremely stressful for the victim. It is particularly distressful when the crime involves serious personal violence such as multiple sexual assaults in company. For this reason this offence needs to be created. It will be a clear deterrent to jurors who are tempted to ignore the directions of the judge that require them to make their decisions according to the evidence and the life experiences they bring to the jury room.

Jurors are not investigators. Their duty is to reach a verdict based on the testimony they have heard, the exhibits and the legal directions given by the judge. This bill will allow courts to be informed when an irregularity has occurred. Expanding the prohibition on the disclosure of jury deliberations will protect jurors from inquiries about their decision from inappropriate channels. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

LICENSING AND REGISTRATION (UNIFORM PROCEDURES) AMENDMENT (PHOTO ID) BILL

Second Reading

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [11.50 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

Applying for a licence can be a complex and time consuming process. Application forms must be completed. Supporting documents and evidence must be gathered and provided. In some circumstances tests must be undertaken.

For a limited number of licences, an applicant must also provide an identification photograph. Having a photograph taken is an added time consuming burden. This Bill gives a licence applicant an option that reduces this "red tape".

The Legislation before us gives an applicant for certain specified licences the choice of reusing an existing photo held by the Roads and Traffic Authority—or attending a Motor Registry to have their photo taken.

Whichever choice an applicant makes, their photograph will be securely stored by the Roads and Traffic Authority. It will only be available to the licensing authority for very specific purposes set out in this bill.

The principal objectives of the bill are to:

- improve customer service by giving a licence applicant the choice of reusing an existing photograph on other licences
- improve the integrity and security of photograph identification issued by NSW licensing authorities—reducing opportunities for identity theft and fraud
- protect the privacy of a person who provides an identification photograph to a licensing authority; and
- enable more effective use of the Roads and Traffic Authority infrastructure and resources for taking and securely storing identification photographs.

The Licensing and Registration (Uniform Procedures) Act 2002 provides a framework for consistent administration of NSW government licences.

Parliament has already applied the Act to licences issued under twenty nine pieces of legislation.

The Act sets standard procedures for submitting and processing licence applications. It also sets standard procedures for licence administrators when they are determining an application—including the processes used to request information, the time periods for making a decision and notifying an applicant.

The Act gives licence applicants the right to have decisions reviewed by the Administrative Decisions Tribunal if a right of review is not already in place for a licence.

This Bill extends the Licensing and Registration (Uniform Procedures) Act to enable more effective administration of requirements for identification photographs.

The term licence in this speech is a generic one and includes registrations, certificates, permits and other related terms.

I would now like to turn to the detail of the bill.

The bill applies to licences listed in schedule 3A of the Licensing and Registration (Uniform Procedures) Act. Schedule 3A lists licences administered by the Commissioner for Fair Trading and WorkCover Authority. These licences are issued under:

- the Home Building Act 1989

- the Property, Stock and Business Agents Act 2002

- Chapter 9 of the Occupational Health and Safety Regulation 2001

- the Explosives Act 2003.

The bill does not require anybody to provide a photograph. Any requirement will continue to be through the legislation that establishes the licence.

The Commissioner for Fair Trading and WorkCover Authority can currently require a photograph for these licences under the relevant licensing legislation. This bill simply enables access to a photograph held by the Road and Traffic Authority if either of these licensing authorities decides to implement a requirement for a photograph.

Further licences can be added to Schedule 3A. Legislation establishing a licence can amend the schedule. This includes a Regulation, where the licence is established by a Regulation. This approach is flexible but also ensures appropriate scrutiny of a decision to use the service.

The Department of Commerce has identified more than 15 categories of licence or registration in NSW where a photograph is currently required. This is in addition to the photo required for a driver licence. The range is quite broad. It extends from surveyors registered with the Board of Surveying and Spatial Information through to the holder of a firearm licence.

Many occupations in the transport industry also require an identification photo - including tow truck drivers, taxi drivers and masters of commercial vessels. These licences can be added to Schedule 3A if this is considered appropriate after experience is gained with the initial licences.

The bill enables the Director-General of the Department of Commerce to enter into photo-access arrangements with the Roads and Traffic Authority and licensing authorities. The director-general can then provide an information technology service for licensing authorities that links to Roads and Traffic Authority and uses that existing infrastructure for taking and storing photographs.

This is similar to arrangements that are currently in place between the Commissioner of Police and the Roads and Traffic Authority for firearm licences and security industry licences.

The photo access arrangements with the Director-General will enable the Roads and Traffic Authority to:

- exchange information with a licensing authority to verify the identity of a person being photographed, or to correctly locate an existing photograph

- disclose a photograph to a licensing authority to assist in verifying the identity of a person making a licence application

- take and store a photograph of an applicant who chooses not to use an existing photograph

- provide a photograph to a licensing authority (either an existing photograph such as a driver licence—or one taken for the licence)

- receive fees as payment for the service.

The arrangements can also authorise a licensing authority to provide identification information to the Roads and Traffic Authority. This is necessary to ensure that the correct photograph is provided.

The Director-General of the Department of Commerce acts as an information and service broker, providing secure access to the Roads and Traffic Authority for licensing authorities and linking this to other information technology services for the production and management of licences. In some circumstances it may make good business sense to use private sector service providers—for example using a commercial data centre to store licence records, much in the same way that banks and financial institutions provide for secure services.

The bill makes it clear that the director-general must not enter into arrangements with a service provider unless he or she is satisfied that the arrangements protect privacy. The arrangements must make appropriate provision for compliance with relevant information protection principals in the Privacy and Personal Information Protection Act 1998.

Privacy and security have been key concerns in the development of this bill, and the Privacy Commissioner has been consulted through out its development.

The bill prevents a photograph from being stored or used except for the purpose of:

- reproducing the person's likeness on a licence or certificate
- helping to identifying a person making an application under the licensing legislation
- lawful investigations by the licensing authority
- the conduct of criminal proceedings under the licensing legislation or offences under the Crimes Act for false and misleading information
- when performing a function required for the photo access arrangements – such as verifying a person's identity or printing a licence.

The bill also places restrictions on the release of a photo. A photo can only be released:

- to the person shown in the photo
- if the release is provided for in another law
- for a lawful investigation by the licensing authority or for the conduct of criminal proceedings
- when performing a function required for the photo access arrangements.

Release of a photo for an investigation or for criminal proceedings must be done in accordance with any protocol approved by the Privacy Commissioner.

Sections 14 and 15 of the Privacy and Personal Information Protection Act give a person the right to access and correct personal information held by a public sector agency. The bill makes it clear that this right must be exercised through Roads and Traffic Authority rather than a licensing authority or the Department of Commerce. This will simplify administration and help to maintain the integrity of the photo database.

Schedule 2 of the bill amends Part 5 of the Roads Transport (Driver Licensing) Act. These amendments enable the Roads and Traffic Authority to participate in the photo access arrangements.

Existing privacy and security protections in part 5 of the Road Transport (Driver Licensing) Act will continue to apply to the driver licensing scheme. This bill complements those provisions by establishing protections when a Roads and Traffic Authority photo is used for another a type of licence.

The bill benefits people who provide an identification photo to a licensing authority. Their privacy is given increased protection. Their identity is protected and they can be assured that their personal information is stored securely. They have the option to reuse an existing photograph for other licences, reducing application times and red tape.

The community also benefits. Security features used for photograph licences will make forgery difficult. Fraud prevention will be improved.

Licensing authorities will have access to a secure service for managing photographs. Facilities at the Roads and Traffic Authority that currently are only available to the NSW Police Service will become available to other agencies. Compliance with privacy requirements will be simpler to achieve. Administration of licensing will be improved.

Honourable members may also be aware that the Photo Card Bill has been introduced into the Legislative Assembly. The Photo Card Bill includes consequential amendments to this bill. The Photo Card Bill will omit a provision that states that photo-access arrangements must afford a licence applicant a choice of providing an existing Roads and Traffic Authority [RTA] photo or having a new photo taken. The application process used for a licence makes this provision unnecessary. At the time of making an application applicants will be asked if they have a current drivers licence or photo card and will be given the choice of using the most recent photo held by the RTA or attending a motor registry and having a new photo taken.

Consequent amendments in the Photo Card Bill will modify section 80H to ensure that the RTA can keep and use photos under the Licensing and Registration (Uniform Procedures) Act 2002, the Road Transport (Driver Licensing) Act 1998 and the proposed Photo Card Bill. This change will ensure that a single photo can be used for any of the Acts. The Photo Card Bill will also amend section 80I, which deals with the release of photographs. The privacy protections in part 5 of the Road Transport (Driver Licensing) Act 1998 will be applied to all photos held by the RTA, irrespective of under which of the three Acts a photo was taken. The same privacy protections will apply to all photos. I commend the bill to the House.

The Hon. MELINDA PAVEY [11.53 p.m.]: The Opposition does not oppose the Licensing and Registration (Uniform Procedures) Amendment (Photo ID) Bill. This bill, although rushed, does seem to be unexceptional. And although the Opposition was given little time to consider the bill in the lower House, it will not oppose the bill here. The Minister for Commerce said that the purpose of the bill is to give licence applicants the choice of using an existing photo held by the Roads and Traffic Authority [RTA] when providing a photo for specified government licences and registrations. There are 15 existing licence or registration categories administered by eight government authorities currently using an identification photo. So it is a good idea to streamline this process and get rid of red tape.

The bill will enable the RTA to take and store identification photos for other government licencing authorities. It will also improve consumer protection and assist in fraud prevention while maintaining privacy. Photo identification is becoming increasingly important and a complex issue in our society. The idea of setting some standards for such identification, at least at a New South Wales level, certainly has merit. The safeguards highlighted by the Minister in his second reading speech appear to improve on the processes already in place. It is important to note the necessity for the New South Wales Government to work with the Federal Government to develop protocols in relation to a standardised photo identification system.

This is especially relevant now with the heightened security risks since September 11 and concerns about national security now being front-page headlines. Around the world the need for national identification schemes is becoming a reality. I presume that in the not too distant future Australia will follow other countries in their pursuit of these identification schemes. The legislation will standardise procedures and allow for a collection of photographs on a statewide basis rather than a departmental basis. The Opposition will not oppose the bill, and hopes that the New South Wales Government will work with the Federal Government to introduce a national scheme at some point in the future.

Ms LEE RHIANNON [11.55 p.m.]: The Greens will not oppose this bill. We do not have privacy issues with the bill per se. We acknowledge that with regard to security the Roads and Traffic Authority is ahead of other New South Wales government agencies. So the bill is a step forward in terms of protecting against low-level identity fraud and theft. Our concern lies with where this initiative could lead us, and that matter is worth considering. When the bill was debated in the Legislative Assembly the Opposition got all excited, noting the United Kingdom's move to establish a national identification system. The Opposition even called on the New South Wales Government to work with the Commonwealth to introduce an Australia card.

We all remember what happened 20 years ago. Prime Minster Hawke's attempts to introduce an Australia card became the focus of one of the single biggest civil campaigns in our history and the most notable of its type in the world. The Australia card was to form the basis of the administration of major government agencies, to link the finance and government sectors, and to perform the standard identification functions necessary in the commercial and social security sectors. The people won that fight, with tens of thousands taking to the street, and the proposal was abandoned. These are dangerous times for privacy, and that is why I am raising these issues. It was evidenced earlier tonight when the Government failed to ensure that privacy measures were put in place with in-car camera video equipment that is being supplied to police.

With September 11 and the growing security mania being whipped up as a result, initiatives such as the Australia card are liable to be resurrected as attractive smokescreens for conservative governments to hide their considerable failings elsewhere. When the photo ID bill was debated in the Legislative Assembly the Opposition expressed admiration for a system whereby every traveller to the United States of America now has his or her photo and thumb prints recorded and stored in a national database. In terrorism's wake, a number of governments across the world have been considering identification cards that include biometric identifiers such as fingerprints, iris scans or facial recognition. It is through such initiatives that we start to face the prospect of a global distributed database of personal information.

It is in this context that we need to consider this bill. We are concerned that the RTA already holds personal information, including photos, about people who do not drive and therefore should in theory have no relationship with the RTA. The RTA conducts this service on behalf of the police commissioner, in the case of firearms and security industry licences. Now we are about to expand the scheme even further. The bill further consolidates the RTA as the central identity issuing and verifying agency on behalf of all State government interactions. What we see here is function creep, with each addition moving us closer to a situation whereby it will not seem like such a big deal when the RTA starts to issue an all-purpose identity card. In October 2003 Minister Scully floated the idea of a new photo identity card for people without a drivers licence. To date that idea has not gone anywhere publicly, but that does not mean that something is not being cooked up privately. We must be careful of this kind of policy creep—

The Hon. John Della Bosca: Who is that creep?

Ms LEE RHIANNON: I was hoping the Special Minister would say that, particularly as I was about to say "especially when it involves Carl Scully as Minister responsible for the RTA."

The Hon. Rick Colless: How are Carl Scully's numbers going?

Ms LEE RHIANNON: I heard they were not going too well, so it is good to get an update. Minister Scully has just won an Australian Privacy Foundation Big Brother Award for Lifetime Menace as a privacy invader. Did the Special Minister not know that?

The Hon. John Della Bosca: You are invading his privacy.

Ms LEE RHIANNON: No. This has been announced to the world. I am just making sure it is on the record of this House. He won that award for his long record of profound disregard for privacy. The Australian Privacy Foundation spokesperson, Anna Johnston, said that pretty soon New South Wales drivers will not be able to drive around Sydney without Big Brother knowing their every move. She recommends swimming for people who want to travel across the harbour anonymously.

This bill makes us curious about what consequential amendments might be made to existing regulations. For example, clause 30 of the Road Transport (Driver Licensing) Regulation requires licence holders to notify the RTA of a change of address, et cetera. Will the same requirement be placed on people who submit a photo to the RTA but do not have a driver's licence? The answer to that question will start to indicate how much the RTA sees itself as a central identity-issuing authority. The same applies to clause 25 of that regulation, for it allows the RTA to release information to the Electoral Commission. The purpose is not stated in that clause, but it is to "dob in" people who are eligible to enrol to vote but have not done so.

Will that clause now apply also to non-drivers who will have dealings with the RTA? If the answer is yes, the RTA then looks like it is setting itself up as a central identity-issuing authority. And that is the point at which privacy issues really come to the fore. Having a central identity-issuing authority actually carries with it some pretty big risks in terms of high-level identity theft and fraud. We know that such systems are very attractive to organised criminals and terrorists. In setting itself up as a trusted issuer, the RTA will itself become more vulnerable to fraud and corruption.

This new photo system is being set up by a government that has little regard for privacy. This is the Government which, in 1998, introduced the Privacy and Personal Information Protection Bill—a bill that experts have described as quite possibly the worst government bill ever submitted to any Parliament anywhere in the world. They say that, even after it was amended, our New South Wales Privacy Act remains seriously deficient. This legislation is administered by Privacy NSW, which has been decimated in recent times. It is more than 18 months since Chris Puplick departed, and we are onto our third acting part-time commissioner on a rolling three-month agreement, with still no full-time Privacy Commissioner in sight, as we were promised by this Government.

The Hon. Don Harwin: It is a disgrace!

Ms LEE RHIANNON: I could not agree more with the honourable member. With this kind of slow function creep, one day we may just wake up to realise we have an Australia Card system, but with none of the necessary protections, run by people who are only supposed to care about cars and roads.

Reverend the Hon. Dr GORDON MOYES [12.03 a.m.]: Tonight I feel a little like one half of the Odd Couple given the number of times I have found myself agreeing with Ms Lee Rhiannon. I speak on behalf of the Christian Democratic Party to the Licensing and Registration (Uniform Procedures) Amendment (Photo ID) Bill, the purpose of which is to amend the Licensing and Registration Act 2002. The principal objectives of this bill are to improve customer service by giving a licence applicant the choice of re-using an existing photograph on other licences; to improve the integrity and security of photograph identification issued by New South Wales licensing authorities, reducing opportunities for identity theft and fraud; to protect the privacy of a person who provides an identification photograph to a licensing authority; and, importantly, to enable more effective use of the RTA infrastructure and resources for taking and securely storing identification photographs.

Photographs do not prove everything. Yesterday a Ugandan man—whom I would describe as being as black as a human person could be—who was about to be placed in Villawood, came to me to seek help to

prevent his detention and ultimate deportation. Someone had felt that this black man's photograph was taken in very poor light. It actually turned out to be a stolen passport of a white South African Boer. It was indeed a very poor photograph!

The general objectives of this bill are quite commendable. I dare say that some of us have experienced the inconvenience of having to obtain a passport-sized photo for an application, only to find that the lighting used to take the photograph was inadequate or the positioning of oneself in the photo did not fulfil expected requirements. I noticed in today's press that the mayor of Ku-ring-gai Council, Adrienne Ryan, the former wife of a former police commissioner, decided that her official photograph as one of the councillors was not glamorous enough, and ordered a re-take, and a glamour shot has now been posted on her web site—at council's cost.

The RTA has instituted a system that has eliminated this minor problem. In the case of applying for a licence to drive a motor vehicle, one need not submit a "hard-copy" photograph. The RTA has a digital system whereby officers may take photographs of an applicant on the spot. The image of the applicant is then stored on a database to be used by the RTA for purposes related to the issuing of licences. From my understanding, the RTA is the only government authority on a statewide basis that has the facilities and the equipment necessary to take photographs on the spot. This is a great improvement on the previous system. Standardisation and convenience are the hallmarks of such an arrangement. But, as I recall it, the RTA has a history of shonky licence inspectors and staff members who have been bribed in the past. Yet the RTA is now to become the database for everyone in New South Wales, and of course that may be open to abuse.

This bill gives the option for persons needing to provide a photograph of themselves to access their existing photograph held by the RTA in order to satisfy applications for certain licences, including registrations, certificates, permits and other related terms. Schedule 3A outlines those relevant licences. Among the many mentioned are specific licences under the Home Building Act 1989, such as a contractor licence; an owner-builder licence, certain licences under the occupational health and safety regulations, such as a certificate of competency to do scheduled work; licences such as a real estate agent's licence under the Property, Stock and Business Agents Act, and so on.

The photo will be available only to the licensing authority for the specific purposes set out in the bill itself. One important concern is the potential for photographs, kept on a statewide basis, to be accessed by unauthorised persons for illegitimate reasons. According to the second reading speech, the Privacy Commissioner has been consulted through all stages of the bill's development. Furthermore, the bill is said to:

> … prevent a photograph from being stored or used except for the purpose of reproducing the person's likeness on a licence or certificate, helping to identify a person making an application under the licensing legislation …

Making photographs readily accessible without guaranteeing controls on such access may be dangerous. Though this bill may be perceived as dealing with a relatively innocuous matter, it may be said at the same time that it highlights a growing issue, that is, the need for a national identification system. There is a need for the standardisation of photographic identification on a national level. As Ms Lee Rhiannon said, under the Hawke Government, a national identification system, labelled the "Australia Card " was proposed. But, as the result of a huge public response, it did not succeed. An Australian card would be of great benefit as a means of identification and it would also help the Government to identify tax evaders. We are very happy to support the bill.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [12.08 a.m.], in reply: I thank honourable members for their contributions and their support for the bill, which I commend to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

WORKERS COMPENSATION AND OTHER LEGISLATION AMENDMENT BILL

Second Reading

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [12.10 a.m.]: I move:

That this bill be now read a second time.

As the remarks are lengthy and have been delivered in the other Chamber I seek leave to incorporate them in *Hansard*.

Leave granted.

The Bill before the House introduces a number of reforms to workers compensation legislation. I will first list the major amendments made by the Bill and will then explain the purpose of the amendments in more detail.

- Schedule 1 amends the *Occupational Health and Safety Act 2000* to ensure that, where WorkCover has not been notified of a serious incident, the time limit in which the Authority can bring a prosecution is extended by six months. This is to stop employers either deliberately or inadvertently avoiding prosecution by taking advantage of the 2-year time limit on prosecutions.

- Schedule 2 gives effect to miscellaneous amendments to the *Workers Compensation Act 1987* including to:

- to permit WorkCover to issue stop work orders to uninsured employers; and

- to increase and extend the payment of funeral expenses for work related deaths

- Schedule 3 contains amendments to the *Workplace Injury Management and Workers Compensation Act 1998* to:

- to provide for the appointment of Acting Deputy Presidents of the Workers Compensation Commission of New South Wales (the Commission);

- to make procedural changes to the method of appointment of approved medical specialists;

- permit the Workers Compensation and Workplace Occupational Health and Safety Council of New South Wales (the Council) to establish committees; and

- to ensure that WorkCover may issue Guidelines that specify the qualifications required by a medical practitioner to be permitted to assess the degree of permanent impairment of an injured worker.

- Consequential amendments are also made to the *Statutory and Other Offices Remuneration Act 1975* and *Workers Compensation (Dust Diseases) Act 1942*.

Before I turn to explain the amendments in detail, I wish to acknowledge the assistance I have received from stakeholders consulted on the Bill. The Bill was provided to the WorkCover Advisory Council, the Labor Council, the Bar Association, the Law Society, the Workers Compensation Commission and the Self Insurers Association. These stakeholders provided valuable input at short notice and Honourable Members may be assured that I carefully considered the comments made by stakeholders in finalising the Bill.

I will now outline the amendments in more detail.

Time Limits for prosecution

Firstly, this Bill will address an anomaly in the *Occupational Health and Safety Act 2000* regarding the prosecution of offences. Currently, an employer which does not notify WorkCover of a serious incident within a 2-year period can avoid prosecution because – in the absence of a coronial inquest – WorkCover must prosecute offences within 2 years.

A 6 month time limit already applies to prosecutions for breaches of the duties of designers, manufacturers and suppliers of plant and substances for use at work. In these cases the 6 month period begins when WorkCover becomes aware of the act or omission alleged to constitute the offence. This is because sometimes design faults causing safety risks take years to become apparent.

The proposed amendment will allow WorkCover to prosecute outside the usual 2 year period for occupational health and safety prosecutions if WorkCover was not notified of incident within 7 days as required under section 86 of the Occupational Health and Safety Act. In these cases WorkCover may commence a prosecution within 6 months of becoming aware of the incident, and then only if the CEO certifies that it is in the public interest to do so.

The CEO may also issue a certificate stating the relevant notification date or the date on which WorkCover became aware of the incident. The date on this certificate is not reviewable.

I can assure the House, and the Legislation Review Committee specifically, that the conclusive nature of this certificate is necessary to ensure that prosecutions for offences where a company has deliberately not notified WorkCover to avoid criminal prosecution can proceed.

This inability to prosecute employers simply because of a failure to notify WorkCover was highlighted in the recent Parliamentary Inquiry into Serious Injury and Death in the Workplace, and this proposal implements their recommendation 19.

Employers who notify WorkCover as required under the legislation can be assured that the 2 year time limit will still apply. The Bill provides an additional safeguard by allowing WorkCover to notify an employer if it becomes aware of an incident which the employer did not notify. The 6 month period will start to run from the date WorkCover notifies the employer.

I can assure honourable members that the discretion to prosecute outside the 2 year time limit will, of course, not be exercised lightly. As I have already mentioned, this power cannot be exercised unless the Chief Executive Officer of WorkCover certifies that the prosecution is in the public interest. This is a very important safeguard and WorkCover will develop guidelines to ensure that this power is exercised only where there is a clear need to ensure that the employer is brought to account for a serious workplace incident which was due to a breach of the Act.

Uninsured employers

Further, this Bill amends the *Workers Compensation Act* to address the problem of non-insurance by employers. Uninsured employers place a huge burden on the Scheme because they do not contribute insurance premiums. This leads to higher premiums for the employers who do the right thing.

This initiative will complement existing powers to prosecute for non-insurance and recover double the unpaid premium from uninsured employers. This power will, however, allow for the immediate enforcement of the obligation of all employers to hold workers compensation insurance.

Inspectors will be able to issue a stop work notice to uninsured employers. This is a similar instrument to stop work notices for unsafe workplaces

The decision by WorkCover to issue a stop work notice can be reviewed in the Supreme Court. However, the notice will only come into effect if the employer does not provide adequate proof of insurance within 5 days. If they do not comply with the notice, employers will be liable fines of up to $55,000 and imprisonment for 6 months.

Employers who are insured need not be alarmed by these tough new powers as they can readily obtain a certificate of currency from an insurer as proof of insurance.

I thank the Construction, Forestry, Mining & Energy Union and the Labor Council for drawing my attention to this proposal. The amendment has been agreed by the WorkCover Advisory Council, which advises me on occupational health and safety and workers compensation matters and which comprises both employer and employee representatives. The proposal developed by a working party of the Advisory Council was unanimously supported by the full Council.

Funeral Benefits

Thirdly, the Bill amends the *Workers Compensation Act* to increase and extend the payment of funeral expenses for all work related deaths.

The amount of funeral benefits payable will increase from a maximum of $4,400 to $9,000 for workers who die in the course of their employment. This amendment will take effect from the date of introduction of the Bill to the Parliament.

The increased amount is double the amount available in most of the other Australian states.

Apart from a 10% rise to cover GST in 2000, this is the first increase since 1992.

In addition to this increase, funeral benefits will now be payable for all workers who die in the course of their employment.

Until now, only workers with no dependents were eligible for funeral benefits. This meant that, in cases where workers had dependants, funeral expenses were paid out of the compensation that dependants received.

As a result of the Government's decision, workers with dependents will receive up to $9,000 for the funeral. They will, of course, continue to receive the lump-sum compensation of $296,000, plus weekly payments for their dependent children aged under 16 or – in the case of dependent children who are students – under the age of 21.

This extension of funeral benefits to workers who have dependents is another recommendation of the Parliamentary Inquiry into Serious Injury and Death in the Workplace.

Acting Deputy Presidents

Several changes are also proposed to the *Workplace Injury Management and Workers Compensation Act 1998*.

The Bill allows the Minister to appoint Acting Deputy Presidents of the Workers Compensation Commission.

The role of Deputy Presidents is primarily to hear appeals from arbitrators.

Currently there is only provision in the Act to appoint an Acting President, but not to appoint Acting Deputy Presidents.

These appointments mean Acting Deputy Presidents can be appointed when a Deputy President is on leave or when the Minister considers it necessary to ensure the proper and efficient administration of the Commission.

Consequential amendments are also made to the *Statutory and Other Offices Remuneration Act 1975* so that the Statutory and Other Offices Remuneration Tribunal can determine the rate of payment for the Acting Deputy Presidents in the Workers Compensation Commission.

Approved Medical Specialists

The Bill also makes minor procedural changes to the way that approved medical specialists are appointed. Approved Medical Specialists issue binding certificates about the level of a worker's permanent impairment in disputes in the Commission.

The Bill confirms that when appointing Approved Medical Specialists the President may consider the recommendations of the WorkCover Advisory Council.

The Bill provides that the Council can set up a sub-committee to assist in the carrying out of the Council's functions.

