LEGISLATIVE COUNCIL

Tuesday 4 April 2006

The President (The Hon. Dr Meredith Burgmann) took the chair at 2.30 p.m.

The Clerk of the Parliaments offered the Prayers.

The PRESIDENT: I acknowledge that we are meeting on Eora land.

ASSENT TO BILLS

Assent to the following bills reported:

Constitution Amendment (Pledge of Loyalty) Bill
Crimes (Serious Sex Offenders) Bill
Environmental Planning and Assessment Amendment Bill
Fines Amendment (Payment of Victims Compensation Levies) Bill
Greek Orthodox Archdiocese of Australia Consolidated Trust Amendment (Duties) Bill
Land Tax Management Amendment (Tax Threshold) Bill

SELECT COMMITTEE ON THE CROSS-CITY TUNNEL

Reference

Motion by the Hon. Michael Gallacher agreed to:

1. That the terms of reference for the Joint Select Committee on the Cross City Tunnel be amended by inserting after paragraph 1 (f):

   (g) the role of Government agencies in relation to the negotiation of the contract with the Lane Cove Tunnel Consortium,

   (h) the extent to which the substance of the Lane Cove tunnel contract was determined through community consultation processes,

   (i) the methodology used by the Roads and Traffic Authority for tendering and contract negotiation in connection with the Lane Cove tunnel.

2. That the committee report on paragraphs 1 (g) to (i) by the first sitting day in September 2006.

3. That this House requests the Legislative Assembly to agree to a similar resolution.

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

TABLING OF PAPERS NOT ORDERED TO BE PRINTED

The Hon. Eric Roozendaal tabled, pursuant to Standing Order 59, a list of all papers tabled since 28 March 2006 and not ordered to be printed.

LEGISLATION REVIEW COMMITTEE

Report

The Hon. Penny Sharpe, on behalf of the Chair, tabled a report entitled "Legislation Review Digest No. 4 of 2006", dated 4 April 2006, together with minute extracts for Digests Nos 2 and 3 of 2006.

Report ordered to be printed.

STANDING COMMITTEE ON SOCIAL ISSUES

Report: Dental Services

The Clerk announced the receipt, pursuant to standing orders, of report No. 37, entitled "Dental Services", dated March 2006, together with transcripts of evidence, tabled documents, submissions and correspondence.

The Clerk announced further that it had been authorised that the report be printed.

The Hon. JAN BURNSWOODS [2.35 p.m.]: I move:

That the House take note of the report.

Debate adjourned on motion by the Hon. Jan Burnswoods.

PETITIONS

Local Government Orders

Petition requesting legislation to force a plaintiff to a local government order to finance any legal action that may eventuate from a resident's decision to defend the plaintiff's complaint, received from **the Hon. Peter Breen**.

Casino to Murwillumbah Rail Services

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

Temporary Protection Visa Holders

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

Tallowa Dam

Petition opposing the construction of a pipeline from Tallowa Dam north and the raising of the dam wall, received from **Mr Ian Cohen**.

DISTINGUISHED VISITORS

The PRESIDENT: I welcome to the President's Gallery Ms Stella Delaiverata, Parliamentary Officer with the Solomon Islands National Parliament.

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Orders of the Day Nos 1 and 2 postponed on motion by the Hon. John Della Bosca.

CHILD PROTECTION (INTERNATIONAL MEASURES) BILL

Second Reading

The Hon. JOHN DELLA BOSCA (Minister for Finance, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, and Vice-President of the Executive Council) [2.43 p.m.]: I move:

That this bill be now read a second time.

As the second reading speech was delivered in the other House, I seek leave to incorporate it in *Hansard*.

Leave granted.

This bill will implement the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children in New South Wales. This convention is more generally known as the Child Protection Convention. The Child Protection Convention is one of a number of Hague conventions, including conventions on adoption and child abduction, which aim to ensure the safety and wellbeing of children in the twenty-first century world in which national borders are more open than they have ever been before. The measures proposed in the bill

will be of significant benefit to Australian families, and in particular to children who are the subject of international child protection litigation. Australia ratified the Child Protection Convention on 1 August 2003 with the support of all States and Territories.

Since 2003 the convention's international child protection measures have been administered in Australia through the Commonwealth Family Law Act 1975. It has always been the intention that each State and Territory would also put in place its own legislation to implement these measures in its jurisdiction. The bill will put in place jurisdictional laws in relation to children who cross international borders where parenting orders or child protection concerns exist for the children. It will also establish a framework for co-operation between Child Protection Convention countries to ensure the protection of children.

The Child Protection Convention confirms in its preamble that the best interests of the child are to be a primary consideration. This reflects the same guiding principle of the 1989 United Nations Convention on the Rights of the Child. The fundamental purpose of the bill is to strengthen our ability to protect New South Wales children. During the last part of the twentieth century, the opening up of national borders, ease of travel, and breaking down of cultural barriers have brought many advantages but, sadly, have also increased risks for children. Trafficking and exploitation of children, displacement through war, terrorism, civil disturbance and natural disasters have become major problems.

Children can be victims in broken relationships between transnational families with disputes over custody, relocation, contact and the potential of international parental abduction, just as can occur for children who never leave this State. The legislation will enhance the protection of children and their property. It does this by determining which country's laws are to be applied in particular circumstances, while allowing for emergency protection measures to occur wherever the child is present. The absence of agreed rules at an international level has led to authorities in one country failing to act because they assume authorities in another country will take, or have taken, responsibility for the child. The New South Wales legislation seeks to overcome these difficulties and simplify the process of resolving international child protection cases without losing sight of the best interests of the child.

The objectives of the bill are to determine which country has jurisdiction in decision making to protect the child in order to eliminate potential conflicts of jurisdiction between authorities in different countries, determine which law is to be applied, determine the law applicable to the parental responsibility, provide for recognition and enforcement of protection measures, and establish co-operation between the authorities of New South Wales and other Child Protection Convention countries in the interests of protecting children.

After ratification of the Child Protection Convention by Australia in August 2003, the Commonwealth Government passed legislation to enable the Family Court to register and enforce child protection orders in Australia from convention countries. Built into the Commonwealth legislation were roll-back provisions which provide that once State legislation is enacted, that legislation will prevail. This recognises that child protection matters are traditionally State responsibilities and more properly dealt with in State-based specialist children's courts.

The mechanism for those with parental responsibility to register orders in the Family Court in relation to family issues such as residence, maintenance and contact will be maintained as part of a flexible response, because they are accepted as Federal responsibilities. The New South Wales legislation will, in common with the Federal and other state legislation, clarify responsibilities and eliminate conflict in jurisdiction between Australian courts and foreign courts in child protection cases. It is based on the model Queensland legislation. The model legislation was approved by all the parliamentary counsels around Australia, the Standing Committee of Attorneys General and the Community Services Ministers' Committee.

The bill's enactment will ensure that the key benefits of the Child Protection Convention are enshrined in New South Wales legislation. These include clarification of responsibilities and the elimination of conflict in jurisdiction between New South Wales and overseas courts in child protection cases, the recognition and enforcement of foreign orders in New South Wales, ensuring recognition and enforcement abroad of New South Wales protection orders and other measures of protection where appropriate, and providing mechanisms for authorities in New South Wales and other countries to co-operate in relation to protective measures for a New South Wales child abroad or in relation to a child returning to another country who is subject to a New South Wales protective measure.

As with legislation in the other States, it will define the role of the New South Wales Central Authority under the Child Protection Convention. This role will be to find solutions for the protection of particular children; assist in implementing measures whether made here or elsewhere which are directed at protecting children; give consideration to initiating action in New South Wales, at the request of a competent authority of another country if a response is required in New South Wales; exchange information, subject to confidentiality and privacy laws; provide information on laws and services; help locate children; provide reports on the situation of particular children; and apply to the Children's Court or Family Court as appropriate for orders in response to requests from competent authorities of Child Protection Convention countries to transfer or receive jurisdiction, or take measures directed at protecting the person of a child.

The New South Wales legislation substantially replicates the Queensland model legislation and expands on the Queensland provisions on two minor points. First, the bill defines the term "interested person" in relation to a child who is the subject of a "measure of proceedings". Whereas the model legislation leaves this term undefined, the bill provides that an interested person means the child, or a parent, or a grandparent of the child, or any other person concerned with the care, welfare or development of the child. Any of these people may apply to be joined as a party to proceedings arising from an application to exercise the court's jurisdiction in relation to the child or to refuse recognition of a foreign measure. An interested person may also take proceedings in a New South Wales court to enforce a registered foreign measure. The inclusion of this definition makes it clear who can be involved in proceedings relating to a child and is equivalent to those people who can seek a variation of a care order under section 90 of the Children and Young Persons (Care and Protection) Act 1998.

Second, the bill will provide a mechanism whereby the Director-General of the Department of Community Services can obtain relevant information necessary to prepare a report required by the Child Protection Convention on the consultations undertaken prior to child being placed in foster care in a convention country. The Child Protection Convention requires that these

consultations occur with the competent authority in the convention country. The measures in the bill will overcome jurisdictional confusion that has arisen. Normally, State child welfare laws gain priority over family law orders but, according to the rules of the Child Protection Convention, if a New South Wales care order conflicts with a foreign child protection order registered under the family law amendments, the Family Court order prevails.

By permitting registration in the State Children's Court the usual order of priorities can be maintained. The bill mirrors the Queensland model legislation in that it empowers the Children's Court to supplement foreign personal child protection measures with domestic care orders. The recognition of a foreign protection measure without modification may not necessarily ensure the safety, welfare and wellbeing of the child or young person due to different circumstances in this State. In some circumstances it may be appropriate only to recognise and register part, rather than the whole, of a foreign child personal protection measure. Once jurisdiction requirements have been satisfied, the bill gives to the Children's Court the full range of orders as if the original order has been made in this State. This will not only advantage the child but should assist in streamlining processes within the court and enhance familiarity with the operation of the legislation.

To give an example that has arisen in this State: A child arrived here subject to care orders made in the country of his birth. He was brought by the person exercising guardianship, who came for business purposes. The care orders required that the child reside in an institution while remaining in this person's guardianship. In the country of origin this was appropriate because there were child-centric institutions there. In this State we do not deliver services to children in that way and the implementation of those foreign orders, without modification, would have led to the child being placed in an adult psychiatric institution. There was no simple and effective way both to recognise the intent of the orders made in the child's country of birth and to provide appropriate services in this State. The bill will address this gap in our laws.

To better adapt the obligations of the Child Protection Convention for this State the bill brings into effect legislation mirroring that of other States, and legislation that has been jointly agreed to by the Commonwealth and the other States. While the Commonwealth will remain the key central authority for Australia in terms of being the primary recipient of international communication from foreign central authorities, the Department of Community Services will be the central authority in New South Wales. The department will be responsible for taking action in this State on behalf of children. At present the impact of this legislation in New South Wales will be small.

In general, international child protection cases arise infrequently. As well, while 18 countries have signed the Child Protection Convention, only eight, including Australia, have both signed and ratified it, and two have acceded. While information is not definite from all other countries, the best current estimate is that 27 countries will join in this arrangement in the near future. As more countries ratify the Child Protection Convention its benefits will be enjoyed by an increasing number of children in an era of increasing mobility across national borders. For children entitled to the benefits of the Child Protection Convention it is anticipated that New South Wales may be called upon to assist Child Protection Convention countries by providing a report on the circumstances of a foreign child located in New South Wales, or to provide the necessary protection services for a child subject to an order recognised in New South Wales.

The bill specifies the jurisdiction of courts and child protection authorities. The general order under the Child Protection Convention is that the country in which the child is habitually resident retains jurisdiction over the child's person and property. Generally, a New South Wales child protection authority may exercise jurisdiction only for a New South Wales person or protection measure in relation to a child who is present and habitually resident in New South Wales; or a child who is in New South Wales and habitually resident in a Child Protection Convention country where the measure is either urgent or provisional; or there is a request or agreement that New South Wales assume jurisdiction. Additionally, a New South Wales authority may exercise jurisdiction if a child is present in a Child Protection Convention country and is habitually resident in New South Wales or is wrongfully removed from Australia, or if New South Wales is requested to assume jurisdiction.

Other additional circumstances where New South Wales may exercise jurisdiction are where the Child Protection Convention country agrees; or a child is present in New South Wales and is a refugee minor living in the community; or if the child is habitually resident in New South Wales but at the moment is present in a non-Child Protection Convention country; or is habitually resident in a non-Child Protection Convention country but is an Australian citizen; or is present in New South Wales and is habitually resident in a non-Child Protection Convention country. New South Wales child protection authorities may accept or reject a request to assume jurisdiction. The bill also sets out the circumstances under which a New South Wales authority may exercise jurisdiction for a New South Wales property protection measure in relation to a child. In those cases the Public Trustee will be appointed as guardian of a child's property should that be necessary under a property protection order.

The bill provides for the recognition and enforcement of foreign protection orders. These are not automatic. On receipt of a foreign measure a New South Wales authority has several courses of action open to it. These are laid down in the legislation. The grounds for refusing to recognise a foreign person or protection order are also spelled out and provide New South Wales authorities with the discretion to meet their obligations. These grounds include: that the Child Protection Convention country lacked jurisdiction for taking the measure; that the Child Protection Convention country acted contrary to the fundamental principles of New South Wales law when it took the measure; that recognition of the measure is contrary to public policy in New South Wales; that there would be no appropriate way of enforcing the measure; that the measure is incompatible with a later measure in the country where the child habitually resides; and that the measure places the child in care in New South Wales but the Child Protection Convention country has no consent from New South Wales authorities.

These measures are likely to affect only a small number of children in the short term but the legislation provides a framework that is likely to benefit an increasing number of children and so, I believe, will become vital to ensuring the safety and protection of New South Wales children wherever they might be in the world, and of other children who are in New South Wales and need protection. I commend the bill to the House.

The Hon. PATRICIA FORSYTHE [2.43 p.m.]: The Opposition is pleased to support the Child Protection (International Measures) Bill 2006. Central to any legislation that this Parliament passes in relation to child protection are two clear principles. The first is embodied in the question: Is it in the best interests of the

child? The other is embodied in the question: Does it conform with the United Nations Convention on the Rights of the Child? This bill certainly conforms to both fundamental principles. The best interests of the child has been the guiding principle on which New South Wales has, for a very long time, based its child protection and other legislation relating to children under the age of 18 years.

This State has been guided in legislation that it has considered in this place by the concept that children have rights and that those are the rights enshrined in the United Nations Declaration on the Rights of the Child. I make those remarks by way of background, because the passing of this bill is an opportunity for New South Wales once again to make clear the principles that underpin our legislative position regarding children. This State can be proud of what it has done to support children and other people who are vulnerable. One of the Parliament's core responsibilities is to ensure that New South Wales has the best legislation to protect its children and vulnerable people. The bill is one of a long line of bills that are in accordance with those principles.

Though the bill passed through the other place after contributions by comparatively few of its members, it is in fact a bill of utmost importance and one that ensures that New South Wales becomes party to The Hague convention dealing with measures for the protection of children, a convention which was signed in 1996. In other words, it has taken a decade from that signing to reach today's position. Three Hague children's conventions have been developed over the past 25 years. The Hague conference noted that those conventions have the fundamental purpose of being able to provide the practical machinery to enable States that share a common interest in protecting children to co-operate together to do so. That is the principle underlying this bill. For this Parliament, it is principally about the protection of the children of this State.

The Hague convention passed in 1996 was the culmination of a number of years work. The convention was drafted by family law experts from 48 countries under the auspices of The Hague Conference on Private International Law. Australia has been a very active player in that process and was part of the 1996 convention. In 2001 Australia, through the Federal Attorney-General, introduced legislation to ratify The Hague Convention on the Protection of Children. That legislation was referred to the Joint Standing Committee on Treaties for examination, and on 1 May 2003 the Federal Government ratified The Hague Child Protection Convention. I give that background because it is only now, in 2006, that New South Wales is passing the appropriate legislation to discharge its role in the ratification process. Much of our legislation dealing with issues such as child protection is passed by State legislatures, not the Federal jurisdiction.

After the Federal Government ratified The Hague Convention for the Protection of Children on 1 May 2003 the Attorneys-General throughout Australia agreed in August 2003 that it would be ratified at State and Territory level. I have copies of the Tasmanian and Queensland bills, which are dated 2003. In other words, soon after the ratification of the convention Tasmania and Queensland considered it important enough to enact appropriate legislation in 2003. My colleague in the other place the honourable member for Wakehurst was right in his criticism of the Government's timing of the introduction of the legislation. Like me, for a long time he has taken an interest in child protection and for a long time he has been critical of the Government's capacity or willingness to provide the Department of Community Services with the fundamental resources to do its job.

The fact that we are dealing with the legislation in 2006 is a clear indication that the department has been underfunded throughout the term of the Carr and Iemma governments. New South Wales has used the Queensland legislation as its model, although from the Parliamentary Secretary's speech in the other place it is clear that this bill has two minor additions. Given the uniformity of purpose to protect the children of New South Wales and the fact that none of the parties in either the Legislative Assembly or the Legislative Council would oppose the bill, one must ask why it has taken the Government three years after the introduction of legislation federally to introduce the appropriate legislation in this place.

The Hon. Dr Arthur Chesterfield-Evans: Because they had the children in refugee camps.

The Hon. PATRICIA FORSYTHE: That has absolutely nothing to do with the bill. That is the most inane and stupid interjection that I have heard for some time. New South Wales has not followed the lead of Tasmania and Queensland to get on with the job of protecting children in New South Wales. The legislation is significant because it recognises our changing world, one in which national borders have opened up. It is easy for one person to travel from one European Union country to another and it is becoming easier all the time for people to travel across the world. The breakdown of families is common, but not peculiar to Western cultures. Unfortunately, many children are caught up in the turmoil that follows the breakdown of what are often described as transnational families. Disputes over custody arise not only within one State or one nation; they often involve nations. The term "international parental abduction" is used to describe the abduction of a child by a parent living overseas when a court in a State or country has determined the parent in that State or country to be the custodial parent.

We have seen many cases of children in the care of a non-custodial parent being taken out of the country in which the non-custodial parent lives with the child. The bill will make it easier for the courts to make appropriate rulings in such cases. Although the drafting of The Hague Convention involved more than 40 nations, currently as few as 10 countries have ratified the convention. This type of legislation applies only in the countries that have ratified the convention. One of our roles as lawmakers of this nation is to speak up and raise this matter with visiting parliamentarians and delegations from other countries who have not realised the importance of ratifying The Hague Convention on the International Protection of Children. More and more families are breaking down, and it will not get any easier.

It is essential that the legislation ensure that courts are able to make rulings guided by the convention. Currently no case law underpins the interpretation of the convention. We have some way to go to ensure the protection of young people. However, I am proud of the strength and leadership shown by the Federal Government in ratifying the convention. In addition, the Federal Government has provided funding to International Social Service Australia to ensure that Australia is well placed to provide support to families whose problems fall within the legislation. Australia has taken the lead. I give due respect to those in New South Wales who drafted the legislation. I note that the Parliamentary Secretary in the other place complimented a number of people from the department, one of whom was Rod Best. From my reading I know that he was one of the people who presented a paper on child's rights at the Bath conference in 2001, which set up Children's Rights International—one of the important agencies bringing together lawmakers and those involved with jurisdictional issues that affect the protection of children.

In many different ways Australia has been at the forefront of protecting young people from an international focus. The Hague Convention is much broader in scope than some of its earlier work, yet it is part of an evolving process that recognises parental responsibility on the international scene as a consequence of a changing world—a world quite different from the world of two or three decades ago when the ability of people to travel internationally made it difficult to enforce court orders. In Australia the application for a passport for a young child to travel with a parent requires joint parental consent. Yet we continue to read and hear of cases of children allegedly abducted and taken out of the country as a result of family breakdowns. Of course, those children are the essence of this bill.

The Opposition supports the bill. However, as I said earlier, we are justifiably critical that it has taken the Government until 2006 to introduce this legislation—an extraordinary period, given that other States introduced legislation soon after the agreement of Attorneys General in August 1993. The legislation could have been introduced far earlier than today. With that minor criticism, I indicate the strong support of the Opposition for the bill.

Ms SYLVIA HALE [3.00 p.m.]: The Greens support the Child Protection (International Measures) Bill because it implements the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children—that is, the Child Protection Convention. It means that New South Wales will co-operate with jurisdictions that are signatories to the Child Protection Convention to ensure the flow of information and the continuation of protection of children here and in other countries. This legislation is in keeping with Australia being a convention country and it is in keeping with other States and Territories laws and with Commonwealth laws. The convention was approved by the Federal Government in August 2003. It has taken years for the appropriate legislation to come before this Parliament. I understand that other States and Territories have already introduced similar legislation. The New South Wales legislation is based on analogous Queensland legislation.

I endorse the concerns expressed by the Hon. Patricia Forsythe and others about the dilatoriness of this Government in introducing this bill. However, I cannot refrain from expressing my awareness of the hypocrisy of a party that is prepared to condemn the Government for being too slow in introducing this legislation, but at the Federal sphere has so patently demonstrated a lack of concern about welfare of children in its jurisdiction. I refer to children who have been detained in immigration detention centres, with the resultant break-up of families, separation from parents and enormous psychological damage being inflicted. It is a tribute to community outrage that there has been some improvement in the situation of those children and how they are being dealt with by immigration authorities. Although I endorse the regret expressed by the Hon. Patricia Forsythe that it has taken the Government a long time to introduce this legislation, I think it is a case of the pot calling the kettle black.

The detail of the bill has been outlined elsewhere, but I will briefly state that the bill allows greater co-operation between convention countries. Therefore, a child under a protection order in New South Wales will

continue to be protected if the child goes to another country that is a signatory to the convention. This will better ensure the protection of a child when moving between jurisdictions and will cut through most of the red tape when determining which court has jurisdiction. It will make clear which legal system and child protection authority has responsibility and jurisdiction over a child or young person. Children emigrating to New South Wales from a convention country and under a care and protection order in this country should in theory, by way of notification, become subject to a similar court order here and become clients of the Department of Community Services [DOCS]. Likewise, New South Wales courts and DOCS can notify a counterpart authority in another convention country if a child is moving overseas and that child is under a care and protection order.