Permanent Impairment Guidelines

Finally, the 1998 Act currently allows WorkCover to make guidelines regarding the assessment of permanent impairment of injured workers. This Bill makes explicit that this power includes the ability for the guidelines to specify the training and qualifications of practitioners who undertake these assessments.

This amendment addresses an issue that was the subject of a recent Supreme Court case – *Thomson v WorkCover*.

I understand that WorkCover is appealing this decision in the Court of Appeal.

Honourable Members would be aware, these Guidelines were issued by WorkCover in consultation with the Permanent Impairment Coordinating Group. This Group consisted of representatives from the specialist medical colleges, as required by section 377 of the Act, as well as Labor Council representatives.

Any future changes to the permanent impairment guidelines will be developed in consultation with the WorkCover Advisory Council.

I can assure the House that the amendment does not change the permanent impairment guidelines in any way, other than to address the issue that was identified in the *Thomson* decision, that is, to confirm that guidelines may provide for the training and qualifications of doctors who may undertake permanent impairment assessors.

The guidelines currently provide that an assessor will be a registered medical practitioner with qualifications in the relevant medical specialty who has undertaken the requisite training in use of the WorkCover Guides. Assessors may be one of the claimant's treating practitioners or an assessor engaged on behalf of the employer or insurer to conduct an assessment for the purposes of assessing the level of permanent impairment.

However, given that the Government intended that the guidelines provide for who may undertake permanent impairment assessments, this Bill will ensure that existing guidelines issued in 2002 are valid. I can assure the Legislation Review Committee specifically that this retrospective validation is necessary not only because it implements the Government's policy but also ensures that the system in place since 2002 is not unduly disrupted on technical grounds.

Conclusion

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

I commend the Bill to the House.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [12.10 a.m.]: I speak on behalf of the Opposition to the Workers Compensation and Other Legislation Amendment Bill. As the workers compensation scheme continues to evolve it becomes apparent to the Government that from time to time it needs to finetune the operation of the scheme to ensure the free flow of the claims system and to ensure that claims are handled in a positive way for injured workers. That is the primary focus of the scheme, and to maintain a scheme in which premiums do not escalate beyond control. On a simple view of the objects of this bill one would consider this to be simple legislation and therefore in general terms it would be readily supported.

As the Minister is aware, the Opposition is concerned about two aspects of the legislation relating to the appointment of approved medical specialists and the ability of WorkCover to issue guidelines to specify the professional and other requirements for a medical practitioner to be permitted to assess the degree of permanent impairment of an injured worker. There is no doubt in my mind that these two aspects of the legislation are a direct result of the case of *Thomson v WorkCover*, which was heard in the Supreme Court on 30 June. Dr Ron Thomson won the case. WorkCover was trying to prevent him from working as a medical practitioner in this field. The matter is now set down in the Court of Appeal on 15 February. It is self-evident that this legislation is designed to circumvent that Court of Appeal hearing and in simple terms it is an insult to the Court of Appeal.

The Government is using legislation to reform workers compensation to mask its attempt to misuse the role of Parliament to circumvent the Court of Appeal hearing this matter. It is important for honourable members to realise that the Australian Medical Association [AMA] was not consulted in this matter. The College of General Practitioners was not consulted. I, and I suspect a number of other honourable members, have copies of letters from Mr Graham Cat, the New South Wales and Australian Capital Territory Faculty Manager of the Royal Australian College of General Practitioners, and Allen Thomas, Director, Medico-Legal Strategic Policy and Training of the Australian Medical Association, New South Wales Ltd. Given the hour and my instructions that there has been some discussion with crossbench members, led primarily by Dr Thomson, I do not need to push the issue much further unless honourable members have particular concerns about the correspondence and want to look at it.

There is no doubt that these two aspects of the legislation are unsavoury and need to be removed. It is the Opposition's view that the rest of the bill should proceed without amendment. However, the two aspects I have spoken about need to be removed. It is my intention during the Committee stage to do that. The amendments, which are quite simple, seek to delete those two aspects. The Government has been caught out trying to circumvent the Court of Appeal hearing set down for 15 February. There is some urgency in relation to this bill. The Government wants to get it through the House before the Court of Appeal hearing. Parliament has a responsibility to ensure that matters proceed properly through the court system. The matter should be allowed to proceed without interference by the Government.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [12.15 a.m.]: I speak to the Workers Compensation and Other Legislation Amendment Bill and endorse the comments of the Leader of the Opposition with regard to WorkCover's adaptation of the guidelines of the American Medical Association for the assessment of permanent impairment. I have spoken against these guidelines in debate on a number of bills dealing with the assessment of workers injuries. The guidelines are fatally flawed in that they talk about permanent impairment. This legislation is so backward that it does not even draw a distinction between impairment and disability.

One's inability to work is not one's impairment; it is one's degree of disability. One may have an impairment such a shortsightedness, which may disappear when one puts on spectacles. So, while one is impaired, one is not disabled. The subtlety of this difference might seem semantic but it is quite practical. If one is in a wheelchair, one is impaired. However, if a computer programmer does not use his or her legs, he or she may not be disabled from a work point of view. The idea of a one size fits all formula based on a physical examination does not take into account the job that someone is doing, so the same impairment may be more significant to one person than to another, depending on the degree of disability and in particular the amount of financial disadvantage that person suffers.

The simplistic formula worked out by the American Medical Association is beloved of insurance companies because it is simple and they can then relate the percentage of impairment to an amount of money. However, that simplistic assessment is often made at the expense of the person injured. Be that as it may, these guidelines are available. Doctors may familiarise themselves with them and give evidence to the court, and the court will judge the credibility of that evidence. The case of *Thomson v WorkCover* occurred when WorkCover endeavoured to say that Thomson's ability to give an opinion as to the level of impairment was not adequate because he had not done its courses.

Thomson was vindicated as being a reliable witness who was quite competent. As was pointed out by the Leader of the Opposition, the matter is on appeal. The Government wants to pre-empt that appeal and say that if one has not done this course one may not testify. That will affect the livelihood of a number of doctors who are giving evidence in the courts of New South Wales with regard to the degree of injury and impairment to workers coming before those courts. Courts are entitled to make their own judgment as to the competence of witnesses. This legislation simply creates the idea that if one is a specialist and one has done this course one would have a certain level of knowledge. The people targeted by this are extremely experienced people who are specialists in that area and who have been working in the area for a long time.

I have been invited to do this course, which was pushed at the faculty of occupational medicine. I have a philosophical problem with the whole concept of a permanent impairment percentage, so I was not interested. However, I understand exactly what is being asked and I do not believe it is necessary for people to do such courses, nor is it necessary for the Government to mandate courses prior to the courts making a decision. I urge everyone to support the Opposition's amendments on this point.

Ms LEE RHIANNON [12.20 a.m.]: The Greens support the bill. We welcome the fact that steps are being taken to usher in some of the changes recommended by the serious injury and death in the workplace inquiry. However, we have concerns about the bill, which I will refer to later. One positive aspect of the bill is that it gives WorkCover inspectors the power to issue stop work notices to employers who have, until now, avoided paying for workers compensation insurance. The Greens have consistently maintained that one of the key failings of the workers compensation system is employer compliance. Many times we have told this House of reports we have received of shoddy employers, particularly in the construction industry, who have deliberately avoided paying or who have underpaid their workers compensation premiums. We know that WorkCover has been picking up the bill for those compensation payments, which has weakened its financial position. Therefore, we are pleased to see this initiative from the Government to tackle head on the longstanding problem of uninsured employers.

The Greens strongly support increased funeral benefits for all workplace deaths. That goes to the heart of supporting workers and their families. It is a deeply symbolic and financially necessary step to support families who have lost their loved ones through a workplace death. Another very moving and disturbing aspect of sitting on the inquiry into injuries and deaths in the workplace was hearing the hardship suffered by many families who had to arrange funerals. We welcome the provision that gives WorkCover six months to begin prosecution of employers who fail to report accidents. Every breach of occupational health and safety should be prosecuted, no matter how much time has passed. If the company breaks the law or risks its workers' safety to bump up the profits it must be prosecuted. We hope this amendment will move this State further towards that goal. This brings me to the concerns the Greens have with the bill.

Although the appointment of an acting deputy president appears straightforward, I question whether those appointments are made for reasons other than to cover for short periods of sick leave or annual leave. Allowing for temporary appointment leaves the commission open to politicisation. It enables the government of the day to appoint those whom it believes will do the right thing. An acting deputy president can be appointed for a short time to see how he or she performs. If the person toes the line the temporary appointment can be extended for up to one year and even beyond. If more deputy presidents were needed, surely it would be better to appoint them and give them the protection of tenure.

The Greens are not happy with this provision. Similarly, we are concerned about complaints we have received from the New South Wales Royal Australian College of General Practitioners and the New South Wales Australian Medical Association that they were not consulted about the bill. We acknowledge that workers can now be much more confident that their impairment will be decided by an expert doctor. Overall, we welcome these changes and look forward to subsequent amendments in 2005 that introduce more of the recommendations of the serious injury and death in the workplace inquiry. This will serve as a clear signal that the Government is now committed, most of the time, to improving safety and workers compensation for the workers of New South Wales.

Reverend the Hon. FRED NILE [12.24 a.m.]: The Christian Democratic Party supports the Workers Compensation and Other Legislation Amendment Bill. We have some concerns about one aspect of the bill that will make changes to the method of appointment of approved medical specialists. We are pleased to support the aspects of the bill that will extend the time for instituting summary criminal proceedings under the Occupational Health and Safety Act 2000 where an employer or occupier of a place of work has a duty to report an incident. It will also permit WorkCover to issue stop work orders to uninsured employers, and provide the payment of funeral expenses for WorkCover-related deaths. Dr Ron Thomson came to my office and had a short discussion with me. He gave me some material about his case, including a letter dated 8 December from Allen Thomas, the Director, Medico-Legal Strategic Policy and Training from the Australian Medical Association (NSW) Ltd, which supports Dr Thomson's concerns. The letter states:

> The Bill under reference was never discussed with AMA (NSW).
>
> The position of AMA (NSW) has always been that medical practitioners with appropriate skills and training should not be limited in their capacity to provide for fair reward those skills to the community.
>
> The effect of relevant sections of workers compensation legislation which you have tested before the Supreme Court is in view of AMA (NSW) restraint of skills and trade of medical practitioners.
>
> Following a successful outcome before the Supreme Court, AMA (NSW) was waiting with anticipation the hearing of an appeal in February 2005. The amended Bill under reference appears to attempt to thwart due process.
>
> Yours sincerely
>
> ***ALLEN THOMAS***

Dr Thomson has provided a copy of the Supreme Court citation, which states:

> **DECISION:** 1. Declared that the WorkCover Guides for the Evaluation of Permanent Impairment beyond power to the extent to which they purport to impose a requirement that a registered medical practitioner who has undertaken training in use of the WorkCover Guides is not entitled to carry out assessments of permanent impairment under the Workers Compensation Acts, unless he or she has 'qualifications in the relevant medical specialty'; 2. The defendant is to pay the plaintiff's costs.

Dr Thomson was successful in his court case. He sent me a lengthy letter, which explains his arguments and which states in part:

> The effect of this proposition [referring to the Government's view on the legislation] and insofar as they wish to establish protocol to implement/enforce the same, the inference seems to be that those excluded from performing whole person impairment assessments must necessarily be general practitioners whereas those admitted for that purpose must necessarily be specialists and hence the continuing attempts by WorkCover to obtain this state of affairs and as contained in the proposed legislation.

Dr Thomson is extremely critical of some of the specialists. He says:

> Yet further, it is well known in the medical and medico-legal community that a not inconsiderable number of specialists produce better medico-legal reports including whole person impairment assessments that are quite effective and if these amendments sought by the Government succeed, then they will exclude a not inconsiderable body of the medical community who are perfectly capable of performing whole person impairment assessments from doing so while at the same time, will entrench a (too large) number of specialists who are permitted to continue to do so but whose reports and whole person impairment assessments are suspect, tainted or just plain wrong.

He supports the amendments proposed by the Opposition. He also states:

> I have been performing medico-legal assessments including whole person impairment assessments full time since 1986 and to date have undertaken approximately 35,000 such events.

Dr Thomson has developed great skill and competence in the area of assessments. I have discussed with the Minister as to whether medical practitioners such as Dr Thomson, who are highly qualified but not specialists, can be given the opportunity, with the approval of WorkCover, to undertake assessments, as they have done in the past. I have discussed with the Government whether it is possible to amend the legislation so that the Minister would have the power to extend the specialist category to suitably qualified general practitioners who had developed the same qualifications through experience. The Minister has been examining the possibility. An object of the bill states:

> To provide that WorkCover may issue guidelines that specify the professional or other requirements for a medical practitioner to be permitted to assess the degree of permanent impairment of an injured worker.

That object of the bill seems to provide the opportunity for the Minister to include within the guidelines flexibility so that the Minister at his discretion could give special recognition to a number of general practitioners, such as Dr Thomson. Perhaps there could be a grading or rating system by which the practitioners are approved for the purpose of assessing impairment. Although there may be a limited number of these practitioners, those like Dr Thomson who have the experience should be allowed to continue to exercise their professional ability in this area. The Minister has indicated he will make a statement on the record about this issue. The Christian Democratic Party supports the bill in principle and calls on the Minister to address this matter. The amendments proposed by the Opposition would remove the proposition in the legislation of special priority for specialists. The amendments to schedule 2 [4] would omit clause 2, Appointment of approved medical specialists, and clause 3, Qualifications to assess permanent impairment, of proposed new part 18I of the Workers Compensation Act 1987. The removal of those two provisions may hinder the successful operation of the legislation.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [12.32 a.m.], in reply: I thank members for their contributions. Most of the second reading debate has focused on a couple of issues. The Government is pleased to attract the support and confidence of members in the changes to the funeral benefit and a range of other scheme reforms envisaged in the legislation. We are also appreciative of support from the House for the capacity of WorkCover inspectors to issue stop-work orders where an employer is uninsured or underinsured. They are valuable scheme reforms which, I can assure the House, will be used judiciously by WorkCover officers.

I am sure there will be discussion in Committee on the most contentious issue. In the course of my reply I will deal with a couple of issues, because there are a number of things I want to place on the record on behalf of the Government. The Government will strongly oppose the Opposition's amendments as drafted that relate to the so-called Thomson case. The purpose of this aspect of the bill is to remove any doubt about the validity of the WorkCover permanent impairment guidelines, which provide for specialists in the relevant field to assess workers seeking lump sum payments for permanent impairment. It is important to understand that this section relates to assessment of impairment, not treatment. That is a very important distinction.

The second issue is to refamiliarise members with a debate we had several times during the WorkCover reforms about the dispute settlement methodology involved in the guidelines. The guides, as most members would have observed, although originally based on the so-called American Medical Association guidelines, went through a significant series of revision by expert specialist working groups. Effectively, each chapter of the guide represents various specialities in human pathology and the way in which injuries and permanent impairment arising from injuries can be assessed. For example, various chapters deal with psychiatric and psychological, spine, upper limb, hearing, urinary, reproductive, respiratory, nose and throat, skin, cardiovascular, endocrine, digestive, nervous system, vision, lower limb and homeopathic.

All of those chapters were composed by specialists. The guides are designed for use by specialists. Let there be no confusion: we are not speaking about a mere trifle as to whether or not the guides are used by general practitioners or specialists. They are designed for use by specialists. Their validity rests on their continuing interpretation by specialists. It is regrettable that there are a number of general practitioners who have been working in the field of assessment as medico-legal witnesses and providing opinions to the courts in relation to medico-legal assessments of impairment. It is important to understand that the guides are designed for the interpretation by specialists and are based on use by specialists.

It is also worth revising some of the issues in the original debates about these guidelines. It was an important part of getting a reasonable level of stakeholder support for the original guidelines that there be minimal doubt about their operation and consistency. A strong commitment given by the Government, and at the time supported by the Parliament, to the stakeholders in relation to victims—the key stakeholder being the union movement in this particular instance—was that the guidelines would only be used for the purpose of permanent impairment assessment, not treatment, by specialist doctors. A specialist is defined for those purposes as someone admitted to one of the colleges of specialisation.

I have discussed these matters with Dr Thomson's employer, and I have had time to consider in detail the submissions Dr Thomson has made on these matters. It is a disconcerting case because clearly he is a person of commitment and ability. He is in a position where he has been assessing impairment under the old court system and, no doubt, doing a very professional job. He is no longer qualified to use these guidelines. The threshold that the original legislation was drafted around was incorporated for very good reasons. It is very important that the Parliament keeps the confidence of the key stakeholders with this set of guidelines. It is a critical commitment to the union movement and the Labor Council of New South Wales that only specialists use these guidelines.

The guidelines were developed by the various committees comprising employer and union representatives and representatives of various medical colleges and associations, including the Australian Medial Association, as required by the Workplace Injury Management and Workers Compensation Act. These committees, made up of those eminently qualified people, determined that only specialists in the relevant field should be able to undertake permanent impairment assessments.

This was an important feature of the 2001 reforms. I repeat: the Australian Medical Association was involved in that original decision. It was always the clear intention and interpretation of the Act that the guidelines were able to specify that a doctor must be a specialist in the relevant field to certify the extent of an injured worker's permanent impairment. The Government believes that this bill simply legitimises the current guidelines developed through extensive consultation in 2001 and which were unambiguous in the requirement that specialists operate the various chapters of the guide. The Government does not want to change those guidelines or their effect. Indeed, to do so would be a major breach of faith of major key stakeholders in the dispute settlement system.

I have confirmed with the Labor Council of New South Wales, the Australian Industry Group and Australian Business Ltd that they all support the Government's bill as it is currently drafted and support the current requirements that the guidelines are only to be used by specialists. The medical representatives on the WorkCover Advisory Council also indicate their strong support for the Government's current position. Of course, if stakeholders express concerns and want the qualifications set out in the guidelines changed—and this is important in view of the comments of Reverend the Hon. Fred Nile—the Government is prepared to review this with employer and union representatives, the Australian Medical Association and relevant colleges, as we are required to do with changes to the guidelines under the Workplace Injury Management and Workers Compensation Act.

The bill does not affect this possibility and I undertake to continue to do this to ensure fairness and to ensure that all the elements agitated by the Thomson case are taken into consideration in the operation of the guidelines. It is a bit churlish of the Leader of the Opposition to suggest that this is an attempt to insult the Court of Appeal or the Supreme Court. Clearly, this matter is the province of the Legislature, which has made decisions about this. Indeed, my second reading speech at that time clearly indicated the way in which the guidelines were meant to operate. Public commitments were given to key stakeholders, including a process involving all medical colleges and the Australian Medical Association to determine these matters. It is very much the province of the Legislature to restate the original intention, and it is quite proper.

The Opposition is a bit misguided—perhaps it is the lateness of the hour—about this amendment. It does not change the current system; it simply supports the status quo, which is that only specialists in the

relevant field who have received training in the use of the guidelines can certify the extent of an injured worker's impairment. I emphasise also that the entire bill has been the subject of consultation with the WorkCover Advisory Council, the WorkCover Board and employers and unions, and has received unanimous support in its current form.

I also note that the Legislation Review Committee has reviewed the bill and did not consider that the proposal unduly trespasses on the rights and liberties of any individuals or on the decisions of the court. The committee recognised the public interest in having an effective system for assessing permanent impairment as an integral component of the State's legislative scheme for workers compensation. The committee noted also that the guidelines have been generally accepted and have been operating since 1 January 2002. This amendment is required to ensure that this effective system is not unduly disrupted on purely technical legal grounds. The Opposition amendment has the potential to destabilise the position as the permanent impairment guidelines and their use by specialists are a critical aspect of the statutory scheme. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 3 agreed to.

Schedule 1 agreed to.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [12.44 a.m.], by leave: I move Opposition amendments Nos 1 and 2 in globo:

No. 1 Page 6, schedule 2 [4], lines 26-34. Omit all words on those lines.

No. 2 Page 7, schedule 2 [4], lines 1-5. Omit all words on those lines.

The Minister said that there has been widespread support for the bill. The Royal Australian College of General Practitioners, a recognised specialist college, said that it was extremely disappointed that it was not consulted on the bill. How can the Minister then say that he has widely consulted with stakeholders when the peak body was not consulted? That dispels that suggestion immediately. Also, the Australian Medical Association [AMA] said that there was no discussion with it in relation to the bill. The association stated:

> The position of AMA (NSW) has always been that medical practitioners with appropriate skills and training should not be limited in their capacity to provide for fair reward those skills to the community.
>
> The effect of relevant sections of workers compensation legislation which you have tested before the Supreme Court is in the view of AMA (NSW) a restraint of skills and trade of medical practitioners.
>
> Following your successful outcome before the Supreme Court, AMA (NSW) was waiting with anticipation the hearing of an appeal in February 2005. The amended Bill under reference appears to attempt to thwart due process.
>
> Yours sincerely
>
> ALLEN THOMAS
> Director, Medico-Legal
> Strategic Policy & Training

At the outset I dispel the delusional inference of the Minister that, because of the lateness of the hour, we are confused in our position. We are not confused at all. I have no axe to grind on behalf of Dr Thomson. I understand that he is a very well-respected gentleman in this field, but, at the end of the day, and despite the Minister's undertakings to Reverend the Hon. Fred Nile, it comes down to the fact that there is contention over certain aspects of the original legislation that are now listed in the Court of Appeal on 15 February 2005—eight weeks from now. Honourable members are aware of the slowness of the Government in signing off on legislation and putting it into practice. By the time the bill receives assent from the Governor and it is advertised in the *Government Gazette* early in the New Year, the matter will have already been before the court.

I submit that the proper process is for the matter to be heard by the Court of Appeal, the body entrusted with the responsibility of looking at this matter. Quite simply, the appellant in this case is the Minister. He is

having a quid each way. He is taking the matter to the Court of Appeal and, at the same time, is trying to rush through legislation on the morning of the last sitting day in 2004 to ensure that he has a shilling each way. He has covered both sides of the base, and one cannot do better than that. The Minister is not confident of winning the case, so he is hoping to pass legislation to ensure that if he loses on appeal he is guaranteed to win through legislation and stop the process dead in the water. That is unfair and thwarts the functions of the Court of Appeal. Whether it is workers compensation law or any other legislation, it is not good practice for this Parliament to get into the habit of saying that it is acceptable for a matter to go before the court in which the Government is the appellant, but if it is not confident of the outcome the Government can then introduce legislation before it goes to court.

[*Interruption*]

Well, it is a darned sight worse than that because this really impacts on an individual. In this case it is one individual who is now being taken to court. A person is being taken to court and because the Government cannot guarantee that it will be successful it is taking out an insurance policy on the side to ensure that Dr Thomson, and people like him, do not operate under this Government's regime. If that is the way the Government wants play it, it should introduce the legislation after the court case has been heard, after Dr Thomson has been given the opportunity to appear before the court and put his case. Bring it forward and we can debate it then, but do not do it in the shonky way you are trying to do it now. It is not on.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [12.50 a.m.]: I spoke about this during the second reading debate, but I omitted to say that the Australian Medical Association in New South Wales wrote to me to say it had not been consulted; and nor had the Royal Australian College of General Practitioners been consulted. As far as the general nonsense of the guidelines is concerned, the Minister said they have chapters about each specialty. That is certainly true. It evolved in the American Medical Association over a long period—I believe as a response to the insurance industry, which wants a formula that makes it all neat and trim. Of course, with the controversy surrounding the payment for treatment in the highly expensive American medical insurance scheme, it has sufficient power to achieve that.

The American Medical Association has been refining these guidelines for some years; no-one would dispute that. The idea that a few committees of WorkCover can do better than the American Medical Association has done over a period of quite some years is simply an arrogance, and also a nonsense. If we consider the basic point here, the fundamental problem with the guidelines philosophically is that they are very backward in that they ignore the difference between an impairment and a disability. That is a fundamental flaw. The guidelines rely on assessing an individual impairment and what it will do to their lifestyle and work—which depends of course upon their occupation. It is a nonsense that only the impairment, and not the person in the context of their social life and working life, is taken into account.

The other significant nonsense in the guidelines is that they ignore pain. The single thing that in many cases decides whether someone can work is whether they have pain. Since pain cannot be measured, the most critical variable in impairment, and therefore ability and disability, is pain. Whether the guidelines are worked on for 20 years, are pushed by the insurance companies, or are refined by WorkCover, my view is that a nonsense is a nonsense, is a nonsense. In the end the court should decide what impairment and disability a person is suffering from, what they can do with it and what level of compensation they should receive.

My view is that the medical profession should recognise its limitations and discuss these things in a sensible fashion. The Minister may have forgotten, but my suggestion about how this might be achieved is that there be a three-person panel, if the Government chose to go away from a more judicial model. A doctor would decide the level of impairment, an occupational therapist or other workplace consultant would decide how much that impairment operated as a disability in the context of a person's occupation, and a financial person/job placement person would decide what job could be undertaken within the framework of those abilities and disabilities, in the prevailing labour market and at the current wage rate.

That was my suggestion for a non-judicial way of assessing an individual. A panel might have a formula, but the formula would be far broader, philosophically, than these, in my opinion, very silly guidelines. Honourable members might well ask why this system exists. Of course, the insurance companies love it because it is very cheap. You merely arrange for a doctor to conduct an impairment assessment. You pay for one consultation—a very expensive consultation, but nevertheless only one consultation, which is far cheaper than getting a number of doctors and their opinions and then fighting it out in court for some days.

Because pain is relatively ignored in all of this, the percentage impairments are very low; and as the insurance companies try to have the payment tied to this low percentage of total disability, it costs them very little by way of payouts. That is the interest that is driving it. Some doctors like it because they become specialists; other doctors like it because they can run courses on these guidelines, which are frightfully complex.

The unions were conned into thinking it was okay if specialists were doing it. That was perhaps a lack of understanding. Time will tell, as the unions see their members getting a bad deal out of the system. Whether they will have the power to change it once it has become entrenched, is quite another question. Perhaps the Government eventuallywill see the inequity of this system and not follow it quite so enthusiastically as the Minister has just done.

Take a practitioner who has had a lot of experience in accessing injuries. Effectively, people have the power to say that if the practitioner does not have this diploma, they have nothing. The fact that they can use the AMA guidelines is really not a specialty in itself, although it is trying to boost itself up to be such.

I believe that the court should be able to decide this matter. In fact, my view is that the court should have a lot more say in deciding what compensation people should receive; and the guidelines should be given the respect they deserve—which is not very much. The court should decide the expertise of the people who appear before it, and the quality of their evidence; that would be much better than slavishly following these guidelines. The court should decide on the evidence, and its decision should be upheld. And, as the Leader of the Opposition said, the correct appeal procedure should be maintained. I therefore urge honourable members to support the Liberal Party amendments.

The Hon. JON JENKINS [12.56 a.m.]: As I understand the process, and I would like the Minister to confirm that this is the way the process works, when someone has an accident and is making a claim for permanent impairment they have to attend an approved specialist. The approved specialist must be a fellow of one of the recognised colleges of medicine. That specialist must also have undergone some training in the use of the WorkCover guidelines. That means they have to attend a specialist seminar, apparently for several days.

Presumably the costs would be met by WorkCover. That would allow them to make these assessments of permanent disablement. That specialist can then provide his or her opinion to the insurer, and if there is a dispute a senior specialist is called in. That senior specialist must be a fellow of one of the royal colleges with at least seven years experience. That senior specialist will then work with the commission to resolve the dispute. They are the guidelines as I understand them.

It seems unusual that the specialist who gives the additional opinion as to permanent disablement is then vetted by a medical specialist, however more experienced, who does not have to undergo training in the use of the guidelines. Unless I have read the bill incorrectly, that is an anomaly that the Minister should address.

There is another issue I would like the Minister to address. There is currently a legal case on foot whose basis will cease to exist if this legislation is passed in its current form. There is the potential for someone to lose substantial legal fees. I would like the Minister to address that issue in reply.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [12.58 a.m.]: I thank honourable members for their contributions to the consideration of these amendments. I appreciate the lateness of the hour but they are important matters so I will quickly respond to what I believe are the key issues. I believe that the Hon. Jon Jenkins might have misinterpreted the appeal mechanism. The specialists with seven years experience who hear the appeals are also required to have trained in WorkCover guidelines.

Secondly, following advice I received, I said to the honourable member privately that if the appeal is not proceeded with as a consequence of this legislation, WorkCover will be able to submit to the court that WorkCover or the Government will consider making an appropriate payment to cover the costs incurred so far by Dr Thomson in relation to the case. I dealt in the second reading speech with a couple of points raised by the Leader of the Opposition, and I will not labour them. However, it is important to restate the position that the Government has adhered to from the commencement of the motor accidents authority and the workers compensation debate: medical practitioners and lawyers are not stakeholders in statutory compensation.

The only stakeholders are victims and their representatives, and people who pay for the scheme. The people who pay for the workers compensation scheme are New South Wales employers and the workers who

are compensated and protected by the scheme, particularly those who are injured. It is important to understand that the scheme was designed to look after and serve victims and employers.

All the add-ons to the system, including the WorkCover employees themselves, the authority, the board, the inspectorate, the lawyers, the doctors and everybody else, serve the interests of those two groups. That basic proposition should make it easy to understand that those two groups are the people who should have the primary say in the mechanics of the system and in whose interest decisions are made. We need to work out what will best serve those two groups.

The Hon. Dr Arthur Chesterfield-Evans: The problem is that the insurers have all the say.

The Hon. JOHN DELLA BOSCA: The insurers have no say in these matters. That is an important point, and I do not think I need to labour it. As I have said before, all the key employer groups and all the key union groups say they want to retain the status quo with respect to who uses the guidelines. We have a very extensive process. The Australian Medical Association [AMA] was involved in depth in that process from the beginning and has been involved all the way along the line. Irrespective of what the AMA may say about consultation, it is important to understand that I have documents that illustrate that the AMA was involved from the beginning in the formulation of the guidelines.

[*Interruption*]

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): Order! The Hon. Dr Arthur Chesterfield-Evans will cease interjecting.

The Hon. JOHN DELLA BOSCA: I reiterate the point that the logic of the bill is the retention of the status quo. What the Government is seeking in this part of the bill is endorsement of the status quo and has been the status quo since the original reforms were implemented in 2001. The Government is not seeking to change anything. The Government is reinforcing the status quo, which was originally supported by the AMA, other stakeholders, and other service providers.

The Hon. Dr Arthur Chesterfield-Evans' argument about the court's position was very confused. I could not understand whether he was saying that the Court of Appeal, the Parliament, or doctors should determine the matter. It is clear that he does not like the guidelines and thinks they are nonsense. He is entitled to his view, but it is not a view that is shared by some of Sydney's most eminent specialists in a variety of medical fields—and I can only take their advice. Contrary to what has been suggested by doomsayers such as the Hon. Dr Arthur Chesterfield-Evans—I acknowledge his professional background in workers compensation and I acknowledge that his views should be considered seriously—I have not been overrun by massive stakeholder complaints.

The fact is that the guidelines system is working fairly well. There are some problems, but they are being sorted through. Basically, workers are finding they are getting a quick assessment of their impairment and often receive satisfactory determinations that do not involve massive costs to the scheme. So far the guidelines system is working. It is a fairly radical change and obviously there will be issues all along the line. However, it is important to understand that this legislation is not about the guidelines per se but about making sure that the guidelines work as fairly as possible in determining permanent impairments. The gilt-edged guarantee of that is to make sure the guidelines are used by medical specialists.

Reverend the Hon. FRED NILE [1.04 a.m.]: I briefly express my thanks to the Minister for his remarks about the costs that may have to be paid by Dr Thomson in relation to the court case. Hopefully the offer is much stronger than the way the Minister stated it tonight. It was not a concrete offer. Hopefully it will become a firm offer. Precedent exists for the costs of test cases to be borne by the Crown because the court's determination assists in clarifying the legal position.

Second, the Christian Democratic Party takes on board the Minister's comments regarding discussing the matter of specialists with the stakeholders. With stakeholders' co-operation, there may be some way in which highly qualified general practitioners, such as those who have 20 years experience, may be categorised as provisional specialists or specialists for the purposes of this legislation while not technically being members of a specialists college. I think it should be possible for WorkCover to designate certain people as specialists for the purposes of the legislation. I take seriously the Minister's assurance that he will discuss this matter with WorkCover and the stakeholders, and therefore I will not support the amendments at this stage.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [1.05 a.m.]: Given Reverend the Hon. Fred Nile's appreciation of the act of generosity that seems to have emanated from Minister Della Bosca, I will put matters into perspective. Dr Ron Thomson went to court on 30 June this year because WorkCover was trying to prevent him from operating as a medical practitioner in his field. Dr Thomson won the case, but the Minister is appealing against that decision.

If Dr Thomson decides not to proceed with his case, the Minister's act of generosity will materialise and the Government will pay his legal costs. However, the fact is that if he withdraws the case, he will not be able to continue to operate as a practitioner. Currently he has a matter before the court and the Government has appealed because it is not happy with the decision that allows Dr Thomson to practise. How that could in any way be described as an act of generosity is beyond me.

Effectively, the Government wants Dr Thomson to agree that the matter not be determined by the Court of Appeal. If Dr Thomson is happy to do that, the Government will cover his legal costs. That is the way I have interpreted what the Minister said a few minutes ago. But that implies that once the legal proceedings are concluded and the Government has covered his legal costs, Dr Thomson will not be able to operate as a medical practitioner. Gee, that is just a massive win-win for Dr Thomson!

Reverend the Hon. Fred Nile: But he is a stakeholder who is seeking a review of that matter.

The Hon. MICHAEL GALLACHER: Yes, but in the meantime the Government is asking this House to pass legislation that certainly will conclude matters in relation to a judicial appeal. A review of the legislation should have taken place ages ago. The Government is asking the House to pass legislation that becomes the Government's insurance policy in the event that the Government does not get the decision it wants from the court on 15 February. If the legislation is passed, Dr Thomson will lose his job. Dr Thomson must be sitting on his hands to stop himself from clapping because he has cut such a good deal with the Government! Reverend the Hon. Fred Nile should not be fooled by the Government's offer to pay the court costs.

The Government is taking Dr Thomson to the Court of Appeal because it is not happy with the determination of the court. The Government has decided to appeal and use its superior resources to force Dr Thomson to engage in legal action. Dr Thomson is just one person, and the Government is forcing him to go to court. While Dr Thomson is worrying about his court case, which is coming up on 15 February, the Government is engaging in sleight of hand and has introduced legislation that effectively says to Dr Thomson, "You might win on 15 February, but guess what? We have still got you with legislation. You are stuck."

If the Government is genuinely doing the right thing, it will wait for the case to be decided on 15 February. If the Government loses the case, it will be able to introduce legislation and put a solid case to the Parliament to substantiate why it needs to clean up its mess. But the Government should not proceed with its current strategy, which is double dipping of the worst kind.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [1.10 a.m.]: I reinforce the point made by the Leader of the Opposition. The idea that the Government is being charitable to Dr Thomson is a complete nonsense. If this legislation is passed, he will never get to court. He won last June, but the appeal will never happen because this legislation will pre-empt it and he will not incur any legal costs as a result. Nor will he have a job, because the job he was doing will not exist. If the Government waited until after the court case and then, should he lose, reimburse him, that would be appropriate. He would presumably then have gone through the legal case and then lost, in which case he would be reimbursed and he would not have a job. However, if the Government passes the legislation after the case, he will still not have a job. People like Dr Thomson are not being treated well. His legal costs are probably less of a problem than the fact that he will lose his livelihood despite the fact that he is apparently a competent practitioner.

Question—That the amendments be agreed to—put.

The Committee divided.

Ayes, 12

Dr Chesterfield-Evans	Mr Lynn	
Mr Clarke	Mr Oldfield	
Mrs Forsythe	Ms Parker	*Tellers,*
Mr Gallacher	Mr Pearce	Mr Colless
Mr Gay	Mrs Pavey	Mr Harwin

Noes, 21

Mr Breen	Ms Hale	Mr Roozendaal
Dr Burgmann	Mr Hatzistergos	Ms Tebbutt
Ms Burnswoods	Mr Jenkins	Mr Tsang
Mr Catanzariti	Mr Kelly	
Mr Cohen	Mr Macdonald	
Mr Costa	Reverend Dr Moyes	*Tellers,*
Mr Della Bosca	Reverend Nile	Mr Primrose
Ms Griffin	Ms Rhiannon	Mr West

Pairs

Mr Egan	Ms Cusack
Mr Obeid	Miss Gardiner
Ms Robertson	Mr Ryan

Question resolved in the negative.

Amendments negatived.

Schedule 2 agreed to.

Schedules 3 to 6 agreed to.

Title agreed to.

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

LEGISLATIVE COUNCIL

PARLIAMENTARY JOINT SERVICES

Reports

The President tabled the Annual Report of the Legislative Council for the year ended 30 June 2004, Volumes 1 and 2, and the Annual Reports of the Joint Services of the Parliament for the years ended 30 June 2003 and 30 June 2004.

Ordered to be printed.

GAMING MACHINES AMENDMENT BILL

Second Reading

The Hon. HENRY TSANG [Parliamentary Secretary] [1.20 a.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

In November 2003, a subsidiary of Melbourne-based Tabcorp Holdings Limited made an offer to buy all of TAB Limited's shares. This offer succeeded in mid-2004, over a rival offer from Brisbane-based UNiTAB Limited. The Government stated at the early stages of the offer that, if either bidder acquired more than 50% of TAB's shares, TAB would be required to divest the business arm operating under the CMS and linked gaming system licences within 18 months. This timing was required to remove any potential conflicts of interest, given Tabcorp currently owns and operates poker machines at Star City Casino and throughout Victoria and the CMS links all gaming machines in clubs, hotels and the Casino and provides daily data on the usage and turnover of each machine and is the basis for monitoring gaming machines and the collection of tax by the Government.

Tabcorp subsequently entered into a Deed with the Minister for Gaming and Racing, which committed it to divest the business within this timeframe. The Government also indicated at the early stages of the offer that the investment licence would be withdrawn, subject to Tabcorp completing its contractual obligations for gaming machines provided under this licence.

During the offer period, Tabcorp agreed to procure the sale of the CMS and linked gaming system business to UNiTAB. The divestment is subject to Tabcorp and UNiTAB concluding contractual arrangements, which is currently expected to occur prior to December 2004.

In December 2003, Parliament passed the Totalizator Legislation Amendment Act for the purpose of amending the Totalizator Agency Board Privatisation Act 1997 and the Totalizator Act 1997 to facilitate the takeover offers being considered at that time. This Bill follows on from that initial step. The amendments in the Bill are required to enable completion of the commercial arrangements regarding the divestment of the TAB gaming licences to UNiTAB to take place.

I note that the amendments are not of a policy nature. There is no major policy shift in the way the CMS or linked gaming system licences are to be run. There is no change to the exclusivity arrangements for these licences. There is no change to the way gaming machines will be monitored through the CMS, or additional requirements for the holder of the linked gaming system licence. The Bill contains only machinery amendments that will facilitate the finalisation of a commercial agreement between Tabcorp and UNiTAB regarding the ownership and operation of the CMS and linked gaming system businesses.

The Bill seeks to remove the specific references in the current legislation to TAB Limited as the holder of the exclusive licences for the CMS and linked gaming systems. The amendments will not disturb the exclusivity that the legislation confers upon the CMS and linked gaming system licences. The references to TAB are to be replaced with a more generic expression that allows these provisions to apply to UNiTAB, and any other future owner of the CMS and linked gaming systems licences, without the need for further amendment to the legislation.

The amendments also enable the transfer of the exclusive licences from TAB Limited. This is necessary to allow the CMS and linked gaming system businesses to be transferred to UNiTAB. The provisions are clear that any such transfer is only allowed with written consent of the Minister and subject to any terms and conditions determined by the Minister. It is anticipated that the timing of the licence transfers would converge with other components of the divestment strategy.

As part of the transfer of the licences it is important to ensure that services continue their smooth operation. To facilitate this the Bill incorporates a number of savings provisions. One savings provision ensures that current third-party contracts that are in force remain applicable to the new licence holder.

As a precaution, a provision has been included to allow the Minister to publish an order in the Gazette to require parties to contracts to give any consents that are necessary to permit the assignment of such contracts to the new CMS or linked gaming system licence holder. The relevant contracts must be identified and published in the Gazette.

The contracts must be, in the Minister's opinion, necessary for the continued operation of the CMS or linked gaming system businesses, and reasonable conditions can be applied to the consents. Typical examples are a contract for telecommunication services, or a contract for CMS equipment maintenance services.

It is understood that the existing provisions of the Procurement Agreement between Tabcorp and UNiTAB require Tabcorp to use best endeavours to secure the assignment of contracts. The legislation need not be used if the parties to the contracts give consent, and given the power to require consent it is considered likely that the majority of contracts will not require the legislative power to be exercised.

It will be the responsibility of the licence holder to come to the Minister with any contracts where consent is not given, and it will need to convince the Minister that consent is necessary to the running of the CMS or linked gaming system business, before a Ministerial order is made.

If consent is not given within 60 days after it has been sought under an order, the consent is taken to have been given unconditionally. This sanction is to encourage the prompt resolution of this matter and to encourage dialogue between the parties particularly in relation to any conditions sought on the consent.

These are sensible provisions, as they will ensure that the new owner of the CMS and linked gaming system businesses is in the same position to operate these businesses as TAB, prior to the sale.

Another savings provision relates to the collection of fees via direct debit. A great number of venues have provided information to enable the CMS monitoring fee, and fees associated with the operation of linked gaming systems to be paid via direct debit. Rather than requiring all of these venues to provide this information again, in the same form, to the new CMS and linked gaming system licensee, this provision allows the direct debit payment authorisations to continue to operate in favour of the new licence holder.

As mentioned above, one of the requirements to allow the takeover of TAB Limited was that the investment licence would be withdrawn. The investment licence currently enables TAB Limited to own gaming machines and operate them in hotels on a profit-share basis.

Few hotels took up contracts under the investment licence with TAB and all but one of these contracts have expired. The proposed legislation is drafted to remove all references to an investment licence, but includes a savings provision which allows the remaining investment licence contract to continue until its expiry date and to prevent any extension of this contract.

The Gaming Machines Act currently requires that the CMS and linked gaming system licensee have commercial arrangements with the NSW racing industry.

During the negotiations for the takeover of TAB Limited by Tabcorp, Tabcorp and the racing industry entered into a Heads of Agreement in relation to the ongoing commitment to the racing industry. This agreement supersedes the specific agreement between the CMS and linked gaming system licensee and the racing industry. It means that the defined legislative requirement is no longer necessary, and can therefore be removed from the Bill.

I now turn to the issues of interest to the Legislation Review Committee. I believe that this Bill does not contain any provisions that fall within the areas of interest to the Committee.

The Bill does not contain any provisions that trespass on personal rights or liberties.

The Bill does not contain any provisions that make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers or upon non-reviewable decisions.

There are no new regulation-making powers conferred by in the Bill and as such it is not considered that it would inappropriately delegate legislative powers or insufficiently subject the exercise of legislative power to Parliamentary scrutiny.

As I have said before this is a Bill that removes technical impediments to the transfer of the CMS and linked gaming system licences from TAB Limited to UNiTAB. The amendments are machinery and necessary and appropriate to enable a commercial agreement to take place.

The Department of Gaming and Racing will continue its role to regulate UNiTAB as licensee.

I commend the Bill to the House.

The Hon. MELINDA PAVEY [1.21 a.m.]: I lead for the Opposition on the Gaming Machines Amendment Bill. The Opposition will not oppose the bill. The bill has come about because it provides for the divestment of TAB Ltd's compulsory functions under the centralised monitoring system [CMS] and linked gaming system licences to UNiTAB. That was one of the important requirements of the takeover by Tabcorp Ltd of TAB Ltd. The CMS is a compulsory arrangement to which all licensees must adhere by connecting their poker machines to that system. This applies not only for monitoring in respect of taxation but also for linked gaming systems within licenses premises in New South Wales.

In a linked gaming system two or more specially approved gaming machines are linked electronically to contribute a percentage of the money wagered on the gaming machine to a separate jackpot pool. The CMS is frequently the subject of complaint by licensees in both registered clubs and hotels. Licensees largely criticise the nature and cost of that system. The system involves a significant cost, a monthly payment that is made by licensees to the CMS. The Minister has stated in explanatory notes on this bill that the setting of fees for the CMS will remain unaltered. The Treasurer, on advice from the Independent Pricing and Regulatory Tribunal [IPART], sets those fees and those fees remain unchanged, despite this being the most unpopular aspect of this whole arrangement.

In relation to the specific elements of the bill, it substitutes references to TAB Ltd with a generic provision that permits ownership of the CMS and linked games systems to be in the name of UNiTAB or any other future owner of the licences. The bill removes all references to an investment licence, which previously enabled TAB Ltd to own gaming machines and operate them in hotels on a profit share basis. As there is only one remaining hotel with a contract under the investment licences, the bill allows the remaining investment licences contract to continue, but only until its expiry date.

At the time of the takeover battle for TAB Ltd, Tabcorp Ltd reached an agreement with the racing industry that superseded the current arrangement between the CMS and linked games and the racing industry. Settlement of this matter was a critical precondition of the takeover as included in the enabling legislation. The Opposition, along with ClubsNSW and the Australian Hotels Association, remains critical of the CMS monopoly and its inefficiency generally. However, the shadow Minister in the other place, George Souris, said that the Opposition supports the bill and wishes Tabcorp best fortunes for the future.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [1.23 a.m.]: The Gaming Machines Amendment Bill implements further amendment resulting from the passage of the Totalizator Legislation Amendment Act, passed last year. The bill allows for the transfer of the exclusive licences for the central monitoring system [CMS] and linked gaming systems. The principal Act was amended to enable all shareholders to consider voting on two commercial propositions for the purchase or possible merger of TAB Ltd. The Government acknowledged at the time that if Tabcorp were successful in its proposition to purchase the New South Wales TAB, Tabcorp would have to divest the CMS business arm within 18 months of the purchase. However, I was critical that no such provisions were contained in that bill. I was very concerned about this as TAB holds an exclusive 15-year licence on the New South Wales linked jackpot system that links all machines in New South Wales to the CMS.

However, the Government has pulled through and delivered on its promise. The amendments do not change the way the CMS or linked gaming system licences operate or the exclusivity arrangements for the licences. It will remove specific references to TAB Ltd so that other entities can take over the licence. The

Government may then gazette the contracts between the holder of a CMS licence or links licence if it deems necessary. I had spoken against the concept of the CMS licence being exclusive in the same way as Telstra could not have a monopoly on telephone services. The CMS should be used for positive messages as well as the collection of profits. That has not yet happened, but it needs to be done.

As of June last year there were 1,830 hotels with 24, 255 electronic gaming machines and 1,381 registered clubs with 75,214 electronic gaming machines. For 2002-03 the turnover on gaming machines in hotels and registered clubs totalled more than $47 billion. Every time a bill comes before the House that amends the Gaming Machines Act I attempt to move amendments to legislate player-for-player activity statements; that is, harm minimisation through technology that will interact with the player activity statements that inform players of their total turnover during the month for the period covered by that statement; the total wins recorded during the monthly period; the net expenditure, that is, turnover less wins during the monthly period; the total points earned and redeemed during the monthly period as a result of playing gaming machines under the scheme; the total length of time over each 24-hour period during the monthly period when the participant's player card is inserted in gaming machines under the scheme; and the total length of time that the participant's player card is inserted in gaming machines under the scheme during the monthly period.

The technology exists to display on-screen time and harm minimisation icons. Every time I have done this the Government comes up with some lame excuse, and promises me it will do something about getting the technology on line within six months, and the Opposition glibly backs the Government every time. This has been going on since 2001. Now such amendments may be beyond the leave of this bill, but I remind the Government of the necessity to insert after section 49 of the Gaming Machines Act 2001 a new section 49A, which would read either:

> A hotelier or registered club must ensure that the following is displayed on each operating gaming machine display screen in a club or hotel prior to the commencement date as determined by the regulations being no later than two years from the date of proclamation of this section:
>
> (a) the time in either a digital or analog display accurate to 7 minutes of the correct time, with numerals for a digital display 1 cm or greater or the circumference of the analog clock 3 cm or greater.
>
> (b) between the period of 10-15 minutes of machine play since zero credits and within each following period of continued play since zero credits 10-15 minutes display messages as determined by the regulations.
>
> (c) further on-screen harm minimisation information and other items as determined by the regulations.
>
> Maximum penalty: 50 penalty units.

Or would read:

> 49A Display of on screen time and harm minimisation items
>
> A hotelier or registered club must ensure that on screen harm minimisation information and other items as determined by the regulations is displayed on each operating gaming machine display screen in a club or hotel prior to the commencement date as determined by the regulations being no later than two years from the date of proclamation of this section.
>
> Maximum penalty: 50 penalty units.

The Department of Gaming and Racing issued the first determination on technical standards in November 2000, and we are still waiting for the legislation. The Liquor Administration Board's submission to the Independent Pricing and Regulatory Tribunal of New South Wales entitled "Review of Gambling Harm Minimisation Measures" endorses the implementation of such measures. It states:

> In preparation for introduction of this measure, when the remaining matters in the First Determination are implemented, the Board arranged for the focus group research into the contents of the messages, and as set out earlier, to be undertaken. The Board has determined the contents of the first 4 messages to be mandated.

In particular the board stated:

> The Board believes that gamblers should be provided with as much information as possible to assist them to decide whether to commence or continue playing. The contents of the proposed messages will provide such information. The time taken to provide the message will also be a circuit-breaker.

The board also agreed with the recommendations of the Productivity Commission that there is a need for enforced breaks to allow gamblers to pause before automatically playing on. The board also supported the idea

that the prescribed messages should be required to scroll across the screen at least once during every 30 minutes of continuous use and that the content of those messages should be consistent with all other harm minimisation messages. In June this year IPART released a report entitled "Gambling: Promoting a Culture of Responsibility", in which it considered the merits of periodic information messages, display of payout ratios for gaming machines and information on individual gambling sessions. The IPART report states on page 58, under the subheading "Evidence":

> There are two studies of particular relevance to periodic information messages. The first, conducted by Tony Schellink and Tracy Schrans, focused on responsible gambling features and other changes to 1,400 gaming machines in Nova Scotia, Canada. One of the responsible gambling features introduced was a pop-up reminder, which advises the player how long they have spent playing that machine after 60, 90 and 120 minutes. The study was based on a sample size of 164 people who played gaming machines at least monthly, of which 30 were classified as problem players. The same people were surveyed on four occasions over a period of nine months.
>
> This study found that a message after 60 minutes of continuous play was effective in reducing session length. The message advised players how long they had been playing and asked whether they wished to continue.

There was also a second study. The tribunal considered that there is sufficient evidence and stakeholder support for it to recommend the introduction of pop-up messages after 60 minutes of continuous play. The introduction of this measure should be accompanied by research to evaluate its effectiveness. The tribunal also noted that the introduction of this measure would be linked to the introduction of clocks on gaming machine screens, in terms of both technology used and phase-in with new machines.

Page 61 of the report refers to information on individual gambling sessions. It notes that the existing technical standards for gaming machines require that these machines provide the player with information on the monetary value of their credits, bets and wins. These requirements could be extended so that gaming machines also provide information to players on an individual gambling session, including the time and money the player has spent gambling. The tribunal's recommendations address provision of a range of information for players of gaming machines about individual gambling activities and the gambling environment, including the display of the monetary value of credits, bets and wins on gaming machines; the introduction of 60-minute pop-up reminders on gaming machines; and more effective utilisation of longer-run player activity statements. Given the concerns expressed about the effect of providing further information about time and money spent during individual gaming machine sessions, the tribunal considered that this measure should not be introduced at this time. It recommended that the requirements to provide information on individual gambling sessions on gaming machines should not be introduced at this time. I think that is a highly conservative recommendation; I have merely included it for the sake of honesty.

I believe the CMS, as a monopoly, must take account of the social effects of gambling and the transfer of the CMS licence under this legislation should not stop the provision of harm minimisation measures in gambling using CMS technology to achieve that objective. As it is quite capable of collecting information about capital movements, such as jackpots and dividends, it should also be able to take account of the effects that it is having on individual players. The Australian Democrats do not oppose the legislation, as it merely transfers the contract.

Motion agreed to.

Bill read a second time and passed through remaining stages.

TEACHING SERVICES AMENDMENT BILL

Second Reading

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [1.33 a.m.]: I move:

> That this bill be now read a second time.

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

Leave granted.

> The Carr Government is committed to ensuring that the New South Wales education system continues to meet the challenges of the twenty-first century and delivering world-class results. Since coming to government in 1995 we have increased funding of

education and training by almost $4 billion, an increase of more than 65 per cent. Since 1995 we have undertaken the most comprehensive review and updating of the syllabus, beginning with the primary syllabus, then the Higher School Certificate, and finally the years 7 to 10 syllabus. We have introduced more rigour into the curriculum, with a focus on literacy in all years. We have employed more than 900 reading recovery teachers to provide one-on-one tuition to students who are falling behind with their reading. Over the next four years we will be spending more than $460 million to progressively reduce class sizes in the early years of school to give our students the best possible start to their schooling.

We are seeing the results of our investment in education. New South Wales is leading the way in many key areas of education—a fact confirmed by the recent Productivity Commission report on government services. Our year 5 students are the best in Australia when it comes to their writing skills. The commission found that 95.9 per cent of children in year 5 achieved the national writing benchmark. The commission also found that our year 3 students were above the Australian average when it came to achieving the writing benchmark, with 89.9 per cent of students achieving the benchmark, almost half a per cent above the national average.