Agreement can be made where a child is moving back and forth or who moves somewhere overseas permanently as to which jurisdiction should be responsible. I understand from reading the debate on this bill in the lower House that there may soon be changes introduced to the Children and Young Persons (Care and Protection) Act 1988 dealing with the interstate transfer of care orders and proceedings. It is always a great source of frustration to police, courts and agencies that borders— whether they are borders between Australian States and Territories or international borders—keep impeding the provision of protection. A lot of red tape can be generated and people can flee to other jurisdictions to escape orders. This bill seeks to ensure a higher level of protection for children who need it, no matter what jurisdiction they happen to be in. The Greens support the bill.

Reverend the Hon. Dr GORDON MOYES [3.04 p.m.]: The purpose of the Child Protection (International Measures) Bill is to implement the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children in New South Wales. This convention is commonly known as the 1996 child protection Hague convention. Specifically, the bill will ensure that child protection orders—orders that are put in place for the safety and wellbeing of New South Wales children—will be recognised and upheld overseas and vice versa. On a personal note, I began to become vitally interested in the welfare and protection of children in the 1970s. When I came to Sydney in 1977 to become superintendent of Wesley Mission, I discovered that I was also superintendent of the Dalmar Children's Home. In that one year there were 134 children for whom I was guardian ad litem—their guardian in the eyes of the law—for their protection and care.

Over the years, that developed into working to provide support and administrative care for many children in child care facilities, the building of about 50 additional child care facilities, the development of out-of-care homes, the development of foster care programs and some adoption programs. I continued in the role of guardian ad litem for a large number of children until only the past few weeks, when my successor took over. In 2005 I was officially guardian, in the eyes of the law, to more than 3,500 children in New South Wales and I provided them with some form of protective care or other. There would be very few tales concerning the abuse of children that have not come to our attention over the years, which have led to those children being placed under my care by courts. In recent years I have noticed an incredible increase in transnational children—children from the Sudan and other parts of Africa, from Sri Lanka, from middle Europe and also from the Middle East, particularly among Arabic-speaking people. Over the years I have had a number of staff who are Arabic speaking and Arabic born who provide the care for these children.

I now address the intent of the bill. No wonder we are concerned that the convention implemented by this bill is one of those things that must be implemented in New South Wales. This bill is one of three Hague children's conventions that have been developed over the past 25 years. The main objective of these conventions has been to provide the practical machinery to enable States that share a common interest in protecting children to co-operate together to do so. The 1996 Hague convention is much broader in scope than the other two Hague conventions. It covers a wide variety of civil measures of protection concerning parental responsibility, ranging from contact to public measures of protection or care, and from matters of representation to the protection of children's property.

The 1996 child protection Hague convention originated from the decision taken on 29 May 1993 by the states represented at the Seventeenth Session of the Hague Conference on Private International Law. Subsequently, a number of commissions were formed to negotiate and develop the text and ambit of the convention. Finally, member states present at the plenary session on 18 October 1996 adopted the draft text of the convention. Some advocated a change in the name of the convention, given its long-windedness, but member states inevitably agreed to retain the title because it more effectively conveyed the content and substance of the convention. A total of 29 countries signed the convention, including Italy, Poland, Bulgaria, the United Kingdom and Australia. Almost all of the signatories to the convention are Western European nations. Australia ratified the convention on 29 March 2003 and the convention entered into force on 1 August 2003. All

State and Territory governments supported ratification of the convention by Australia. It is hoped that neighbouring Australian countries will sign and embrace the terms of the convention for practical reasons.

I have mentioned that simply because Australia is now faced with more and more children being brought to this land from nearby South-East Asian and Middle Eastern countries, and the issues raised in the convention are important to cover the needs of those children. An international convention applies only to people within particular States of the ratifying country when a State passes legislation to embrace the terms of the convention. It is not good enough for countries that have not signed the convention to look upon children as expendable, as they do by not being part of the convention. In this case, although the convention was signed by Australia it can become applicable to New South Wales only after New South Wales passes legislation to bring it into effect. Since 2003 the convention's measures have been administered in Australia through the Commonwealth Family Law Act 1975.

The Parliamentary Secretary stated in her second reading speech, "It has always been the intention that each State and Territory would also put in place its own legislation to implement these measures in jurisdiction." The bill is the final necessary step to make the convention applicable to the jurisdiction of New South Wales. The objectives of the bill are to determine which country has jurisdiction in decision making to protect a child in order to eliminate potential conflicts of jurisdiction between authorities in different countries, determine which law is to be applied, determine the law applicable to the parental responsibility, provide for recognition and enforcement of protection measures, and establish co-operation between the authorities of New South Wales and the other Child Protection Convention countries in the interests of protecting children. The raison d'etre for the bill is obvious: Ease of communication and ease of travel have opened up our borders and those of countries around us to one another. Inevitable consequences arise from that. As pointed out by The Hague Conference on Private International Law:

> … the cross-border trafficking and exploitation of children and their international displacement from war, civil disturbance or natural disaster have become major problems. There are also the children caught in the turmoil of broken relationships within transnational families, with disputes over custody and relocation, with the hazards of international parental abduction, the problems of maintaining contact between the child and both parents, and the uphill struggle of securing cross-frontier child support.

Those of us who have been engaged in the work of providing protection and care for children in our community, particularly for children who come from transnational liaisons, understand each of those points—and, in fact, there are heartbreaks at every point. Honourable members may be instantly familiar with the environmental, physical and economic devastation brought about by the Asian tsunami in December 2004 and beyond. Honourable members would be aware also that it is a sad fact that the international child sex trafficking syndicates preyed on children in the areas ravaged by the tsunami with extreme implications for those children, their families, and the social and spiritual fabric of those regions. An example of where the bill would apply in New South Wales was referred to in the second reading speech. A child arrived in New South Wales subject to care orders made in the country of his birth. The Parliamentary Secretary stated:

> The care orders required that the child reside in an institution while remaining in this person's guardianship. In the country of origin this was appropriate because there were child-centric institutions there. In this State we do not deliver services to children in that way and the implementation of those foreign orders, without modification, would have led to the child being placed in an adult psychiatric institution. There was no simple and effective way both to recognise the intent of the orders made in the child's country of birth and to provide appropriate services in this State.

The bill will cater for those situations and others, allowing for appropriate arrangements to be made where required. The bill will, hand in hand with Federal and other State legislation, bring clarity to responsibilities and eliminate conflict in jurisdiction between Australian courts and foreign courts in child protection cases. Enactment of the bill will ensure that the key benefits of the Child Protection Convention are enshrined in New South Wales legislation. Some of the more salient aspects include: countries abroad will recognise and be able to enforce New South Wales child protection orders and other measures of protection; protection orders made overseas will be recognised in New South Wales; the roles and responsibilities of New South Wales and overseas laws and courts will be clearly defined, eliminating conflicts in jurisdiction; and there will be greater co-operation between New South Wales and overseas authorities to enable the safety and wellbeing of children who are the subject of New South Wales orders.

The bill is based on model legislation approved by all Australian Parliamentary Counsels, the Standing Committee of Attorneys-General and the Community Services Ministers Committee. Clearly there is a cogent need for a central entity to administer the terms of the convention. The bill defines the role of that entity—entitled the New South Wales Central Authority—which will be the director general of the New South Wales Department of Community Services. That department will, from the inception of this bill, be responsible to find

solutions for the protection of particular children, help locate children and provide reports on the situation of particular children; assist in implementing measures, whether made here or elsewhere, which are directed at protecting children; give consideration to initiating action in New South Wales at the request of a competent authority of another country if a response is required in New South Wales; exchange information, subject to confidentiality and privacy laws; apply to the Children's Court or Family Court as appropriate for orders in response to requests from competent authorities of convention countries to transfer or receive jurisdiction; or to take measures directed at protecting the person of a child.

Matters concerning the establishment or contesting of a parent-child relationship, adoption, foster care, the name of a child, emancipation, maintenance obligations, trusts or succession, social security, public measures of a general nature in matters of education or health, measures taken as a result of criminal offences committed by children, and decisions on asylum or immigration will not be dealt with by this bill. The reason for that is that the Child Protection Convention does not apply to those matters, as indicated by article 4 of the convention. It is worth noting that the Legislation Review Committee, in its legislative digest, has not identified any issues under section 8 of the Legislation Review Act.

The bill will prove to be a useful addition to the repertoire of legislation dealing with interjurisdictional issues concerning the protection of children. Although the legislation is likely to affect only a small number of children, it is clear that it is necessary in our modern-day society. All must be done to facilitate arrangements that are in the best interests of the child. However, I emphasise that resources, both financial and human, must be added to the Department of Community Services in order for the bill to be administered effectively. The implementation of the bill ought not to take away from other responsibilities carried out by the department, which are so very fundamental to the fabric of our society. On behalf of the Christian Democratic Party, I commend the bill to the House.

The Hon. GREG DONNELLY [3.18 p.m.]: I support this important Government bill, the Child Protection (International Measures) Bill. I would argue that one important way of discerning how developed a society has become, from a human point of view, is to look at the way it nurtures, protects and looks after its members, particularly those least able to do so. Down the ages civilised societies have recognised that, although it was only in the last century that a body of international law was developed to give fuller recognition to those important human rights. That body of law—commencing with the Geneva Declaration of the Rights of the Child 1924, the Universal Declaration of Human Rights 1948, the Declaration of the Rights of the Child 1959, the International Covenant on Civil and Political Rights 1966, the Convention of the Rights of the Child 1989, and The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children 1996 (the Child Protection Convention)—has given particular attention to the rights of children. It is worth noting that the preamble to the Convention on the Rights of the Child specifically states, inter alia:

> Bearing in mind that, as indicated in the *Declaration of the Rights of the Child*, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection before as well as after birth."

New South Wales has a proven record as a leader in child protection in Australia. The enactment of this legislation will place New South Wales at the forefront of jurisdictions working to ensure that children are afforded the best protection at an international level. In 2003 Australia ratified the Child Protection Convention. This bill seeks to implement New South Wales' obligation arising out of that decision. Until now, Federal legislation has been in place. The enactment of this bill will invoke a rollback clause in that Federal legislation, resulting in New South Wales legislation prevailing. New South Wales is the third Australian jurisdiction to assume the child protection aspects of the convention from the Commonwealth. This bill, which is based on the Queensland model, aims to ensure the best interests of the child; promote co-operation between convention countries; overcome conflicts over jurisdiction and its limitations in respect of child protection measures; determine applicable laws; and provide for the recognition and enforcement of measures to protect children and their property.

The convention provides for international co-operation between convention countries for the better protection of children and young people. One of the most important aspects of the convention is its role in encouraging and promoting co-operation amongst convention countries by eliminating potential conflicts of jurisdiction between authorities in those different countries. The enactment of this bill will put in place a framework for the international recognition of measures of protection for children and young people. Importantly, this means it will be clear which country's child protection authorities have jurisdiction in relation to a child or a young person. Another major objective of the Child Protection Convention is to address the problem of international cases involving protection of children from abuse and neglect. There is no doubt that it

is in the best interests of children and young people that there be internationally agreed rules determining which child protection authorities have jurisdiction in relation to a particular child or young person. The absence of agreed rules may mean that authorities in one country fail to act because they assume that authorities in another country have taken responsibility for protecting the child or young person.

Currently, only seven countries have both signed and ratified the convention. However, it is expected that up to 27 countries will have done so in the not too distant future. In time this will lead to a significant increase in the number of children who benefit from the provisions of this legislation. As a society we have a fundamental obligation to value and protect our children and young people. We all have a responsibility to do what we can to reduce the risk of harm and to promote the safety, welfare and wellbeing of all children and young people. All human life must be treated with dignity and respect. As lawmakers, we have a particular obligation towards those who are weak, vulnerable and, through their circumstances, unable to stand up and defend themselves. This bill makes an important contribution towards meeting that obligation. I commend the bill to the House.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [3.23 p.m.]: On 1 August 2003 Australia, with the support of all States and Territories, ratified the Child Protection Convention. Since 2003 the convention's international child protection measures have been administered in Australia through the Commonwealth Family Law Act 1975. It has always been the intention that each State and Territory would put in place legislation to implement these measures in each jurisdiction. New South Wales is now doing that. The Child Protection (International Measures) Bill will put in place jurisdictional laws relating to children who cross international borders where parenting orders or child protection concerns exist for the children. It will also provide a framework for co-operation between child protection convention countries to ensure the protection of children. The bill is based on model legislation approved by all Australian Parliamentary Counsels, the Standing Committee of Attorneys-General and the Community Services Ministers Committee.

Under the convention each State and Territory will be required to find solutions to the protection of particular children; assist in implementing measures, whether made here or elsewhere that are directed at protecting children; give consideration to initiating action in New South Wales at the request of a competent authority of another country if a response is required in New South Wales; exchange information subject to confidentiality and privacy laws; provide information on laws and services; help to locate children; provide reports on the situation of particular children; and apply the Children's Court or Family Court, as appropriate, for orders in response to requests from competent authorities of convention countries to transfer or receive jurisdiction, or take measures directed at protecting the person of a child.

The object of this bill is to implement in New South Wales the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, which is otherwise known as the convention. The objects of the convention are to determine the State whose authorities have jurisdiction and to take measures directed at the protection of the person or property of the child. It will determine which law is to be applied by such authorities in exercising their jurisdiction, and determine the law applicable to parental responsibilities, which is not dealt with in the Act because it is dealt with in section 111CS of the Commonwealth Family Law Act 1975. It will also provide for the recognition and enforcement of such measures of protection in all contracting States and establish such co-operation between the authorities of the contracting States as may be necessary to achieve the purposes of the convention.

The following background was provided in the second reading speech. The Child Protection Convention is one of a number of Hague conventions, including conventions on adoption and child abduction, which aim to ensure the safety and wellbeing of children in the twenty-first century in which national borders are more open than they have ever been. The bill provides that the proposed Act does not apply to those matters to which the Child Protection Convention does not apply under article 4 of the convention. These matters are the establishment or contesting of a parent-child relationship, adoption, the name of a child, emancipation, maintenance obligations, trust or succession, social security, public measures of a general nature in matters of education or health, measures taken as a result of criminal offences committed by children, and decisions on asylum or immigration, as outlined under proposed section 4. Australia has caught up with this convention, which I gather was signed in 1996, and 10 countries are currently signatories to that convention.

Some people have married persons from another country, split up with them and access to their children has proved difficult. Often the country in which a child is born tends to minimise the rights of a parent from another country. A friend of mine had a relationship with a woman in Denmark and a child was born there.

Effectively, that child can leave Denmark only when the Danish say so. The custody orders are extremely favourable to the mother in Denmark but extremely unfavourable to the father in Australia. Another friend of mine who is living in Japan has had children to a Japanese man. If she ever attempts to leave Japan the children will remain with their father because he is Japanese. So the custody issue is not in any way related to the sex of the parent; it is related merely to citizenship. The issue relating to which court has jurisdiction is extremely vexed.

I note that that aspect is not referred to in the convention and Australia supports the convention, which is a good thing. The more international law we have, the better. Australia's record with regard to children is far more questionable than it needs to be, with the *Tampa* and *Siev-X* episodes and the children in refugee camps. Those children, who are now out of refugee camps, effectively are not being given the same rights as Australian-born children and there is a huge compensation case against the Government. In one case, a child who spent a long time in detention in Australia probably has permanent psychiatric damage. The Iranian convention to which Australia is a signatory resulted in the return of some people to Iran. Work visas were given to Iranian people and they and their children came to Australia. There appears to be a lack of data about those adults and children who were affected.

International laws regarding child sex trafficking require a good deal of attention. We must remain vigilant because child sex trafficking is still occurring. We can only hope that this bill will make it easier to keep track of children and safeguard their welfare. I hope that more countries will sign the international convention. The convention does not address all the difficulties facing children—who, to some extent, continue to be viewed as being the property of the country in which they were born and of their parents—and we must work to protect children's autonomous rights. This convention is a step in the right direction, as is our ratification of it.

The Hon. JOHN RYAN [3.30 p.m.]: Intercountry adoption is another area where measures such as The Hague convention have an impact on New South Wales practices. I think it is appropriate to inform the House of, or at least to ventilate in this place, a number of concerns that I have with the manner in which the Government has carried out its responsibilities regarding intercountry adoptions. Frankly, the Department of Community Services [DOCS] seems to have some sort of hang-up when it comes to intercountry adoptions. It appears to hold the ideological view that such adoptions are somehow wicked and evil and that the people who participate in this process should be treated with enormous suspicion. New South Wales residents who wish to adopt a child through the process of intercountry adoption are subjected to the most incredibly rigorous examination by the Department of Community Services. Some of that examination is appropriate but I remind the House that prospective adoptive parents must also pay the most phenomenal fees.

This Government is on record as having tripled the fees that are charged to people seeking to enter into intercountry adoptions, even though that practice already involves a considerable expense to applicants. The department's prejudice against intercountry adoptions was almost ventilated by a former Minister for Community Services, who used to be a member of this place, who expressed the view that poor parents do not attempt intercountry adoptions. The simple truth is that intercountry adoptions have a noble purpose. Such adoptions are not the equivalent of what occurred with the Stolen Generation. They do not involve removing children from perfectly good, functioning families and from their culture and environment. Intercountry adoptions invariably involve children who are in danger and who have no future. In fact, many children would die if they were not removed from their current circumstances and offered opportunities by loving parents in another country.

Of course, it is not an optimal situation: we would prefer children to grow up with their natural parents in a healthy environment. But in large part that is not going to happen for the children who become the subject of intercountry adoptions. Not only has the department increased fees for intercountry adoptions but the adoption procedures take years. In countries such as New Zealand an intercountry adoption can sometimes take as little as 12 months. In New South Wales it is not uncommon for intercountry adoption procedures to be completed over two or three years. Parents who successfully adopt a child from overseas must sometimes wait another two or three years before they can adopt again, which means that there is an enormous age gap between their first and second children.

The Department of Community Services appears to believe that it needs to conform with The Hague agreement. New Zealand is a signatory to The Hague agreement and it seems somehow to be able to complete intercountry adoptions more efficiently and with lower fees than New South Wales can manage. Some Labor members may have complained—I do not know whether the Government has an official view on this subject—about the cost of IVF treatment. It is expensive. Some would even say that it is phenomenally expensive and that

people should not put the public hospital system to the enormous cost of providing IVF treatment. Adoption is an alternative for people who seek to become parents but who cannot do so naturally. The Department of Community Services appears to ignore the many opportunities for adoption that exist.

The simple fact is that in New South Wales the rates for both domestic and intercountry adoptions have been falling consistently, notwithstanding the fact that the number of children in public care has been escalating—in fact, I think it has doubled over 10 years. About 10,000 children in New South Wales are in public care, yet the Department of Community Services domestic adoption numbers have fallen to a little more than a couple of dozen. Two or three times a month the Children's Court will return children—sometimes without rigorous intervention by DOCS—for the second and third time to people who simply will not make it as parents. The director general of DOCS admitted to me that that occurs largely become the department has an anti-adoption culture. Sadly, that culture affects not only domestic but also intercountry adoptions.

The Government has been slow to implement the measures in this bill. I urge it now to amend New South Wales law to ensure that parents in this State who have adopted children of overseas origin also benefit from international laws. It is about time the Government hurried up and introduced other measures to benefit parents who want to enter into intercountry adoptions. I remind the Government that it promised to establish a non-government organisation to process intercountry adoptions as an alternative to the Department of Community Services performing this role. But there has been no progress in this area. In fact, the Government has positively hindered progress by requiring a number of the organisations that would readily take up that challenge to lodge with the Government enormous amounts of money—something in the order of $500,000—as an indemnity in cases where a child is placed and something goes wrong. If indemnification were required I would have thought it would be more appropriate for the Government to provide it.

Parents who wish to adopt children from overseas need help. They deserve the Government's support and the assistance of the Department of Community Services, which should stand by them. The department should not hinder parents by creating problems at every turn and regarding them with enormous suspicion and disbelief at every stage of the process. In my former role as the shadow Minister for Community Services I met dozens of wonderful parents of children from overseas. There are dozens of very happy children who are growing up in New South Wales as a result of intercountry adoptions. Many honourable members have noted that the Government took its time in introducing this legislation. I ask the Government to consider implementing other measures relating to intercountry child protection arrangements. It should get on with those as well.

The Hon. Dr PETER WONG [3.38 p.m.]: I support the Child Protection (International Measures) Bill. I share the concerns expressed by the Hon. John Ryan about the unfriendly attitude that the Department of Community Services takes to intercountry adoptions, its harsh treatment of applicants, the unreasonable fees and the other issues that he raised. I note that the bill will implement, in essence, the child protection convention. Like the Minister, I believe the measures will be of significant benefit to Australian families, particularly children who are the subject of international child protection litigation. The Minister also said that the New South Wales bill, together with other Federal and State legislation, will clarify responsibilities and eliminate jurisdictional conflicts between Australian and foreign courts in child protection cases.

The legislation will help to alleviate a great deal of suffering amongst, I am glad to say, only a small number of children. I say that one child who has to suffer the problem this bill deals with is one child too many. However, I express concern not about what this bill seeks to regulate but the way it will work. I hope that the Department of Community Services will learn a great deal from this legislation because significant numbers of children in this State experience similar problems of abuse when they move between States and/or are abducted by a family member within this State and country.