These results come on top of last year's finding by the Productivity Commission that 15-year-olds in New South Wales were among the best in the world in literacy. New South Wales outperformed most OECD countries in literacy—including the United States of America and the United Kingdom. We have a world-class system, delivering world-class results. But we cannot rest on our laurels. That is why the reforms we are introducing tonight will ensure that our schools continue to meet the challenges of a twenty-first century education system.

Two major reforms are encompassed in this bill. The first is to allow for the merit-based appointment of people from outside the New South Wales public education system to executive positions in schools. The second is the introduction of a framework for enhanced accountability for government school principals. Both will have significant, positive impacts on the quality of educational leadership in government schools. More importantly, they will enhance the quality of learning for students in those schools. In June 2004 I announced a major initiative to enhance public education and the role of principals.

The initiative included a $50 million pay rise for principals, and all executive staff in schools, on top of the 12 per cent increase for all school teachers awarded by the Industrial Relations Commission. Principals will receive a total increase of between 17.5 per cent and 19.5 per cent between January this year and January 2005. The increase is fully funded by Treasury. The increases brought government school executive staff in line with staff of Catholic schools. It is therefore important that they are subject to similar systems of merit selection and accountability.

This Government recognises the important role the school principal plays in shaping the educational outcomes and management of a school. We want to give our principals greater authority in the running of their schools, but we are also requiring a greater level of accountability. The bill is not a complete rewrite of the Teaching Services Act. Rather, the bill acknowledges and builds on the existing structure of the Education Teaching Service, which is renamed simply "the Teaching Service". There are a number of minor amendments that are intended to tidy up the Act by removing obsolete references, and generally reflecting the structure and practices of the Department of Education and Training in 2004.

Two definitions are fundamental to this bill. The first is the term "senior position". This new term is defined in the bill as "any position in the Teaching Service to which a person employed in the Teaching Service could be promoted". The second key term defined in the bill is "merit". The bill adopts definitions of "merit" that are currently used elsewhere in New South Wales public sector employment legislation. In particular, "merit" is defined in essentially the same terms as in the Public Sector Employment and Management Act 2002. Merit of persons seeking appointment to a vacant position is to be determined by having "regard to the nature and duties of the position and to the abilities, qualifications, experience, standards of work performance and personal qualities of those persons that are relevant to the performance of those duties".

It also reflects the definition of "merit" contained in the Technical and Further Education Commission Act 1990, which applies to the appointment and promotion of TAFE teachers by the Technical and Further Education Commission. For too long we have had a system which, while based on merit, did not necessarily ensure the best possible candidate for each vacant position. This bill rectifies that anomaly. Section 47A (2) requires that all appointments to vacant senior positions are to be made on the basis of merit. Section 47A (5) requires the director-general to determine the comparative merit, as defined, of persons seeking appointment. No longer will it be a requirement for appointment to a senior position that the person be currently employed as an officer of the Education Teaching Service.

Unlike the rest of the public sector in New South Wales, and employment in the rest of the community throughout Australia, there was no capacity for good candidates from outside the system to throw their hats in the ring. In effect we were saying, "We welcome everyone to be a teacher, but if you are outside the system, you will have to start as a classroom teacher, no matter what your previous experience." Now, with this bill, good teachers from public schools interstate, or good teachers from non-government schools who want to make a contribution to public education, will get that chance. We have the best teachers and principals in our system, and we want to make sure that we will be able to continue to attract the best to our public schools. Our students deserve it, and their parents expect it.

The second reform provides the separation of performance issues from conduct issues for principals in government schools and the introduction of a new, streamlined process for dealing with a small number of under-performing principals. The bill introduces, for the first time, a performance management framework for principals. These provisions are set out in the proposed new sections 52, 53 and 54. The proposal will require the director-general to conduct a performance review of every principal, and to do so on at least an annual basis. The director-general retains the right to do so more frequently if individual circumstances warrant it.

The process for dealing with a principal who, after a performance review, is considered not to meet the required level of performance comprises two components. First, where there are concerns about the performance of a principal, he or she will be informed of those concerns and will be required to undertake a performance improvement program designed around the identified concerns. If at the end of the program the principal's performance is still not satisfactory, the director-general is empowered to take appropriate action, including dismissal or demotion. Principals will maintain their existing right of appeal to

> either the Industrial Relations Commission or the Government and Related Employees Tribunal against dismissal or demotion. With these protections in place the bill removes additional internal review processes for principals subject to dismissal or demotion for unsatisfactory performance. Section 83 of the Act makes it clear that performance issues for principals are to be separated from disciplinary or misconduct issues. As such, prescribed officers will no longer investigate principals for performance-related issues. These processes have proved unnecessarily cumbersome and time consuming.
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> To give operational effect to these amendments the Department of Education and Training will introduce a principal assessment and review schedule that will allow an annual assessment of school principals measured against key accountabilities. This will include an analysis of indicators such as learning outcomes, educational leadership, community and staff feedback, resource and risk management, staff and community relationships, and planning and budget management.
>
> The package strengthens the role of principals in relation to occupational health and safety and introduces, among other things, an on-line leave management system that will save time for teachers and principals. Enhanced accountabilities for principals will allow the director-general to ensure that the expected level of expertise and leadership is in fact delivered. Another key element of this reform package is the introduction of a review of a principal's appointment to a particular school every five years.
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> It is recognised that schools have different needs depending on their stage of development. This initiative is designed to match the skills and abilities of principals with the needs of schools. The review will consider the principal's performance since appointment to a school against the major areas of accountability for principals: the development of the school, the skills and abilities necessary to drive continuous improvement, and feedback from parents/caregivers, students and staff. Following the five-year review, the principal will be either transferred to a new school or retained at their current school.
>
> Where performance issues are identified, the new performance management provisions will apply. I mentioned earlier that the proposed reforms are built on the existing framework of the Teaching Services Act. For this reason many of the existing benefits that are currently applicable to teachers will continue to apply. For example, section 60 currently contains a right for an officer to appeal to the director-general where the officer is dissatisfied with the process of filling a vacant position. This appeal right is preserved and enhanced in the revised section 60. It is important to note that the existing transfer system is retained.
>
> The director-general's power to transfer staff on a permanent or temporary basis has been updated to reflect changes that previously were introduced on the commencement of sections 86 and 87 of the Public Sector Employment and Management Act 2002. The new provisions underpin the existing transfer system. It is intended that the existing transfer scheme will continue to operate and thus enable staff who obtain transfer points to be considered for a transfer to a preferred school. A transfer in these circumstances will continue to be permitted by the two reforms introduced in this bill.
>
> Finally, I wish to clarify for the House the reason for some of the additional machinery provisions that have been included in proposed section 47A. In relation to merit appointments, I have indicated that the bill has relied on the definition of "merit" in the Public Sector Employment and Management Act 2002. It is entirely appropriate, then, that the bill also picks up the other associated provisions from that Act, such as section 18, relating to advertising of positions, and section 22, relating to legal proceedings in relation to appointments. These reforms are commonsense, practical improvements that will strengthen the public education system in New South Wales.
>
> I wish to acknowledge the contribution of the New South Wales Teachers Federation on behalf of the Primary Principals Association, the Secondary Principals Council and the Public Principals Forum for their contribution in developing this package. I commend the bill to the House.

The Hon. DON HARWIN [1.33 a.m.]: I have always believed that the principal sets the tone for the school. In part, I suppose that is because of my experiences in government education but, more particularly, because I am the son of a government school principal. He was a foundation principal for two government high schools, both of which had very good reputations. In fact, the first of the two, Macquarie Fields High School, was made a selective high school shortly after he left. I think that was in some ways a reflection of his good work.

With that in mind, I am pleased to report to the House that the Teaching Services Amendment Bill will help improve education in government schools by allowing for appointments to senior positions on the basis of merit and by requiring a greater level of accountability from government school principals. The Opposition welcomes this bill because it introduces into the leadership level of our school system processes of merit and accountability to which we have been committed for some considerable time. The bill relates to senior positions in government schools, which are defined as:

> … any position in the Teaching Service to which a person employed in the Teaching Service could be promoted.

This bill provides for appointment to such positions on the basis of merit, including persons from outside the New South Wales public education system, such as individuals from interstate or from the non-government school sector. Under the provisions of the bill, principals in government schools will be subject to a new performance management framework that separates performance issues from conduct issues. This framework includes annual performance reviews, performance improvement programs and streamlined procedures for dealing with unsatisfactory performance.

The draft principal assessment and review schedule includes the following major accountabilities expected of government school principals: educational leadership, management and implementation of

curriculum, learning outcomes, management and implementation of programs for student welfare and child protection, establishment of effective decision making and communication procedures within the school and community, enhancement of the performance development and welfare of staff and implementation of equal employment opportunity principles, whole school planning and resource and risk management, participation of the school community in development and in achieving the school's goals and purposes, and promoting the development of constructive professional relationships amongst staff.

Should an annual review determine that a principal has failed to meet the required level of performance, he or she will be required to undertake a performance improvement program designed to address the identified areas of concern. This is a significant measure. The Coalition recognises the value in government school principals receiving support to achieve a high standard of performance. In the event that further evaluation finds that a principal's performance has remained unsatisfactory after the completion of such an improvement program, this bill empowers the director-general to take appropriate action, including either demotion or dismissal. It is vital that there is a mechanism by which underperforming principals can be removed. It is equally important for the community's faith in the standard of the education system that such a mechanism be visible and understood. The public rightly expects that principals should be accountable, and this bill is about demonstrating that they are accountable.

In order to implement this new performance management framework, 28 school education directors will be appointed to regional offices. These senior office grade 2 positions are extremely important as the success of the entire process will depend on their ability to evaluate performance properly, provide support adequately, and foster development effectively. Quality persons must be appointed to these positions. In order for them to be able to provide meaningful advice and assistance to struggling principals, these individuals must have recent experience as principals with a demonstrated track record of success. The performance management framework also introduces a review of a principal's appointment to a particular school every five years. In addition to assessing the principal's general performance, this review will evaluate the principal's success in attaining the goals set in relation to the standing of that particular school. Feedback from parents, caregivers, students and staff will form a valuable part in this process. Once again, this is an important demonstration to the school community that the principal of the school is accountable for his or her performance.

This is not to say, however, that the Coalition has no reservations about the implementation and operation of this scheme. Key stakeholders have raised concerns that the performance evaluation process may be used to bring pressure to bear upon principals who are critical of the Government. Many in the sector are troubled that individuals who have genuine issues to raise about practices in our government school system will be silenced as a result of the misuse of the performance management scheme. Such concerns, however, relate to the implementation of the scheme rather than to any flaw inherent in the framework. Consequently, the Opposition will not oppose this bill. It will, however, monitor closely the manner in which it operates in order to ensure that, as intended, it strengthens the government education system by ensuring that senior positions in the teaching services, particularly that of school principal, are filled with candidates chosen on merit and that their performance is held accountable through a rigorous but fair and open process of evaluation and improvement.

The Hon. PATRICIA FORSYTHE [1.39 a.m.]: As my colleague has said, the Opposition does not oppose this bill. Indeed, we believe that it is important legislation and that it is part of a number of reforms that will enhance the professional nature of teaching. I know it has been welcomed by most principals as an important step forward for them. A key measure in the bill is the provision for merit selection in relation to the appointment of persons to senior positions in the teaching service. It is worth noting how merit is to be determined. The bill provides:

> For the purpose of determining the merit of persons eligible for appointment to a vacant senior position, the Director-General is to have regard to:
>
> (a) the nature and duties of the position, and
>
> (b) the abilities, qualifications, experience, standards of work performance and personal qualities of those persons that are relevant to the performance of those duties.

We believe that this is an important step forward and is in accord with the Commonwealth Government's quality teacher initiative, which was signed off by all Ministers for Education, I think in 2000. At the time the Hon. David Kemp was the Minister, and at stage a number of goals were set out. The Adelaide Declaration on National Goals for Schooling in the 21st Century was part of that. One of the key points stated:

> *Teachers for the 21st Century* also makes clear the Commonwealth's total commitment to development for school leaders and future leaders in partnership with peak principal organisations and other key education practitioners. A fundamental component of teacher quality is the development of the skills of school leaders, particularly the skills required in developing whole school approaches to raising educational standards.

There is ample research to suggest that the quality of the school is determined by the quality of its leadership. It is not bricks and mortar, it is not any one of a number of other things. It is, in fact, the quality of the leadership. This legislation is one step towards confirming that. Compared to the position of other States, New South Wales still has some distance to go if the position of principals is to be truly enhanced. For example, I note that in July Monash University announced a new course to train aspiring school principals. That course was to begin in August. I note that the university said the announcement followed the education faculty winning a Victorian Government tender to deliver a Master in School Leadership degree.

The university's announcement went on to note that to be eligible to be a principal in the United States of America and Canada, Masters level courses and certification had been a requirement for some time. When I undertook a study tour into education in Canada as part of a Commonwealth Parliamentary Association trip in 2001, it was certainly made clear to me that no-one teaching in Canada would be able to become a principal without an appropriate Masters degree in Education. If we are to go down that path that will have to be part of the direction in which we go.

There is one other fundamental point that we need to keep in mind: there is a known shortage of school principals. Making appointments on merit and making appointments from interstate are significant, but across the sector and in other parts of the western world there is now a known shortage of school principals. That is being experienced in the Catholic education sector, particularly at primary level. When we look at the required performance of principals and positions of merit, we need to keep in mind the framework in which we are setting the role of principals, because, for whatever reason, it is now not as attractive as it once was. The responsibilities that we expect of principals are onerous, and we know from legislation in this place that those responsibilities have a great deal to do with child protection. Those responsibilities have certainly increased in the time that I have been a member of this House. We need to keep that in mind as we focus on the bill.

I said at the beginning of my contribution, a good school is determined by the quality of its leadership. A couple of weeks ago I noticed in the *Canberra Times* that a number of schools across Australia were given special awards by the Federal Minister for Education, Science and Training for the excellence of the outcomes of their schools. One of the schools was Queanbeyan South Public School. About three years ago I had the opportunity to visit that school and meet with the principal, Paul Britton. The school has received that award for its work in indigenous education. I understand why that is so, because the school has an outstanding school leader. The same could be said about Cheryl McBride from the Sarah Redfern Public School at Minto. They are only two examples of outstanding school principals whom I have had the pleasure of meeting, the sort of people who would have no fear of merit appointments. The Opposition welcomes the legislation. However, the Government needs to consider the nature of the qualifications for principals in the future and it needs to look at strategies to address a significant and growing issue: a shortage of people wishing to fill positions as school principals.

Reverend the Hon. Dr GORDON MOYES [1.46 a.m.]: The Teaching Services Amendment Bill, which amends the Teaching Services Act 1980, has a number of objectives. The first is to provide for merit selection in relation to the appointment of persons to senior positions in the New South Wales public teaching sector. The second is to provide a statutory framework for managing the performance of government school principals, including annual performance reviews, implementation of performance improvement programs and streamlined procedures for dealing with unsatisfactory performance. The third objective is to make a number of amendments to the Act and other related legislation. In general, we commend the objectives and content of the bill.

The first reform concerning merit appointment to senior positions is most commendable. On a general level, the reason for merit selection is to ensure the appointment of the best person for a position in light of their qualifications, skills, aptitude and knowledge, contrasted with the qualifications, skills, aptitude and knowledge of other potential candidates for the subject position. Given the relative importance of executive positions in schools, opening the door for merit-based appointments of people from outside the New South Wales public education system will assure the largest possible pool of potential employees from which to choose. As the Deputy Premier advised:

> Now, with this bill, good teachers from public schools interstate or good teachers from non-government schools who want to make a contribution to public education, will get that chance.

We all want the best for our school children. Ideally, those in high positions of responsibility aiming to administer and manage schools to the best of their ability should be the best equipped for the position involved. Providing the opportunity for persons both inside and outside of the New South Wales public sector to apply for executive positions possibly will reverse the trend that we have experienced over a period of time of outstanding principals in the government system being siphoned off into the private school system.

The bill will ensure that the best attempt will be made to secure the best person for the job. As a number of outstanding school principals have been mentioned, I would mention that in the past couple of weeks the school principal from a school in the south-west of Sydney, Ms Julie Grimshaw, won the Sydney Rotary Scholarship for Excellence in Teaching. She is the principal of a school where the parents of 96 per cent of the students were born overseas, where 92 per cent of the students speak Arabic, and where a large percentage of students are unemployed after leaving school. She devised a system of allowing students to work in the public health system during their last year in the school system and earn some merit for that work. In fact by teaming up with Government traineeships funded by the Commonwealth Government it enabled these students to be paid. It is interesting that virtually all students who have been through that system have continued either as aides in nursing or in other positions within the health system. The scholarship given by the Sydney Rotary Club for excellence in leadership within public schools will enable her to go overseas to study and to better develop her ideas on her return.

Proposed section 47A provides that legal proceedings cannot be brought in respect of appointments to vacant senior positions. This provision is in line with section 22 of the Public Sector Employment and Management Act 2002, which applies to all vacant positions in the public service. An officer who unsuccessfully applies for a senior position can appeal the decision to appoint another officer to the director-general on the ground that the selection process was irregular or improper. Proposed amendments to section 51 are important and would appear to vest more power in the director-general. The director-general may appoint an officer of the Education Teaching Service to a position within that service that is vacant, or the holder of which is suspended, sick or absent. Currently, this appointment must be made in accordance with conditions of employment as determined by the Director-General of Education and Training with the concurrence of the secretary. It is important to note that the director-general will again have more power under this bill, as has been the case with a number of other bills considered by this House tonight.

The bill provides that the director-general must review a school principal's performance at least annually. That is an important initiative. The importance of the position of school principal ought not be underestimated. Notions of accountability, efficiency and stewardship come into play and underpin the need for this annual review. The bill proposes that the review of a school principal's performance is to have regard to the performance criteria determined by the director-general and such other matters as the director-general considers relevant. Again, it is apparent that the director-general is the receptacle of a large degree of power.

The bill introduces new provisions for dealing with unsatisfactory performance on the part of school principals. Under the new performance management regime, school principals will be subject to performance review at least annually. Performance evaluation of senior staff is quite commonplace in private enterprise. Chief executive officers are usually assessed by boards on an annual basis. If a school principal is not performing in a satisfactory manner, the Director-General of the Department of Education and Training may implement a performance improvement program for that principal. If the principal's performance is still unsatisfactory following that program, the director-general may decide, after giving the principal 21 days in which to make written submissions on the matter, and taking into consideration those submissions, to dismiss the principal from the teaching service or demote the principal to a lower position. I have heard some objections to that provision but a high merit selection and maintenance process can be achieved only if there is also a disciplinary process, and I commend the Government on biting the bullet in that regard.

Under proposed section 60, an officer may appeal to the director-general against the decision to appoint another officer to a vacant senior position for which the appellant has unsuccessfully applied. The director-general's decision, once he or she has made a decision with respect to the appeal, is final. As I have said, this is a normal process that is undertaken within private enterprise. The bill also introduces a variety of other amendments. I will not detain the House with noting them, but the bill removes all provisions relating to the Technical and Further Education Teaching Service that were made redundant with the formation of the TAFE Commission in 1991. Importantly, the bill also removes provisions relating to promotions lists from which the director-general is currently required to make appointments to senior positions. These are very important provisions and the Christian Democratic Party supports the Government and the content of the bill.

The Hon. JON JENKINS [1.54 a.m.]: Proposed section 54 relates to unsatisfactory performance. If the proposed assessment process bears any relationship to the current system of assessing teachers, the effect of which removes them from the system for being ineffectual, then the provision should be improved. I know from firsthand experience that some teachers are completely unsuited to teaching and should look to other profession. With regard to proposed section 7, the bill is silent in relation to how one gets onto the eligibility list. The provision allows for appointment by the director-general—but that sounds to me a little bit like jobs for the boys. The director-general is not required to advertise the eligibility list or the position, so how does one get placed on an eligibility list?

The Hon. CARMEL TEBBUTT (Minister for Community Services, Minister for Ageing, Minister for Disability Services, and Minister for Youth) [1.55 a.m.], in reply: I thank all honourable members for their contributions to the debate and for their support. I can assure the Hon. Jon Jenkins that the eligibility list is not a matter of jobs for the boys. I undertake to get him more information about that matter. The Minister in the other place will respond to his inquiry in due course. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

LEGAL PROFESSION BILL

Second Reading

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [1.56 a.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

This bill repeals and replaces the current *Legal Profession Act 1987.* It represents a major milestone in achieving consistency and uniformity in the regulation of the Australian legal profession. It will also make it easier for lawyers to practise across State and Territory borders.

The mosaic of State and Territory-based regulatory regimes for the legal profession currently imposes unreasonable burdens on practitioners who want to practise interstate. Also, consumer interests are not served by differences that interfere with efficient business practices.

To address this, in July 2001 the Standing Committee of Attorneys General agreed to develop model laws to facilitate legal practice across State and Territory jurisdictions.

The Standing Committee worked closely with the Law Council of Australia in developing Model Legal Profession provisions and I wish to thank the Law Council for its substantial contribution.

A consultation version of the model provisions was released in 2003 to more than 100 stakeholders. These included professional associations for legal practitioners, regulatory authorities, consumer organisations and heads of courts and tribunals.

The model provisions were finalised and endorsed by SCAG Ministers in August 2003. In July this year all Australian Attorneys-General signed the Legal Profession Memorandum of Understanding and each State and Territory agreed to use its best endeavours to implement legislation giving effect to the model provisions.

The Memorandum of Understanding also establishes a joint working party with representatives from each State and Territory, the Commonwealth, and the legal profession. The joint working group provides regular advice to SCAG on the implementation, operation and maintenance of the provisions. This national joint working party is the appropriate body to initially consider the concerns of any individual or group about the national model provisions.

The working party is currently considering a number of proposed amendments to the model provisions. Some of these were agreed to by the Standing Committee of Attorneys General earlier this month and have been incorporated into this bill. Others are still under consideration.

This bill is the culmination of many years of hard work and co-operation across all jurisdictions. However, it is inevitable that, from time to time it will need amending as the national model provisions are revised and amended. Facilitating legal practice across State and Territory boundaries will be an ongoing project.

In preparing this bill, which adopts the national model provisions for NSW, there has been extensive consultation with the Law Society, Bar Association, the Legal Services Commissioner, the Legal Profession Advisory Board, and the Administrative Decisions Tribunal. I would like to thank these bodies for their contributions, which have been significant and invaluable.

The result is a bill which removes barriers to legal practitioners practising across State and Territory borders. A legal practitioner admitted in NSW will now be able to practice in any Australian jurisdiction without the need to also be admitted in that jurisdiction. A client in Victoria will have the same rights and remedies as a client in New South Wales. Disciplinary action taken against a practitioner in New South Wales can be enforced in Queensland.

This bill will commence on proclamation and will be proclaimed when the regulatory and other authorities affected by the amendments have had time to establish the new processes and procedures that will be required.

CHAPTER 1—Preliminary

Chapter 1 of the bill sets out the definitions used throughout the bill. There are some changes to terms used in the *Legal Profession Act 1987*, developed to facilitate national practice. Some terms denote local, interstate and international practitioners.

For instance under the bill, once admitted a person becomes an 'Australian lawyer'. If admitted in NSW the person is a 'Local Lawyer'. If the person is admitted in another Australian jurisdiction, they are an 'Interstate lawyer'.

If the person holds a practising certificate they are a 'Legal Practitioner'. An Australian legal practitioner is a person holding a practising certificate issued by an Australian jurisdiction. A Local legal practitioner is a person holding a practising certificate issued in NSW, and an interstate legal practitioner a person with a practising certificate issued in another State or Territory.

A 'law practice' is an entity entitled to engage in legal practice. It includes an Australian legal practitioner in sole practice, a law firm, a multi-disciplinary partnership, an incorporated legal practice and a community legal centre.

The bill also uses the term 'Legal practitioner associate'. This term covers partners, directors, employees and others behind the practice who are legal practitioners. It does not include lay directors, partners or employees.

The term "a principal of a law practice" includes a sole practitioner, a partner, or a legal practitioner director of a law practice.

Clause 8 defines the 'home jurisdiction' of a legal practitioner as the jurisdiction where the practitioner's practising certificate was granted.

CHAPTER 2—General requirements for engaging in legal practice

Part 2.2—Reservation of legal work and titles

Part 2.2 reserves legal work and titles for practitioners. This reservation protects the public and clients by ensuring legal work is only carried out by people properly qualified to do so.

This part ensures there is a textually uniform prohibition across Australia restricting unqualified people from engaging in legal practice or representing they are entitled to engage in legal practice.

Clause 14 makes it an offence for any person to engage in legal practice for fee, gain or reward, unless they are an Australian Legal Practitioner. This does not prevent registered foreign lawyers or community legal centres from engaging in legal practice, or prevent licensed conveyancers from doing conveyancing. If an unqualified person engages in legal practice in breach of this clause, they are unable to recover any money for their work.

The term 'engaging in legal practice' is not defined and has deliberately been left to the common law. However, the Government does not expect this definition to limit in any way the current reservation of legal work for practitioners. The bill will ensure that only qualified people can provide legal services to the public. This common law approach has the benefit of remaining flexible and allows the development of common jurisprudence on what constitutes legal practice throughout Australia.

Clause 15 prohibits an unqualified person from representing or advertising they are entitled to engage in legal practice. Clause 16 provides that only qualified people may use the following titles: lawyer, legal practitioner, barrister, solicitor, attorney, counsel, Queens Counsel, Kings Counsel, Her Majesty's Counsel, and Senior Counsel.

This will ensure the public can identify people who are qualified legal practitioners and who are subject to the legal profession regulatory scheme and ethical standards.

Part 2.3—Admission of local lawyers

Part 2.3 sets out the process and requirements for admitting people to the legal profession.

This part is designed to work with similar provisions in other jurisdictions to ensure equivalent qualifications and training requirements are recognised throughout Australia. The part also ensures that only applicants with appropriate academic and practical qualifications and who are fit and proper persons can be admitted to the legal profession. This part is similar to part 2 of the *Legal Profession Act 1987*.

Under clause 31 the Supreme Court may admit an applicant for admission as a Local Lawyer if the Admission Board certifies the applicant is eligible for admission and is a fit and proper person.

Under clause 25 the Admission Board must consider each specified suitability matter, and any other relevant matter. The suitability matters are set out in clause 9 and include whether the person is of good fame and character, whether the person has been insolvent under administration, and any previous convictions.

Clause 26 states a person may apply to the Admission Board for an early determination of their suitability. Clause 27 allows the Admission Board to refer the determination of whether a person is 'fit and proper' to the Supreme Court.

If the Admission Board refuses to certify that a person is eligible for admission, the candidate may appeal to the Supreme Court under clause 28.

Division 4 of part 2.3 sets out the powers and role of the Legal Profession Admission Board, currently the Legal Practitioners Admission Board.

Under clause 38, the Board's power to make admission rules is retained. This allows the Board to specify how and when applications should be made. Rules may also be made about admission requirements for academic qualifications and practical legal training and their assessment; the disclosure of matters that may affect the eligibility of an applicant; and applications under the trans-Tasman mutual recognition legislative scheme.

Part 2.4—Legal Practice: Australian Legal Practitioners

Part 2.4 of the bill establishes the processes for granting and renewing practising certificates.

The relevant model provisions ensure that:

- practitioners will apply for a practising certificate in their principal place of practice;
- a jurisdiction will permit legal practitioners holding an interstate practising certificate to practise in that jurisdiction;
- interstate lawyers will be officers of the Supreme Court of any jurisdiction they practise in;
- each jurisdiction will recognise conditions on practice imposed on interstate legal practitioners in their home jurisdictions (e.g. as a result of disciplinary action);
- practising certificates will be issued on the basis of admission in any State or Territory; and
- Government lawyers whose home jurisdiction does not require that they have practising certificates will be able to practise in other jurisdictions.

Practising Certificates ensure those lawyers wishing to practice as a Solicitor or Barrister are covered by appropriate insurance and the fidelity fund. Practising Certificates also provide an easy mechanism for suspending or revoking a practitioner's right to practise.

In NSW, practising certificates can only be issued by the Bar Association or the Law Society. A lawyer holding a certificate from the Bar Association is entitled to practise as a barrister, a lawyer holding a certificate from the Law Society is entitled to practise as a barrister and solicitor. A lawyer may only hold one practising certificate at a time.

Making an application

The process for granting and renewing local practising certificates is contained in part 2.4 Division 4.

A person admitted as a lawyer in any Australian jurisdiction will be able to apply for a practising certificate in NSW. Similarly, lawyers admitted in NSW will be able to apply for a practising certificate in any other jurisdiction. This new system will replace that created by the Mutual Recognition Acts in each State and Territory.

Clause 45 explains when a lawyer must apply for a practising certificate in NSW. This is an important provision under the model law scheme.

Generally, a lawyer must apply for a practising certificate in NSW if he or she principally engages principally in legal practice in NSW.

Other provisions set out where a lawyer can apply for a practising certificate when this is unknown, or when the lawyer is only temporarily engaging in legal practice principally in another jurisdiction.

An applicant for a practising certificate must disclose matters which affect their eligibility or status as a fit and proper person to hold a practising certificate.

Clause 42 specifies various matters which may be taken into account in determining if a person is fit and proper to hold a practising certificate. These grounds include any suitability matter and:

- whether the person has previously obtained a practising certificate with misleading information;
- whether the person has contravened the Act, Regulation or Legal Profession Rules, or any corresponding legislation; and
- whether the person has contravened a condition on their practising certificate or an order of the Tribunal or corresponding disciplinary body.

Clause 48 provides that the Law Society Council or Bar Council may grant, renew or refuse to grant a practising certificate. In granting a certificate, the Council may also impose conditions on the certificate limiting the type of practice that can be undertaken by the Legal Practitioner. The Council can only grant or renew a practising certificate if satisfied the person is eligible and is a fit and proper person to hold the certificate.

Conditions

Division 5 deals with the conditions that a Council may place on a practising certificate.

Conditions must be reasonable and relevant. Some possible conditions include requiring the holder to undertake continuing legal education, or an academic or training course, or a period of supervised practice. Clause 51 gives a specific power to impose conditions on a certificate when a local legal practitioner has been charged with a criminal offence, but the charge has not been determined.

Clause 52 specifies that where an Australian Legal Practitioner practises in NSW, their NSW practice is subject to any condition imposed on their admission to the Legal Profession, no matter which State or Territory they were admitted in. This facilitates national practice by ensuring that conditions are consistent, and consumers are protected.

Clauses 53, 54 and 55 specify statutory conditions that barristers and solicitors must comply with. For instance, the requirements that a barrister must be a sole practitioner and cannot be in partnership or employment are maintained.

Clause 56 specifies that the Bar Council can impose conditions requiring the holder of a certificate to complete a barrister's reading program or requiring the practitioner to read with a barrister for a period of time. A new sub provision allows the Bar Council to suspend or cancel the practising certificate of a practitioner who does not comply with these conditions.

A contravention of any condition imposed on the certificate is capable of being unsatisfactory professional conduct or professional misconduct. The contravention may also attract a fine of 100 penalty units.

Division 6

Division 6 of part 2.4 of the bill sets out the process for amending, suspending or cancelling a local practising certificate. Under clause 60, this can be done where:

- The practitioner is no longer a fit and proper person to hold the certificate;
- The practitioner no longer has appropriate insurance or fails to pay a contribution;
- The practitioner breaches a condition of their certificate.

Division 7

Division 7 retains the provisions that require legal practitioners who become bankrupt or are convicted of a serious offence or tax offence to 'show cause' or provide details about this and explain why, despite the 'show cause' event they are a fit and proper person to hold a practising certificate. This Division ensures NSW regulatory bodies can take swift action against practitioners who fall into these categories.

Under clause 66 the show cause process also applies to those persons applying for a practising certificate. Where an applicant has been convicted of a tax offence or has been bankrupt, they must provide a written statement to the Council explaining why they consider themselves to be a fit and proper person to hold a practising certificate. After receiving the statement, the Council may decide to refuse to issue the certificate.

The current holder of a practising certificate must give the appropriate Council a notice that the show cause event happened, and a written statement explaining why the person considers themselves to be a fit and proper person. After receiving the statement, the Council may decide to cancel or suspend the holder's certificate.

Clause 72 states that if the Council determines that a holder is not a fit and proper person to hold a certificate then the Council must either refuse to grant the certificate or institute proceedings in the Tribunal for unsatisfactory professional conduct or professional misconduct.

If a condition is imposed under this Division and the holder does not comply, then clause 73 provides that the holder is guilty of professional misconduct and the appropriate authority may suspend or cancel the local practising certificate. Under clause 74, if the Council refuses to grant the practising certificate under this Division, the applicant is not entitled to reapply for a specified period not exceeding 5 years.

An applicant who is dissatisfied with a decision of the Council or Commissioner under this Division may appeal to the Tribunal. Where a person appeals the decision, the person bears the onus of establishing that they are a fit and proper person to hold a practising certificate.

Division 8

Under clause 78 a Council may immediately suspend a practising certificate where it is in the public interest to do so, on any of the grounds specified for Divisions 6 and 7. Clause 79 allows the holder to surrender their practising certificate and allows the Council to cancel it. Under clause 80 the Council may give a notice to a holder requesting the certificate be returned. Failure to comply with the notice is an offence.

Division 9

Other existing provisions in the Legal Profession Act 1987 are included in the bill. Clause 85 allows the regulations to make provision for regulating and prohibiting the marketing of legal services, including advertising personal injury services.

The provision giving solicitors audience rights before the courts and allowing them to be advocates is maintained in clause 87.

Division 10

The provisions relating to the fees payable for the grant or renewal of a practising certificate are retained in Division 10.

Division 11

Division 11 deals with interstate practitioners practising in NSW. The adoption by all States and Territories of the national model provisions will ensure that all Australian practitioners can practise throughout the country regardless of where their practising certificate was issued.

Clause 98 retains a current requirement that when an interstate legal practitioner establishes an office in NSW they must hold appropriate professional indemnity insurance.

Clause 100 states that an interstate legal practitioner is not authorised to engage in legal practice in this jurisdiction to a greater extent than a local legal practitioner could be authorised under a local practicing certificate. This ensures New South Wales restrictions on practitioners also apply to those holding interstate practising certificates.

Under Division 12 the Councils will be able to enter into protocols with interstate regulatory authorities about matters relevant to the issue of where a lawyer should obtain a practising certificate.

Clause 106 states a Council must keep a register of the names of Australian lawyers to whom they grant practising certificates. The conditions on practising certificates must also be kept in the register.

Other provisions deal with specific government offices or positions.

In some other Australian jurisdictions government lawyers will not be required to hold practising certificates. Clause 114 allows these lawyers to practise in NSW while working for their government, without being required to take out a NSW practising certificate.

Part 2.5—Interjurisdictional provisions regarding practising certificates.

Part 2.5 contains interjurisdictional provisions regarding practising certificates and provides for notification action to be taken by courts and other authorities in relation to the admission of people to the legal profession and their right to engage in legal practice in Australia.

For instance, when an applicant makes an application for admission, the Admission Board may inform other jurisdictions of that application.

Under Division 3, a local lawyer must notify the local Council and Prothonotary if their name is removed from an interstate roll or if an order is made that their name be removed from a roll. They must also notify the local Council if certain orders are made interstate—for example if an order is made recommending that their NSW practising certificate be cancelled or suspended. Finally, they must notify the local Council and Prothonotary if any foreign regulatory action is taken against them.

The local Councils and Prothonotary must take action when they receive such a notice. If a lawyer is removed from an interstate roll the Prothonotary must also remove the practitioners name from the local roll and the Council must cancel their practising certificate, unless there is a court order to the contrary. Where foreign regulatory action was taken against the Practitioner, the appropriate authority may issue a show cause notice asking the lawyer why their name should not be removed from the NSW roll.

Part 2.6—Incorporated Legal practices and multi-disciplinary practices

All States and Territories, either currently or previously, restricted legal practitioners' ability to share profits with non-practitioners. These restrictions were intended to ensure legal practitioners adhered to legal professional obligations, and duties to consumers and courts.

National Competition Policy Reviews by NSW, WA and Tasmania recommended relaxing the restrictions on the sharing of profits, and allowing incorporated legal practices and multi disciplinary partnerships. In late 1999 NSW removed restrictions on profit sharing in multi-disciplinary partnerships and in July 2001 has also permitted incorporated legal practices.

However, differences in legislation around Australia allowing incorporated legal practices and multi disciplinary partnerships restrict the use of these entities. The objective of the model provisions is to establish uniform provisions in all jurisdictions, ensuring that incorporated legal practices and multi disciplinary partnerships can practise across State and Territory borders with ease.

Part 13 adopts the national model provisions relating to incorporated legal practices and multi disciplinary partnerships and strengthens the regulatory requirements to ensure that clients' rights are protected and that the professional obligations on legal practitioners are not affected by the business structures.

An incorporated legal practice must have at least one director who is a legal practitioner. Before carrying on business, the corporation must notify the Law Society that they intend to provide legal services.

As corporations are separate legal entities at law, clause 143 ensures that legal practitioner employees of the practice cannot use the corporation to shield themselves from liability. The clause specifies that any breach by them of a professional obligation can amount to unsatisfactory professional conduct or professional misconduct. Clause 144 ensures all insurable solicitors in an incorporated legal practice have appropriate professional indemnity insurance.

Under clause 146 an incorporated legal practice that provides legal and non-legal services must inform their clients which services are being provided by legal practitioners, and which are not. This is to ensure that their clients are fully informed and not acting under a misapprehension about who is providing the services.

The Law Society Council may apply to the Supreme Court to ban a corporation from providing legal services under clause 153. Directors can be banned from managing incorporated legal practices under clause 154.

Multi disciplinary partnerships

Multi disciplinary partnerships are partnerships that provide legal and non-legal services. Similar to an incorporated legal practice, a multidisciplinary partnership must give the Law Society notice that they intend to provide legal services.

Where a partnership has legal and non-legal partners, clause 168 specifies that the legal partners are responsible for the management of the legal services provided. Clause 171 specifies that a legal practitioner employee in a multi disciplinary partnership must maintain professional standards that apply to other practitioners.

Part 2.7—Legal practice by foreign lawyers

The national model provisions provide a system for registering foreign lawyers. The scheme currently operating in most jurisdictions requires a foreign lawyer to register in each jurisdiction where they practise. However, the national model provisions will allow registration in one jurisdiction to be recognised in other jurisdictions.

The provisions in the bill are otherwise similar to the existing provisions in the Legal Profession Act 1987 in relation to foreign lawyers.

Currently NSW has 14 foreign lawyers registered with the Law Society.

Part 2.8—Community Legal Centres

Clause 240 adopts the current section 48H from the Legal Profession Act. This requires community legal centres to comply with certain provisions allowing them to provide legal services.

CHAPTER 3—Conduct of Legal Practice

Part 3.1—Trust Money and Trust Accounts

Part 3.1 sets out requirements and procedures for legal practitioner trust accounts. This part is crucial to the uniform legal profession scheme. Currently, there are different trust account requirements operating in each jurisdiction. One of the aims of the model laws project was to set similar trust account requirements in all jurisdictions, thus reducing compliance costs.

Under clause 244, money entrusted to a legal practice for, or in connection with, financial services is excluded from part 3.1. This money is protected by the Financial Services License Scheme operated by the Commonwealth.

Part 3.1 generally requires all trust money received by a legal practice in NSW be put into a NSW trust account. Sometimes it may be difficult to determine the jurisdiction where trust money is received. This may be because the client is resident in one jurisdiction, while the services are performed in another, or two different offices of a law practice are involved. To assist with this, clause 247 allows the Law Society Council to enter into protocols with authorities in other jurisdictions to determine where trust funds were received.

Clause 252 specifically excludes barristers from holding money on behalf of other persons. However, the regulations may specify situations where barristers can hold trust funds.

Under Division 3, the Law Society Council may appoint an investigator to a law practice. This appointment may authorise the investigator to investigate a particular allegation or matter, or allow for the investigation of trust accounts on a general or regular basis. Once the investigation is complete an investigators' report must be submitted to the Law Society Council.

Under clause 272 the Law Society can accredit people to be external examiners. The external examiner examines the records of a trust account. Under clause 274, a law practice must have its trust account examined by an external examiner at least once a year. The external examinations ensure trust accounts are kept in accordance with the legislation, and also assist the Law Society in identifying any discrepancies in the account.

Public Purpose Fund

The bill retains the Public Purpose Fund, which is made up of interest earned on the statutory deposits under Division 6. The Public Purpose Fund is applied for the payment of various costs and expenses set out in clause 290, including the costs of regulatory action under the bill. Discretionary payments may also be made from the Fund to assist Legal Aid, the Fidelity Fund and the Law and Justice Foundation.

The current trustees of the Public Purpose Fund will be maintained.

Part 3.2—Cost disclosure and Assessment

Currently, cost disclosure and review requirements differ throughout Australia. Sometimes they are in legislation or, in other cases, in the professional associations' practice rules.

Inconsistencies in costs disclosure requirements cause practical difficulties - for example, two or more separate costs disclosures may be required for the one matter. A disclosure complying with the requirements of one jurisdiction may not meet the requirements of another. Uniformity will ensure that consumers receive a single set of costs information.

The national model provisions relating to legal costs ensure there are the same requirements in relation to cost disclosure and similar principles for cost assessment, but with each jurisdiction retaining its own structures and processes for cost assessment.

Part 3.2 sets outs the requirements in relation to costs disclosure and assessment. This includes what must be included in a cost disclosure statement, billing, and having legal fees assessed.

Generally the provisions in the bill apply if a client first instructs the law practice in the matter in NSW.

When the client first instructs the practice, the law practice must give the client a cost disclosure statement detailing the information specified in clause 309(1). This includes an estimate of the total costs, an estimate of the amount the client will be able to recover and how the costs can be assessed.

There are certain exceptions from the requirement to disclose as outlined in clause 312. These include a client who has already received a disclosure notice and who has waived further disclosure, a public company and the holder of a financial services licence.

As a general rule a client will not be required to pay legal costs in respect of matters that have not been disclosed unless the costs have been assessed under Division 11.

In addition to the disclosure statement, a law practice can enter into a costs agreement with the client. The cost agreement is a binding, written contract detailing how costs will be charged and billed.

A costs agreement may be enforced as a contract and can be reviewed under this part. The agreement may be set aside under clause 328 if the agreement is not fair, just or reasonable.

The law practice cannot recover their costs from the client until the bill has been given. The bill can either specify a lump sum or itemise the individual costs involved.

The current provisions in the NSW Act dealing with maximum costs in personal injury damages matters, and costs in civil claims where there is no reasonable prospect of success have been retained in Divisions 9 and 10. These provisions directly replicate sections 198C to 198N of the *Legal Profession Act 1987*.

Costs billed by a law practice can be assessed under Division 11.

When assessing the bill, a cost assessor must consider the criteria for assessment listed in 363. This includes whether the legal work was necessary, carried out in a reasonable manner and whether the fees charged were fair and reasonable. Cost assessors may also assess party/party costs following a court or tribunal award of costs.

Once the cost assessor has reviewed the fees, the cost assessor must make a determination under clause 367 and issue a certificate. Once the certificate is filed in a court with the relevant jurisdiction the certificate becomes a judgement of that court.

If either party to the assessment is dissatisfied with the cost assessor's determination, this may be reviewed by a cost assessment panel.

The Panel consists of two cost assessor members and reviews the determination made by the original cost assessor. After reviewing the fees, the certificate, and any relevant material, the panel can make a new determination and issue a certificate under clauses 377 and 378.

An appeal to the Supreme Court is available under clause 384. The Supreme Court can either make a new determination or remit its decision to the cost assessor for determination.

If a cost assessor considers the costs charged by the law practice are excessive, the cost assessor can refer the claim to the Legal Services Commissioner.

Part 3.3—Professional Indemnity Insurance

The National Legal Profession Joint Working Group has a subcommittee investigating whether a national indemnity insurance scheme is feasible. This is still continuing. Therefore, this bill maintains the current NSW provisions for professional indemnity insurance.

The *Legal Profession Act 1987* has provisions dealing with claims against solicitors relating to HIH Insurance. These provisions are now little used, but will be retained in a schedule to the bill.

Part 3.4—Fidelity Cover

Fidelity Funds meet claims by consumers who have suffered financial loss due to a legal practitioner's dishonest default in failing to pay or deliver money, or through a fraudulent dealing with trust property.

The model provisions ensure greater consistency across Australia in relation to the claims that can be made on Fidelity Funds, ensuring consumer rights do not differ between jurisdictions. The model provisions also clarify which fund is liable for claims with an interstate element, and include interjurisdictional provisions to facilitate co-operation between interstate authorities on the investigation of defaults.

Under part 3.4, solicitors are required to pay a contribution to the Fidelity Fund when applying for a practising certificate. Additionally, interstate legal practitioners who become eligible to withdraw money from a NSW trust fund must also pay a contribution.

The NSW Fidelity Fund is only available for defaults occurring in NSW. Therefore, clause 433 determines the 'relevant jurisdiction' where a default occurs. Generally this will be determined by the location of the funds and the person authorised to withdraw the funds.

Given that funds associated with financial services are excluded from the trust provisions of the bill, clause 435 also prohibits clients claiming on the Fidelity Fund for claims relating to financial services. This is because financial services funds are regulated by the Commonwealth Government.

Division 9 of part 3.4 gives the Law Society Council the ability to deal with interstate regulators when a claim against the Fidelity Fund occurs partly in NSW and partly in another jurisdiction. Clause 462 gives the Law Society Council the power to enter into formal protocols with interstate regulators to share information about claims, and investigate claims across jurisdictional borders.

Part 3.5—Mortgage Practices and Managed Investment Schemes

This part adopts the current provisions from s. 115-122M of the Legal Profession Act 1987 regulating a practitioner's ability to carry on a mortgage practice or managed investment scheme.

CHAPTER 4—Complaints and discipline

Chapter 4 of the bill adopts the national model provisions relating to complaints and discipline. These will achieve greater uniformity in standards applied by regulators and courts across Australia to determine when a practitioner's right to practise should be removed or restricted. They will also ensure that the rights afforded to complainants are broadly comparable across jurisdictions. In particular, the bill adopts the definitions of unsatisfactory professional conduct and professional misconduct from the national model provisions, ensuring that this will be the same across Australia.

Chapter 4 also facilitates the mutual recognition of disciplinary action, co-operation between regulators, and the exchange of information concerning complaints.

This Chapter draws from both the national model provisions and the relevant provisions of the current Act. It also implements a number of amendments to the current provisions, including certain amendments proposed by the Law Reform Commission in Report 99—*Complaints against lawyers: an interim report*) April 2001 and the Attorney General's Department's *Further review of complaints against lawyers* in November 2002. Other proposals came from the legal profession regulators.

Professional misconduct is defined in clause 497 as conduct that involves a substantial or consistent failure to reach or maintain a reasonable standard of competence or diligence occurring in the practice of law.

Unsatisfactory professional conduct is the lesser offence, and is defined in clause 496 as conduct occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the profession is entitled to expect from a reasonably competent legal practitioner.

Clause 498 sets out certain types of conduct that are capable of being unsatisfactory professional conduct or professional misconduct and these include serious offences, tax offences and offences involving dishonesty.

The Chapter applies to Australian legal practitioners, Australian lawyers both current and former, and current and former Australian Registered Foreign Lawyers.

Clause 562 specifies that the Administrative Decisions Tribunal can make any order it sees fit, including some specified orders if it finds the legal practitioner has engaged in professional misconduct or unsatisfactory professional conduct. The Tribunal will also be able to make orders that will be implemented in other States and Territories. For instance the Tribunal can make an order recommending that the name of a practitioner be removed from an interstate roll or an order recommending that a practitioner's interstate practicing certificate be suspended or cancelled.

Under part 4.9, the Legal Services Commissioner must keep a register of disciplinary action taken against lawyers. The register must contain the details of all disciplinary action taken against lawyers in NSW and of disciplinary action taken against lawyers in another State or Territory if there is a New South Wales connection to the conduct.

Part 4.10 contains a number of provisions to assist with inter-jurisdictional issues. Clause 583 allows the Legal Services Commissioner to enter into protocols with other jurisdictions for investigating and dealing with conduct that appears to have occurred in more than one jurisdiction. Under clauses 584 and 585 both the Commissioner and the Law Society and Bar Councils

can request another jurisdiction to investigate a complaint, and other jurisdictions can also ask the Commissioner or the Councils to investigate a complaint.

Clause 586 allows the Legal Services Commissioner and the Law Society and Bar Councils to enter into arrangements with authorities in other States and Territories for the sharing of information.

Clause 588 requires that authorities in NSW implement orders made by interstate disciplinary bodies, just as disciplinary orders made by the NSW, Administrative Decisions Tribunal for removal of a practitioners name from an interstate roll or cancellation of an interstate practising certificate, will be implemented elsewhere.

CHAPTER 5 External Intervention

Chapter 5 provides for intervention in the business and professional affairs of law practices in certain circumstances in order to protect the interests of the general public, and clients of the legal practice.

External intervenors can be appointed in a range of circumstances set out in clause 615, including where the practitioner has died, ceased to be a legal practitioner, or has become insolvent under administration.

Under clause 616 the Law Society Council may appoint a supervisor of trust money for a law practice where there are issues relating to the practice's trust accounts and it is not appropriate that the practice be wound up and terminated.

Under clause 620 the supervisor is responsible for the trust money and accounts of the practice. The supervisor has power to open trust accounts, receive trust money and keep records relating to the trust account. A supervisor's appointment terminates when a receiver or manger is appointed, when all trust funds are distributed or where the Law Society determines that the appointment should cease.

Clause 616 also allows the Law Society or Bar Council to appoint a manager where the practice is, or may become, a viable business concern and where for this to occur a person needs to be appointed to take over the professional and operational responsibility for the practice. For instance, a manager may be appointed where the principal is sick or cannot otherwise run their practice.

Under clause 626 the manager is responsible for carrying on the law practice. The manager may transact any urgent business, operate the trust account, accept instructions from clients and wind up the affairs of the practice. The manager's role ceases when a receiver is appointed with the powers of the manager, where the practice has been wound up, or where the Council has determined that the appointment should cease.

Under clause 616 the Law Society Council can apply to the Supreme Court for a receiver of a law practice to be appointed if it believes the appointment is necessary to protect clients' trust money and that it may be appropriate for the practice to be wound up and terminated.

Under clause 633 a receiver is to be the receiver of trust money and other regulated property, and to wind up and terminate the practice.

The *Legal Profession Act 1987* only provides for the appointment of receivers and managers. This bill provides another option of appointing a supervisor of trust money in circumstances where this would be more appropriate.

CHAPTER 6—provisions relating to investigations

Chapter 6 of the bill specifies the powers of investigation for:

- Trust account investigators;
- Trust account external examiners;
- A complaints and discipline investigator; and
- A compliance auditor.

Clause 670 allows the Legal Services Commissioner or the Law Society to conduct a compliance audit of a law practice to determine if the practice complies with the requirements imposed by the bill.

CHAPTER 7 Regulatory Authorities

Chapter 7 deals with the constitution, appointment and functions of the:

- Legal Profession Admission Board;
- Legal Profession Advisory Council;
- Legal Services Commissioner;
- Law Society; and the
- Bar Association.

These are largely the same as in the *Legal Profession Act 1987,* but modified where necessary to accommodate the changes introduced by implementing the national model provisions.

Under clauses 702-704 the Bar Council and Law Society Council will continue to be able to make rules in relation to legal practice.

CHAPTER 8—General Provisions

Chapter 8 contains provisions of general application to the bill.

Clause 721 provides a general disclosure provision allowing information to be shared with interstate and New Zealand regulatory bodies.

Conclusion

This bill adopts the national model legal profession provisions, it ensures a national approach to the regulation of the legal profession and removes barriers to legal practitioners practising across State and Territory borders.

It establishes a regulatory framework that meets the needs of the profession, while at the same time protecting the interests of consumers.

It is the culmination of many years' work and co-operation between the Governments of each State and Territory in Australia, the Commonwealth Government, and the Australian legal profession.

I commend the bill to the House.

The Hon. GREG PEARCE [1.57 a.m.]: The Opposition supports the Legal Profession Bill, which repeals and replaces the current Legal Profession Act 1987. The Attorney General said in the Legislative Assembly that the bill represents a major milestone in achieving consistency and uniformity in the regulation of the Australian legal profession. He said also that it will make it easier for lawyers to practise across the States and Territories, and that will indeed be the case. I spent some 25 or more years practising law, 22 years of which were spent with what is now a major national and international firm, Freehills. I experienced both the highs and the lows of our State-based legal system, having come into the profession in the late 1970s.

By the time I became a partner in Freehill Hollingdale and Page in 1983 the firm had made the first real progress in the march towards a national law firm practice. We owe a great deal to Brian Page, a prominent and forward-thinking lawyer who saw the importance of developing a national legal practice. But it was not an easy proposition at that time. We made a convoluted arrangement with a Western Australia law firm, Muir Williams Nicholson and Co. In those days the various States required lawyers to appear before the Supreme Court to be admitted as a solicitor, attorney, proctor or whatever, and off we all trooped to Perth to be admitted in the Supreme Court of Western Australia. I must admit that that was my first trip to Perth so I did not really mind the trip, but obviously the process involved a great deal of unnecessary expense and administrative inconvenience for everybody. I will not dwell on the history of the development of national law firms and the gradual breaking down of the barriers, except to mention briefly the peculiar situation of Queensland, where what we term the "dingo fence" was maintained. Among the methods to stop other lawyers practising in Queensland, they insisted that firm names could include only the names of the principals, and there were various residential requirements. We were very unhappy with the firm Blakes because it was able to find a Mr Blake who could become a partner in that firm in Queensland.