I am well aware of the work of the Hon. Brad Hazzard in the Legislative Assembly who has in the past raised grave concerns about the failures of the Department of Community Services to protect children who have been abused either when they move out of New South Wales jurisdiction after having been the subject of notification to the Department of Community Services or when they move to New South Wales after being the subject of similar child protection concerns in other States. Mr Hazzard has alerted the Parliament, and I understand the department itself, to numerous cases where children have been placed at risk, because domestic laws in this country do not achieve what this legislation intends to attain. I hope that the department's administration improves with this legislation, because I believe that hundreds of children in this State would benefit from a bill based not only on international measures but also on equally significant national measures.

Reverend the Hon. FRED NILE [3.42 p.m.]: I support the Child Protection (International Measures) Bill and endorse the remarks of Reverend the Hon. Dr Gordon Moyes and the Hon. Greg Donnelly. I want to

refer to the use of conventions, whether it is the Hague convention or the United Nations convention. The Child Protection Convention is non-controversial. This bill seeks to implement the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of parental responsibility and measures for the protection of children in New South Wales. The main purpose of the bill is to ensure that child protection orders, which are put in place for the safety and wellbeing of this State's children, will be recognised and will continue to protect them when they are abroad. The legislation will also allow foreign child protection orders to be recognised in New South Wales.

In the 1950s and 1960s, when these conventions were adopted after debate and consideration, they were rubber stamped by a majority of nations. In recent years that practice has dramatically changed and conventions are closely examined because of the need for a clear understanding of the meaning of the United Nations and The Hague conventions. Sometimes what appears to be an innocent phrase has a hidden meaning when written into legislation or used in a legal way. A strange development in recent years, particularly in the United Nations conventions relating to children or women's issues or health, has been that the convention's terminology has been intentionally manipulated to include a pro-abortion policy without using the word "abortion".

Christian nations with large Catholic populations, particularly in South America—not Australia, the United States of America, the United Kingdom and Canada, the progressive Western nations—joined with Muslim nations to create a voting block to change the wording of certain conventions to remove double-meaning terminology. The meaning and intention of those conventions were clarified so they could not be misused in the future. In the past, governments would ratify and rubber stamp conventions, which then became legally enforceable under Australian and New South Wales law. Governments and politicians have found to their surprise that they have unintentionally opened a Pandora's box. Having signed a convention, they find that they are bound to interpret and apply it accordingly.

I have always argued that a convention should be debated in the Federal Parliament before being signed and ratified. Whether it was ever the intention of our founding fathers, under the Federal constitution treaties can be signed on behalf of Australia by the Minister for Foreign Affairs or by the Prime Minister, who then report to Parliament. I believe that practice is back to front but I understand that when the word "treaties" was included in our Australian constitution it related to friendship treaties between Australia and New Zealand, the United Kingdom, Canada or the United States. The treaties would be discussed and negotiated and then finally signed and accepted.

The United Nations and The Hague conventions, including the Child Protection Convention, deal with the minute detail of law. For that reason I believe the convention should be accepted by the Australian representative, that is, the Minister for Foreign Affairs, and brought back to the Federal Parliament. If the Government continues to support it and it is debated and voted on by both Houses of the Federal Parliament, it may be ratified and signed with full knowledge of its meaning so that it is not in conflict with Australian laws, culture, tradition or Christian heritage. It is very important to consider that in the future. Senator Harradine was a strong proponent of that view but I do not think he was successful in the Senate. That process should be looked at by the Federal Government. Our State Government should not blindly ratify or embody conventions in State legislation unless we fully understand what it means and the effect of its application. New South Wales should reserve the right to decide whether it will incorporate those conventions in this State's legislation.

It is very important to protect our children. No-one in their right mind would argue against that. So it is strange that in our modern society there is so much abuse of children. One would think that as we become more civilised there would be less abuse of children, that they would need less protection. But the reality is that large numbers of children all round the world are being abused physically, sexually and mentally—hopefully not on that scale in Australia, but it is happening in individual cases. Obviously, when it does, our police take action. Abuse of children on a large scale is occurring in a number of countries that seem to openly accept children being treated as slaves or, as happens in some African nations, being recruited into revolutionary armies. These armies build up their strength by kidnapping and brainwashing children, and then supplying them with modern firearms. Then, as members of those armies, they carry out the most brutal attacks on innocent people, such as villagers and so on.

In our own society we have heard of cases of child prostitution and abuse of children for child pornography. I am pleased by recent reports of arrests of large numbers of adults, usually males, who are detected by Internet technology to be viewing child pornography on the network. These people are very sick, mentally and morally; they get pleasure from viewing child pornography. In some recent cases, police have

stated that 18-month-old babies were being abused for the purposes of child pornography, or what is virtually baby pornography. Those men, when caught, have been charged. Sadly, the sentences they receive are very light—much less than the sentences that this Parliament set for such offenders and expected they would get. I am sure the arresting police too would have expected much harsher sentences. I am very disappointed to learn that some offenders are getting 6- and 12-month gaol terms, some even receiving community service orders, when our legislation provides for heavy penalties of imprisonment for 5, 10 and 15 years. Those sorts of sentences are not being imposed by the justice system, and in particular by the judges.

Even though some of these men are being caught—they number in the hundreds—I become concerned when I think, "Where is that 18-month-old baby? Where is the child that has been abused for child pornography?" Some members may know but, from my reading and study on this issue, I do not know of any case in which the child has been located, and protected by being removed from that environment. That should be a priority of police. I know it is difficult, because police are looking for photographs and other pornographic material to be used as evidence, but I know of cases where magnification of child pornographic photographs has revealed something in the background—such as the cover of a book, or in one case a bottle label—that would help identify the country, hopefully the city, that the material is coming from, or otherwise assist with attempts to establish where children are located. Where the pornography involves a child being sexually abused, photographed or videotaped, a real person, a child, is at the centre of that pornography.

So I am pleased to support the Child Protection (International Measures) Bill 2006. I know the next matter I raise is not a main purpose of the bill; I refer to children being taken from or coming into Australia. In the majority of cases it involves a dispute following breakdown of a marriage, and the husband or wife kidnapping the child and taking it overseas or bringing it into Australia. We need to make sure there is no trafficking in children for use in child pornography or child prostitution. We support the bill.

The Hon. HENRY TSANG (Parliamentary Secretary) [3.55 p.m.], in reply: I thank honourable members for their support of the bill. I would like to respond to questions raised by the Opposition and the Greens. Time has been spent to get things right and there has been no delay. Time was taken to tailor a service that meant New South Wales has two agencies, rather than one agency, to implement the provisions of the bill. Those two agencies are the Department of Community Services and the Public Trustee. The involvement of the Public Trustee will give greater assurance for property and financial matters than if those matters were being handled by the Department of Community Services. The Public Trustee has skills in working with money, while the Department of Community Services is a great agency to look after the welfare of children. No other State places this emphasis on promoting the rights of the child. This bill, as honourable members have said, has nothing to do with inter-country adoptions. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

MOTOR ACCIDENTS (LIFETIME CARE AND SUPPORT) BILL

MOTOR ACCIDENTS COMPENSATION AMENDMENT BILL

Second Reading

The Hon. JOHN DELLA BOSCA (Minister for Finance, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, and Vice-President of the Executive Council) [3.58 p.m.]: I move:

That these bills be now read a second time.

It is with great pleasure and some pride that I introduce the Motor Accidents (Lifetime Care and Support) Bill and the Motor Accidents Compensation Amendment Bill. These cognate bills provide the legislative framework for implementing the Government's significant improvements in the assistance available to people injured in motor vehicle accidents. The Motor Accidents (Lifetime Care and Support) Bill establishes a scheme to provide lifetime care and support for persons who suffer catastrophic injuries such as spinal damage or brain trauma in motor vehicle accidents. This will give effect to the Government's plan, announced last year, for a major overhaul in the care of people catastrophically injured in motor vehicle accidents.

The Motor Accidents Compensation Amendment Bill introduces enhancements to the existing CTP motor accidents injury scheme. The first is by introducing a new special children's benefit providing a no-fault

benefit for those New South Wales resident children injured in motor accidents who currently are not covered by the CTP scheme. Secondly, the bill also extends the scope of the CTP scheme to provide compensation entitlements for injury or death resulting from a "'blameless" or "inevitable" accident, which is a motor vehicle accident where no-one is considered to have been at fault. An example of this is where a person is injured because a driver experiences an unforeseen illness or medical condition which results in a loss of control over the vehicle. Currently, under the common law, if a court finds that no-one was at fault in an accident, the CTP compensation entitlements are not available to those injured in the accident.

This Government has a proven record in successfully planning and implementing insurance scheme reforms. The New South Wales Government made major reforms to the motor accidents scheme in 1999 to achieve three key objectives: to provide motorists with cheaper green slips, to improve access to early treatment and rehabilitation expenses for people injured in a motor vehicle accidents, and to increase the proportion of the premium dollar going to injured people, particularly those with serious injuries, by reducing scheme administration costs.

Since the 1999 reforms green slip prices have continued to decrease. Before the reforms took effect the average green slip price for a family passenger vehicle in the Sydney metropolitan area was $441. By June 2004 the average price for a green slip for that vehicle was $343 plus GST, dropping even further to $322 plus GST by December 2005. This is a substantial reduction on the pre-reform price of $441, and amounts to an actual dollar savings of over $100 per policy for motorists in New South Wales. The reforms also introduced the accidents notification form [ANF] to provide injured people with fast access to early treatment. Some 36 per cent of claimants have used this simplified procedure to notify insurers of their claim and to obtain more immediate compensation.

The introduction of the ANF and the 10-day deadline requirement for insurers to accept provisional liability has shortened the time that it takes for an injured person to seek compensation payments. Another key objective of the 1999 reforms was to ensure that payments for seriously injured people were not affected. In the reform scheme the average payment to the most seriously injured has increased by 19 per cent.

Pursuant to sessional orders business interrupted.

QUESTIONS WITHOUT NOTICE

DUBBO BASE HOSPITAL WAITING LIST

The Hon. MICHAEL GALLACHER: My question without notice is directed to the Minister for Health. Why have ophthalmology patients at Dubbo had to wait an average of six months for their operations, with 27 patients already having waited for more than one year? How long will the remaining 282 patients currently on the waiting list have to wait?

The Hon. JOHN HATZISTERGOS: I happen to have the long-wait figures for the Dubbo Base Hospital, which show a significant decrease on the figures from February 2005 to February 2006 of some 76.9 per cent in long waits. This is a silly thing that happens when the honourable member does not follow what happens in the lower House in question time. He has lobbed up a question about which he has exercised no judgment and he has asked it. He has ended up looking quite stupid. It is important to remember that the figures I have just quoted for Dubbo, the long-wait list having gone down by some 76 per cent, is not an isolated occurrence.

The Hon. Patricia Forsythe: Point of order: Clearly, the Minister is debating the question, not answering it.

The PRESIDENT: Order! When answering a question one of the two things that a Minister cannot do is debate the question. The Minister must answer the question.

The Hon. JOHN HATZISTERGOS: The figures I stated for Dubbo are not isolated, but part of a detailed plan to reduce waiting times overall. We started it off some two years ago by appointing Professor Brian McCaughan and Dr Patrick Cregan, two very experienced clinicians, to lead a team of people to advise us about a waiting list reduction policy. Overall across the State, in the past year in particular, we have seen a

67.7 per cent reduction in the long-waiting list, that is a figure of some 10,500 to a figure now of around 3,400—a $115 million investment in a surgery plan. Not only have we achieved improvement in the long-waiting list, but we have achieved it also in the overall waiting list with a reduction of some 8,000. If the honourable member followed question time in the other House he also would have heard the announcement of an additional $7 million this financial year to specifically target long-waiting lists.

SENIORS WEEK

The Hon. HENRY TSANG: My question is directed to the Minister for Ageing. Will the Minister outline what the New South Wales Government is doing to recognise the achievements and contributions that seniors make to local communities in New South Wales?

The Hon. JOHN DELLA BOSCA: Yesterday I had the pleasure of launching Seniors Week 2006 and presenting awards to outstanding senior members of our community. The Seniors Week Achievement Awards honour seniors and elders from across the State for their leadership and initiative. Yesterday 59 individuals and organisations received awards for outstanding contributions to health and wellbeing, education and lifelong learning, intergenerational understanding, community service and volunteering, environment and science, and business mentoring. Seniors Week is now in its forty-eighth year. It is the largest event for seniors in the Southern Hemisphere. It is an opportunity to thank, celebrate and recognise older people for their contributions to the community. More than 1.2 million people in New South Wales are aged over 60, which means that 250,000 people will participate in New South Wales Seniors Week activities. The Seniors Week theme "Live Life" challenges traditional perceptions about ageing, and encourages seniors to remain healthy and active. This year's Seniors Week campaign reflects the importance of how we, as a community and as individuals, remain active, healthy, positive and involved, as we grow older.

There are more than 500 Seniors Week activities to choose from in metropolitan, regional and rural New South Wales. I encourages seniors, including the first baby boomers who turn 60 this year, to learn something new—step out at one of the many dance events, enjoy the adventures of a new outdoor sporting activity, or visit the theatre. This year's Seniors Week features a number of events for people to enjoy, such as the Premier's gala concert; the Young at Heart Film Festival, the first ever Sydney Seniors Film Festival, at the Ritz cinema in Randwick; the Great Seniors Week Debate at the Enmore Theatre; laughter workshops at Bondi Pavilion; "Once Upon a Lifetime", a theatrical production at the Australian Theatre for Young People; cycling events for seniors; and two specially discounted concerts by the Sydney Symphony Orchestra at the Sydney Opera House. In addition to the feature events, the Seniors Week Grants Program supports hundreds of activities and events from all corners of the State. Through this program the New South Wales Government helps local authorities and community groups by providing seed funding for Seniors Week projects.

This year $175,000 in grants has been allocated to 307 organisations to organise local events during the week. These grants enable local government organisations and small community organisations to celebrate Seniors Week in a way that is unique and appropriate to seniors in their local area. The Seniors Week celebrations will provide opportunities to celebrate older people in New South Wales, and demonstrate that they are valuable, welcomed and essential to our community. For further information about New South Wales Seniors Week 2006, people can pick up a copy of the Seniors Week program at Coles or Bi-Lo, or visit the Seniors Week web site at *nswseniorsweek.com.au.*

ABALONE INDUSTRY

The Hon. DUNCAN GAY: My question without notice is directed to the Minister for Primary Industries. How are abalone fishers supposed to make money in an industry with no guarantee of the total allowable catches for the coming season? Why was about 400 kilometres of coast from Jervis Bay to Port Stephens closed by the Government in 2002 against the advice of the Minister's management advisory committee and the industry? Why will the Government not reopen areas to sustainable commercial fishing with associated monitoring? Is he aware that Elders Rural Bank has written to an abalone fisher indicating that, due to the unstable and mismanaged state of NSW Fisheries, his request for finance was refused?

The Hon. IAN MACDONALD: This is an important question and we have to go back a little bit in time to answer it. In 2003 it was quite well documented that a disease called perkinsus, which wipes out abalone, had developed in abalone in the region to which he referred. I have been worried about the abalone industry because it appears that the drought has impacted on marine life. Another concern is the potential for overfishing in the area and poaching. The honourable member may not be aware that I have been talking with

the industry about some experimental and research-orientated programs for the Jervis Bay Area for some limited harvesting of abalone under a program to see at what stage recovery is occurring. We did not make this decision because we wanted to close that area. The disease perkinsus took down the vast majority of abalone.

Any responsible Minister would have taken the advice of his department, and that I did. I took the advice of my department, the chief scientist and others that we should close that particular fishery. That is what we did at that time. It is unfortunate. It is a terrible situation. It obviously has impacted upon people, but the plain fact of the matter is that fishing for abalone could not continue sustainably in that area.

The Hon. DUNCAN GAY: I ask a supplementary question.

The PRESIDENT: Order! Members who wish to ask supplementary questions should be quick to their feet to seek the call.

The Hon. DUNCAN GAY: What will the Minister do to overcome problems of the abalone fishermen? What is his response to Elders Rural Bank, which believes that he has mismanaged this fishery?

The Hon. IAN MACDONALD: As if Elders Rural Bank is an authority on fisheries—come on! The bank might know how to help out a farmer and it is not bad in terms of seed production and selling products for farmers and all of that, but I do not know if the bank is an expert on perkinsus. Let me make it clear that the advice was very erudite and persuasive that the fishery in that area had been impacted upon dramatically by perkinsus.

The Hon. Duncan Gay: What are you doing about it?

The Hon. IAN MACDONALD: We are doing research. If the honourable member had listened, he would have heard me talking about us designing a research program for a limited take of abalone from that region that is not affected by perkinsus. If he had listened to my initial comments, he would have heard that.

NEW SOUTH WALES FIREARM SAFETY AND TRAINING COUNCIL FIREARMS SAFETY TESTING

The Hon. JOHN TINGLE: My question without notice is addressed to the Minister for Roads, representing the Minister for Police. Is the Minister aware of a letter dated 30 March from the general manager of the Firearm Safety and Training Council to firearms safety testing officers relating to the expiry of the council's exclusive contract to administer tests to applicants for firearms licences? Does that letter state to the testing officers that if they choose to conduct tests other than with the Firearm Safety and Training Council, they will have to develop their own training course? Is this true, or is it a fact that the Government will provide the new course? Does the letter also state that testing officers operating under the new scheme will have to provide various types of insurance for themselves? Is this true, or do clubs and associations already provide insurances, such as public liability, which will cover these officers when they conduct tests on behalf of a club? Is this letter a crude attempt to frighten testing officers to remain with the Firearm Safety and Training Council after its contract expires?

The Hon. ERIC ROOZENDAAL: I have been advised that the Firearm Safety and Training Council has sent a letter to a number of shooting clubs regarding the firearms licence qualification course, which is the new scheme for firearms safety testing in New South Wales for longarm licence applicants. There are a number of incorrect statements in the letter. First, the statement that if clubs operate alone they must develop their own course is wrong. A new firearms licence qualification course has been developed. The course materials explain to new licence applicants basic information about firearms and their rights and responsibilities as firearms owners or users. The primary purpose of the course is to ensure that new licence applicants have a practical understanding of, and are competent in the fundamental principles of firearm safe handling. Clubs may choose to deliver this course or they may choose to develop their own course, which must be approved by the commissioner. A standardised assessment regime has been developed so that all new longarm licence applicants will be held to the same criteria across New South Wales. Secondly, the letter states that the testing officers who will be conducting the training will be required to provide various types of insurance. It is my understanding that shooting clubs are required to take out public liability insurance which cover various activities undertaken in the club. However, I would urge clubs to examine their insurance policies to ensure they are adequately covered.

MR KEVIN CHARLES "PRO" HART STATE FUNERAL

The Hon. GREG DONNELLY: My question without notice is addressed to the Minister for Rural Affairs. Will he inform the House of today's State funeral for Pro Hart?

The Hon. TONY KELLY: Today I had the great privilege to travel to Broken Hill to represent the Premier and the New South Wales Government as well as the people of New South Wales at the State funeral service for Pro Hart. With his casket draped in an Australian flag and a miner's helmet and lamp, today's service was a simple yet moving ceremony acknowledging the life and contribution of a great Australian. In delivering a speech on behalf of the people of New South Wales, I stated that the great man himself would have noted the idea of a State funeral with an ironic smile. Probably no-one was more disdainful of official pomp and ceremony. No-one was more indifferent to fame and celebrity. Few had an earthier sense of humour—he was a man of Broken Hill through and through.

For such a man, a State funeral might have seemed out of character. But in offering a State funeral for Pro—an offer that his family graciously accepted—the Government was not guided by his no-nonsense, no-fuss approach, but rather by the high esteem in which he was held by the New South Wales community. The simple truth is that few Australians stood higher in popular affection. Pro Hart understood and caught the character, the spirit, and the humour of Australian outback life. His art revealed a deep love of our country and its people. Those are the qualities that over 1,000 people gathered in Broken Hill today to recall and honour. In the words of his son, Kym, Pro was a "magic bloke"—loved by those who knew him and who knew his work.

At the centre of this magic bloke and his world was Broken Hill. As I said, Pro was Broken Hill through and through. He was born and grew up in western New South Wales where he learned to sketch and to paint. He worked as a miner in Broken Hill where he lived and made his artistic reputation, and where he died with his family at his side. Pro Hart once said that all the inspiration he ever needed was around him in Broken Hill. And this inspiration is embedded in the countless paintings of the city, the land and its people. For Pro Hart, painting was second nature. He did not care about the adulation of critics, academics and even art historians, nor did he worry about the city-based curators who rejected his work.

This was something taken up by another great Broken Hill-ite, Peter Black, who commented that if it was good enough for Prince Philip to buy three of Pro's paintings and for Lyndon Johnson to hang one in the White House, then it was good enough for Pro Hart to be hung in every gallery in Australia. While rejection may grate with some, for Pro it was of no concern. For Pro, the duty, the creed, of the artist, was to be true to oneself. The world he painted and drew was the world he knew and understood. He was his own man and, as such, he struck a chord with the public. He was a people's painter. He loved the Australian landscape—its colours, its contrasts and shapes—as well as the people who inhabited it.

While Pro Hart enjoyed success and his work was exhibited in many cities and displayed in many of the world's finest galleries, he never forgot his roots or the source of his inspiration. In private life he was generous and a committed Christian. In public life, he was modest and unassuming. In his professional life, he was dedicated to creating exceptional art. His reward is a lasting place in the ranks of great Australians. I am sure the House joins with me in paying tribute to Pro Hart—the people's painter—his life and his work.

SYDNEY HARBOUR COMMERCIAL FISHING INDUSTRY COMPENSATION

The Hon. Dr PETER WONG: My question without notice is directed to the Minister for Primary Industries. Why has the fisheries division of the New South Wales Department of Primary Industries been informing Sydney Harbour fishermen that the buyback arrangements have been formulated under the guidance of an Act, when in fact they are being proposed under departmental policy? Will the Minister table in this House, or otherwise make publicly available, the policy, so that fishermen and their advisers may make informed decisions about their future?