This bill represents a number of years' work by the Standing Committee of Attorneys-General and various other bodies, including the Law Council of Australia. And work is ongoing. A committee is working on various necessary amendments. Much of the new legislation includes matters with which we are familiar, including the disciplinary system, trust accounts, fidelity funds and all the other consumer protection provisions that apply to lawyers. Most of the provisions will assist in arrangements between the various jurisdictions. Given the late hour, I will not go through all the provisions. The Attorney General and the Minister in this place have set out the provisions at length.

As the bill has 462 pages, it would not do us much good to go through it in great detail tonight. However, it must be said that for many, many years the profession has prided itself on giving good service to the community and, as part of that, disciplining itself and ensuring that it has very high standards. This package represents a great deal of work by members of the profession—and various departmental officers—who want to ensure the highest standards as well as the best opportunity for them to practise across Australia. I join with the Attorney in mentioning former New South Wales Parliamentary Counsel, Dennis Murphy, QC, whom I have known for a considerable time. He was very much involved in the drafting of this bill. He has been a real stalwart for New South Wales for many, many years.

New South Wales initiated the process and led the Standing Committee of Attorneys-General in coming up with the model laws. The bill adopts a national model legal profession and ensures that a national approach to regulation of the legal profession is taken. It removes barriers to legal practitioners practising across State and Territory borders, and establishes a regulatory framework that meets the needs of the profession while at the same time protecting the interests of consumers. As I said, it is the culmination of a number of years work, and some work will be ongoing. I commend the bill to the House.

Reverend the Hon. FRED NILE [2.03 a.m.]: Judging by the size of the bill, we should all spend about three hours speaking to it. I suggest that the reason the bill is so thick is that lawyers wrote it and put it together. They have covered every possible contingency and aspect.

The Hon. Greg Pearce: No, there will be more.

Reverend the Hon. FRED NILE: There will be more; this is the first edition. There will be further editions. From memory the bill introduced in 1987 was only about half as thick as this bill. It will increase to the size of a phone book as times goes on. The object of the bill is to replace the Legal Profession Act 1987 with a new Act to provide for the regulation of legal practice in New South Wales and to facilitate the regulation of legal practice on a national basis in conjunction with the national legal profession model laws project. We support the bill. I am sure that if lawyers perceive problems with the legislation they will soon draw them to our attention.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [2.04 a.m.]: I simply note that we were briefed on this bill only this week. The bill is more than 500 pages long and it was presented in this House at 1.55 a.m. today. One can only assume that it is right; certainly, the lawyers have said so. Whether they are the only stakeholders in the matter is another question. I am concerned about the way this Parliament works, with so little information being provided to members so late.

The Hon. PETER BREEN [2.05 a.m.]: This bill is the culmination of work by the Standing Committee of Attorneys-General and the various legal professions around Australia. It is part of the model bill to enable practitioners to practise across all jurisdictions. However, in addition to the model bill provisions, it has some 100 other provisions that were prepared by the Bar Association, the Law Society and the Commissioner of Legal Services in New South Wales. They were prepared by lawyers, and they are directed at the interests of lawyers. To my mind, there has not been sufficient input into the process by law consumers, who pay for these services. I am disappointed about that because from time to time the legal profession has an opportunity to consult with the community, and often it does not do so. I foreshadow a modest amendment I will move in Committee; I will not canvass it at length, given the hour.

There is a problem in the legal profession in terms of complaints. Once a lawyer is the subject of a complaint, everyone goes into secrecy mode. The lawyer cannot find out even the fact that there is a complaint through the Law Society or the Bar Association. Their argument is that these matters need to be treated privately until they are fully investigated. A number of offenders continue to do what they have been doing which is the subject of investigation. They do it with impunity, often for a number of years. In a recent case reported in the Source column in the *Sydney Morning Herald* a legal practitioner had been under investigation for many years for overcharging. During the hearing before the Administrative Decisions Tribunal, which is where the matter eventually ended up, the practitioner reported that he thought he was acting properly because no-one had complained about his activities except a certain parliamentarian named Peter Breen.

The only place where people can complain about a legal practitioner under investigation is in the Parliament. That situation should be remedied. The Legal Services Commissioner would like to see it remedied. Indeed, during the drafting of the bill the Legal Services Commissioner urged on the Law Society and the Bar Association the possibility of introducing a provision that would allow for disclosure of an investigation. Today on the front page of the *Daily Telegraph* there was a report that more than 100 medical practitioners were under investigation. As usual, people can find out who is under investigation and what they are being investigated for. Yesterday the House passed a bill dealing with building contractors. One provision enabled the department to suspend a builder's licence for 60 days. In the case of builders, there is no question that people can find out when a builder is under investigation.

One good reason for finding out is to avoid the person under investigation continuing to do what he or she has have been charged with and what he or she is being investigated for. There is no reason that the same provision should not apply to legal practitioners. On that basis, I urge honourable members to support my

amendment, which is important. It would not cause them any great grief or disadvantage. Yet from the point of view of consumers, it has been demonstrated overseas that when the process of investigation and complaint is open and accountable, the number of complaints are reduced and law consumers find themselves in a much better position because they can inquire through the professions about people with whom they are about to do business or people with whom they have been dealing. On that basis I urge honourable members to support the bill generally—given its size, it was worthy of much better treatment by the House—and my amendment.

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [2.10 a.m.], in reply: I thank honourable members for their support for the bill. As the Attorney General indicated in the other House, this bill is a culmination of an historic process undertaken by the Standing Committee of Attorneys-General to establish a truly national legal profession. So far as the Hon. Peter Breen's comments concerning public access to information about legal practitioners are concerned, the Government will not be supporting his amendment, and I will deal with this matter in more detail at the Committee stage. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Chapters 1 to 3 agreed to.

The Hon. PETER BREEN [2.12 a.m.]: I move Reform the Legal System amendment No. 1:

No. 1 Page 310. Insert after line 24:

529 Disclosure of information about investigation

(1) A Council or the Commissioner is authorised to disclose to any person:

(a) the fact that a complaint against a named Australian legal practitioner is the subject of an investigation, and

(b) the general nature of the complaint, and

(c) the length of time for which the investigation has been conducted.

(2) A Council or the Commissioner must not disclose information under this section if of the opinion that disclosing the information is not in the public interest or will or is likely to:

(a) prejudice the investigation of the complaint, or

(b) prejudice an investigation by the police or other investigatory or law enforcement body of any matter with which the complaint is concerned, or

(c) place the complainant or another person at risk of intimidation or harassment, or

(d) prejudice pending court proceedings.

The object of this amendment is to provide for disclosure of information about investigation of legal practitioners. At the moment the situation is that secrecy provisions prevent the Legal Services Commissioner, or the Law Society or the Bar Association, disclosing even the fact of an investigation. The purpose of the amendment is to allow people making inquiries of those bodies to be advised whether or not an investigation is under way, the general nature of the complaint and the length of time for which the investigation is being conducted. There are in the bill other provisions that provide privacy safeguards. There is also in my amendment a public interest provision. The general purpose and object of the amendment is to allow law consumers who do not have the benefit of the same kind of understanding of these matters as lawyers, to learn what on earth is happening with either a person they are dealing with, or to make an inquiry about someone they are about to deal with.

As an example, there was an interesting article in the *Law Society Journal* in November about mortgages, and solicitor mortgages in particular. Solicitor mortgages often involve misappropriation; in one matter currently under investigation a practitioner has misappropriated something of the order of $8 million. This practitioner is well known in Sydney; he is still working in real estate. He has been under investigation now

for about three years. Many people who have dealt with him, and who are still in the process of dealing with him, have no idea of the extent of his culpability. Yet because of the provisions of the Legal Profession Act the Law Society is not able to make any disclosures. So unless one happens to know who used to work with this practitioner, one cannot possibly find out what he has been up to.

This process ought to be open and accountable. The Legal Services Commissioner fully endorses this amendment and has been urging a similar amendment upon both the Bar Association and the Law Society. The commissioner points out that in jurisdictions in America that have this transparent and accountable complaints system in place, the number of complaints have decreased and people's expectations are not so high; they are less concerned about what is happening when they can simply make a phone call and find out. Also it builds better relations between clients and practitioners. I urge honourable members to support the amendment, which I commend to the House.

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [2.13 a.m.]: The Government opposes this amendment. As I have already indicated, reforms contained in this bill provide greater public access to information about legal practitioners. Clause 106 provides for a public register of practising certificates to be maintained by the professional associations, which must state any conditions imposed on the practitioner in relation to engaging in legal practice. Part 4.10 provides for publicising disciplinary action taken under the Act by any of the regulatory authorities. The Legal Services Commissioner will continue to maintain, on its Internet site, a public register of all disciplinary action taken against a legal practitioner.

The definition of "disciplinary action" has been expanded to include circumstances where a legal practitioner is reprimanded without a formal finding of unsatisfactory professional conduct or professional misconduct. The commissioner and the relevant council may also publicise disciplinary action taken against a practitioner in any other way they think fit. In these ways, the bill ensures that the public will have access to information about any practitioner who has been found to have engaged in unsatisfactory professional conduct or professional misconduct, who has been disciplined for conduct that does not amount to misconduct, who has any restriction on his or her practising certificate, or who has had a receiver or manager appointed to his or her practice. I believe that this goes far enough in providing consumer protection information to the public about miscreant solicitors.

Every year nearly 3,000 complaints are made against members of the legal profession, many of them on very slight grounds. For example, in 2003-04, 2,806 written complaints were received and 2,829 complaints were finalised. Of those, only 103, or 3.6 per cent, were considered sufficiently serious to be referred to the tribunal for disciplinary action. To provide the public with access to the details of the other 2,726 complaints would be to make public a wide range of possibly vexatious and/or unfounded claims against members of the profession.

Some 1,460 complaints—51.6 per cent of those finalised—were dismissed, on grounds including that the complaint was withdrawn or insufficient particulars were supplied; that it would be unlikely that the tribunal would make a finding of unsatisfactory professional conduct or professional misconduct, or on the ground that they were vexatious, frivolous or unsubstantiated. Of those 1,369 complaints that were not dismissed, 1,216 complaints—nearly 90 per cent—were satisfactorily resolved through informal dispute resolution. These are consumer disputes, where a client seeks redress, and the conduct in question does not warrant disciplinary action.

Many of the complaints do not have a bearing on the professionalism or competence of the legal practitioner concerned. If we take out consumer complaints and dismissed complaints, there were only 153 complaints in 2003-04. I consider that, rather than publicising every complaint against every practitioner, existing practices by the Office of the Legal Services Commissioner to reduce complaints are better targeted and more likely to be effective. The Office of the Legal Services Commissioner has in recent years identified a number of practices and practitioners whose records comprised a large number of complaints. The office has assisted a number of those practitioners in identifying areas of weakness. The practitioners were encouraged to take positive steps to alter their in-house procedures to improve client service and prevent further complaints. Their intervention ranges from a quick phone call to point out an error to an extensive interview with the commissioner. It is in the public interest for the Office of the Legal Services Commissioner to intervene to prevent complaints wherever possible.

The Hon. GREG PEARCE [2.19 a.m.]: The Opposition notes that this bill was introduced as a result of a lengthy and considered set of negotiations at a national level to develop the model and progress with this

legislation. In those circumstances, we do not think it would be appropriate to amend it at the moment. We note also the comments of the Minister. I draw to the attention of the Hon. Peter Breen that the memorandum of understanding signed by the Attorneys-General in relation to the process has established a joint working party with representatives from each State and Territory and the Commonwealth and the legal profession to consider any further amendments and anything that is required in regard to the implementation and operation and other provisions of the legislation. Perhaps the appropriate course would be for the honourable member to make the suggested amendment to the working group.

Amendment negatived.

Chapter 4 agreed to.

Chapters 5 to 8 agreed to.

Schedules 1 to 9 agreed to.

Title agreed to.

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

CRIMES (ADMINISTRATION OF SENTENCES) AMENDMENT (PAROLE) BILL

Second Reading

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [2.22 a.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The object of the Crimes (Administration of Sentences) Amendment (Parole) Bill 2004 is to make various amendments to the Crimes (Administration of Sentences) Act 1999 with respect to the operation of the parole system and the workings of the Parole Board, which is a statutory body. Since it was first elected, the Carr Government has continually worked to improve the New South Wales parole system. The Government is of the view that the emphasis of the parole system should be on what is right for the community. The provisions of the Crimes (Administration of Sentences) Amendment (Parole) Bill 2004 will closely align the parole system with the expectations of the community. A particular focus for the Government has been on the interests of victims of crime. Victims groups have already welcomed the proposal and are anticipating the bill.

The Government's most recent legislative improvements to the parole system were introduced by means of the Crimes Legislation Amendment (Parole) Act 2003. Among other things, the Act made changes to the composition of the Parole Board. The Act introduced a presumption in favour of parole supervision in respect of a parole order made by a court. If a court now makes a parole order and the court does not impose conditions requiring the offender to be subject to supervision, unless the court expressly states otherwise, the parole order is taken to include supervision conditions. By this means the Government has increased the number of parolees under supervision by the Department of Corrective Services' Probation and Parole Service thereby giving added protection to the community and added support to offenders. The Act also requires the Parole Board to give reasons for its decision when it decides to release an offender on parole. The board is in this way accountable to the community.

Some aspects of the 2003 Act had their genesis in the tragic death of an inmate in early 2003. The inmate had been detained beyond his release date due to an administrative error. In response to this most unfortunate occurrence, the Minister for Justice asked Mr Vernon Dalton, AM, to investigate certain aspects of the case, and Mr Dalton subsequently recommended that a number of administrative reforms be implemented to enhance the work of the Parole Board. Despite the Government's efforts, both recent and past, there remained scope for improvement to the system of parole and the workings of the Parole Board. Consequently, the Minister for Justice asked Mr Vernon Dalton to conduct a further inquiry. The Minister asked Mr Dalton to examine the structure, membership and procedures of the Parole Board and its secretariat with a view to ensuring that the board discharges its functions efficiently and effectively. Mr Dalton subsequently submitted a report for the Minister's consideration. Many of the provisions of the Crimes (Administration of Sentences) Amendment (Parole) Bill 2004 stem from the recommendations in Mr Dalton's report.

For the benefit of members, I advise that Mr Dalton is a former Chairman of the Corrective Services Commission, which was the authority under the old Prisons Act 1952 that was responsible for the administration of the Department of Corrective Services. Mr Dalton served as Chairman of the Corrective Services Commission from 14 December 1981 until 27 March 1987. After leaving this position, Mr Dalton served as the Director-General of the Department of Community Services. Following his retirement from the public sector, Mr Dalton served as chief of staff to the Hon. Virginia Chadwick, MLC, a Minister in the Greiner and Fahey Coalition governments.

Parole is a pivotal phase in the rehabilitation of an offender. The Government recognises, however, that not all offenders are eager to address their offending behaviour. The Government is of the view that an offender wanting parole should display a desire to behave lawfully and a willingness to address his or her offending behaviour. An underlying principle of the bill before the House is that parole is a privilege not a right. I shall now outline some of the more significant changes proposed in the bill. In recent years the Parole Board has acquired functions additional to its responsibilities in relation to parole. The board now determines such things as: whether to revoke a periodic detention order; whether to reinstate a revoked periodic detention order; whether to substitute home detention in place of a revoked periodic detention order; whether to revoke a home detention order; and whether to reinstate a revoked home detention order or prior revoked periodic detention order. These are important functions that the board now performs. So it is proposed that the Parole Board be renamed the State Parole Authority [SPA].

The bill also makes changes to the constitution of the proposed SPA. At present, the Secretary of the Parole Board is a member of the board. The secretary will not be a member of the SPA. The Government is of the view that, despite there being certain administrative advantages in having the secretary as a member of the SPA, it is inappropriate for the secretary to have the capacity to sit on a meeting of the SPA which deals with the substance of a particular case. The Government is, however, of the view that it is sensible for the secretary to sit on a committee which deals with purely administrative matters. The bill reflects these sentiments.

Importantly, the bill provides for at least one of the SPA's community members to be a person who, in the opinion of the Minister, has an appreciation or understanding of the interests of victims of crime. Such a community member is not to be confused with a victim's representative. Any such community member will not be an advocate for victims. The community member or members will simply add to the SPA's expertise in dealing with victims' issues. All SPA members should be cognisant of victims' issues. The inclusion of a community member or members with an appreciation or understanding of the interests of victims is intended to give victims of serious offenders, and victims generally, added confidence in the fact that their interests as victims, and in the case of victims of serious offenders, their victim's submissions, will be given appropriate consideration by the SPA in the decision-making process. The role of the SPA must be to act as a discerning group of individuals assessing parolees and acting in the public interest as the community gatekeeper.

The need to protect the community is a theme that flows through the bill. Proposed new section 135 relates to the general duty of the SPA. New section 135 (2) contains several matters that previously the SPA did not have to take into account in deciding whether the release of an offender was in the public interest. The new matters that must be taken into account are the need to protect the community, the need to maintain confidence in the administration of justice, the nature and circumstances of the offence, and guidelines established by the SPA in consultation with the Minister in relation to the exercise of the SPA's functions.

The guidelines to which I have just referred are intended to ensure that there is consistency in the process observed and outcomes derived by the variously constituted divisions of the SPA. As with the Parole Board, the SPA may be constituted into divisions to carry out its functions. Following the proposed amendment to section 184, a division of the SPA will consist of one judicial member, at least one community member, and one or more of the official members. The secretary will no longer be a member of a division. For the benefit of honourable members I advise that, for decision-making purposes, a division of the SPA is taken to be the SPA.

I wish to allay any concerns that the drafting of guidelines will encroach upon the SPA's independence. The bill provides for the guidelines to be developed by the SPA in consultation with the Minister. In contrast, the Queensland system provides for the Minister to make guidelines. The purpose of the SPA guidelines is to assist the SPA in making decisions. The guidelines are not intended to override evidence placed before the SPA, nor inhibit SPA members from exercising their discretion. The guidelines will deal with matters such as parole consideration and documents that may be provided to assist the SPA in reaching a decision. The guidelines will provide details of the kinds of things an inmate should achieve prior to being granted parole, such as a low-level security classification, which indicates acceptable behaviour and satisfactory progression in the correctional system. The guidelines will assist current and future members of the SPA to understand their role and the policy considerations that led to the development of the legislation under which the SPA is to operate.

In keeping with the emphasis on the protection of the community, new section 135 (3) provides that except in exceptional circumstances the SPA is not to release a serious offender on parole unless the Serious Offenders Review Council [SORC] advises the SPA that it is appropriate for the offender to be considered for release on parole. This provision recognises the fact that the information on which the SORC relies to prepare reports and to provide advice concerning the release on parole of an offender is accumulated over a lengthy period.

New section 135A sets out matters to be addressed in a report provided to the SPA by the Probation and Parole Service in relation to the granting of parole to an offender. The SPA will also address these factors in its decision. The Probation and Parole Service must examine such things as the risk of the offender re-offending while on parole and the measures to be taken to reduce that risk. The offender's willingness to participate in rehabilitation programs, and the offender's success or otherwise in such programs must be commented upon. The report is to address the offender's attitude to any victim of the offence, and to the family of any such victim. In section 135A the Government is ensuring that the SPA, which is essentially a decision-making body, is provided with the information that it needs from the Probation and Parole Service to make informed decisions.

I will briefly provide a description of the parole process for the benefit of honourable members who may not be familiar with the process. In the main, the Parole Board considers matters involving offenders who are serving sentences that are longer than three years for which a non-parole period has been set. The Parole Board meets in private to consider whether an offender should be released on parole. The board makes a decision on the basis of the written material placed before it. If the board decides to release an offender, and the offender is not a serious offender in respect of whom a victim wishes to make a submission, it will make a parole order. In the event that the Parole Board decides not to release an offender on parole, the offender is given the opportunity to appear before the board at a review hearing to present his or her case for parole. Offenders currently have an automatic right to appear before the board irrespective of the merits of their case.

In the case of serious offenders, there is a statutory requirement for the Parole Board to give notice to all victims of the offender whose names appear on the victims register that the board proposes to release the offender or that the board proposes not to

release the offender and the offender has sought to make a submission at a review hearing. Each registered victim may then decide whether to make a submission to the board.

The Government is proposing to make changes to the procedures in respect of the consideration of an offender for parole. These changes, apart from being in the interests of general efficiency, are in the community interest and in the interests of the victims of crime. Sections 137 and 143 of the Crimes (Administration of Sentences) Act 1999 provide that, if an offender is not released on parole when the offender first becomes eligible for release, the Parole Board must reconsider the matter within each successive year unless the offender is no longer eligible for release on parole. Generally speaking, the Parole Board should reconsider each case towards the end of each subsequent 12-month period. The Parole Board is able to decline to reconsider a case for up to three years and can defer making a decision for up to two months.

In the past, the Parole Board has sometimes reconsidered cases early in the ensuing 12-month period after an offender has not been released on parole. In the Government's view, the early reconsideration of a case is contrary to the original intention of Parliament. Moreover, the practice consumes the resources of the board, the Department of Corrective Services, and the Serious Offenders Review Council when a serious offender is involved. The early consideration of cases may cause anguish to some victims. The making of a submission would be a difficult exercise for many victims.

Proposed new sections 137A and 143A will ensure that the SPA is to reconsider cases only at the end of each subsequent 12-month period. However, the bill makes provision for the different circumstances that may arise. The 12-month requirement for the reconsideration of cases will not apply where the SPA is satisfied that the offender would suffer manifest injustice if it did not reconsider the case sooner, for example where an offender who has been undertaking a required rehabilitation program completes the rehabilitation program shortly after the SPA has considered the offender's case and decided not to grant parole because the offender has not completed the required rehabilitation program.

Regulations will prescribe the circumstances that may amount to manifest injustice. The 12-month requirement for the reconsideration of cases will also apply when the SPA revokes a parole order and the parole order is not revived at the mandatory hearing to review the revocation. In cases involving parole revocation, the 12-month requirement will commence from the date on which the offender is returned to prison. In the past, the Parole Board has seen an offender in person only when the offender has sought a review of the board's decision not to grant the offender parole. New sections 137C and 143C provide that the SPA may examine an offender for the purpose of considering the offender's case should the SPA consider that such an examination would be worthwhile. The SPA is not required to examine an offender but can choose to do so.

As I stated earlier, where an offender is not released on parole when he or she first becomes eligible for parole, sections 137 and 143 require the Parole Board to reconsider the offender within each successive year. The offender does not need to apply to be reconsidered—it happens automatically. However, some offenders behave so poorly that they know, or should know, that they have no prospect of gaining parole. The Government believes that it is reasonable for the Act to be amended to provide that where the SPA has refused to make a parole order at the end of a non-parole period, or where a parole order has been revoked and the offender returned to custody, the SPA should not be automatically required to reconsider the offender for parole each year.

The SPA should be required to reconsider an offender's case only if the offender applies for parole. The manifest injustice safeguard exists to protect the legitimate interests of offenders. By requiring offenders to apply for parole, the Government will reduce the number of cases to be considered by the SPA where all parties to the proceedings know that, given the circumstances, the offender will not be granted parole. The Government also believes that an offender should not be entitled automatically to a review hearing after the SPA has formed an initial intention not to release the offender on parole.

New sections 139 and 146 provide for the withdrawal of the automatic right to a review hearing. It is proposed that if the SPA forms an intention to refuse parole, the SPA will determine whether the offender should be entitled to a review hearing or whether the offender should be required to apply for a hearing, in which case the application will need to convince the SPA that a hearing is warranted. Whether a hearing will in fact be held will be at the discretion of the SPA.

The Government is of the view that the SPA is in the best position to determine whether an offender should be entitled to a review hearing. In some cases the SPA will recognise at the outset that a review hearing will be necessary in order to make a final decision in respect of parole. In other cases the onus will be placed rightly on the offender to satisfy the SPA by way of a written application that the offender's circumstances warrant a review hearing. Most people would agree, for example, that a sex offender should not be automatically entitled to a review hearing if the offender has refused to participate in the sex offender programs offered by the Department of Corrective Services. New sections 139 and 146 recognise, among other things, that the SPA has finite resources that should not be wasted on offenders who have made no attempt to address their offending behaviour.

The Government is aware that many offenders have poor literacy skills—indeed, some offenders are totally illiterate. Some offenders will have difficulty without proper assistance in applying for parole. Some offenders will also have difficulty without proper assistance in applying for a review hearing. I assure the House that the Department of Corrective Services will provide proper assistance to offenders to help them with their written applications. The department will develop appropriate user-friendly application forms. Of course, offenders will also be able to obtain assistance from outside the correctional system to complete application forms. At present, after having decided that an offender should be released on parole, the Parole Board must make an order that the offender be released on parole on a day that falls within a seven-day period. The seven-day period for a serious offender commences after the seven-day period in which an appeal may be made to the Court of Criminal Appeal.

New section 138 provides for the SPA to order the release of a non-serious offender on parole during a specified period that is longer than the current seven-day period. If a parole order is made earlier than the offender's parole eligibility date, the specified period will begin no earlier than the parole eligibility date and end no later than 35 days after that date. Where the order is made after the parole eligibility date, the specified period will begin on the date that the parole order is made and end no later than 35 days after the date on which the parole order is made. Similarly, new section 151 provides for the SPA to order the release of a serious offender during a specified period. If the order is made earlier than 14 days before the offender's parole eligibility date, the specified period begins no earlier than the offender's parole eligibility date and ends no later than 21 days after that date.

Where the order is made after the parole eligibility date, the specified period begins no earlier than 14 days after the date on which the order is made and ends no later than 35 days after that date.

In the case of a serious offender, members will note that the period available to the State in which to research, prepare, and lodge an application to the court in respect of a parole order thought to have been made on the basis of false, misleading, or irrelevant information has been increased from seven days to 14 days. The seven-day period was inadequate. The proposed changes to broaden the period in which an offender can be released on parole should not be seen mistakenly as a punitive measure. There have been cases when the Parole Board has not been able to release an offender on parole because suitable accommodation has not been available within the current seven-day time frame. The purpose of the proposed expanded time frames is to ensure that there is sufficient opportunity for the department to make suitable post-release arrangements for an offender.

Proposed section 141A and new sections 153 and 185 relate to submissions to the SPA. Proposed section 141A provides for the Commissioner for Corrective Services to make a submission to the SPA concerning the release on parole of an offender. The commissioner may make a submission in relation to a matter that has been considered, is being considered, or is to be considered by the SPA. In view of the nature of the information that may come to the commissioner's attention, the SPA will be required to have regard to any such submission from the commissioner. Under proposed section 141A, the SPA must take into account a submission from the commissioner in relation to an offender who has not yet been released on parole, irrespective of whether the SPA has made a decision to grant parole.