The Hon. IAN MACDONALD: I am not aware that the fishermen were informed that it was under the guidance of an Act, and I do not have information in relation to that, but I know that we have a buyout policy that has been applied in terms of recreational fishing havens buyouts as well as the marine park buyouts, particularly the Solitary Island Marine Park. The policy also is being applied to the Byron Bay buyout and will be applied to the two current marine parks, one of which is already gazetted, the Port Stephens Marine Park, and one at Batemans Bay that has already been announced and soon will be gazetted. That policy has been in place for a considerable time. For the information of the honourable member, the buyback package offered to fishers had been accepted by a large number of fishers when the offer closed last Friday. A number of other fishers came in around that time, subsequently seeking buyout arrangements. The policy has been in place for a considerable time and I will make it available to the honourable member.

The Hon. Duncan Gay: Have you given them emergency help about signing out?

The Hon. IAN MACDONALD: I have made it very clear that the emergency help has been accepted by a number of fishers and others who told us not to worry about it, but to just give them the full amount when it is worked out. The Government has paid around $350,000 to one fisher. This is a considerable package and we have doubled the depreciation allowance from $10,000 to $20,000. The package has gone pretty well. The department will negotiate with a number of other fishers. No-one really disputes this and it has, in fact, been the subject of discussion at the Seafood Industry Advisory Council on a number of occasions. Other formulae were proposed, which would have meant that the dollar figure paid to fishers in a buyback could have been reduced, such as market value. The Government has gone with the previous policy because it gives a significant payout. The Government has made that very clear, and that policy stands. I undertake to provide a copy to the honourable member.

NEW ENGLAND AREA HEALTH SERVICE AND HUNTER AREA HEALTH SERVICE AMALGAMATION

The Hon. JENNIFER GARDINER: My question without notice is addressed to the Minister for Health. Is it correct that the Carr and Iemma governments promised that $100 million would be saved by amalgamating the New England and Hunter area health services and that the $100 million would be redirected to front-line services? Will the Minister advise what front-line services in the area covered by the former New England Area Health Service have been directly funded by any such savings? How many of the senior executives in the amalgamated area health service are based at Tamworth? How many are based at Newcastle? Do senior executives regularly charter planes to travel between Newcastle and New England? Is this an example of redirecting funds to front-line services?

The Hon. JOHN HATZISTERGOS: It is very good to get a question from the Hon. Jennifer Gardiner about staffing, because I do have some information that I can share with the House about area health service amalgamations that would be of interest to her. During 2004-2005 there was an increase of 2,900 front-line full-time equivalent staff: that is, 107 medical staff, 2,035 nursing staff, 686 allied health staff and 78 uniformed ambulance staff. I am advised that area health services are on target to reach an administrative savings, having reduced the corporate and administrative staff by 673 full-time equivalents. The Department of Health restructuring has been ongoing since 2003.

At 30 June 2003 the department had 823 full-time equivalent staff and that is now down to 635 staff. The Department of Health has assumed responsibility for the Office of Drug and Alcohol Policy community drug strategy, which was previously in the Premier's Department. It should be highlighted that those savings have been achieved without forced redundancies. In relation to corporate services, I am advised that NSW Health spending on corporate services has decreased from 3.72 per cent of its budget in 2002-2003 to 2.81 per cent. I advise the House that the median cost for peer agencies of a size similar to NSW Health is much larger at 3.48 per cent. Honourable members can see what a lean administration the Government is running in NSW Health.

The Hon. Michael Gallacher: Mean!

The Hon. JOHN HATZISTERGOS: Lean. We are devoting more resources to front-line services by putting more people on the front line to provide services to people, which is what the honourable member's question was about, and fewer people in backroom bureaucracy. The way that the Opposition has responded to these changes is interesting. A number of hospital general manager positions have been deleted as a consequence of the amalgamations. Just a couple of weeks ago the Leader of the Opposition in this House together with the Leader of the Opposition in the other House went to Wyong to tell the people that if the Coalition was elected at the next election, it would reinstate a general manager at the Wyong Hospital. Two days later I went to Wyong and gave the hospital a paediatric unit.

The Leader of the Opposition will give the people a bureaucrat while we on this side of the House have given them a paediatric unit. That demonstrates their priorities. However, there is more. The honourable member for Cronulla said that if he were re-elected a general manager would be appointed to Sutherland hospital.

The Hon. Michael Gallacher: You want to run it from Sydney.

The Hon. JOHN HATZISTERGOS: If the Coalition wants to talk about bureaucracy, I will cite a good case for it to work on. In Canberra there are 20,000 bureaucrats spending $1.1 billion in administering a health scheme that treats not one single patient. The Hon. Jennifer Gardiner should go and work on that.

SHEEP MEAT INDUSTRY

The Hon. CHRISTINE ROBERTSON: My question without notice is directed to the Minister for Primary Industries. Will the Minister update the House on key challenges facing the sheep meat industry and what the New South Wales Labor Government is doing to help?

The Hon. IAN MACDONALD: As honourable members would be aware, the sheep meat industry is a major contributor to our State and national economy. In fact, the New South Wales sheep industry alone exports almost $1.4 billion worth of products every year. It directly employs some 30,000 people and supports an additional 12,000 jobs in related businesses and industries. But competition in domestic and export markets is getting tougher every day. For instance, our wool industry continues to face competition from synthetic fibres and now represents just 2 per cent of the world's apparel fabrics. Returns to sheep enterprises are also under pressure. In addition, the industry is facing stiff competition in the export market.

Just last year, some 283,000 tonnes of Australian lamb and mutton were exported to 94 destinations around the world including the United States of America, the Middle East, China and South Africa. In the world's second largest sheep meat market—the European Union—our producers are not on a level playing field. The European Union maintains restrictive quotas on imports and heavily subsidises its sheep producers. In fact, in some cases about 60 per cent of a producer's income is provided via government assistance in Europe. Australian sheep meat producers could boost their income by $60 million each year if the European Union quotas were increased by just 20 per cent above current levels. To make matters worse, New Zealand sheep producers are given 12 times greater access into the European Union than their Australian counterparts. That is despite the fact that Australia produces about 100,000 tonnes more lamb and other sheep meat products than our southern neighbours—the same standards, the same if not better quality, but 12 times the market access. Our sheep meat producers deserve better.

I have continually called on the Commonwealth to ensure our sheep meat producers get a fair go. In February, I opened the Wool Meets Meat Conference in Orange and took the opportunity to highlight the current trade imbalances for our sheep meat producers. On 9 March, I hosted a special Fair Go Barbecue at Parliament House and again called on the Commonwealth to make Aussie sheep meat producers a priority at the World Trade Organisation talks.

Today, I announce that the New South Wales Labor Government will take yet another step in our efforts to help address the current trade imbalance. On 19 April I will host a Sheep Meat Export Summit, right here in Sydney. That summit will be held the day before the next Primary Industries Ministerial Council and will provide an ideal opportunity to put those issues front and centre. We have invited representatives, and they are involved in the organisation, from the Sheepmeats Council, Meat and Livestock Australia, New South Wales Farmers Association, the Australian Meat Industry Council, Aus-Meat Limited, the Livestock and Property Agents Association, and the Saleyard Operators Association, to name a few.

I have invited also the Federal agriculture Minister and the Federal trade minister. We need the Commonwealth to step up and fight for our Aussie sheep farmers at World Trade Organisation trade talks. Finally, I call on the State Opposition to join us in the fight and lobby Canberra on behalf of the industry. I hope the Deputy Leader of the Opposition attends the summit and makes some sort of contribution about how he will act on behalf of sheep producers of this State. The members opposite have an appalling track record for their lack of support for our agricultural industries and their lack of lobbying efforts with their Federal counterparts. That was seen with the forced deregulation of the domestic rice industry and more recently with the wheat single desk. Let us hope they do not sell out our sheep meat producers as well through their silence.

LONG BAY CORRECTIONAL CENTRE PRISON OFFICERS INDUSTRIAL DISPUTE

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: My question without notice is directed to the Minister for Health. Will the Minister inform the House what provisions have been made for forensic patients in Long Bay gaol during the next 48 hours as prison officers are on strike over a dispute with the Department of Corrective Services relating to rostering? Will the strike affect forensic staff and prevent them from fulfilling their duties?

The Hon. JOHN HATZISTERGOS: In relation to the second part of the honourable member's question, I am not aware of any issues. I will obtain an answer to that part of his question. Health staff are still working; they have not gone on strike.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I ask a supplementary question. Health staff might not be on strike but what is the effect of prison staff being on strike?

The Hon. JOHN HATZISTERGOS: I will direct that question to the Minister for Justice. He will provide the honourable member with information relating to his question.

TAMWORTH BASE HOSPITAL NURSING STAFF

The Hon. JOHN RYAN: My question without notice is directed to the Minister for Health. Is there a chronic nurse shortage at Tamworth Base Hospital? Are nurses doing double shifts and having to work on their days off to cover that shortage? What is the staff to bed patient ratio at the hospital? Are the financial implications of such workloads covered in the current budget for the Hunter New England Area Health Service? If not, from where will funds be derived for the additional costs?

The Hon. JOHN HATZISTERGOS: With regard to nursing shortages, I am on record as having indicated that at the moment there is a need for an additional 1,800 nurses across hospitals in New South Wales. The shortage has been drawn to the attention of the Commonwealth Government on a number of occasions, most recently I think in the Preston report, which it partly commissioned. On a number of occasions we requested the Commonwealth Government to provide additional training places so that those positions could be filled, not by nurses working longer shifts or by casual nurses but by long-term permanent staff. Regrettably, the Commonwealth Government has not acceded to our requests. That is why last year and this year the New South Wales Government undertook the largest ever overseas recruitment campaign to fill positions on a permanent long-term basis. Wherever there are vacancies—

The Hon. Melinda Pavey: There are enough nurses here. They just do not want to work in your hospitals.

The Hon. JOHN HATZISTERGOS: New South Wales is a popular destination. If the honourable member looked at statistics, she would find that over the past five years we have increased our nursing work force considerably. The reality is that we need additional nurses. We cannot fill these positions with the nurses being churned out of universities. It is a disgrace that last year, at the University of Technology, Sydney and at Charles Sturt University, 3,500 people applied to obtain a nursing position and were turned back because there were no Higher Education Contribution Scheme [HECS] funded places.

[*Interruption*]

It is no different in dental services. HECS places were slashed by 20 per cent, so every year only 40 dentists who are HECS funded come out of our universities. So the position with dental services is exactly the same. These work force shortages are no different. The Commonwealth Government is of the view that somehow it can constrain expenditure on health by constraining the work force; if it keeps the work force tight and short, it can prevent health expenditure from growing. But the very things the honourable member is complaining about and the very issues identified in his question are all a product of that failed policy. Interestingly, over the past few years the Commonwealth has been abandoning that policy, particularly in relation to medicine, but it had not done it yet in medicine. It is still continuing its old theme of, "Somehow we will all go overseas and get the nurses we require. We do not want to do that but we have to." The Commonwealth Government recognises that because it gives us the visas. It is happy for us to go overseas; it gives us the visas for people to come here and work. It does not want to provide places here. If it provided places here, it would have to pay for their education. What a short-term view of our work force! It is staggering that about 40 per cent of the whole medical clinical work force is overseas trained. Those are the figures. How can we meet our growing demands with a domestic work force of the kind being produced at Tamworth?

The Hon. Duncan Gay: So the Federal Government is giving you visas to help you out?

The Hon. JOHN HATZISTERGOS: No.

The Hon. Duncan Gay: That is what you said earlier before you clicked your fingers at us.

The Hon. JOHN HATZISTERGOS: The Commonwealth Government recognises its own failings. It is happy to give us the visas because it does not have to pay for places in universities. There are a record number of places. I would not be going overseas and getting the additional nurses we need— [*Time expired.*]

DEPARTMENT OF NATURAL RESOURCES COMPLIANCE POLICY

The Hon. TONY CATANZARITI: My question without notice is directed to the Minister for Natural Resources. Will the Minister provide the House with information on the new compliance policy of the Department of Natural Resources?

The Hon. IAN MACDONALD: Honourable members would be aware that the Labor Government introduced a number of wide-ranging reforms in the way we use and protect our land and water resources. Legislation such as the Water Management Act 2000, the Catchment Management Authority Act 2003 and the Native Vegetation Act 2003 has transformed natural resource management in New South Wales. The twin aims of this reform process are to ensure that our communities can continue to have equitable access to resources today, while not endangering access for future generations.

Today I announce the release of another component of that process that will help to protect our water and land well into the future. The Department of Natural Resources has produced a new compliance policy that clearly sets out the role and responsibilities of land managers, water users, other stakeholders and the Government. The policy signals a renewed focus on our aims of ending illegal land clearing in New South Wales, ensuring equitable access to water sources and supporting those farmers and water users who manage their resources in a sustainable way.

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

The Hon. IAN MACDONALD: The State Government has always recognised that the vast majority of farmers are responsible custodians of our landscapes. It will continue to work co-operatively with them on natural resource management and protection. This new policy clearly articulates that the Department of Natural Resources [DNR] will consult with landholders, industry and other agencies to ensure that everyone understands the requirements under the law. The emphasis is on community engagement and education and on promoting voluntary compliance.

The Hon. Michael Gallacher: Point of order: On two occasions the Minister said this was a new policy announcement. I vividly remember your views, Madam President, when you said on 9 March that Ministers were not entitled to talk about policy announcements or to make policy announcements during question time. You said:

> It is certainly true that a question may not seek an announcement of government policy. I remind the Minister that that is the thrust of the standing orders.

Madam President, you also said:

> I made a clear ruling that the Minister is in order if he is talking about a policy that has been previously announced.

The Minister just said that this is a new policy. Madam President, you also said:

> There would be very little that Ministers would be able to talk about if they were not allowed to talk about government policy that had previously been announced. The standing orders are clear: a Minister cannot announce new policy in the House.

On two occasions the Minister used the words "new policy". Madam President, the ruling that I quoted earlier was yours. The Minister is out of order.

The Hon. IAN MACDONALD: I have already been involved in half a dozen radio interviews in relation to this issue.

The Hon. Duncan Gay: So it is not new policy.

The Hon. Michael Gallacher: You referred to new policy.

The Hon. IAN MACDONALD: The Leader of the Opposition is interfering in areas that are the responsibility of others!

The PRESIDENT: Order! I have continually ruled that there are only two things Ministers must do when answering a question. They must not debate the question and they must be relevant. The Leader of the Opposition should have taken a point of order on the question, not on the answer. The Minister may continue.

The Hon. IAN MACDONALD: I have made it clear that the DNR must fulfil its obligations and take action against the small number of people who consistently ignore the rules. Not only are these people breaking the law; they are endangering our precious land and water resources at the expense of honest members of the community who are doing the right thing. Therefore, when breaches occur, the department will take appropriate steps that can range from advisory or warning letters, penalty notices, remediation orders and stop work orders to prosecution in the most serious cases. While the priority is to work toward the best result for sustainability of the environment, I have instructed the department to seriously consider prosecution for those who deliberately and flagrantly abuse the system. I make it clear that the Government remains committed to its 2003 election policy of ending broad-scale land clearing in New South Wales.

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

The Hon. Michael Gallacher: Point of order: Following on from your learned decision of a few moments ago, Madam President, the Minister has now been asked to elucidate a new policy. As you have already indicated, questions about new policies are out of order.

The Hon. Peter Primrose: To the point of order: Elucidation was requested on the Minister's answer, not the question.

The Hon. Michael Gallacher: Further to the point of order: Madam President, the supplementary question is based on the initial question, and you told me a few moments ago that if I had taken a point of order on it, the question would have been ruled out of order. This supplementary question is based on the original question, which you believed was out of order.

The PRESIDENT: Order! The Hon. Tony Catanzariti is seeking elucidation of the answer so the Minister for Natural Resources is in order.

The Hon. IAN MACDONALD: Anyone found to be ignoring the rules and engaging in large-scale illegal clearing will not go unpunished, and in the worst cases people will find themselves facing possible court action.

The Hon. Melinda Pavey: Stop wasting question time, Macca. Just sit down.

The Hon. IAN MACDONALD: The Hon. Melinda Pavey has piped up for the first time today. She was sitting over there yawning. She has been asleep—she obviously has had a hard week. However, it must be emphasised that this new policy is not about locking up land or penalising farmers unnecessarily. It is about getting the best results for sustainability in this State and ensuring that we leave our children the legacy of a clean, diverse and thriving natural world. It is also about ensuring that our vital primary production sector can remain viable and profitable well into the future. I understand that there are a few outstanding issues with regard to the Native Vegetation Act, and I am continuing to work constructively with farmers, environment groups and other stakeholders to reach some solutions. The Government has full faith in the legislation and in the ability of all parties to agree eventually on a sensible outcome to these issues. But we remain steadfast in our determination to put an end to illegal land clearing and other breaches of natural resource law.

MACQUARIE MARSHES PROTECTION

Mr IAN COHEN: I am interested in continuing the previous theme. My question is directed to the Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources. What action has the Minister taken against the illegal land clearing, the construction of unlicensed floodplain structures and the diversion of environmental water into on-farm storage that was documented as occurring in the Macquarie Marshes between December 2005 and February 2006? What action is the Department of Natural Resources taking to follow up the reporting of these incidents? How does the New South Wales Government intend to achieve its responsibility to protect these internationally significant wetlands, as agreed under the 1986 Ramsar convention and under the Federal Environment Protection and Biodiversity Conservation Act 1999?

The Hon. IAN MACDONALD: I do not have specific information about the particular case to which Mr Ian Cohen referred.

The Hon. Duncan Gay: It is an allegation.

The Hon. IAN MACDONALD: Yes, it is in the realms of an allegation—like the case that the Wilderness Society raised in the past day or so. I am pleased to advise that the Department of Natural Resources is in the process of finalising a floodplain harvesting policy that will provide a significant improvement in the way floodplain harvesting operations are managed. Floodplain harvesting is the collection, extraction or impoundment of water that flows across floodplains. Until now, floodplain harvesting has happened in an ad hoc manner, without any regulation. This has clear disadvantages for the environment and for downstream irrigators who rely on this water for their cropping. That is the case at Cubbie Station on the Culgoa, which all honourable members have heard about. The implementation of the new policy will provide equity and resource security to the State's water users who rely on the harvesting of floodwater for their cropping enterprises.

The Hon. Duncan Gay: Did you write this yourself?

The Hon. IAN MACDONALD: My philosophy runs right through it, mate! Once implemented, the policy will also benefit the environment by linking access to floodwater and water-sharing plans, all of which have clearly defined environmental provisions and conditions. The Government will work with peak stakeholder groups over the next 18 months to ensure the smooth implementation of the policy. The policy is part of this Government's commitment to the national water initiative and other related measures through the development of substantive water-sharing plans.

BATHURST BASE HOSPITAL WAITING LIST

The Hon. GREG PEARCE: My question is directed to the Minister for Health. Why is Bathurst Base Hospital closing for elective surgery from 14 to 21 April when 134 patients are waiting for orthopaedic surgery at the hospital, 21 of whom have waited for more than a year?

The Hon. JOHN HATZISTERGOS: The number of people who are currently waiting for care at Bathurst Base Hospital has declined by some 93 compared with those waiting for care in January 2006. The figures for Bathurst hospital show that only 12 people are currently on the long-wait list. That is the figure that the Hon. Greg Pearce asked for and that is the figure that I can now give him.

The Hon. Greg Pearce: Only 12? Not 21?

The Hon. JOHN HATZISTERGOS: Yes, 12. In relation to Easter closures, the Government has carefully planned the surgery that will take place at hospitals around the State in accordance with surgical targets. This involves having more surgery performed at times that are convenient to patients and less surgery at other times that are less convenient to patients. A number of hospitals, for example—

The Hon. Robyn Parker: It is a cost-cutting measure.

The Hon. JOHN HATZISTERGOS: No. A number of hospitals will continue to operate over the period. I am advised that at Bathurst Base Hospital the closure will last for four working days. Of course, the situation will vary from hospital to hospital. The hospitals plan their surgery, arrange for that surgery to take place, meet their surgical targets and arrange to close during periods that are convenient to them and to their patients. What is important is not the issue that the Hon. Greg Pearce identified but the outcomes. And the outcomes are clear: the long-wait list has come down by 67.7 per cent compared with the same time last year. The overall waiting list has reduced by 8,000. We have committed an additional $7 million specifically to target the long waits, of which there are very few at Bathurst Base Hospital in light of the figures that I just outlined. The issue does not have the gravity that the Hon. Greg Pearce attached to it.

The Hon. Duncan Gay: Unless you are one of those people on the list.

The Hon. JOHN HATZISTERGOS: All patients in all hospitals will benefit from the $7 million that the Government has allocated to target long-term waiting lists in particular. As I have said, in the past year the improvement at Bathurst Base Hospital has been quite significant in that regard. That is due to the hard work of the doctors and nurses at the hospital. Hospitals across the State use periods when there is less surgery to perform essential maintenance. We must also recognise the fact that some staff want to take holidays during periods when they can be with their families and friends.

YOUTH WEEK

The Hon. KAYEE GRIFFIN: My question is addressed to the Minister for Commerce. Can the Minister inform the House how the Government is supporting Youth Week 2006?

The Hon. JOHN DELLA BOSCA: I thank the Hon. Kayee Griffin for her question and acknowledge her particular interest in Youth Week 2006. As honourable members will be aware, the Government fully supports Youth Week 2006. I am pleased to report to the House that the Motor Accidents Authority, through its Arrive Alive Program, is playing an important role in supporting and partnering Youth Week 2006. More than $20,000 has been given to 35 councils across the State to fund shuttle buses for young people throughout New South Wales during Youth Week. By funding the Arrive Alive shuttles we hope to encourage as many young people as possible—particularly those in remote areas—to attend their local events safely. This year the emphasis is on funding areas where no other, or very limited, alternative transport options exist.