New section 153 provides for the State to make a submission to the SPA concerning the release on parole of a serious offender. The State may make a submission in relation to a matter that has been considered, is being considered, or is to be considered by the SPA. This provision will eliminate a difficulty that could arise at present when the Parole Board initially indicates that it intends not to make a parole order in respect of a serious offender and then later decides at a review hearing to make a parole order in respect of that offender. In such circumstances, the State would be denied an opportunity to make a submission to the board. New section 153 will eliminate this potential difficulty.

The functions of the SPA are restated in new section 185, which also provides that when exercising its functions the SPA must have regard to submissions made by the commissioner. The nature of the position of commissioner makes it highly likely that the commissioner will be privy to information relevant to a matter before the SPA. On certain occasions it will be appropriate for the commissioner to make a submission to the SPA based on that information. A submission by the commissioner may be in respect of any of the SPA's functions in regard to parole, periodic detention or home detention. Members will be aware that the SPA's primary role is to consider whether to release an offender on parole. The SPA is not empowered with a hands-on role in the ongoing management of an offender who is in custody. New section 232 (1) (a1) makes it clear that the commissioner is responsible for the care, control and management of offenders in full-time custody, periodic detention or home detention. It is important therefore for the SPA to have the ability to make a recommendation to the commissioner in respect of any matter that may be relevant to the granting of parole.

Proposed section 193B authorises the SPA to make submissions to the commissioner as to the preparation of offenders for release on parole, either generally or in relation to any particular offender or class of offender. The operational realities of the correctional system dictate that the commissioner not be bound by any such recommendations made by the SPA. Nevertheless, the proposed section recognises the fact that from time to time the SPA is expected to make observations of value to the management of the correctional system. I said earlier that the secretary would not be a member of the SPA. I also mentioned that currently there are administrative advantages to the secretary being a member of the Parole Board. For instance, at present the Secretary of the Parole Board can be called upon at short notice to help constitute a division of the board. The secretary's entitlement to be a member of a division is useful in cases where there is urgent cause to revoke a parole order. Nevertheless, as stated earlier, the Government has decided that the secretary should not sit as a member of the SPA at a meeting that deals with the substance of a case.

However, there remains a need for a process for the swift revocation of a parole order. Such processes exist in overseas jurisdictions such as Canada and New Zealand, and in domestic jurisdictions such as Queensland. New section 172A provides a process for the swift revocation of a parole order. In the event that a division of the SPA cannot be constituted, the proposed section will enable the commissioner to apply to a judicial member of the SPA for an order suspending an offender's parole order and, if necessary, a warrant for the offender's arrest. The judicial member to whom the commissioner applies for an order will grant an order only if satisfied that the commissioner has reasonable grounds for believing that the offender has failed to comply with the offender's obligations under the parole order, or if there is a serious and immediate risk that the offender will leave New South Wales in contravention of the parole order, harm another person, or commit an offence. While the provisions of this section are likely to be used infrequently, the introduction of a mechanism for urgent situations is necessary in the community interest. Ideally, of course, it will be possible to constitute a division of the SPA in all urgent cases.

New section 172A also provides that the SPA is to review a decision to suspend a parole order within 28 days of the offender being returned to custody. The new section recognises the urgency that will be associated with applications for an interim suspension of a parole order. The section provides for applications to be made in person or by telephone, electronic mail, or facsimile transmission. The consideration of offenders for parole often causes victims alarm and anguish. The Department of Corrective Services is of the view that on occasions a victim may better deal with the prospect of the proposed release on parole of an offender if the victim has access to some of the information in the possession of the SPA. New section 193A gives a victim of a serious offender access to documents held by the SPA in relation to an offender, subject to certain safeguards under section 194.

Section 194, which deals with the security of certain information, currently states that a document need not be provided if in the opinion of a judicial member of the Parole Board the release of the document would adversely affect the security, discipline or good order of a correctional centre, endanger the person or any other person, jeopardise the conduct of any lawful investigation, or prejudice the public interest. Section 194 is to be amended to expand the grounds on which a judicial member of the SPA may prohibit the disclosure of a document to include the grounds that the document might adversely affect the supervision of offenders who have been released on parole, and that the document might disclose the contents of an offender's medical, psychiatric or psychological report.

When the Parole Board decides that an offender has failed to comply with his or her obligations under a parole order, the board may do one of three things: revoke the order; decline to revoke the order—in which case the board may issue what is known as a "board warning"—or decline to revoke the order but impose further conditions. If the board decides to revoke a parole order, it must state the reason for doing so. There is, however, no parallel section requiring the Parole Board to give reasons when it decides not to revoke a parole order. The Government is of the view that the SPA should be required to give reasons when it decides not to revoke a parole order where the commissioner or a probation and parole officer has applied for revocation of the order. It is to be expected that from time to time there will be occasions on which the SPA will reject a request for the revocation of an order. New section 193C will require the SPA to keep records of its decisions and to supply copies of them to the Minister, the commissioner, or the Probation and Parole Service on request.

The Crimes (Administration of Sentences) Act 1999 currently provides for an offender or the State to apply in certain circumstances to the Court of Criminal Appeal [CCA] for a direction as to whether in making a decision the Parole Board relied on material that was false, misleading or irrelevant. The requirement for appeals to go before the CCA has existed from the time of the introduction of the Sentencing Act 1989. The appeal-related provisions of the Sentencing Act 1989 later became sections of the Crimes (Administration of Sentences) Act 1999. At various times the Law Reform Commission and judges of the CCA have commented on appeals involving Parole Board decisions. The consensus has been that the requirement for matters to be determined by the CCA, which is constituted by three Supreme Court judges, is unnecessary.

The proposal to omit from the Act all references to the Court of Criminal Appeal and to insert instead references to the Supreme Court is common sense. It will provide for decisions of the SPA to be reviewed by the Common Law Division of the Supreme Court rather than by the CCA. It is possible that from time to time the chairperson of the SPA will be a retired Supreme Court judge. The Government believes, however, that the review of an SPA decision by a single Supreme Court judge in such circumstances will not be inappropriate as the Supreme Court will be reviewing a decision of the SPA and not a decision of the chairperson. The hearing of a review by the Common Law Division of the Supreme Court will clearly not diminish the integrity of the appeal process. Finally, the Corrections Health Service has been renamed under the Health Services Act 1997 as Justice Health. The name was changed to better reflect the organisation's role. The bill therefore makes various consequential amendments to the Crimes (Administration of Sentences) Act 1999, and I commend it to the House.

The Hon. DAVID CLARKE [2.22 a.m.]: The Opposition does not oppose the Crimes (Administration of Sentences) Amendment (Parole) Bill, which a number of amendments to the Crimes (Administration of Sentences) Act pertaining to the parole system and the operation of the Parole Board. The main objectives of the bill are to rename the Parole Board as the Parole Authority; to restate the obligations and proceedings of the Parole Authority; to more explicitly define the matters the Parole Authority must consider before making parole determinations; to specify that the Minister be allowed access to documents and information; and to provide for the possibility of more advanced notice of the parole of offenders than is currently the case.

The bill will extend the period that must elapse between the date on which the Parole Authority decides to release an offender on parole and the date on which the offender is released. It will direct appeals from the Parole Authority's decision to the Supreme Court rather than to the Court of Criminal Appeal. In urgent circumstances it will allow a judicial member of the Parole Authority to suspend an offender's parole order pending an inquiry as to whether the order should be revoked. There will be an increase in the penalty that may be imposed for misconduct before the Parole Authority.

It is the view of the Opposition that the bill does not make substantial changes. By and large, it redrafts existing legislation. For example, it does not change the authority's discretion to make decisions. The Opposition is concerned that there is no increased transparency and disclosure to the public of information on the parole of offenders. The Minister has been given no authority to direct the Parole Authority, even when there is an evident threat to community safety. There should be no automatic right to parole. It is a privilege that should be earned. It is an administrative process that enables an offender to be released after completing a minimum sentence but before the expiry of a maximum sentence. The high rates of recidivism in New South Wales indicate that the Parole Board increasingly fails in its responsibility to the community.

Figures referred to by the shadow Minister, the honourable member for Davidson in the other place, show an increase in recidivism from 35 per cent 10 years ago to more than 45 per cent today. The rate of recidivism in New South Wales is bad and getting worse. While the Parole Authority is obliged to consider submissions from the Minister about proposed parole releases, there is no compulsion for it to do so. Despite the Government confirming that some offenders have terrorist sympathies, the Minister has been given no power to direct that they serve their full sentences to protect the community. While the Opposition does not oppose this bill, it believes it highlights a lost opportunity to increase the accountability of the new authority.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [2.25 a.m.]: This disappointing bill appears to be an attempt to keep prisoners in gaol for as long as possible. On 30 June 2003 there were 23,555 prisoners Australia-wide and the New South Wales prison population was 8,881. The imprisonment rate per 100,000 in New South Wales was 169.4, which was 16 above the national average. The recidivism rate in New South Wales in 2002-03 was 45.4 percent, which was the highest in Australia. The national rate was 37.2 per cent, which is a worrying statistic. It shows that this Government is the worst in Australia at rehabilitating prisoners.

That is borne out by two simple examples. I asked a question of the Minister as to why visitors were not allowed to provide books for prisoners. The answer I was given was as follows:

> I am advised by the Commissioner of Corrective Services that departmental policy does not permit visitors to provide books to inmates primarily for reasons associated with security. Inmates have access to libraries in all correctional centres. These libraries, which contain a variety of books, are funded by the Department to meet the needs of the inmate population. Additionally, most correctional centres have the capacity to arrange inter-library loans.

However, this was a book on a computer course that the inmate was undertaking. It was quite specialised, and effectively he was not able to complete his course. Surely it should not be too dangerous for a prisoner to educate himself or herself. It should be possible to check the book to see whether any weapon was hidden within it. The second question I asked the Minister concerned a prisoner who was allowed access to a computer in Queensland to do a university course but who was denied a computer when he came to a New South Wales prison, which seemed quite unfair. He wanted to educate himself. I note also the submission of the Law Society which commented:

> It is clear that the aim of the Bill is to make it harder for an offender to obtain parole. Generally speaking, the proposed amendments tighten the requirements for obtaining parole, remove the right for offenders to be automatically considered for parole and fetter the discretion of the parole authority to deal with applications for parole.
>
> It appears that the catalyst for the Bill may be a perception that the Parole Board has been granting parole when it should not have, or that the Board has not been properly considering parole applications. No evidence has been documented to support this. The second reading speech refers to an inquiry conducted by Mr Vernon Dalton with a view to ensuring that the Board discharges its functions efficiently and effectively and states, "many of the provisions of the *Crimes (Administration of Sentences) Amendment (Parole) Bill 2004* stem from the recommendations in Mr Dalton's report". A copy of Mr Vernon's [sic] report is not publicly available. Accordingly, it is not known whether the Bill is, in fact, based on recommendations contained in his report.
>
> In the Committee's view—

that is to say, the Law Society's Criminal Law Committee—

> it is unnecessary to amend the current legislation. Resources would be better spent improving rehabilitation programs in custody rather than introducing rules which will result in offenders remaining in custody longer. Overall, the amendments disregard the long established principle that the non-parole period is the minimum period for which an offender must be kept in custody in relation to an offence.
>
> The Criminal Law Committee believes that the proposed amendments would result in more inmates being refused parole and that many offenders will remain in prison beyond the expiration of the non-parole period of their sentences. The Committee is very concerned that this will cause a further increase in prison population.

So, the Law Society is quite unhappy with this bill. Certainly it seems to be pandering to the perception that people should stay in gaol longer, which was enunciated by the Hon. David Clarke earlier in debate. We do not support the bill.

Ms LEE RHIANNON [2.30 a.m.]: The Greens oppose the bill. These amendments are not focused on improving the parole system to ensure that offenders are less likely to reoffend. We need a bill that delivers constructive changes to the way offenders are assisted when they seek parole, not one that makes it harder for offenders to get parole and responds only to the needs of the victims to participate in the parole process. As I have said before, the Greens understand the need of some victims to be involved closely in the judicial process relating to the crime, but we still hold the view that any increased focus on victim participation will not help to lower crime rates or make former prisoners better citizens once they are released. A victim's expression in court of the effect that crime had on him or her is a very different thing to allowing victims to participate in assessing an offender's risk to the community once the offender is paroled. We question the Government's initiative. The Parole Board already has community members who reflect a cross-section of the community. The parole process will not be improved by amending the Act to specify that members should be people with knowledge of the interests of victims.

There is a huge body of literature on the risks of reoffending, and they are not surprising. Socioeconomic levels, one's education and the degree of family support play a role. I doubt that these members with special victims' interests will be trained or skilled in this area. This move will no doubt make people feel good when it is announced on the news, but I question what value such a person would add to the assessment of the risk an offender poses to the community. The Greens are concerned that the provisions that served to increase the rights of victims do so by trespassing on the personal rights of prisoners. This bill gives victims of a serious offence access to the offender's records. The rights to privacy of serious offenders must be balanced

against the public interest and the interest of victims. The Parole Authority should be required under this legislation to consider the offender's rights to privacy. This provision is not well thought out at all.

The Greens believe the bill should focus on ways to ensure that offenders have a good integration plan upon release—more provisions for making stable accommodation plans, proper treatment of mental health issues and services for drug and substance abuse. The failure of the bill is that it does not propose any reforms to the rehabilitation services offered to prisoners during their term in prison; it does not address the problems that prisoners have getting their classifications reviewed; it does not address the services provided to prisoners as they seek parole; and its does nothing to improve reintegration plans for prisoners to ensure that they can move on with their lives without reoffending. The Greens hoped that the Government's parole reforms would have focused on delivering progressive, preventative legislation that reduces the number of reoffenders. Instead the Government has introduced a bill that makes it harder for people to get parole. The Government is moving forward with its program of increasing the participation of victims in the justice process, most notably through the use of victim impact statements in Local Courts.

The Government should offer prisoners greater opportunities to make meaningful changes to their lives to increase their chances of not reoffending when they are released. I suggest to honourable members, and this is where we so often part company, that such an approach is the best way to assist victims and to make our society safe. That is the retort we hear time and again when we delve into this debate, but so often the outcomes that are delivered through this legislation do not help to make our communities, our streets and our homes safer. We agree with the Government that community safety is of primary importance, but what is the point of legislating that the Parole Authority consider the safety of the community? Surely this is a given. It begs the question: What has the Government been doing up until now if it has just discovered community safety? The Government has replaced meaningful parole considerations, such as a prisoner's willingness to participate in rehabilitation programs and the support the prisoner has in the community, with droll rhetoric about maintaining public confidence in the justice system. The bill does not do justice to the Minister. We really could expect better from him. I think he would prefer to give us better, too.

The Hon. John Hatzistergos: It's a terrific bill.

Ms LEE RHIANNON: Okay, I will put that on the record. It is rather disappointing that is the level at which the Minister put himself. This bill smacks of the Government's usual archaic attitude towards prisoners. It gives no regard to improving their prospects for rehabilitation and places further limits on their civil liberties. Again, for the record, when prisoners are gaoled they suffer loss of liberties. Their sentence of imprisonment does not—

The Hon. Rick Colless: That's the whole idea.

Ms LEE RHIANNON: Precisely. That is the whole idea. Okay, hold onto that thought because that is the point I try to make every time. The loss of liberty is their sentence, but that does not mean that they then have to lose all their other rights. That is when those opposite usually interject and have a go at me. The bill enables the Commissioner for Corrective Services to wade into parole decisions, the latest example of the Government's agenda to broaden the power of its bureaucrats. Why is the Government not investigating ways to keep offenders out of prison or, when they do go to prison, finding ways to offer parole to them to get them out of the criminal justice system more quickly? What does the Government hope to achieve by making it harder for some offenders to obtain parole? Inevitably prisoners will be released into the community. The best chance the Government has of enhancing community safety is to offer more rehabilitation services to prisoners to improve their prospects for parole.

The Greens believe that the New South Wales parole system would be more aligned with community expectations if more emphasis were placed on giving prisoners who are eligible for parole better access to counselling services, personal development, and education and training opportunities. It is in the community's interest to give convicted offenders a better chance of building a life for themselves when they leave prison to help them reduce their risk of reoffending. Instead the bill will see more offenders stay in prison beyond the non-parole period of their sentence. It will increase the prison population. That is when I start to wonder whether perhaps the purpose of the bill, come the next election, is for the Labor Party to boast how many people it has behind bars. The Greens call on the Minister to consider more constructive parole reforms that assist offenders to make a better transition from prison to community life.

Reverend the Hon. Dr GORDON MOYES [2.37 a.m.]: I will be brief. I prepared a thorough speech, but in the light of the hour I will not use it. However, I will pull up a few important points. The bill is of interest

to me as a former parole officer. The Christian Democratic Party supports the Crimes (Administration of Sentences) Amendment (Parole) Bill but there are some issues the Government ought to revisit. I hesitate to commend all the provisions. I will mention just a few. The current Parole Board will be renamed the State Parole Authority. I wonder why that is necessary, apart from political correctness. In the past 10 years the name has changed from the Parole Board to the Offenders Review Board back to the Parole Board and now to the State Parole Authority. Everyone in gaol understands exactly what Parole Board means and they would much rather keep that title.

The Parole Authority must take into consideration parole issues such as the need to protect the safety of the community, the need to maintain public confidence in the administration of justice and the nature and circumstance of the offence. That is fair enough, but a whole lot of other things ought to be included. Having written many reports for parole boards over the years, I would include the offender's conduct while serving a sentence. That is a very important aspect that should be presented to the Parole Board. The board ought to know how the prisoner has behaved while serving a sentence. Something should be mentioned concerning the prisoner's willingness to participate in rehabilitation programs. It is always important to mention the availability of family, community or government support for the prisoner upon release and the likelihood that the offender will benefit from the grant of parole through rehabilitation programs.

None of those factors is required by the Parole Authority. I believe they should be. Although it requires some factors, I am concerned about the omitted factors. The Parole Board is not instructed to consider an offender's antecedents. In layman's terms, that means the Parole Authority must have regard to the offender's past. The offender's criminal history is just one element of his or her past. Other issues concerning the offender ought to be considered. For example, earlier today the Hon. Peter Breen made mention of Bronson Blessington, who is one of a number of offenders labelled never to be released and one of a number of people who participated in the killing of Janine Balding. That was an horrific killing and we have no respect for those involved in that rape and murder. However, this man was only 14 years old when he involved himself in the murder of Ms Balding.

I do not want to underestimate the gravity of the loss suffered by Ms Janine Balding's family. But I want to point out that Bronson at 14 had already had a very sad life. He had been sexually abused by four adult males, he was a street kid, he was an alcoholic, a petrol sniffer and basically uncontrollable. In 1990 while in prison he gave his life to Christ and became a Christian. Over the past 14 years in prison he has led more than 580 Bible studies within the prison yards with an attendance of well over 5,500 prisoners. In many people's eyes there is great evidence that he has been rehabilitated. That kind of background and antecedents ought to be part of the Parole Board's consideration. The authority must be given information regarding both the victim's interests and the offender's state in order to make an informed decision to release or not to release a person on parole.

I want to mention two or three other minor points that are very important for the person seeking parole. For example, under the existing regulations any serious offender, if parole is refused, will be considered again any time within the next 12 months. Under the proposed bill the offender is not given a date for reconsideration. He must make an application and this can only be made after 9 months have passed. There is no sense of hope for these people. A further problem is that it places the onus on the prisoner to make all of the approaches to the authority. Under the present regulations a hearing is automatically set if the board forms an intention not to make a parole order. Under the proposed provisions the Parole Authority sets a hearing only if the offender requests a hearing and if the Parole Authority is satisfied that a hearing is warranted.

A prisoner must make a request in writing. Honourable members would realise that many inmates are semi-illiterate. They are not able to make written submissions setting out why a hearing is warranted. In the past they have had access to the Legal Aid Service and the Aboriginal Legal Service. Both those services have been severely restricted in their funding and in their availability to prisoners. While I am happy on behalf of the Christian Democratic Party to commend many aspects of the bill, a range of issues should be carefully considered. I do not believe the Government has done that.

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [2.43 a.m.], in reply: I want to address some of the issues that have been raised, particularly those raised by Reverend the Hon. Dr Gordon Moyes. As to the claim by the honourable members that the Parole Authority should have to consider certain factors, I indicate that clause 135A requires the preparation of a report by the Probation and Parole Service which addresses factors including the conduct of a person in custody and the post-release plan. Clause 135 requires the Parole Authority to consider the contents of the report of the

Probation and Parole Service. For the first time, we require in this legislation the Probation and Parole Board to prepare a structured report detailing the various factors that will indicate the likely success of parole, and for the authority to make a decision based on that report and other discretionary matters, including a judge's sentencing remarks and the effect on victims.

It is important to understand that the philosophy underpinning these amendments is that the authority will be the decision maker. Unlike the situation in the past, the parole process has been driven by the board. The change of name will make it quite clear that the authority will comprise a discerning group of citizens who independently review whether the department and the offender have done their work so as to justify a decision for parole being made. It is not the function of the Parole Authority to act as an advocate on behalf of a potential parolee. For that reason the name of the body is being reconstituted and referred to as the State Parole Authority.

The emphasis in this legislation is for the Department of Corrective Services to offer opportunities to an offender to address his offending behaviour and to realise parole at the end of the minimum term. Of course, the offender will have to embrace those opportunities and be able to satisfy the board that the risk factors are such that a parole order ought to be made. It is wrong to say, as Ms Lee Rhiannon has attempted to, that minor offenders will be excluded from the parole process. I make it clear that 60 per cent of offenders are not paroled by the Parole Board. Those 60 per cent of offenders are serving sentences under three years. They get their orders from the court and they are automatically paroled at the end of their minimum term. They do not have to go through the parole process. Therefore, the argument that she puts that minor offenders will be disadvantaged has no substance.

Reverend the Hon. Dr Gordon Moyes said that if a person is refused parole he will be unable to apply again for parole until a determined date. That is correct. He will have to make application in writing and the board will have to consider in the first instance whether to have a hearing in the case of a serious offender and in the case of other offenders an opportunity to consider it in a different context. It is import to remember, however, that an exception is created in the bill, that is, where there is manifest injustice. In the event that a person is refused parole—for example, he may have courses to complete before he can be considered favourably for parole—there is a capacity for the matter to be brought forward and to be dealt with at an earlier time. Other than that, he will have to take his place.

It is not the job of the Parole Authority to be making hoops for offenders to jump through. From the moment offenders come into custody their job, with the assistance of the Department of Corrective Services, is to map out a plan to realise their parole at the earliest possible date. It is the job of the authority to make appropriate decisions as to whether those tests have been met. This bill will promote the independence of the Parole Board. It will not make it an advocate for parolees. The Hon. David Clarke said we had missed an opportunity because we were not directing the Parole Board sufficiently. There has been disagreement on this issue. On the one hand the Liberal Party is arguing the bill is not tough enough and on the other hand members are arguing that the bill is too tough. It is important that I clarify one thing, particularly in relation to serious offenders.

At present all serious offenders have to undergo a process with the Serious Offenders Review Council, which can make a recommendation to the board. The board is not bound by that recommendation. These amendments will require the Serious Offenders Review Council in relation to serious offenders to form an assessment as to whether it is appropriate for the Parole Board to consider releasing an individual to parole. The only exception is in the event of exceptional circumstances. In other words, if the Serious Offender Review Council says that a serious offender cannot be appropriately considered for parole, the Parol Authority must refuse parole.

The definition of "exceptional circumstances" need not be dogmatic. Rather, it is in a similar fashion to that expressed in sections 9C and 9D of the Bail Act. The State Parole Authority will assess the circumstances in accordance with the features of each case. Some guidance as to what constitutes exceptional at law is found in the English case of *Regina v Kelly* 2000 QB 198, where Chief Justice Lord Bingham said at page 208:

> We must construe "exceptional" as an ordinary, familiar English adjective, and not as a term of art. It describes a circumstance which is such as to form an exception, which is out of the ordinary course, or unusual, or special, or uncommon. To be exceptional, a circumstance need not be unique, or unprecedented, or very rare; but it cannot be one that is regularly, or routinely, or normally encountered.

Comments were made about whether we are somehow trying to put a muzzle on the State Parole Authority, particularly in this respect. I am reluctant to provide more specific guidance than this but make it quite clear that

there are two rationales underpinning the section. The first is to distinguish between the principal functions of the Serious Offenders Review Council and the State Parole Authority—the former being concerned with the management of serious offenders within correction centres, and the latter being the community's gatekeeper that, thus, concerns itself with the fate of the prisoner beyond the prison walls.

The second is to have a mechanism available for the State Parole Authority in situations where it is preferable to grant parole to a serious offender so that the offender is tested in the community under supervision, rather than hold offenders in prison and then catapult them into unsupervised liberty at the end of their term. This answers the criticism of Ms Lee Rhiannon that the bill does not deal with rehabilitation and the return of offenders to productive life. Other sections of the Department of Corrective Services and the Serious Offenders Review Council specifically direct their attention to that area. As I have indicated on numerous occasions during debate, it is not the function of the authority to act as some form of partial advocate in favour of potential parolees. Its function is to represent the community.

Ms Lee Rhiannon also referred to victims. I shall not labour that point at any length, except to say that it is important that the State Parole Authority have access to a wide range of information and expertise. Among that expertise it is important to have a knowledge and understanding of victims issues. It is not proposed that the individuals appointed to the authority will act as victims' advocates; rather, they will have a wide variety of information. Information by victims can assist the parole process enormously. We saw evidence of that earlier this week in the case of Russell Cox. The victim in that case, suitably armed with enormous information about that serious offender's time in custody and programs he had undertaken, was prepared to support his release. It is hoped that if victims are armed with further information, as proposed in this legislation, they will similarly be able to participate in the parole process, which will give the process greater legitimacy.

Finally, Ms Lee Rhiannon referred to the important issue of privacy, particularly in relation to the release of information. The bill enables the Parole Authority to have guidelines. It is my intention to ask the chairman of the Parole Authority, prior to proclamation and before the commencement of the Act, to develop guidelines for dealing with the privacy of prisoners in relation to the release of any information. That matter can be appropriately dealt with in that way, bearing in mind that the presiding judicial officer on the Parole Authority has the right to refuse access to information where it is not in the public interest to do so. "Not in the public interest" can include information that is of a purely private nature in relation to an offender.

Motion agreed to.

Bill read a second time and passed through remaining stages.

SPECIAL ADJOURNMENT

Seasonal Felicitations

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [2.54 a.m.]: I move:

That this House at its rising today do adjourn until Tuesday 22 February 2005 at 2.30 p.m.