For some young people in remote areas attending Youth Week events will involve a 600-kilometre round trip. We are encouraging as many young people as possible across New South Wales to take part in their local Youth Week events throughout the five days. Arrive Alive, the Motor Accidents Authority's youth road safety program, is also using its partnership with Youth Week 2006 to raise the profile of road safety among young people. As honourable members will be aware, young people aged between 17 and 25 years are more than twice as likely as any other road user to be killed or injured on New South Wales roads. The shuttles will display the Arrive Alive logo and promote the importance of the Arrive Alive youth road safety message—to celebrate safely. Arrive Alive gives more young people the opportunity to be part of this year's Youth Week festivities and to participate safely. Councils running Arrive Alive shuttle buses include the Great Lakes Shire Council, Tamworth Regional Council, Eurobodalla Shire Council, Bellingen Shire Council, Warrumbungle Shire Council, Coolamon Shire Council, Lachlan Shire Council, Narromine Shire Council, Liverpool Plains Shire Council, Camden Council, Murrumbidgee Shire Council, Narrabri Youth Services and the Upper Hunter Shire Council. Honourable members who want more information on these initiatives should visit the Arrive Alive or Youth Week web site.

COMMUNITY WORKERS WAGE INCREASE

Ms SYLVIA HALE: My question is directed to the Treasurer. In view of the importance attached by the Government to the State Industrial Relations Commission and its determinations, will the Treasurer give substance to the commission's March 2006 decision to award community workers a 10.5 per cent wage increase over the next three years by making provision in the forthcoming budget for an increase of at least $13.3 million over the next three years to enable community organisations to fund the wage increase? Given the Government's reliance on community organisations to provide essential community services, will this additional funding be provided so that not-for-profit human service organisations can fully meet their obligations, without having to reduce employees' hours or service delivery?

The Hon. Michael Gallacher: Rollover Beethoven.

The Hon. MICHAEL COSTA: I notice the Leader of the Opposition has not asked a question. Where is the question?

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

The Hon. MICHAEL COSTA: Each year the New South Wales Government—

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

The Hon. MICHAEL COSTA: I am not going ahead until the Opposition is quiet.

The PRESIDENT: Order! I remind all members that interjections are disorderly at all times.

[*Interruption*]

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

The Hon. MICHAEL COSTA: The Hon. Greg Pearce can ask me a question and I will answer it. He has not asked me a question. I was expecting one from him, but I have not received it. Each year the New South Wales Government's budget includes provision for indexation of grants that recognise that non-government organisations [NGOs] that receive funding contributions from the Government face cost increases including wage rises. In 2001 the Government provided supplementation to NGOs to assist them to meet the costs associated with the making of a new award. For some organisations this package resulted in supplementation of more than 20 per cent on their funding base.

In 2001 the Government agreed that the indexation calculation for funded NGOs would be refined to better reflect movements in wages. The Government provides for the impact of award increases in the indexation provisions. That change has assisted NGOs to meet other wage rises that have occurred in recent years impacting on Social and Community Services award employees. Government meets regularly with its NGO partners and the Council of Social Service of New South Wales. The Government recognises the essential role of non-government organisations in service provision and the approach taken to developing its budget reflects that.

NORTHERN BEACHES HOSPICE

The Hon. PATRICIA FORSYTHE: My question is directed to the Minister for Health. Is money held in an account for the specific purpose of the provision of a hospice on the northern beaches? Was that money raised by the local community? Did Cabinet give consideration to the siting of a hospice as part of its consideration of the future of hospital services on the northern beaches? If not, when will a decision be taken about the provision of a hospice on the northern beaches?

The Hon. JOHN HATZISTERGOS: I am grateful to the honourable member for asking about services required on the northern beaches. I do not have specific details in relation to a hospice but I will obtain them and advise the House in due course. I can say, however, that at a meeting last week the Government gave extensive consideration to the issue of health services on the northern beaches. I recall the honourable member's interest, not only reflected in the question she asked me last week in the House but also in her detailed report on Mona Vale Hospital.

Last Thursday morning the shadow Minister for Health, Mrs Jillian Skinner, commented on radio about the health needs of the northern beaches and said she wanted the Government to confirm whether it had given the go ahead for a major hospital to be built at Frenchs Forest. She said all she wanted were the details. On that very day I announced that a new high-level acute hospital would be built at Frenchs Forest. I confirmed that Mona Vale Hospital would remain on its existing site and would provide a complementary service. I confirmed that the future of Manly hospital was to be determined in consultation with the community and gave an indication that a possible use would be aged care. The Government's decision was warmly embraced by that great chronicle, the *Manly Daily*, which in its editorial stated, "As a community, let us savour this. We have won a facility custom-designed to serve all us, our children and our children's children."

After that great announcement was made it is important to see what the Opposition said. The honourable member for North Shore, who earlier that morning told us that all she wanted were the details, after the announcement was not convinced and said, "This has been an issue that's been around for 10 years". The honourable member for Wakehurst said, "The people of the northern beaches have been shafted because we need two hospitals". That is what I announced, and that shows how much attention to detail the honourable member for Wakehurst had been paying. Both members issued a press release in which they did not indicate where they would site the hospital or what they would do about it. It was interesting to note that the honourable member for Davidson was not a party to that press release.

On 31 March we got an indication about the provision of health services on the northern beaches under a Coalition government. The *Manly Daily* ran a two-page article headlined, "What they think of the big decision". What did six, who are all members of the Liberal Party, of the 12 people interviewed say? The honourable member for North Shore and the honourable member for Wakehurst in their insightful and consistent analysis said the hospital would never be built. The honourable member for Davidson said, "I think this is a logical choice … Frenchs Forest is a sensible one." So the honourable member for North Shore and the honourable member for Wakehurst would not tell us where the hospital should go or what they would do, and the honourable member for Davidson said it was a logical choice. The third view was that of the Federal member for Mackellar, Bronwyn Bishop, who said "I'll continue to fight for a level five hospital at Mona Vale."

On Friday Tony Abbott, the Federal member for Warringah, said "We can't take this seriously unless the State Government gives a clear start date and end date, and gives a satisfactory funding commitment." Later on the same day on Channel 7 news he said, "Rather than promise yet another new hospital … the State Government should … upgrade the hospitals we've already got." One point of view is to build it at Mona Vale. The second view is: "I don't know where it is and it will never be built." The third view is to build it at Frenchs Forest. The final view is to upgrade the two existing hospitals. That is what the Coalition proposes for the diminishing number of people the Opposition represents on the northern beaches—indecision, no vision and no answers.

ROAD TOLL

The Hon. PENNY SHARPE: My question is addressed to the Minister for Roads. Will the Minister update the House on the latest information on the State's road toll?

The Hon. Melinda Pavey: Particularly in relation to the Pacific Highway?

The Hon. ERIC ROOZENDAAL: This is a very serious issue. I hope we can act on it without playing politics. My message to the people of New South Wales, especially as we approach Easter, is to heed the warning of the Roads and Traffic Authority to drive safely and carefully. I am advised that the road toll for New South Wales in 2005 was 504. That is the lowest annual total since 1945 and more than 60 per cent lower than the highest recorded road toll of 1,384 in 1978. I am advised that provisional figures show the number of people killed in road crashes this year has increased compared to the same time last year from 117 in 2005 to 153 as at midnight last night. That figure includes fatalities that could be removed from statistics if subsequent police or coronial investigation shows the cause of death was, for example, a heart attack or suicide.

I am advised that this year we have experienced a higher number of multiple fatality crashes than at the same time last year. This has in part contributed to an increase in the provisional road toll so far this year. Every death is a tragedy. The State Government continues to work hard to reduce the road toll, and as a community we can and must do better.

It is worth noting that over time there have been improvements. Despite there being 13 times as many vehicles now, 10 times as many licensed drivers and a doubling of the population compared to 1945, the New South Wales fatality rate per population in 2005 was the lowest since records commenced in 1908. The current fatality rate per vehicle and per kilometre travelled are at historic lows, with a 90 per cent reduction in fatalities since the end of World War II.

The Hon. Catherine Cusack: How dare you be so pious on this issue!

The Hon. ERIC ROOZENDAAL: I had hoped this would be an issue above any form of politicisation.

The Hon. Catherine Cusack: You're a disgrace!

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

The Hon. ERIC ROOZENDAAL: I refuse to acknowledge any of her interjections because they are disgusting and try to politicise the issue.

The Hon. Melinda Pavey: When are you starting the Ballina bypass?

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

The Hon. ERIC ROOZENDAAL: It is because I am concerned about the increase in the number of multiple fatality crashes this year that I issue a warning: Drive carefully and safely. That warning, I am sure, is echoed by all members of this House. The Government continues to work hard to bring down the road toll. Initiatives include the Road Users Summit, held in March 2005; the Country Road Users Summit, held in May 2005; the Heavy Vehicle Summit, held in July 2005—

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

The Hon. ERIC ROOZENDAAL: —the Country Road Safety public education campaign, which uses "New Car Advertising" type images to highlight the dangers of speeding in country areas; the Country Drink Driving public education campaign, to highlight the dangers of alcohol impairment of driving skills; as a result of the Pacific Highway Road Safety Review Report, $35 million of funds allocated for engineering works on the Pacific Highway for 2004-05 and 2005-06; the Princes Highway Road Safety Review and the allocation of $30 million of funds for engineering works on the Princes Highway over the three financial years starting 2004-05; funding for road safety improvements at crash black spots, as well as safety works on black lengths excluding Pacific Highway and Princes Highway safety review programs; revisions of speeding penalties, with the monitory fine reduced but with merit points increased for speeding offences up to 15 kilometres an hour

above the speed limit; point-to-point speed camera trials; and the introduction of "Crashcam"—high-speed cameras that record crashes and near-misses to be used throughout the State to improve road safety. I know the road toll is an issue that all members are concerned about. I urge all drivers to be safe and careful.

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

DEFERRED ANSWERS

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

LEGAL FEES INQUIRY

On 28 February 2006 the Hon. Peter Breen asked the Minister for Finance, representing the Attorney General, a question without notice regarding a legal fees inquiry. The Attorney General provided the following response:

> In 2004, the NSW Parliament enacted the Legal Profession Act 2004, making it the first jurisdiction to adopt the National Model Legal Profession Laws, developed by the Standing Committee of Attorneys General. The national model commenced operation in NSW in October 2005 and in Victoria in December 2005. All other jurisdictions are moving to introduce the model legislation during 2006. NSW has played the leading role in this national project.
>
> The new legislation includes uniform national standards on costs disclosure, which significantly expand and improve on pre-existing regimes. The model will deliver consumers of legal services consistently high standards of protection across Australia.
>
> I received the finalised position paper and recommendations of the Legal Fees Review Panel in January of this year. I expect to release the paper, and the Government's preliminary response to its recommendations, in the near future.
>
> The cost assessment provisions of the legal profession legislation have also been under review by my Department. Various aspects of the costs assessment system have been addressed through legislative reforms in the course of the national model laws process, including:
>
> - Broadening the categories of persons who may apply for an assessment;
> - Clarifying the interaction between the costs assessment system and the disciplinary system;
> - Allowing cost assessors to refer solicitors who overcharge to the Legal Services Commissioner (LSC). Formerly costs assessors could only refer when the overcharging was "deliberate";
> - Permitting disputes involving amounts under $10,000 to be referred to the LSC for mediation; and
> - Tightening the arrangements for the recovery of the costs of the assessment.
>
> The review of the costs assessment provisions will continue in the light of experiences with these recent amendments, many of which only commenced operation in October 2005.

QUEEN ELIZABETH II EIGHTIETH BIRTHDAY CELEBRATIONS

On 2 March 2006 Reverend the Hon. Dr Gordon Moyes asked the Minister for Commerce, representing the Premier, a question without notice regarding the Queen Elizabeth II eightieth birthday celebrations. The Premier provided the following response:

> The Department of Prime Minister and Cabinet has advised the New South Wales Government of the Queen's specific request that no major celebrations be held to honour her 80th Birthday.
>
> In recognition of her request, the Australian Government and the New South Wales Government will not be undertaking any significant celebrations. However, the Australian Government will present the Queen with a gift on behalf of the Australian people to mark the occasion. A photo album will be prepared commemorating her 15 visits to Australia. The Governor-General of Australia, Prime Minister and State representatives including the Governor of New South Wales and the Premier of New South Wales will send separate messages congratulating Her Majesty on reaching this important milestone.

The New South Wales Government will also encourage organisations to fly the Australian flag and the State flag at full mast on the 12 June 2006 to mark the Queen's birthday. Government buildings will fly both flags as a matter of course.

SCHOOL STUDENTS REPORTING SYSTEM

On 1 March 2006 Reverend the Hon. Fred Nile asked a question without notice of the Minister for Health, representing the Minister for Education and Training. The Minister for Education and Training provided the following response:

> Following consultation during 2004 and 2005 the NSW Government announced new requirements for reporting to parents in August 2005. Advice on the new requirements was provided to schools in 2005 and at the commencement of 2006. These new requirements meet Federal Government conditions for funding set out in the *School Assistance Act 2004* and accompanying regulations.

On 23 February 2006, the NSW Teachers Federation distributed a letter which advised its members not to comply with the new reporting requirements.

The Department of Education and Training immediately lodged a dispute notice in the NSW Industrial Relations Commission (IRC) and also advised schools that they should 'continue planning for implementation of the new report requirements in 2006'.

The NSW Teachers Federation provided assurances to the IRC that it has not banned the new student reports and that it has advised its members to attend professional development sessions designed to prepare for implementation of the new reports.

A memo was sent to schools on 10 March 2006 advising principals of the outcome of the IRC process and reminding them of support that is available to assist them with preparation of the new reports that are to be issued to parents this year.

Should the NSW Teachers Federation commence industrial action, the Department will refer the matter back to the IRC.

Questions without notice concluded.

MOTOR ACCIDENTS (LIFETIME CARE AND SUPPORT) BILL

MOTOR ACCIDENTS COMPENSATION AMENDMENT BILL

Second Reading

Debate resumed from an earlier hour.

The Hon. JOHN DELLA BOSCA (Minister for Finance, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, and Vice-President of the Executive Council) [5.03 p.m.]: In the reformed scheme the average payment to the most seriously injured has increased by 19 per cent while the average payment for non-economic loss or general damages is 23 per cent more than in the old scheme. The reformed scheme has also seen a dramatic decrease in administration costs, with legal costs almost halving and investigation costs having reduced by more than 40 per cent. The Government's reforms to the motor accidents scheme have delivered on all the key objectives. For motorists, green slip premiums are at their most affordable for over a decade. Injured people are receiving faster treatment and rehabilitation and those that are most seriously injured are, on average, receiving increased compensation payments.

The Government's 1999 reforms to the CTP insurance scheme have achieved a more affordable, more effective, more efficient and fairer motor accidents scheme. The Government's demonstrated record in successfully reforming the motor accidents insurance scheme speaks for itself. It is against this background that the Government now proposes to improve the coverage provided to injured people in the motor accidents scheme by establishing a Lifetime Care and Support scheme for the catastrophically injured, providing a special no-fault benefit for children under 16 years of age, and by extending compensation to those injured in inevitable or blameless accidents. These significant enhancements in the support and assistance available for those people injured in motor vehicle accidents will provide a practical and compassionate safety net for the victims of motor vehicle accidents who would not otherwise be looked after under the existing compensation scheme.

As many honourable members may recall, in June 1999 I indicated to the House that the Government would be looking at two further scheme reform issues of special interest to me: first, the provision of no-fault benefits for children; and, second, the introduction of a no-fault long-term care scheme. Today it gives me much pleasure to introduce these significant enhancements in this Chamber. These initiatives will provide security to the injured person and their family, and the comforting knowledge that the necessary treatment, rehabilitation and care will be provided. This will improve the quality of life for injured people and their families. The Motor Accidents (Lifetime Care and Support) Bill was amended in the other place by the Government to clarify that the cost of medication and any necessary modifications to enable a scheme participant to return to work or study are included within the treatment and care needs to be met by the scheme, and to enable the regulations to prescribe other kinds of treatment, care, support or services to be provided by the scheme.

Part 7 of the bill was amended to extend the Lifetime Care and Support Authority's right to recover from other parties to also include recovery of a relevant contribution to the cost of providing treatment and care from a third party, where that party is partly responsible for the accident. Part 8 of the bill was amended to authorise the authority to exchange information about services provided to a scheme participant with other relevant persons and bodies. Consequential amendments were also made to schedule 3 to clarify that a

conclusive medical assessment of future treatment must be referred again for assessment by a court if the court finds there was a denial of procedural fairness in the original assessment.

The Motor Accidents Compensation Amendment Bill was also amended in the other place by the Government to clarify further the scope of the new entitlement to recover motor accidents scheme damages for death or injury caused by a blameless motor accident, in particular, to clarify that the exclusion of the driver whose act or omission caused the accident from entitlement to claim is an exclusion that operates in all circumstances. The bill was also amended to clarify the application of the Motor Accidents Compensation Act 1999 to the new blameless accident and children's no-fault entitlements. As the remaining part of my remarks are similar to those delivered in the second reading speech in the Legislative Assembly, I seek leave to have them incorporated in *Hansard*. I commend the bills to the House.

Leave granted.

The Motor Accidents (Lifetime Care and Support) Bill establishes a scheme to provide lifetime care and support for persons who suffer catastrophic injuries in motor vehicle accidents covered by the Motor Accidents Compensation Act 1999.

Motor vehicle crashes are the single biggest contributor to traumatic catastrophic injury in Australia. A mistake made when driving can have devastating consequences.

The forces of impact in motor vehicle crashes can rip vehicles apart and lead to horrific injuries, typically spinal injury and brain trauma. These injuries are devastating for the injured person, their family and the wider community.

Each year about 125 people will be catastrophically injured in motor vehicle accidents in New South Wales and left with significant disabilities from which they will never recover that require lifetime support. They will have significant daily needs for care, personal assistance, domestic support, and ongoing equipment and medical needs. For those with the most profound injuries, this will extend to requiring 24 hour nursing care.

Under the current Motor Accidents Compensation Act only 65 of the 125 people catastrophically injured in a motor vehicle accident are likely to be eligible for compensation. This is because compensation is only available where the accident was caused by the fault of another driver. People who are considered "at fault" are not entitled to any compensation and must rely upon family and community services to provide support.

Even those in receipt of compensation are not guaranteed a lifetime of reasonable care and medical treatment. Typically, the catastrophically injured will be male and predominately young—more than half will be less than 20 years of age at the time of the injury and more than 70 per cent will be under the age of 30.

To address the special circumstances of catastrophically injured motor accident victims, the Government released its Lifetime Care and Support Plan in June 2005. The Plan proposed that all people catastrophically injured in motor vehicle accidents in New South Wales would receive the medical care and support services they need throughout their life, regardless of who was at fault in the accident.

The Government undertook extensive consultation on the Plan, with a series of public consultations conducted across Sydney and regional New South Wales to discuss the scheme with key stakeholders. The Plan was enthusiastically endorsed by medical specialists, health professionals, disability support groups and service providers.

The new scheme established by the bill will give effect to the proposals outlined in the Government's Lifetime Care and Support Plan.

This new scheme will include those people with catastrophic injuries entitled to make a negligence or fault-based claim under the Motor Accidents Compensation Act 1999. The scheme will also extend cover to such injured people who are "at-fault" in a motor vehicle accident and to catastrophic injuries resulting from those motor vehicle accidents where no person is at fault.

Part 2 of the bill deals with the eligibility requirements and entitlements of participants in the scheme. A person will be eligible to participate in the scheme if their injury meets the criteria to be established by the LTCS guidelines.

Essentially, the catastrophic injuries requiring lifetime support which it is intended the scheme should cover are spinal cord injury and serious traumatic brain injury. There will however also be other types of motor accident injuries which may result in a need for lifetime support. For example severe burns or bilateral amputations and the LTCS guidelines will make provision for this.

For spinal cord injury it should generally be possible to assess scheme eligibility within months of the injury based on the LTCS guidelines requiring the injury to result in a permanent neurological deficit.

For brain injury to be considered potentially eligible, the LTCS guidelines will require a more than one week duration of Post Traumatic Amnesia (PTA) or if a PTA score is not available there must be evidence of a significant impact to the head or of a cerebral insult.

In addition, the injured person must also score 5 or less on any of the items assessed using the Functional Independence Measure (FIM). The FIM assesses self care, mobility, locomotion, communication, social interaction and cognitive function. A FIM rating of 1 indicates that the person requires total assistance and a rating of 7 would indicate that they are completely independent. A rating of 5 or less on an index item indicates that a person requires some supervision to perform the task. A paediatric version of FIM will be used for assessing children's brain injury.

As an early final assessment may not be possible for people with a brain injury, the bill also makes provision for interim participation in the scheme for a period of up to a maximum period of two years.

A person will not be eligible to participate in the scheme if the person has been awarded common law damages for their treatment and care needs. Acceptance into the scheme as a lifetime participant will prevent a person from recovering common law damages for treatment and care needs.

The scheme will provide for all the reasonable treatment and care expenses of participants. These reasonable expenses include medical treatment, rehabilitation, attendant care services and home and transport modification. This is consistent with current entitlements in the CTP motor accidents scheme which provides for an injured person's reasonable and necessary medical treatment, rehabilitation and care expenses.

The LTCS guidelines will determine what are the reasonable and necessary treatment and care needs of participants.

An application to participate in the scheme can be made by the injured person or another person with authority to act on behalf of an injured person. An application can also be made by a CTP insurer where a CTP claim relating to the injury has been made.

Part 3 of the bill provides the mechanisms for resolving disputes about whether a motor accident injury satisfies the scheme eligibility criteria and whether an injury is caused by a motor vehicle accident covered by the scheme.

Given the importance of injury eligibility, the bill provides for any dispute on this ground to be referred to a panel of three assessors who must be medical practitioners or other suitably qualified practitioners such as a speech therapist or an occupational therapist.

This will enable different professional skills and experiences to be applied to the resolution of the dispute. For example a panel comprising a rehabilitation specialist, neuropsychologist and an occupational therapist could be used for the assessment of an eligibility dispute involving a brain injury.

The bill also provides for grounds on which an assessment panel's determination may be referred for review by a Review Panel.

These dispute resolution processes will provide for the fair and impartial determination of questions about injury eligibility by independent medical and care specialists.

As the scheme applies to motor vehicle accidents covered by the Motor Accidents Compensation Act 1999, it may on occasions be necessary to also resolve disputes about whether the relevant injuries have resulted from a motor vehicle accident. This is not a question that can be resolved by medical and care experts.

The bill proposes that such disputes can be independently determined by a panel of 3 claims assessors. Claims assessors are statutory officers appointed under the Motor Accidents Compensation Act 1999 and are senior legal practitioners with extensive experience in motor vehicle injury claims. The scheme will pay an injured person's reasonable legal costs associated with this dispute resolution process.

Part 4 of the bill deals with the Authority's assessment of treatment and care needs and also provides mechanisms for resolving disputes about the Authority's assessment.

It is proposed that the LTCS guidelines will make provision for collaborative processes for determining reasonable and necessary treatment and care needs which will involve the LTCS Authority, the participant and their Lifecare co-ordinator.

It is intended that care assessments of scheme participants will be undertaken regularly through the person's life. For example following discharge from hospital the person may be assessed at three months and then every six months for the first five years. When the person is settled into the community the assessments would be conducted less frequently but would be required at significant life transitions, for example, when completing schooling or commencing or returning to work.

A two tier independent dispute resolution process is proposed for resolving disputes about the Authority's assessment of treatment or care needs. The bill provides for an independent assessment by a single assessor in the first instance. There is also provision for a review of that assessment on specified grounds by a review panel consisting of three assessors.

Part 5 of the bill deals with arrangements for the payment of expenses for treatment and care expenses, including provision for the regulation of fees for those services not provided at a public hospital. These provisions are similar to arrangements already in place under the motor accidents scheme legislation.

Part 6 of the bill establishes the Lifetime Care and Support Authority and provides for appointment of a 5 person Board of Directors to determine the administrative policies of the Authority. The bill also establishes the Lifetime Care and Support Advisory Council to advise Government on the operation of the scheme. In particular, the council is to keep the LTCS Guidelines under review and to monitor the operation of the care and support services provided to injured people who are participants in the scheme. The membership of the Council will include health practitioners and representatives of severely injured people.

Part 7 deals with funding of the scheme which is to be provided through a special levy to be paid by motorists when they purchase a compulsory third party green slip insurance policy. The levy will be collected on behalf of the Authority by licensed insurers when a green slip policy is issued.

The bill explicitly provides that levy contributions must be set so as to fund the full cost of providing lifetime care and treatment to scheme participants and meet other scheme expenses. The fully-funded requirement is consistent with requirements on licensed CTP insurers under the motor accidents scheme. The bill further provides that the Authority's determination of the levy contributions must be made in accordance with independent actuarial advice as to the funding amount required to meet the full funding test.

Importantly the bill specifically prohibits any Ministerial direction in the exercise of the Board or the Authority's functions with respect to setting the full funding amount or the levy contributions required from motorists to achieve this.

Schedules 1 and 2 of the bill deal with administrative arrangements concerning the Board of Directors and the Lifetime Care and Support Advisory Council.

Schedule 3 of the bill makes consequential amendments to the Motor Accidents Compensation Act 1999. The bill clarifies that for a participant in the scheme, the CTP insurer dealing with the claim is no longer required to meet any of the person's treatment and care expenses as those expenses are now required to be met solely by the Lifetime Care and Support scheme.

The Motor Accidents Compensation Act is also amended to exclude a lifetime participant in the scheme from recovering economic loss damages for any treatment and care needs. The current lump sum compensation arrangements for meeting these needs will be replaced by the provision of lifetime treatment, care and support provided by the Lifetime Care and Support Scheme.

The Motor Accidents Compensation Act already provides for independent medical assessment of disputes about the future treatment and care needs of a claimant, however a court or a claims assessor is not bound to adopt the medical assessment. It is also a major criticism of the current provisions that a future treatment or care decision by a medical assessor is not enforceable and therefore may still be declined by the CTP insurer.

Accordingly, the bill proposes to make the medical assessment determination of a dispute about future treatment and care conclusive and therefore binding on the court, claims assessor or insurer. This will also ensure that guidelines for determining reasonable and necessary care and treatment needs can be applied consistently across the motor accidents scheme and the Lifetime Care and Support scheme.

Motor Accidents Compensation Amendment Bill

I now refer Honourable Members to the Motor Accidents Compensation Amendment Bill.

The primary purpose of this bill, as I previously indicated, is to extend the scope of the NSW motor accidents scheme by amending the Motor Accidents Compensation Act 1999 to provide a special benefit for children at-fault in a motor vehicle accident and to provide CTP scheme entitlements to people injured in blameless accidents.

The blanket application of legal rules and principles can on occasions have unfortunate and even undesirable consequences. The principle of fault is a case in point. For example when a person injured in a motor accident is unable to access CTP assistance because no one is found to have been at-fault in causing their injury. Or when children are penalized for behaving as children do. The enhancements to the motor accidents scheme proposed by the bill will provide greater support and security to injured people and their families.

Part 1.2 of the bill provides a right of recovery to people injured in motor vehicle accidents occurring in NSW where no-one is at-fault. That is an 'inevitable' or 'blameless' motor accident.

For the purpose of making this new claim for death or injury, the motor accident is deemed to have been caused by the fault of the owner or driver of the motor vehicle. The injury must also be caused by a motor vehicle accident of a kind recognized by the Act. A person who is injured in a blameless accident will be entitled to CTP scheme benefits.
The one exception is that the driver of the motor vehicle causing the accident will not be entitled to make a claim under these provisions.

A driver however that is catastrophically injured in these circumstances will still be able to apply to participate in the Lifetime Care and Support Scheme.

Part 1.2 also provides a special benefit for children aged up to 16 and a resident of NSW at the time of the accident, in those circumstances where the driver of the motor vehicle involved in the accident was not "at-fault". The child's injury must be caused by a motor vehicle accident of a kind recognized by the Act.

The special benefit will cover the injured child's treatment, rehabilitation and care costs as currently prescribed by the Act. These expenses will be met on an "as incurred" basis, in the same way that these payments are currently made to other scheme claimants. There will also be entitlement for any treatment and care required in the future.

The special benefit also extends to cover burial expenses in cases where the child is killed.

The special benefit will not be available to children killed or injured in a motor vehicle accident which occurred during the course of conduct which would constitute a serious offence and which materially contributed to their death or injury.

In the event a child is injured in a motor vehicle accident where there was no-one at fault, entitlements under the new blameless accident provisions would take precedence.

The availability of this special no-fault benefit in the motor accidents scheme will not impact on any child pursuing a fault-based CTP claim. Children's access to other compensation components provided in the motor accidents scheme, for example, loss of earning capacity and non-economic loss awards, will continue to be available only on a fault basis.

Whilst the primary purpose of the bill is to extend the motor accidents scheme to include blameless accidents and the special "no-fault" benefit for children, the bill also makes a number of other amendments to the general operation of the motor accidents scheme.

Part 1.1 of the bill deals with the application of the Act. The Part introduces a new section 3A which is intended to clarify that the Act applies to death or injury caused in an accident occurring during the driving of the vehicle, a collision or the vehicle running out of control and not to an injury that arises gradually from a series of incidents.

The provision also makes it clear that where a defect in the vehicle causes injury it must be caused during the driving of the vehicle, a collision or the vehicle running out of control but not for example in cases where defective loading equipment causes injury during the unloading of a stationary vehicle.

The bill also introduces a new section 3B, which limits the application of the Act to motor vehicle accidents where there is coverage under a third-party policy of motor accident insurance or the Nominal Defendant scheme is on risk. The new section also preserves the operation of amendments made by the Motor Accidents Legislation Amendment Act 2004 in relation to certain work injury claims under workers compensation legislation.

The bill also amends section 14 of the Act to expand provisions dealing with the circumstances in which registration may be suspended or cancelled for the non-payment of a CTP premium. It is proposed to include cases of credit card fraud and premium underpayment where false information was given to the insurer, within the circumstances in which action may be taken by an insurer against a person's registration.

Before the third-party insurer may request the RTA to suspend or cancel a person's registration, the insurer must first obtain the written approval of the industry regulator, the Motor Accidents Authority. The bill also provides that the Authority may establish guidelines dealing with the circumstances in which approval will be given.

The bill also proposes a new section 23A introducing a cap on the liability of a CTP insurer arising from any single event. Australia is one of the only places in the world where unlimited insurance cover is required for any personal injury insurance. This means that the insurers of the NSW CTP scheme are required to purchase unlimited re-insurance cover against the possibility of a large number of high cost claims arising from one event.

Since September 11, the availability of re-insurance has been tightening and this has been exacerbated by recent significant exposure for natural disaster claims, in particular hurricane Katrina.

Many re-insurance companies are currently assessing their capacity to offer unlimited cover. Indeed at least two of the largest companies that provide re-insurance to the NSW CTP insurers have indicated an intention to remove unlimited cover policies.

If unlimited re-insurance is not available, then the NSW CTP insurance companies would not be able to underwrite the product. The cap will be set at $200 million being an amount close to the level of re-insurance cover which it is believed will be available to each insurer. This will in no way cap or limit any individual claim as the bill also sets up a mechanism to cover and meet aggregated claim costs above the cap from the Nominal Defendant Fund.

The proposed cap is well in excess of any single event claim in NSW to date. The Grafton Bus crash resulted in total claims worth approximately $38 million. The proposed liability cap is in excess of what may be expected in all but the most remote hypothetical scenarios.

While the re-insurance market may be tightening, at present there is still good quality re-insurance available for unlimited cover. Accordingly it is the Government's intention to only commence this provision in the circumstance where no re-insurance of a sufficient standard is available.

Two changes are also proposed to the Nominal Defendant scheme. Members may be aware that the Nominal Defendant scheme covers people who are injured in motor vehicle accidents involving an uninsured and unregistered vehicle or where the vehicle cannot be identified, for example, because it left the scene of the accident.

The bill amends section 33 (3) to exclude from coverage people who are injured by an unregistered vehicle in an accident which occurred while they were trespassing on private property.

The second amendment to the Nominal Defendant provisions seeks to clarify that for the purposes of making a claim, an uninsured motor vehicle includes a vehicle that was at the time of its manufacture capable of registration or was at the time of manufacture, with minor adjustments, capable of registration or a vehicle that was previously capable of registration but is no longer capable of registration because it has fallen into disrepair.

This amendment is necessary because the existing legislation is being interpreted by the courts in a manner inconsistent, I believe, with the intention of the legislation that the Nominal Defendant scheme should cover injuries caused by uninsured vehicles on public roads that, aside from their state of repair, would otherwise be part of the registration system.

The bill also introduces a proposed new section 59A dealing with medical assessors in the motor accidents scheme. The provision indemnifies an assessor against personal liability for acts or omissions in good faith. The provision also declares a medical assessor to be competent but not compellable to give evidence or produce documents in court proceedings.

This provision is necessary following the decision of the NSW Court of Appeal late last year in Ryan v Watkins, where the court found that the general protections afforded decision makers under the Evidence Act are in some instances not available to medical assessors.

This provision recognises the independent statutory decision making role of medical assessors in determining medical disputes and is consistent with the statutory protection the Act currently provides to Claims assessors.

The bill also proposes amendments to the financial provisions of the Act dealing with the Motor Accidents Authority Fund. The amendments facilitate revised arrangement for dealing with the contributions for payments to NSW Health and Ambulance Services under the section 54 Bulk Billing Agreement. The reason for the revised arrangement is to ensure a GST exempt status for these payments and pass on the resulting saving to NSW policyholders.

Schedule 2 of the bill makes consequential amendments to the Transport (Vehicle Registration) Regulation 1998 and workers compensation legislation.

The amendments to the Road Transport (Vehicle Registration) Regulation are consequential upon the bill's amendment of Motor Accidents Compensation Act provisions dealing with suspension and cancellation of registration for the non-payment of a CTP premium and reflect the policy position that CTP related suspension or cancellation of registration is to be dealt with solely under the provisions of the Act.

The consequential amendments to the Workers Compensation Act 1987 and the Workplace Injury Management and Workers Compensation Act 1998 reflect the introduction of a new section 3B in the Motor Accidents Compensation Act which preserves the substance of amendments made by the Motor Accidents Legislation Amendment Act 2004 in relation to certain work injury claims.

The Government's 1999 reforms to green slips have led to a stable and affordable motor accidents scheme. As I indicated earlier, prior to those reforms to the scheme, the average green slip cost for a family sedan in Sydney was $441. Today that average sedan green slip costs $322 plus GST.

The significant increase in assistance for people injured in motor vehicle accidents which will be provided by the initiatives included in the Motor Accidents (Lifetime Care and Support) Bill and the Motor Accidents Compensation Amendment Bill are estimated to have an average $20 a green slip policy net cost impact for motorists.

The stability achieved by the Government's 1999 CTP insurance reforms have resulted in a more than $100 per policy saving for NSW motorists. This dramatic decrease in green slip prices makes it possible to now expand the coverage provided by the motor accidents scheme to those injured people in need of support while still keeping green slip prices low.

I commend the bills to the House.

The Hon. JOHN RYAN [5.07 p.m.]: The Opposition will not oppose the Motor Accidents (Lifetime Care and Support) Bill and the Motor Accidents Compensation Amendment Bill. I concede that the bills aim to achieve a number of admirable objectives that have met with wide support. However, I point out that this legislation contains a great deal more than the introduction of a benevolent scheme to assist motor accident victims who are catastrophically injured. These cognate bills also contain a number of other measures that are designed to limit the cover of motor accident compulsory third party [CTP] insurance. Many of the new measures—I will outline them in more detail later—are one-off quick fixes designed to reverse court decisions that have fallen in the favour of accident victims and against CTP insurers. Some of those petty issues are just plain mean or they will create insurance cover gaps that may well leave innocent victims unprotected, against the public interest. I am convinced that the Government has taken the opportunity to introduce these measures in a fashion so that they will escape detailed scrutiny, by hiding them in the shadow of cognate bills that deal with lifetime care and support.

Who would have expected to find in a bill with the title "Lifetime Care and Support" measures that abolish cover for 10-year-old children who get injured while riding off-road motor vehicles in the bush? Who would have thought that a bill with such a generous aim as providing no-fault cover would have abolished cover for motor accidents under the CTP scheme that arise as a result of a fault in a motor vehicle, and which may place many good public servants, such as lifesavers, at risk of losing insurance cover while they are loading a surf boat onto a trailer? Believe it or not, these bills do exactly that. The Opposition has no intention of letting the Government get away with this trick. It goes without saying that the chief reason that these bills have met with approval from the community is that this State Labor Government has such an appalling record on meeting its responsibilities in caring for people with disabilities and caring for people with brain injuries. The only reason that these bills have achieved community support is that everyone recognises that disability services in New South Wales are so poor that no-one would want to be dependent upon the New South Wales Government's schemes for care.

Last year two out of every three people who applied for home care were refused a service and 90 per cent of the people who applied for supported accommodation—services such as group homes—were turned away. One-third of the State's respite care beds are blocked, leaving dozens of carers who have the responsibility of caring for a family member with a disability, and who desperately need a break, without the opportunity to have a break. We have growing waiting lists for extended care and growing lists in the high needs care pool, the two areas in which the State Government keeps lists. Very few other areas of disability services have lists, which means that our capacity to monitor and explain the level of unmet demand is impossible. The Government seems to want to keep it that way. The central purpose of the bills is to enable the State Government to raise $90 million by slogging motorists and insurance companies with an extra tax to bail them

out of their responsibility to look after people who receive a severe spinal cord injury or an acquired brain injury, and who are not covered by an insurance policy.

If the Government had managed wisely the windfall funds they received from property taxes, club industry taxes and business activity taxes they would not need to raise the extra $90 million a year needed to make the scheme work. Now they plan to raise it through an average of an extra $20 a year increase on compulsory third party [CTP] green slips. The bill creates a new bureaucracy and places new liabilities on the taxpayer and the people of this State. The Opposition has every reason to be suspicious that this scheme will be botched like so many other schemes initiated by the Government. In 10 to 15 years the scheme will have more than 1,000 participants who will be dependent on a government authority for many of their basic needs. The new authority will employ dozens of bureaucrats, assessors, panellists and directors. What looks so benevolent today may become the monster of tomorrow. This kind of scheme has been road tested it other States and jurisdictions, such as New Zealand and Victoria. The Victorian Transport Accident Commission began with similar lofty ideals, including a no-fault accident scheme, and today spends 75 per cent less on each participant than the New South Wales Government has budgeted for.

The Victorian Transport Accident Commission has been responsible for placing young people with catastrophic injuries in nursing homes. We have every right and duty to be suspicious of a scheme run by the Government on which thousands of people will be dependent. The Motor Accidents Authority [MAA] has not shown itself to be exempt from behaving like the rest of the State Labor Government in regard to spending big on bureaucracy. Before it starts dealing with matters of extra medical assessment service assessments, it has increased its staff from 71 to 133 in the last three years and it has relocated to larger and more salubrious surroundings, yet little in the way of increased workload can be pointed to in its annual report for that period. The MAA is not particularly budget conscious. The directors and their guests enjoy the benefits of a corporate box they maintain at Aussie Stadium—hardly the behaviour we expect from a government department. I wonder how big and expensive the bureaucracy will become if it takes over more control of the accident compensation system.

The Labor Government cannot be trusted with a new insurance scheme. It has a grand tradition of mismanaging other schemes that are similar to this one. Under the State Labor Government the workers compensation scheme left the Minister for Industrial Relations speechless when it blew out to a massive $250 million deficit, losing $46 million in a single year under his stewardship. Employers and workers are now paying the price. The Government, the so-called workers friend, had to slash workers' benefits to pay for its mismanagement. It has eroded the State's economic competitiveness by saddling small, large and medium businesses with crippling workers compensation premiums. The former Unsworth Government presided over an equally shocking deficit in the TransCover scheme, which took motorists years to pay off. Labor has so much form that we are entitled to be sceptical of its claims that this new long-term care and support scheme is fully funded and that it will be managed properly. The Government has been trying to con the public by saying that the scheme will add only an average of $20 to the annual cost of a CTP green slip.

What the Government has not explained is that, first of all, this figure is an average. Some motorists will pay a great deal more than an additional $20. The proposed levy will not be limited to an additional $20, as suggested in the Government's media spin. The levy will be a percentage of the total cost of a CTP green slip premium. People who represent a higher risk, such as younger drivers or motorcyclists, will pay much more than an extra $20 a year. Because the Opposition is rightly and legitimately concerned about the Government's potential to mismanage the scheme, we will move amendments to the bill to refer the Government's claim about the cost of the scheme to the New South Wales Auditor-General to ensure that they properly reflect the actual costs of the scheme, and to check the accuracy of the Government's claim that the cost to the motorists will be limited to an average of an extra $20 year. The bill will be passed this year, but the scheme will not be operational until 1 October next year, well after the State election. There is plenty of time for the Government's claims to be checked by the Auditor-General and for a report to be prepared and published so that the voters of this State can take that report into consideration before the next State election.

When the Premier launched the scheme at Westmead Children's Hospital he was extremely brief about the full details of the scheme and utterly deceitful in not explaining all of its features. In his attempt to portray the costs of the scheme as limited to an extra $20 a year for each CTP green slip he did not explain that the amount was the estimate—an average—and calculated in 2005 dollars. There is no guarantee that this will be fixed and limited to an amount of an extra $20 a year when finally it is introduced in 2007. Two years of inflation will be added to that figure when the scheme starts up in October 2007. Green slips could increase above an extra $20 in future years if the costs of funding the additional no fault benefits prove to be more

expensive than the Government has calculated. One indication that increased costs are likely and virtually certain is that the Government has not adjusted its costing to include the additional expense to the scheme of covering children under the age of 16. I do not deny that covering children under the age of 16 on a no fault basis may be meritorious, but the Opposition must ensure that the public is told the truth accurately when the Government explains the scheme.

When the Government published a paper in July 2005, prepared by consultants PricewaterhouseCoopers, outlining the cost of the scheme it did not include the cost of extending the no-fault scheme to children aged under 16 years who were injured in road accidents that could not be attributed to negligence on the part of a driver. It calculated then that the scheme would cost motorists an additional $20 on a CTP green slip premium. Yet the scheme we are now considering includes the additional cost of covering children aged less than 16 years. Apparently it has not been necessary to increase the cost of the levy. Commonsense tells us that children will be an expensive addition to the scheme, if only because they have a longer life expectancy than older people. Some 20 per cent of the people who suffer an acquired brain injury in a car accident will be children aged between zero and 14, and 5 per cent of the people who receive a serious spinal cord injury will be aged between zero and 14. It stands to reason that extending the scheme to include a no-fault scheme for children aged up to 16 years will ensure that the scheme will cost motorists more than an extra $20 annually for a CTP green slip.

Something the Premier did not explain at his press conference was that the Government plans to pay for the scheme partly by cutting benefits to claimants who currently can make fault-based claims under the existing scheme. One obvious way in which the scheme will cut benefits is by abolishing lump sum payments for medical care, and reasonable and necessary care and support. Lifetime care services will apply only if the claimant remains alive. Currently, all catastrophically injured claimants who survive motor accidents that are not their fault are paid a substantial lump sum for estimated costs of their care and medical requirements. The size of the lump sum is collated according to their estimated lifespan.