On behalf of the Leader of the Government and my ministerial and other Government colleagues, I take this opportunity to offer my sincerest thanks to everyone in the Parliament who has worked so hard and tirelessly this year. On behalf of honourable members I thank you, Madam President. You have allowed this Chamber to undertake our important work and to debate the important issues placed before us. You have also managed to maintain order and dignity in the Chamber. You have kept the House focused on its proper business and presided with a firm hand. I thank you and your staff.

I thank the Parliamentary Counsel, Don Colagiuri, and his staff for their fine work throughout this year. They always manage to produce bills in a timely and patient manner. Their good work and good humour are appreciated. I wish to record also my gratitude and that of the Government—and I dare say all members—to the parliamentary attendants, who provide a first-rate service to all members of this House. I join my colleagues in their previous remarks in thanking George for his years of excellent service to the Parliament and wish him well in his retirement. We will miss his cheerful assistance.

I thank the Hansard staff. They work very long hours and yet every day manage to accurately and promptly record our words, often making us much more eloquent than we is! I thank the staff of the

Parliamentary Library. All members would acknowledge that the Parliamentary Library continues to provide an excellent service to members, and that service is greatly appreciated. I know I speak for all members when I thank David Draper, and the Parliamentary Dining Room and catering staff, who have literally sustained us through the year.

I acknowledge the important work of the Parliamentary Archives staff, the Building Services staff, the Education and Community Services staff, the Information Technology Services staff, the Printing Services staff, and the Security Services staff. I also thank the cleaners and other staff members, including the outdoor staff, who do a fantastic job of literally cleaning up our mess.

I particularly thank the Clerk of the Parliaments, John Evans, and his staff for the timely advice they manage to provide to members in an impartial and unfailing way on all occasions. I thank my ministerial staff and the ministerial staff of my colleagues for their dedication and hard work. On behalf of the Government I wish the members of the House and all the staff of the Parliament best wishes for a happy and safe holiday season. Merry Christmas!

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [2.57 a.m.]: On behalf of my friend and colleague the Leader of the Liberal Party, Michael Gallacher, and all my Liberal Party and Nationals colleagues, I echo the comments of the Deputy Leader of the Government. Given the late hour, I will not repeat his acknowledgement of all the parliamentary staff, except to say that I totally agree with him. The backup we all receive is terrific. The fact that our speeches read much better than what we actually said sometimes amazes us, but that is a fact of life with our Hansard friends. We sometimes do not sound quite as good when we are reported by our friends down on level 6. Thank you all.

On occasions this is a pretty robust Chamber but we manage to get through. On most occasions we do so with goodwill. We often feel passionate about certain issues but we do not leave the Chamber with any feelings of ill will, and that is important. Best wishes to everyone, but special best wishes to the serene Greek, George. He is marvellous and we will miss him. I hope all members and staff have a happy and safe Christmas with their families and I hope to see you all back here next year, one year closer to when we change benches!

Reverend the Hon. Dr GORDON MOYES [3.00 a.m.]: On behalf of the Christian Democratic Party, and not wishing to delay anyone, we wish everyone God's richest blessings at Christmas. It is a time to celebrate the birth of Jesus Christ, and that is so dear to us. But even those who are not of the Christian faith can rejoice in the emphasis upon love and peace in the world. We trust you all have every blessing at this Christmas time.

Motion agreed to.

ADJOURNMENT

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [3.02 a.m.]: I move:

That this House do now adjourn.

CHRISTMAS

Reverend the Hon. Dr GORDON MOYES [3.02 a.m.]: In its 2004 report entitled "Australian Social Trends" the Australian Bureau of Statistics found that nationwide 68 per cent of Australians declared their affiliation with Christianity. For those people, of course, Christmas is very important. I wanted not only to wish members of the House God's richest blessing at Christmas time, but to ask you to ponder the thought of a Christmas without Christ—because Christmas without Christ would mean that the very heart, core, or essence of Christmas would be removed. Yet, as honourable members may be aware, through talkback radio and in the major press during the past fortnight, that is an issue that faces so many of us.

A Christmas without Christ would mean that the message of Christ based on love, faith, and hope would be left to one side. What would the focus of Christmas be without Jesus Christ? Would we call it National Human Day? Would that appease so-called secular society? Would Love, Peace, and Reconciliation Day take precedence? Or perhaps we could have a National Tolerance Day for those who prefer to be politically correct? I have no hesitation in saying, as people have been saying all week in the press and on radio: If there were no Christ in Christmas, no Christmas prayers, no Christmas carols, no nativity scenes, there would be nothing to Christmas at all.

It might come as a surprise to some but there is a grieving trend in our so-called secular society—which is not as secular as we think—to erode the Christian tradition. The Melbourne *Age*, for example, reported that in government departments, city councils, and State schools the name "Jesus" is a banned word and even "Christmas" is giving way to "festive season" or "holiday season". Local councils have opted for Christian-free festivities and Christmas cards. I raised the issue with the New South Wales Health Department, which wanted a non-Christian Christmas card. The spirit of secular Christmas is summed up by banners one can currently see in Melbourne. The banners in the streets say, "Celebrate Melbourne".

That is almost an oxymoron. Although comical, it is a true depiction of the focus of secular society. All that is left is the festival of "you and me" consumerism, with no meaningful grounding. It is disappointing to see some moves towards the secularisation of Christmas behind the guise of religious tolerance and political correctness. Honourable members may have noticed in the newspapers recently that the major religions that are non-Christian in Australia have emphasised the fact that they wished there would be a truly Christian Christmas in the same way that we celebrate the Festival of Lights at Deepavali and so on.

For humanists, atheists, agnostics, and other non-believers who profess tolerance towards others, it is not so remarkable that there is such intolerance towards a Christian Christmas. However, I am absolutely delighted to wish all of my colleagues in the House God's richest blessings this Christmas time.

DUBBO BY-ELECTION

The Hon. MELINDA PAVEY [3.05 a.m.]: I draw to the attention of the House an issue that is vital to the wellbeing of regional New South Wales. Tonight I will catalogue a duplicitous campaign to deny the voice of country New South Wales the opportunity of punishing the State Labor Government for incompetence, arrogance and the most appalling administration that the people of New South Wales have endured. The campaign supported by the convener of Country Labor, who is also a Dubbo electorate resident and the former general manager of the Wellington Council, was a campaign that denied many loyal Labor Party members an opportunity to support their own party. It was also a campaign that ran the Independents. The campaign was like a puppet show with the Labor Party acting as the puppet-master and the Independents acting as the puppets. Labor is pulling all the strings.

Let me detail the games played in Dubbo and the involvement of the biggest puppet-master, the Premier, Bob Carr. The Premier devised the whole campaign agenda and set the campaign date by phoning Dawn Fardell, the Independent candidate. I think it is important for the people of New South Wales that I place in *Hansard* the truth of what happened in Dubbo.

The Hon. Eric Roozendaal: Yes, you lost!

The Hon. MELINDA PAVEY: And Labor's vote dropped to nothing! The whole Dubbo campaign was a strategy that was organised between the Premier and the so-called Independent candidate. An offer was put on the table to have the campaign date set to suit the convenience of the Labor Party candidate, who had been selected to run against the candidate chosen by the late Tony McGrane. I congratulate Dawn Fardell on her election. It is an honour to represent the people of Dubbo, Narromine, Parkes and Wellington, but it is also important to honour the legacy of Tony McGrane—a legacy that she failed to honour when she sacked his three staff members in the first week she occupied the electorate office. She sacked them just weeks before Christmas. In a terrible tirade she sacked staff members who had helped to create the legacy of Tony McGrane. She was heavily backed by the Independent party and its de facto leader, Richard Torbay, who sacrificed many days away from his own electorate of Northern Tablelands to cater to her needs.

[*Interruption*]

The PRESIDENT: Order! I remind all members that interjections are disorderly at all times.

The Hon. MELINDA PAVEY: There is another issue that I wish to discuss. I wish to correct the record in relation to the misleading facts and statements that were presented in this Chamber and in the other Chamber during the week. There was actually a swing to The Nationals of 4.19 per cent.

The Hon. Amanda Fazio: Which booth?

The Hon. MELINDA PAVEY: At the northern booths at Narromine, Dubbo north, Dubbo south and Dubbo west, there were swings of 7.65 per cent, 5.6 per cent and 3.5 per cent. In Parkes, where the Deputy

Leader of the Opposition was handing out The Nationals' voting information, there was a swing to The Nationals of 6.68 per cent, and it was a similar story in relation to the Hon. Rick Colless. Despite all the lies told about us by the Labor Party during the week before the by-election, there was actually a huge swing toward The Nationals in many of those booths. I reiterate that it is important for the people of New South Wales to understand that in 1995 the Labor Party received 28 per cent of the vote, in 1993 it received 15 per cent of the vote, but in 2004 it received no votes. The former manager of Wellington Council, a resident of the Dubbo electorate and the convener of Country Labor, is looking at me from across this Chamber.

The Hon. Tony Kelly: And I am a voter.

The Hon. MELINDA PAVEY: He should be utterly ashamed that he went to a polling booth on polling day and could not vote for a Labor candidate—the party that he is supposed to represent. He could not even vote for the party he is supposed to represent because he did everything in his power to stop a Labor candidate from running for election—an action that flew in the face of the wishes of local branch members. But I give a commitment that over the next two years The Nationals will prove to the people of country New South Wales that the Coalition will govern post-2007 and give them a government they can look up to. [*Time expired.*]

DEATH OF MR DENNIS HANLON SAM

The Hon. TONY CATANZARITI [3.10 a.m.]: I am saddened to report to the House today the recent passing of Mr Dennis Hanlon Sam, a very good man and a life member of the Australian Labor Party from the town of Young. Dennis Sam was born in 1929, and had celebrated his seventy-fifth birthday only a few months ago. The story of Dennis' life was linked in many ways with his hometown of Young. He lived all his life in Young. He was educated there and when he met his bride he brought her back to the town and raised his children there. Dennis lived for most of his early life in Young with his father, Shaw, his mother, Mill, and his two sisters, Lorraine and Maureen, in the family home that he was raised in.

It was when he met Bernice that he moved to his beloved farm in Burrangong, near Young, where he lived for 52 years. It was to this farm that he brought his bride, Bernie, in 1953 when they were married. The marriage was a truly happy one, and it was only last year that Dennis and Bernie celebrated their golden wedding anniversary with all their family and friends around them. Dennis was known as "Jumbo" in his day. He was a big man in every respect. Not only did he have a big, impressive physical presence, Dennis had a big and caring heart. He truly cared for his fellow man, and throughout his life he dedicated himself to helping the community of Young and to doing everything possible to help people. He was also a straight-laced, no-nonsense person. His passions were shown in his love of his family, his faith and in his community.

Dennis joined the Australian Labor Party at a young age, and was known as a tireless worker for the cause. He was always helping in whatever job was necessary, and was honoured as a life member of the party a few years ago, as an acknowledgment of his tremendous commitment. There are some other special highlights of Dennis' generous lifetime. He was an inaugural member of St Mary's Parish Council, inaugural member of the Catholic Schools Board, a member of the Regional Catholic Education Board, founding member of the Christian Brothers Old Boys Association, a recipient of the Australia Day Service Award for Community Service, a recipient of the Distinguished Service Award for Senior Australians for his contributions to the Young community, a recipient of the Distinguished Service Award and President of the Young Probus Club, a recipient of a long service award for 50 years service to rural fire fighting, a member of the Health Services Board for 10 years and a councillor on Young Shire Council for four years. He was also a member and office-bearer of the Society of St Vincent de Paul, and was active within the Diabetes Association and the Marie McCormick Centre Management Committee.

Dennis is survived by his wife, Bernie, and his six children: Geoff, Michael, Wendy, Greg, Peter and Denise. He is also missed by his beloved grandchildren: Jeremy, Merryn, Ben, Rebecca, Louise, Brad, Brendan, Amy, Megan, David, Jessica, Katy, Emma, Olivia, and Hanlon. I will finish this tribute by quoting some of the words used in his eulogy on 6 November:

> Remember, when our Saviour came to earth, he didn't choose his companions from among the Rabbis, the teachers, or those learned in the law, the theologians of the day. He chose ordinary working people like Dennis Sam.

ISRAEL

The Hon. DAVID OLDFIELD [3.14 a.m.]: The recent mysterious death of Yasser Arafat may be construed by some to create even greater instability in the Middle East. However, to others Arafat was more an

impediment to peace than a facilitator of peace. If reports of the Peace Accord offered at Camp David in 2000 are correct, then much of the Israeli-Palestinian conflict over the past four years may have been averted. It is widely accepted that Israeli Prime Minister Barak offered Israeli redeployment from 95 per cent of the West Bank and 100 per cent of the Gaza Strip, the creation of a Palestinian State in the areas of Israeli withdrawal, the removal of isolated settlements and transfer of the land to Palestinian control, Palestinian control over East Jerusalem, including most of the Old City, and religious sovereignty over the Temple Mount, replacing Israeli sovereignty in effect since 1967.

In return, Arafat merely needed to declare the end of conflict and agree that no further claims could be made on Israel. That offer was inconceivably generous, and yet it is understood that Mr Arafat chose to neither negotiate nor make a counter offer, but simply walked out of the discussions. It is generally accepted that Mr Arafat noted if he were to accept such an arrangement extremists on his own side would kill him. It is clear there are enough Palestinian activists to ensure that, from a Palestinian perspective, the only acceptable outcome would be the removal of Israel and the Jewish people. There is little in history that equals the struggle of the Jewish people to not only establish their own State, but to defend that State from the continuous threat of destruction.

As a youngster, I remember how impressed I was by stories of individual Jews urgently attempting to return to Israel at the outbreak of the Six-Day War. I particularly remember a story of a jet fighter pilot making his way from the United States of America. My good friend David Sachar has told me of his experiences with the underground in the Hagana. Indeed, Ariel Sharon was David's corporal. In the 1948 War of Independence David fought as a sergeant in the Commandos. He was an armourer in the Sinai in 1956 and a reservist during the Six-Day War. Around the time my brother was getting ready to go to Vietnam to fight a war that killed Australians for a decade, the Israelis, outnumbered and outgunned, wiped their enemies from the desert sands in just six days. They are to be much admired; they are people you want on your side. The Jewish people have a clear and longstanding right to live in the area they have named Israel.

More than 3,000 years ago the Israelites defeated a series of warring tribal city-states in the land known as Canaan. Jerusalem itself was inhabited by a tribe called Jebusites. The King of Israel, David, captured that city and the Jebusite tribe was absorbed into the nation of Israel. The *Bible* records how King David later bought the site of the Temple in Jerusalem from a Jebusite called Aravnah. In the hundreds of years that followed, Israel suffered invasions resulting in the carrying away and enslaving of its people. While the Jews were ultimately allowed to return from exile to their homeland, they continued to suffer under the Romans, who, as an insult, and in an attempt to dominate them, renamed their land Palestina.

From about the sixth century onwards, adherents of the newly created religion of Islam, followed by the Muslim Ottomans, occupied the Holy Land until the defeat of Turkey in World War I. The Balfour Declaration of 1917, issued by the British government of the day, called for the establishment of a Jewish homeland in Palestine. In the 1920s Arabs took advantage of the rebuilding done by the Jews and flocked into Palestine looking for work. In 1923 the British, who held the League of Nations mandate over Palestine, facilitated the creation of the kingdom of Jordan by arbitrarily ceding 73 per cent of Palestine to the Arab Hashemite clan. In November 1947 the United Nations voted to partition and divide what was left of Palestine into both a Jewish and an Arab State. The Jews agreed, but the Arabs rejected the plan.

Subsequently, when British rule ended and British forces were withdrawn, Israel declared its independence and was immediately invaded by the armies of five surrounding Arab States. Fortunately, this attempt to snuff out the existence of the fledgling Jewish State failed. Against all odds, Israel survived. The conflicts that have ensued until the present day have been instigated by Arab nations opposing Israel's right to exist. The Israelis have a justifiable claim to the Holy Land. If not for foreign conquerors, Israel would today be a 3,000-year-old civilisation.

RIVERWOOD COMMUNITY CENTRE THIRTIETH ANNIVERSARY

The Hon. KAYEE GRIFFIN [3.18 a.m.]: I congratulate the Riverwood Community Centre on its thirtieth anniversary. The centre has achieved much in its 30-year history and I take this opportunity to say a few words about that history and the work that has been done in and around the Riverwood area. The centre had its origins in the Riverwood public housing estate. It began with a residents action group, the Voices of Riverwood, who were looking for ways to make the area a better place in which to live. Prior to 1974 those local residents held meetings at the Riverwood Public School to discuss local issues, in particular, the needs of youth and children. The Voices of Riverwood had a vision of a place that would cater for the diverse needs of residents of

Riverwood and surrounding areas. Some 30 years later that vision has become the legacy that is the present-day Riverwood Community Centre, with an average of 2,500 people using its services on a weekly basis. In 1974, with the help of a Commonwealth Grant under the Australian Assistance Plan, the Voices of Riverwood purchased a property. This house became the focal point for service provision to Riverwood residents.

In the early years the centre was staffed solely by volunteers and opened Monday to Friday to provide information and assistance to residents. The Riverwood Community Centre, as it became known, was officially opened on 3 September 1977 and saw a constant flow of locals seeking information or assistance in some form. Over time, as the centre became better recognised and its reputation spread, the workload grew and volunteers were faced with more complicated and diverse issues to deal with. The Voices of Riverwood management committee decided to employ a part-time social worker. The centre grew in leaps and bounds and before long the centre's co-ordinator, community nurse and social worker were overwhelmed by the number of people seeking assistance. To cater for specific needs of residents, committees were formed to set up programs in occasional child care and aged services and to start a youth program. With children, young people and the elderly enjoying specialised programs, the centre was being used day and night. Thankfully, this hard work was recognised and funding was provided for the new part-time staff to be employed.

The appointment of a community worker, family support worker and information officer eased the burden on the overworked volunteers. With the centre's services and clientele growing rapidly, it was clear that the existing centre premises were struggling to house all the activities. Canterbury council built a multipurpose centre in Belmore Road, Riverwood, in 1984 and this became the Riverwood Community Centre and the premises for what had previously been the Voices of Riverwood. The growth of the centre and its programs has been phenomenal in recent years. A wide range of services is offered to assist residents, ranging from serous health and welfare problems to more social and leisure activities.

Time constraints prevent me from detailing all the excellent services that the centre provides, but I shall make special mention of the following. The Employment Assistance and Skills Development Program is a 10-week course for unemployed or underemployed youth and people from non-English speaking backgrounds who are trying to upgrade their skills in order to compete in the job market. Under the "Links to Learning—Students at Risk" project, Future Focus and Timeout programs provide support for students in years 7, 8 and 9 from local high schools who are having difficulties within the system or who are at risk of leaving school early. The Riverwood Child Sexual Assault Service offers counselling, non-offending parents' and carers' support, court preparation, client advocacy, protective behaviours workshops and community education.

The Housing and Communities Assistance Program aims to foster community activity and awareness in the Riverwood Public Housing Estate through providing physical spaces like Peace Park and the Riverwood Community Garden, leadership courses and a community-based newspaper for residents. Girl Zone is a program catering for young women from diverse backgrounds that assists them in developing their skills and social relationships in a non-threatening environment. Along with legal advice, counselling, grocery trips for the aged and disabled, child care, art and crafts, sport, and social activities, the centre provides services that are relevant to all facets of the local community.

I congratulate Pauline Gallagher, the management committee and staff on their outstanding success in making the centre such a pivotal part of the Riverwood community. I also acknowledge the work of the hundreds of volunteers who have supported the community centre over the years and their commitment to the residents of Riverwood. I have no doubt that, with the continued vision and drive of the volunteers, staff and management—as evidenced over the past 30 years—the Riverwood Community Centre will continue to thrive for many years to come.

THE HONOURABLE DAVID CLARKE RACIST ROAD RAGE ALLEGATION

The Hon. DAVID CLARKE [3.22 a.m.]: I refer to an article that appeared in today's edition of the *Daily Telegraph* luridly, misleadingly and inaccurately headlined "MP's 'racist road rage'", which purports to record the circumstances of a road incident last week to which I was a party. The events in this overblown and puffed up matter are simple and straightforward. Last Friday afternoon as I drove out of the Parliament House car park into Hospital Road I was confronted by a long queue of stationary vehicles. The traffic was stationary because a large truck was being manoeuvred into the Sydney Domain. To my left was a gap of probably 10 feet and to my right was another vehicle. Because of the angle and reflection I did not have a clear view of the driver of the vehicle on my right, but I made eye contact with the front-seat passenger, who was of Anglo appearance and who indicated by hand motion that I could move into the vacant space. I then proceeded to do so slowly.

To my surprise, the car to my right suddenly moved forward to cut me off and not allow me to join the queue—as I believe normal road courtesy would allow. I believe the courteous and appropriate action in such circumstances would be to allow a vehicle to enter the main stream of vehicles. I looked at the front-seat passenger, as she was nearest to me, and said words to the effect, "What are you trying to do? We don't act like that to each other on Australian roads." As our vehicles appeared to be almost touching, I got out of my vehicle to check how close we were and walked to the driver's side of the car and said, "What are you trying to do? Can't you see that I'm trying to get into the traffic flow—there is sufficient space for me to move in. You don't lose any time or your place in the queue by allowing me to do that."

In response to certain comments made by her I said, "Do you want me to call the police?" Checking whether two cars had collided and making the comment I did does not constitute road rage. It is nothing more than an overblown media upbeat. The facts are very clear: I was cut off by the other driver, not the other way around as was alleged. No comments made by me had a racist connotation. To suggest that the words "What are you trying to do—we don't act like that to each other on Australian roads" has racist overtones is, to my mind, being very precious and certainly drawing a longbow.

Whilst the other driver maintains she was "scared", one could most definitely conclude from her demeanour and road behaviour that the position was otherwise. There was no incident of my sticking my head through her car window, as she alleges. That statement is without any truth. There was no road rage on my part. It is a total fabrication. I regret that this person has drawn inferences of racism: such inferences of racism were certainly never intended. I believe that to suggest otherwise is a case of gilding the lily and, as I said earlier, being overly precious.

My conscience is certainly very clear on this matter. Over many years I have had a well-established documented association with and the support of numerous ethnic communities, including, but not limited to, the Vietnamese, the Chinese—particularly Taiwanese Australians—Pacific Islanders, Egyptian Copts and Assyrians, to name but a few. A perusal of my speeches in this House will testify to some of these associations. Even in the past day or so I have been prominently featured on a major Vietnamese community web site for my support of that community. Similarly, my sponsorship of many functions in this Parliament involving these communities speaks for itself. In all material aspects the allegations of the driver, who actively sought out the media to air her grievances, are unbelievably embellished and not based on truth at all.

SYDNEY CHRISTMAS DECORATIONS

Ms LEE RHIANNON [3.27 a.m.]: A former employee of the New South Wales Cabinet Office once told me that his daily routine and that of his colleagues went something like this: First, arrive at office; second, read the *Daily Telegraph*; and, third, prepare briefing papers for the Premier and relevant Ministers on the issues raised in each article in the *Daily Telegraph*." He assured me that this was no exaggeration. By its actions, the Government gives the *Daily Telegraph* enormous power to set and shape the agenda in New South Wales. The *Daily Telegraph* has always wielded this power with glee, but seems to have stepped up a gear this year.

This year's official "Telegraph campaigns" have ranged from saving the ADI site in Western Sydney to helping "Captain Commuter" Rebecca Turner score a fare-free day on CityRail. This past week has again demonstrated just how powerful the *Daily Telegraph* is. The unlikely subject was Christmas fairy lights in central Sydney. The *Daily Telegraph* decided that Lord Mayor Clover Moore had not put up enough Christmas tinsel on the city streets. My own recollection is that Sydney has never really gone all out at Christmas in the style of London or New York. We are a more laid-back city, and it is normally just a big tree in Martin Place and some lights on the Town Hall.

But the *Daily Telegraph* decided that Clover was "the Grinch who stole Christmas", and accused her of being motivated by some kind of fanatical political correctness. The *Daily Telegraph's* reporter put someone else's "politically correct" quote in her mouth. He also ignored the fact that the city of Sydney is apparently spending more on Christmas decorations this year than it has in the past. Christmas is certainly not under threat. Even if it was, the real villain is commercialisation and the indifferent attitude of mall owners. Nevertheless, the reporter went out and manufactured a bit of hue and cry, got talkback radio onto the case, and suddenly an absurd little story became the big issue of the week in Macquarie Street. Mr Carr and Mr Brogden immediately held press conferences and backed the *Daily Telegraph's* line, as they so often do. Since then, we have seen Mr Carr constantly talking about Christmas, even singing songs about Christmas. The other day he sang *Jingle Bells* on the evening news.

The Hon. Rick Colless: Yes, but he didn't know the words.

Ms LEE RHIANNON: It was silly, and I acknowledge the interjection; it was rather sad. The recent P-plate campaign of young drivers has followed a similar trajectory: story after story, outrage, big headlines, big photographs, emotive pleas from "ordinary people". As a result, an issue that the Government had been trying to put on the backburner is now being fast-tracked through the consultative and legislative process. That does not mean that it is the best outcome. It is an outcome that the Government seems to think will still help the program. I respect the media and the role they play in the political process. My criticism is not really of the *Daily Telegraph*, although I think its ongoing campaign to undermine Clover Moore is blatantly biased and unfair.

What worries me is the Carr Government's spineless pandering to the *Daily Telegraph* and the talkback brigade. Why is the Premier not guided by good policy and progressive Labor ideals, rather than the whim and wiles of the editorial team of the *Daily Telegraph*? It is no way to run a Government, as has plainly become clear in the Carr Government's many emerging failures. As an historian, Premier Carr should know that today's headline is tomorrow's fish and chip wrapping. He should follow Clover's admirable example: she continues to run her own race rather than let the insidious carping of the *Daily Telegraph* wear her down. If the Premier were prepared to be guided by enduring principles rather than the front page scream of today's *Daily Telegraph*, this State would be a much better place—the trains might even run on time and Premier Carr might actually leave the lasting legacy he craves so much.

I take this opportunity to thank staff in this place. Patricia and Theresa, the cleaners on our floor, do a wonderful job. They have been looking after us for years. I note that our cleaners are mainly women from a Spanish-speaking background. They bring delight to our floor in many different ways. I also thank the security staff and outdoor staff. I also extend my appreciation to honourable members of this Chamber. Many times we have intense disagreements but, as Mr Duncan Gay said, on most occasions when we leave this Chamber the sharpness is left behind and is replaced by courtesy. At any time of the year that is important, but at this time of the year it is all the more important. I thank also John Evans and his team: it is absolutely amazing what they achieve. I thank the library staff, the catering staff, security and the attendants. I thank George, our Chamber attendant, whose attention to detail never ceases to amaze me. We all appreciate it enormously. Thank you, George.

Motion agreed to.

The House adjourned at 3.32 a.m. Friday 10 December 2004 until Tuesday 22 February 2005 at 2.30 p.m.