In the event that a claimant dies prematurely the remainder of the lump sum forms part of the claimant's estate. In the case of dependent children, these amounts contribute towards the costs of completing their education and care, and provide some compensation to them for the loss of a natural parent. Under this scheme their families will face great distress because they lose this form of financial assistance. Families in this situation will experience even greater distress if the premature death can be attributable directly to a negligent act by an irresponsible driver. The public outrage will be even greater when they discover that the scheme will rob a family like the one I have just described of the benefits they have under the current scheme to provide benefits to secure long-term care for drivers who incur their injuries through excessive speed or by driving drunk.

Something else the Premier failed to explain when he was busy doing his public relations stunt at Westmead Children's Hospital was that, under this scheme, claimants who do not receive a lump sum will have less say in determining how their care needs are addressed. They will have to submit to an assessment and conform to bureaucratic rules about how many hours care they can have, the equipment they can use, where they can live and so on.

The new, Orwellian-named Lifetime Care and Support Authority and its lifetime care co-ordinators will predetermine every aspect of the new participants' lives. Basic decisions about where people might live, who they can employ as carers, how often they can move house and how often they can change cars, what sport they can attempt, what equipment they can use, whether they can use a private hospital to have follow-up surgery, where they can go on holiday, whether they can obtain in-vitro fertilisation [IVF] treatment to enable them to have children or obtain medication such as Viagra will be in the hands of the new authority and will have to be discussed, item by item, with its long-term care co-ordinators. They will also be subjected to endless guidelines and panel reports on what constitutes a reasonable level of care.

At the early part of the scheme—while there is plenty of money around, because in the early parts of the scheme there will be more lump sums paid into the scheme than are paid out—it is highly likely that the decisions made by the authority will be generous. But, over time, as an increasing number of people become dependent on this authority, the decisions are likely to become tighter and tighter. I have no doubt that in time this authority may well make decisions that are similar to the decisions of the Transport Accident Commission in Victoria. As I have already pointed out to the House, the Transport Accident Commission in Victoria has put young people in nursing homes. Could there be a more horrific outcome for people who experience catastrophic injury? The Opposition accepts that some people are not able to make their lump sum compensation last for their lifetime, but this problem does not apply to everyone. In fact, it does not even apply to most claimants. The

Government's discussion paper makes the claim that 40 per cent of claimants were living on social security 17 years after receiving their lump sum. That means that 60 per cent of people successfully make their lump sums last.

The Hon. Dr Arthur Chesterfield-Evans: For 17 years?

The Hon. JOHN RYAN: Or longer. Many catastrophically injured people can, and do, manage their finances properly to ensure that they can live typical and fulfilling lives. I have met many of them. While these people might be few, they might not wish to submit themselves to the Government's new bureaucracy because they value their independence and privacy. The Opposition believes that those people who wish to make that choice ought to be respected. The Opposition supports the rights of claimants who can express their consent to opt out of the scheme if they choose to do so. The Opposition will be moving amendments that are designed to make that possible. Not all people will choose to opt out of the scheme and the Opposition has carefully prepared its amendments to ensure that the viability of the schemes is not compromised while allowing people to exercise freedom of choice. The Liberal Party that I represent stands for freedom of choice and the individual's right to choose. There would be something wrong with my representations to this House if I did not support that very important principle.

The Hon. Henry Tsang: It will wreck the scheme.

The Hon. JOHN RYAN: It will not wreck the scheme. I propose to the House that fewer than five people a year will exercise the option—five people opting out because they choose to will hardly wreck the scheme. I put it to the Hon. Henry Tsang: Why should people who currently are able to look after themselves well on their lump sum make the sacrifice for a drunk driver or a speeding motorist and have long-term care for the rest of their lives? I put it in those terms because that is exactly the way the public will make the assessment. If the Hon. Henry Tsang could meet the people I have met, those who are making a perfectly legitimate go of exercising this freedom, he may see things differently.

For example, one of the people whom I have met is a young man who has paraplegia. He explained to me that sometimes when he has a carer, he may want to pay them a little more than the new Government authority might allow so he can keep that particular carer. People who are injured develop a special relationship with their carer because the contact between the injured person in relation to personal care is incredibly intimate. A disabled person might want to make sure he or she does whatever possible to keep a particular carer, but that may not necessarily meet the objectives of the new authority.

Let me put to the Hon. Henry Tsang another position that this person has put to me. A regular need of people who suffer paraplegia is operations to ensure bladder control. When their bladder fails, they essentially wet themselves. It can be phenomenally embarrassing and debilitating. If the new authority requires these people over time to begin visiting public hospitals and go on public waiting lists because that is deemed to be a reasonable level of care, this person, who is a contributor to a medical insurance fund and can have the operation done privately, will have to wait a month or six weeks in a public hospital instead of waiting only a week.

Other important questions that will be determined by this authority are: What if I live in the bush and I live remote from carers? The authority will be telling me that a reasonable cost to get carers will be a particular sum, but it might cost more than that to get them. Whereas as a no-fault claimant I would be prepared to accept whatever the authority gave me, if I were a claimant whose claim was based on negligence and I wished to manage my affairs in a particular way, to make some sacrifices in some places and to spend extra money to manage things that were important to me, I would want that right. I have met many people who manage their affairs.

Another area that will be important is sport. As this fellow explained to me, he enjoys playing wheelchair basketball, but it took him a few try-outs at different sports to work out which sport was best for him. I do not imagine that the new authority will be allowing a number of catastrophic claimants to be testing new types of chairs to work out which sport best suits them. But that was a sacrifice he was prepared to make, and a choice that he wanted to make. Other issues that are important to people are whether they go on the in-vitro fertilisation program and how often they might have treatments. I can just imagine how difficult it will be for a lifetime care co-ordinator and other bureaucrats to be making those sorts of assessments in relation to individuals. These are personal and important issues that some people believe ought to be their business and not something that they have to discuss with a government authority.

Accordingly, the Opposition will be moving amendments to allow a limited number of people to move out of the scheme, if that is their choice. The Government appears to be committed to a model of disability care in which government departments, bureaucrats and in some cases service providers approach people who have disabilities in a paternalistic attitude, whereby they tell those people what is best for them. For years, the bureaucracy's planning and decision making about supported accommodation has been gridlocked because they cannot decide on models of accommodation that people with disabilities will be given. They have obviously recognised the problems that some people with disabilities have by the provision of so-called six pack group homes, and that is good. Lately they have debated whether the Government should be providing cluster housing, in-house care or other limited forms of congregate care as alternatives. I have an even better suggestion. Why do we not have the courage to allow people with disabilities to make the decisions for themselves?

Even though the Minister has ridiculed me for suggesting it, I would be inclined, should I ever be the Minister, to examine the possibility of allocating new funding in the disability system in the form of individual packages so that clients will be able to select the service provider that best suits their individual needs. It is no skin off my nose if $110,000 spent in a group home is spent somewhere else by a disabled person meeting his or her needs in the way in which he or she chooses. This is, in fact, the approach that operates in Western Australia and that will soon operate in Victoria. The flexibility that it affords clients is best demonstrated by the wide variety of accommodation options that are already provided in those States—long before the New South Wales Government ever commenced its recent roundtable discussions on accommodation models.

When given the choice, many clients—in fact, most—still elect to use their packages with service providers who deliver accommodation in models that we are all used to, such as group homes and cluster housing. However, one service provider in Western Australia, which has a long waiting list, uses client funding to employ live-in carers in mainstream rented accommodation that is located in the community. In Western Australia clients can even move out of services, taking their funding with them to a new provider, on the condition that they do not damage the viability of the service that they are leaving. Service providers are encouraged not to make decisions that obstruct the right of clients to move. Issues such as housing affect so many aspects of our lives. They determine where we play, where we work and who our friends are. The choice is a huge responsibility and one that I believe clients and their carers should make for themselves, if they can.

However, this proposal has all the hallmarks of a scheme that will perpetuate a lack of notice and lack of self-determination for people with disabilities. It may not happen early in the scheme when the amount of funding coming into the scheme will be greater than the payments going out for care and support. However, I am convinced that over time bureaucrats will revert to type and will find excuses for why clients' choices should be limited and should play second fiddle to the corporate needs of a government authority. To respond in advance to complaints from the Government that our proposal will compromise the viability of the scheme, I point out that that right will extend to only a very limited number of potential claimants.

It has been estimated that 125 people will enter the scheme every year. Half of them will not be able to make a fault-based claim, so they obviously will not be candidates for opting out. Of the remaining 60 or 65 claimants who can establish fault, 70 per cent, or about 45 people, will have a brain injury so they too will not be able to give legal consent or have the capacity to manage their own affairs. A significant number of the remainder will be minors, under the age of 18, who also will not have the capacity to consent or manage their own affairs. Some of the remainder will elect to remain in the scheme because they are prepared to trade off a reduction in their independence for the perceived security of the managed care provided by the scheme. So it is likely that no more than five claimants will make the choice to opt out if we provide them with that opportunity.

The small number of people who elect to take a lump sum will not compromise the viability of the scheme. In the main they will be claimants whose injury is paraplegia. Many people who live with paraplegia live very independent lives, they play sport, establish families and, of course, manage their financial affairs. Frankly, I could think of no better examples of who would be well known to all members of this House than Mr Doogie Herd from the Disability Council of New South Wales or Mr John Walsh, who I note is present in the gallery and is the author of this scheme. They are examples of people with paraplegia who magnificently organise their financial affairs and live absolutely independent lives as well as making phenomenal contributions to the community.

Another group of people who may legitimately wish to opt out of the scheme are people from overseas who are injured in New South Wales. A scheme operated by an authority in New South Wales is unlikely to be flexible enough to meet the needs of claimants who have to return to their overseas home and who will be affected by fluctuations in foreign currency exchange rates. I point out that if one is in that position and is

currently arguing a fault-based claim in New South Wales, one has the opportunity to have the court take into consideration that the costs of one's care will be greater in some countries, such as the United States of America, and that some consideration will need to be given to currency fluctuations. Sadly, it also works the other way and I accept that the scheme will assist other claimants, for example those who live in Indonesia where the costs of care are significantly less. Quite obviously those claimants will clearly opt to stay part of this Government's proposed scheme.

I point out that there will be a group of claimants from overseas who can make a fault-based claim and would be much better off pursuing that claim in the courts. I do not have the solution for that problem. I have not had time to ask Parliamentary Counsel to draft amendments to address that problem. I sincerely hope that having raised it with the Government, the Government will make arrangements to work out what can be done for those people. It would be a tragedy if people from overseas who are injured in New South Wales and otherwise could have made a fault-based claim have to pay a price so that other motorists who make no-fault claims might get some benefit. I do not believe we should rob one person with a disability in order to advantage another.

As I said earlier, the Government's proposed Lifetime Care and Support Authority will have a great impact on how some people with disabilities live their lives. Disputes will inevitably arise over the question of what constitutes a reasonable level of care. My earlier comments will indicate just how difficult some decisions will be. Currently the legislation gives the authority an unfair advantage over claimants. While the authority will have enormous financial capacity to seek legal advice to defeat claimants in a dispute, claimants will have no capacity to recoup any costs of legal or other professional advice, even if they are successful in a dispute with the authority. I point out that under the current scheme some people in dispute with the Motor Accidents are successful. Believe it or not many people can claim their legal expenses, but under the proposed scheme people will not be able to do the same. Participants or their representatives will be required to complete forms and provide substantiating material, including medico-legal reports, to the assessment and review panels. Many people will be ill equipped to properly access material to substantiate their arguments and present that material persuasively without obtaining legal or other advice and representation. The authority's panels, however, will be fully resourced and will comprise qualified and experienced assessors.

As I have pointed, out it is an anomaly that claimants who have a dispute with the Motor Accidents Authority can claim funding for legal advice in disputes, but claimants who are in dispute with the Lifetime Care and Support Authority will not have a similar privilege. The Law Society of New South Wales has recommended that the bill be amended to permit claimants to seek legal advice in disputes that arise with authority assessors in relation to what constitutes reasonable levels of care. I am sympathetic to that objective, but, again, I have not drafted amendments because I understand the Government's concern that it does not want the funds of the authority to be exhausted in endless legal disputation. However, I do believe that a formula ought to be worked out, particularly for people who might reasonably receive some sort of representation. They should be able to claim back those costs.

Persons with a disability could be placed in no worse a situation than having to pay enormous amounts of money to challenge the Motor Accidents Authority, be successful and receive a benefit, but then lose enormous amounts in legal costs. The Opposition knows that the Government's discussion paper promised that claimants would be able to receive funding for education and vocational services as well as child-care services, but those services have not been entirely spelled out in clauses 3 and 6 (2), which outline services that can be considered as reasonable levels of care.

The Opposition believes the scheme will result in savings to the New South Wales Government because it will fund medical, hospital and disability services for clients who are currently covered by the public health system and by services provided or funded by the Department of Ageing, Disability and Home Care. Yet the Government is not providing a single cent to the scheme and expects the motorists of New South Wales to fully fund it. I turn now to the miscellany of provisions that appear to have been tacked on to the scheme, probably at the request of the insurance industry, which have not been the subject of Government announcement and have not been the subject of consultation with key stakeholders such as the legal profession. I know that to be the case because they have told me so.

I point out that almost none of those issues have anything whatsoever to do with giving people no-fault long-term care and support. Clause 61 of the Motor Accidents (Lifetime Care and Support) Bill provides that medical assessors should be protected from being sued for actions they take in good faith on behalf of the Lifetime Care and Support Authority and it provides also that they should be competent but not compellable to

give evidence as witnesses or to produce documents. The Opposition can understand the reasons for protecting assessors from being sued, but we cannot see why their decision should not be open to scrutiny of the courts when questions of procedural fairness arise. If that is not the case, how on earth could someone pursue a case of procedural fairness if there is no access to the people who made the decision or to relevant documents in order to question them in court?

I point out that assessors are subject to direction from authority officials and they are not required to be independent. Disclosure is an important check on their objectivity. In a number of cases assessors have been requested to produce documents relating to their assessment. Some claimants have been concerned, with justification, that the Motor Accidents Authority has involved itself in the assessment of matters in a way that might be regarded as inappropriate. It is not suggested that that is happening now, but there are well-documented cases of that. I am not legally trained and obviously am reliant upon advice. It is relatively clear to me that in the well-documented case of David Ross Catsicans and Matthew Charles Mullaney there was some level of interaction between a medical assessor and the Motor Accidents Authority, which the court determined was a case of unfair process. The judgment states:

> On 29 October 2002 the Assessments Reports Officer of the Motor Accidents Assessments Service wrote to—

a doctor, whom I will not name—

> requesting a review of sections of his report *that required some amendments*. The request was said to have been made pursuant to sections 10.11 and 10.13 of the Medical Assessment Guidelines. The matters referred to [the doctor] were:
>
> (1) on page 5, point 12, paragraph two of your report, you referred to his Unusual presentation and of his carrying a list of symptoms with him to Medical appointments. Unfortunately, the parties may see this as bias and the whole paragraph is best removed from your report.
>
> (2) with regard to your assessment of Impairment, Page 7, Social Functioning, from the MAA Descriptors this sounds like it could be Class two? Could you please elaborate why you have assessed this as class 3 or change to class 2 upon your review?
>
> (3) on the bottom line of your table you have omitted to include %WPI—

which means percentage of whole person impairment—

> Could you please include?
>
> The parties to the dispute did not receive a copy of this letter.

So between the time of the preparation of a medical assessor's report and the presentation of his report no-one knew that the Motor Accidents Authority had given a written instruction to the medical assessor. The judgment then states:

> (4) A further report, dated 9 August 2002, but date stamped as having been received by the Motor Accidents Authority on November 2002, addressed the points raised by the letter from the Medical Accidents Assessment Service by:
>
> (a) omitting material in respect of the plaintiff's alleged unusual presentation;
>
> (b) without providing reasons, changing the assessment in respect of social functioning from class 3 to class 2; and
>
> (c) including the percentage whole person impairment in the table as requested.

It also reduced the level of impairment that had originally been assessed as 30 per cent whole body impairment to 11 per cent whole body impairment. Sadly, the story does not end there. The judgment states:

> (6) On 4 February 2004 the claimant was further examined by [a doctor].
>
> (7) On 5 March 2004 [the doctor] prepared a draft report and certificate in which he assessed the plaintiff's whole person impairment as not greater than 10%. These documents were not forwarded to the parties.

The claimant went from an assessment of 30 per cent whole body impairment, to 11 per cent, to less than 10 per cent. That means he went from being generously provided for by the scheme to not being provided for by the scheme at all. There had been extensive written communication between the medical assessor and the Motor Accidents Authority, none of which might have been revealed had this matter not gone to court and people were interrogated to establish how that occurred. It is irrelevant whether or not that case was proven; it simply proves

that there is correspondence between officials in the Motor Accidents Authority and medical assessors. Due regard should be given to that correspondence when allowing legal officers to make a claim for failure of due process. They ought to be able to have access to both the medical practitioner and to the documents. In this case the judge said:

> I find that there has been an absence of procedural fairness in the process of medical assessment of the plaintiff.

As I said earlier, these amendments will make that harder. The Government is concerned about the fact that some doctors, having given an assessment, will not want to come to court, notwithstanding the fact that they are paid generous fees for attending court as professional witnesses. Doctors who make themselves available and who make these decisions are acting in the public interest. They are making public decisions like everyone else and I see no reason why they should be protected from scrutiny. I understand that doctors who act in the scheme should not have to put their medical indemnity insurance on the line to assist the Government.

The Opposition has no objection whatsoever to protecting them from being sued. But, frankly, it is outrageous to ask people not to answer questions about whether they conducted themselves according to procedural fairness, just to help the Motor Accidents Authority. Opposition members cannot support such a proposal. We will be seeking to move an amendment to delete that provision. The bill introduces a new definition of "motor vehicle accident". The Motor Vehicle Accidents Compensation Bill proposes to redefine a motor accident to remove cover for accidents that arise from defects in the operation of motor vehicles. This creates a gap in the cover for some persons where the provisions of their public liability insurance might not cover some events arising from the use and operation of a motor vehicle.

The Bar Association said to me that when the two schemes were redesigned in 1995 there was an attempt to ensure that the use and operation of a motor vehicle was a seamless transition from that to civil liability. The problem is if one-off changes are made to one scheme without addressing the changes to another scheme it creates a gap. It is not hard to argue that it is not in the public interest to have such gaps. Many people such as surf lifesavers and others require complete coverage and do not want to be caught in the legal quagmire of a potential gap if they happen to be injured while loading a barbecue or surfboat onto a trailer. They do not want to argue whether the trailer was connected to the car or whether the car was in motion.

This was well explained by the Bar Association in a submission I believe it made to the Government—a submission I believe all honourable members should read. The Bar Association believes an insurance gap was created by amendments to the legislation in 1995. It made submissions to the Standing Committee on Law and Justice, which accepted its recommendations and said that the Motor Accidents Authority must address that insurance gap. The Bar Association states:

> The unfortunate consequence of the proposed amendment is to further broaden the gap creating an additional class of persons who will be uninsured.
>
> Although many cases involving a defect in the vehicle will occur in the industrial environment where statutory workers' compensation rights may exist, there are examples of a defect, which can occur around the home. Consider the following:
>
> (i) A vehicle towing a caravan arrives at a campsite. The dolly wheel is broken so the owner seeks the assistance of a passer-by to lift the caravan off the ball on the tow bar. The passer-by that lends assistance suffers a back injury whilst conducting the lift.

If I were ever asked to assist a motorist in those circumstances I would presume I was covered by the CTP insurance that operated for that motor vehicle. If this amendment is agreed to some people might be reluctant to offer assistance to others on the roadside for fear that they will not be covered by CTP green slip insurance. The Bar Association also states:

> Under the current legislation the injured passer-by would be able to bring a CTP claim and the owner of the vehicle would have the protection of CTP insurance. With the proposed amendment the passer-by has no access to the motor accident scheme and the vehicle owner is left uninsured.
>
> Exactly the same scenario can be played out with a trailer at the tip or in a driveway at home.
>
> (ii) A child is left inside a vehicle whilst the owner fills the car with petrol. The child undoes his seatbelt and begins playing with the door handle. Because the safety lock on the vehicle is broken the door opens, the child tumbles out and injures his head on the concrete driveway of the service station.

> Under the current Act the child would be able to access the CTP scheme and the owner would have insurance coverage in relation to the defect in the vehicle. With the proposed amendment the owner would face personal liability and the child is at risk of going uncompensated.
>
> (iii) The owner of the vehicle calls out the NRMA to replace a flat battery. The hood catch on the vehicle is broken and whilst the NRMA patrolman is working replacing the battery the bonnet falls striking them on the head. The effect of the amendment is to take this case outside the CTP scheme and to strip the vehicle owner of the insurance coverage they currently hold in relation to such an incident.

Most honourable members would know that having a vehicle repaired on the roadside is not part of the use and operation of a vehicle. Most people might argue that they do not care from which insurance company they claim, but they want some assurance that they are covered. All the examples that I outlined are hypothetical, but I am sure many honourable members would say they are not so outrageous that they would not arise. These amendments were included in the bill but the Government made no announcement that that would be occurring and it held no discussions with the public to see whether or not they were wanted. If these amendments are agreed to insurers will get the benefit of not having to pay out claims and as a result there will be virtually no decrease in the cost of a green slip.

The bill introduces provisions relating to accidents that occur on private land. Clause 14 of the Motor Accidents Compensation Amendment Bill amends section 33 of the current Act by adding further words so that there will be no right of action against the nominal defendant if somebody is injured by the driver of a motor vehicle or the rider of a motorcycle who trespasses on land in a road-related area. This situation arises occasionally when a trail bike rider trespasses on private land that has become an informal trail bike track. If the rider knocks down or severely injures a bushwalker who is in the general area the nominal defendant may have to pay under the current scheme. It is a rare situation but an injustice may be done if we remove the right of innocent victims to recover damages. Such a situation occurred in the 2005 case *Ryan v. Nominal Defendant*—I was not involved. The effect on the Nominal Defendant Fund is negligible but the effect on one, or possibly two, people a year who would be unable to recover damages could be quite significant. I draw attention to the submission by the New South Wales Bar Association on this matter, which I think is instructive to honourable members. It states:

> It is always problematic to amend a statute in response to a one-off case. The reality is that there are many areas of Crown land, private land and private roads where there is a well established public usage but nonetheless users may technically be trespassers.
>
> If a private owner, a local council or the State Government allow unrestricted private access to a site and are well aware that the public use the site then the erection of one sign forbidding trespassing ought not deny the operation of the Nominal Defendant provisions. In assessing the liability of a Nominal Defendant a Court ought to be able to look at common usage in determining whether an area is sufficiently accessed by the public to trigger the Nominal Defendant provisions.

I point out to the House that some of those who ride motorcycles—irritating though that may be—are very young. They simply do not understand the rules of trespassing, even when the land involved is public land. Motorcyclists commonly traverse public land. Young people who join others in their activities may not understand that they and their activities will not be covered by the operation of the Motor Accidents Insurance Scheme.

Some people might regard this as a legitimate amendment but why has the Government not announced the change? Why has it not been discussed? It appears to be the result of a simple, private request from the insurance industry for the Government to rectify a problem that the industry had in the courts. The amendment was drafted privately and, even worse, it has been added to the tail end of a bill that is substantially about long-term care and support. I cannot imagine a more deceptive way to go about making those changes. The Bar Association has outlined some other scenarios where the bill will have an impact and that are more legitimate even than those involving motorbike riders in the bush.

Imagine that a man is driving his pregnant wife to hospital along a country road. The vehicle runs out of petrol and the man seeks assistance at a nearby farmhouse and proceeds to the doorway contrary to a sign that says, "No trespassers". While standing on the driveway he is run down by an unregistered farm utility vehicle driven by the farmer and his son. That man was trespassing but the situation will not be covered by the scheme. Imagine that a family is walking to the beach through a coastal reserve that is patrolled by the local council. Although there are signs indicating that there is no public access, the route in question has been used by locals for many years and is well known to the local council. There are no gates, fences or barriers to prevent the use of this popular shortcut. Then a family member is run over by a local youth on a trail bike. That family would previously have been covered by the scheme, but will not receive coverage if we allow these amendments to pass.

Then there is the case of an abandoned quarry that is used as a local swimming hole. Residents in the area drive over private property to reach the swimming spot. The landowner erects a "No trespassing" sign but does absolutely nothing to deter trespassers. There will be questions as to whether that landowner is responsible for what occurs on his land. I recognise, as a non-lawyer, that some of those cases may be silly but the law can be an ass. The Opposition is particularly concerned that landowners will have to pay damages awarded against them from their public liability policies—and they may not have wanted to be involved in the dispute at all. The bill will create a gap. The Government has legislated for these changes unannounced and then tucked them at the back of a bill on long-term care and support. They will impact grossly on how people are covered by compulsory third party schemes.

The Opposition argues that we should not make ad hoc, one-off changes to the Motor Accidents Insurance Scheme without fully investigating their impact. In fact, it would not have been inappropriate to refer the scheme to the Standing Committee on Law and Justice for examination when the Motor Accidents Authority has its annual meeting with that committee. The amendments should have been put before members of Parliament and public discussion should have been invited. But, no, the Government has whacked these changes—which are the result of a private deal—in the middle of a bill on a lifetime care and support scheme for the victims of motor vehicle accidents. That is utterly deceptive. The Opposition will certainly give the Government the opportunity to retreat from that course of action. I will not divide the House on the amendments but I challenge the Government to decide whether it wants to go ahead with them. It should at least explain them to the House. For that reason, I foreshadow that the Opposition will move amendments in Committee and examine each of those legal changes that I believe have nothing whatever to do with the debate on these cognate bills.

I have not mentioned those parts of the bills that are generally considered to be beneficial. I refer to the decision to limit to $200 million the public liability claim regarding a particular accident. For example, imagine a situation in which a motor vehicle crashes into a train and kills several people. Insurers simply cannot find reinsurance for that sort of unlimited liability so it makes sense for the Government to assume it. That is a sensible amendment, it has been discussed, and the Opposition supports it. However, I do not believe the other amendments have been examined and we would be failing in our job as an Opposition if we did not, first, point that out; and, secondly, ask the Government to explain itself.

Despite these concerns, the Opposition recognises that there are merits in providing a scheme to ensure that all people who are catastrophically injured in motor vehicle accidents have the opportunity, regardless of fault, to have their medical and personal care needs provided for in a structured government-guaranteed scheme that lasts for their entire lifetime and that is protected from being eroded by inflation or bad investment choices. Accordingly, the Opposition will not oppose the bills but we will move some amendments in Committee to address the concerns that I have outlined.

I know that the Minister and honourable members will want to acknowledge the contribution of Mr John Walsh to the design, study and presentation of the scheme. This has been something of a mission for him. Mr Walsh has explained the scheme—he is, in many respects, its author—and I think it is important to pay tribute to him. Many, many people with disabilities will benefit from this scheme, which is a product of Mr Walsh's ingenuity and foresight. We must be accurate: The scheme has pluses and minuses, and the Opposition would be failing in its duty if it did not point them out vigorously. But my criticisms detract in no way from the magnificent job that Mr Walsh has done. Notwithstanding the criticisms from the Opposition or from others in the community, I have no doubt that the scheme's overall impact will be great. In fact, it is a wonderful outcome for people with disabilities and, more particularly, for those with brain injuries, who, we must admit, are largely ignored by all compensation schemes. Those people will be better for the work of Mr Walsh. I commend him for that and thank him for his phenomenal contribution to the people of New South Wales. Individuals rarely get the chance to make a difference. I know that Mr Walsh's contribution will be valued. It is worthy of Parliament's attention and congratulations.

Reverend the Hon. Dr GORDON MOYES [5.58 p.m.]: I lead for the Christian Democratic Party in debate on the Motor Accidents (Lifetime Care and Support) Bill and the cognate Motor Accidents Compensation Amendment Bill. The two bills provide the legislative basis for implementing important improvements in the assistance provided to people injured in motor vehicle accidents. Like the Hon. John Ryan, I congratulate John Walsh on his remarkable legislative contribution. I point out that a year or so ago I used his personal life and his many achievements as a wonderful illustration during a religious service that I conducted in Wesley Mission for a group of people who were confined to wheelchairs. Mr Walsh is an example to others.

Road crashes are a major cause of death and injury in Australia. Since record keeping began in 1925 there have been more than 169,000 road fatalities in Australia. This death toll exceeds the aggregate number of Australians killed, 89,000, in the four major wars—World Wars I and II, Korea and Vietnam—in which Australia has been involved. Until 1970, each year other than during the Depression and World War II had seen a steady growth in motor vehicle ownership and a corresponding increase in road deaths. However, from 1970 until 2002 the fatality rate dropped from 30.4 to 8.8 deaths per 100,000 population. This reduction has been achieved in spite of a huge increase in motor vehicle use.

From 1970 to 2002 the fatality rate per 10,000 registered vehicles has dropped from 8.0 to 1.4. In terms of 100 million vehicle kilometres travelled, the fatality rate has dropped from 4.4 in 1970 to 1.0 in 2000. This decrease in the rate of fatalities is to be praised. The Australian Bureau of Statistic's *Year Book Australia 2005* has compared Australian road traffic deaths with those for other selected OECD nations. Australia's rate of 8.9 road deaths per 100,000 persons in 2001 is considerably lower than the rates of France, the Republic of South Korea, Poland, Spain, the United States of America and so on. Australia's rate is, however, markedly higher than those of Sweden and the United Kingdom.

The Australian Transport and Safety Bureau reports that on average four to five people are killed every day in crashes on Australian roads. This is a tragic fact. Also since 1990, approximately 22,000 people per year, on average, have been seriously injured in road crashes in Australia or, on average, about 12 times the number of deaths due to road crashes each year. Each year about 125 people will be catastrophically injured in motor vehicle accidents in New South Wales and left with significant disabilities from which they never recover and require lifetime support. Each of those deaths or injuries is significant.

Every death on our roads represents untold adverse consequences for families and loved ones of those killed or injured. The emotional ramifications are clear—grief, loss and despair are to be expected. But in addition to the burden of personal suffering, the monetary cost of crashes has been estimated at $15 billion per annum. The bills that we are debating today go some way towards assisting those seriously injured in a motor vehicle accident and their families cope with the incomprehensible. Last year the Government released a publication entitled "Lifetime Care and Support: Assisting People with Catastrophic Injuries from Motor Vehicle Accidents." The bills before us implement the plan discussed in this report.

The proposed legislation establishes a scheme to provide lifetime care and support for persons who suffer catastrophic injuries in motor vehicle accidents covered by the Motor Accidents Compensation Act 1999. This scheme is mainly implemented through the Motor Accidents (Lifetime Care and Support) Bill and supported by the Motor Accidents Compensation Amendment Bill. The Government has indicated that the scheme has been subject to extensive consultation and has been endorsed by medical specialists, health professionals, disability support groups and service providers. My office has received many letters from varied sources: including Brain Injury Association of New South Wales, Spinal Cord Injuries Australia, the Accident Victims Alliance, academics and doctors supporting the initiatives in this scheme. I will now point out the most salient aspects of this scheme as I see them.

The scheme that is implemented by this legislation will cover three groups of individuals: people with catastrophic injuries entitled to make a negligence, or fault-based claim, under the Motor Accidents Compensation Act; people catastrophically injured in a motor vehicle accident who are at fault; and people catastrophically injured in a motor vehicle accident where no person is at fault. The scheme will provide for the reasonable treatment and care expenses of participants. Reasonable treatment and care expenses are said to include medical treatment; rehabilitation; attendant care services and home and transport modification. The expenses provided for by the scheme are consistent with current entitlements in the compulsory third party [CTP] motor accidents injury scheme. It is noted within that context that the Law Society of New South Wales recommends that the definition of attendant care services, as provided for by clauses 3 and 6 (2), be expanded to include education and vocational services and also child care services.

Where there is a CTP claim, rather than receiving a lump sum at settlement of a claim to cover the estimated costs of future medical treatment and care, the injured person will have these costs met for their lifetime by the new scheme. Lump sum compensation payments for other economic losses and for pain and suffering will remain unchanged. This morning the crossbenchers heard from Judie Stephens, OAM. One of the most forceful points that she made was in regard to lump sum payments. She was of the strong view that given the risks inherent in people receiving lump sums, an annuity would be the best option. She painted a clear picture of the dangers of teenagers who might be awarded million dollar settlements. Obviously, without the benefit of hindsight, a youngster in that situation would not know how to best manage that money. She gave some examples of that.

Funding for the new scheme will be provided by a special levy to be paid by motorists when they purchase a green slip insurance policy. It is estimated that those liable to pay CTP each year will pay an additional $20. I acknowledge the previous speakers who questioned this amount and the capacity of the Government to keep it at that amount over years to come, but that is to be expected. The New South Wales Government will approach the Commonwealth for a GST exemption for this levy. The Government report on the scheme indicates that "while the cost of providing lifetime care and medical treatment for any person can only ever be an estimate, the pooling of these funds will protect against the possibility of poor estimation for an individual claimant". This is important. Heads of damage covering pain and suffering and economic loss will remain unchanged by the scheme.

The bill also makes amendments to the Motor Accidents Compensation Act, essentially to clarify that a CTP insurer is no longer required to meet a scheme participant's treatment and care expenses as those expenses are now required to be met by the Lifetime Care and Support Scheme, and also to give effect to the removal of lump sum payments for a scheme participant's future treatment and care needs. Specifically, a number of enhancements to the existing CTP motor accidents injury scheme are introduced. The bill introduces a new special children's benefit that extends scheme coverage to include a no-fault benefit for New South Wales resident children under 16 injured in motor accidents that will cover hospital, medical and pharmaceutical, rehabilitation and attendant care service expenses. In cases of death, the benefit will meet the family's reasonable funeral expenses.

Further, the motor accidents scheme will be expanded to provide full compensation entitlements for injury or death caused by a motor vehicle accident where no-one is considered to have been at fault. For example where injury is caused to others because a driver experiences an unforseen illness or medical condition. Currently, under common law if a court finds that no-one was at fault in an accident the CTP compensation entitlements will not be available to those injured in the accident. This position was affirmed in the Sophie Delezio case. Wesley Mission has been providing 24-hour-a-day attendant care for young Sophie since her accident. Honourable members may remember that little Sophie Delezio suffered horrendous burns to her body when Don McNeall lost control of his car because of a seizure and crashed into the daycare centre where Sophie was staying. Another toddler also suffered burns from the accident. This legislation is in response to situations where fault cannot legally be attributed to any one person for an accident.

The bill makes a number of minor amendments. It clarifies that the application of the Act is limited to motor vehicle accidents where there is coverage under a third-party policy of motor accident insurance or the Nominal Defendant scheme is on risk, claims involving uninsured and unregistered vehicles, and does not include injuries arising gradually over time from a series of incidents. The bill will also place a cap on the amount of an insurer's liability to $200 million. It was indicated in the second reading speech that the proposed cap is well in excess of any single event claim in New South Wales to date. I understand that the Grafton bus crash resulted in total claims worth approximately $38 million.

In relation to the nominal defendant scheme, the bill clarifies the circumstances where an uninsured and unregistered vehicle that has fallen into disrepair is capable of registration, as the current provision is being interpreted by the courts in a manner inconsistent with the intent of the legislation. The bill also will remove any right of action where an injured person is a trespasser on private property. This raises a whole range of other issues, in which lawyers take great interest, as was outlined by the Hon. John Ryan. I note that the Insurance Council of Australia has indicated its views on this legislation. We have heard those views put in some detail. The Insurance Council stated in a letter to me that:

> … there is a better way to achieve these outcomes (i.e. lifetime care and support of victims of motor vehicle accidents) than is proposed by the Government—with insurers keen to take on part of the financial risk of underwriting the scheme, delivered for the same cost as proposed by the Government.

The Legislation Review Committee has outlined its concerns with some aspects of the bill. I will not repeat those concerns here. The crossbench also was briefed this morning by the Law Society of New South Wales, which has outlined its concerns with the bill even though acknowledging the social merit of the scheme implemented by the legislation. I trust that the Government has considered the views espoused by those entities. The Opposition has given us its concerns in great detail.

I would like the permission of the House to incorporate two of the three letters I received from Judie Stephens, OAM, who is sitting in the public gallery this evening, in relation to this matter. Judie Stephens' grandchild, Jackson, lost both of his parents in a car accident when he was three months old. As a result of the accident, he was left profoundly disabled. Judie has fought a long and hard battle to obtain compensation for

little Jackson. To our deep regret, little Jackson lost his life in December last year. These bills will go some way to help people like Judie who take care of loved ones injured in motor vehicle accidents throughout the lifetime of the injured person. I draw the attention of the House to the difficulties she has encountered with the Office of the Protective Commissioner in regard to these matters. I seek leave to incorporate two letters.

Leave granted.

DARE TO DO AUSTRALIA

18 July 2005

Commissioner Ken Gabb
Office of the Protective Commissioner
PO Box A235
Sydney NSW 2001

Dear Commissioner Gabb,

Misappropriation of Third Party Settlements

Surely this can't be right.....

Recently much midnight oil has been burnt by us—two long-time friends—over issues arising from lump sum settlements in third party claims. Recently a key concern crystallised for us in our thinking. It is a concern currently affecting a number—possibly a very large number—of claimants, and we would like to share it with you.

When a third party claim is settled, the Court considers the evidence and the needs of the injured person (which are documented in financial plans for the Court's consideration), and an appropriate settlement amount is authorised. The insurer then pays that sum to the injured person, with the understanding that it will be used along the lines of the promise to the Court. During the legal process the Court often appoints a trustee (either the Office of the Protective Commissioner of NSW or another complying trustee) as a financial manager for the injured person. After settlement, then, the insurer and the Court have completed their roles, believing that the money will be used for the purposes for which it was promised and paid.

However if this settlement money is then not applied to or is withheld from paying the injured person's needs that were outlined and formed the basis of the Court's decision-making, then surely a promise has been broken, with possibly sinister outcomes. The withholding of appropriate funds to pay for certain specified needs could mean that the person who was granted the settlement in the first place is subsequently denied some or all of the services, proper care and support upon which the settlement was actually based. Obviously this could lead to diminished health and, in the most extreme situation, the individual could even die. Withholding of payment means that the assets of the injured person increase while their quality of life decreases or, at the extreme, the estate of that person has increased at the price of their life.

So if the injured person is disadvantaged in this way, whom might this action advantage? The first party might ostensibly be the trustee (financial manager), because the partial or full withholding from paying appropriate needs means that the trustee has greater funds under management, and that of course results in higher fees being payable to them.

But there is also a second possibility. Consider the extreme and tragic circumstance of the injured person dying. The insurance company has paid out funds in good faith but some or all of these may not have been applied for the needs of the injured person. If that person died, under current legislation the funds would then pass to the next of kin. One cannot help but postulate that this creates a potential conflict of interest and, in some cases, a possible reason to deny care.

This whole issue raises many challenging questions.

- ***How to ensure that the settlement proceeds go to the injured individual as ruled*,** rather than simply creating an ever-increasing asset base to be managed and paid for? This cannot just be about the trustee capturing the funds to manage. Where are the true checks and balances?

- ***If the funds are not going to be applied in line with the Court's decision*** (on the basis of financial documents submitted during Court proceedings), ***why has the insurer been asked to pay those funds in the first place?*** In that case, the insurer could well have paid out a higher settlement than was ultimately going to be used. It is most certainly in the insurance companies' best interests to know that funds are going to be applied as outlined and required. If not, surely it would mean a lower settlement payout by the insurer, which would reflect in lower premiums and higher share dividends. Just think … Any lack of integrity by trustees in applying funds to the needs for which they have been paid out is probably adversely impacting third party insurers' premiums, which consequently affects every policyholder and shareholder of the insurance industry.

- ***How to take away the whole muddy issue surrounding beneficiaries?*** If the injured individual died, why should those assets then pass to others who have not been injured or financially impacted? After all, the settlement was made to provide for a specific set of needs for the injured individual, not to create wealth (and even possible conflict of interest) for beneficiaries.

So may we repeat … Surely this can't be right. This is not the way the system was meant to work, neither for the insurer and their funds paid out in good faith, nor for the Court who endeavour to hand down a financially adequate decision for an injured individual, nor—most specifically—for the injured person themselves.

May we ask you to assist in finding a fair and equitable solution for all parties? ***What we are seeking is that the payments paid by insurers actually go to the injured party to meet their needs, not those of others.*** Somehow there needs to be change.

We remain, yours sincerely, two most concerned individuals...

Judie Stephens Christine Bull

____

ACCIDENT VICTIMS ALLIANCE

Public Statement

This week Motor Accidents Authority (MAA) presented for reading to **NSW Parliament** the **"Lifetime Care and Support Plan".** Accident Victims Alliance (AVA) seeks your support.

It is nine months since my darling Jackson, his Attendant Carer Gail and myself attended Parliament House News Release with Premier Bob Carr when this care initiative was released.

At 8.10pm on Sunday 18 December 2005 Jackson died in my arms. His death was premature.

It is vital that all catastrophically injured people have available **"Lifetime Care and Support Plan"**. Jackson had substantial settlement money which was mismanaged by the Office of the Protective Commission NSW. They ignored Jackson's lifetime treating medical and rehabilitation team who had a professional care plan in place. As a result, Jackson died.

Jackson's death must not be in vain. Catastrophically injured people involved in motor vehicle accidents are those who we are going to protect with this legislation. It is vital and now up to you to ensure that this legislation becomes law.

Please read the enclosed documents.

Is it possible for us to meet after 20 March 2006? Do contact me with your questions and concerns.

Thank you for your help ensuring that catastrophically injured motor vehicle accident victims on NSW roads are protected.

Yours sincerely, Judie Stephens OAM

____

Ms SYLVIA HALE [6.12 p.m.]: The Greens support the Motor Accidents (Lifetime Care and Support) Bill and the Motor Accidents Compensation Amendment Bill. However, we appreciate that modifications need to be made to these bills. To this end, in Committee my colleague Ms Lee Rhiannon will move a number of amendments to the bills. The Motor Accidents (Lifetime Care and Support) Bill establishes a new universal insurance scheme to cover lifetime care for those catastrophically injured in motor vehicle accidents. It is forward-looking legislation, and the Greens are happy to congratulate the Government on this initiative. I note that the bill is broadly supported by the medical fraternity, the insurance industry, the Law Society and most of the accident victims support organisations.

The new Lifetime Care and Support Scheme will provide 24-hour lifetime care for those injured in motor vehicle accidents where their injury is catastrophic, and thus frequently involves spinal or brain injuries. A patient's treatment and care needs would be met for the rest of the patient's life. The bill defines treatment and care needs as medical, dental, rehabilitation, ambulance transportation, respite and attendant care, aids and appliances, artificial members, eyes and teeth, and home and transport modification. Unfortunately, education is not included. The Greens believe this is a major omission, given that injuries may occur while a person is still at school or studying and their injuries may not necessarily exclude them from continuing with their education. Indeed, some older victims may like to embark on further education. However, the scheme will not pay the costs of their education. The scheme should cover any additional services or aids necessary for a person to explore the same educational opportunities that are open to all other members of our community. The Greens amendment will address this issue.

Currently, compensation under the compulsory third party insurance scheme does not cover people suffering catastrophic injury where they themselves are at fault in the accident. This leaves those people—through nothing more than unfortunate happenstance—in a highly vulnerable position. The bill will address this anomaly by covering both the at-fault driver as well as any persons not at fault. At present, many people who

are now paying compulsory third party insurance premiums somehow assume they will be covered by the scheme and will be able to claim under it if they suffer injury, even if they are at fault. I think that misconception is fairly widespread, and one that to date the Government has not done anything to dispel.

Providing lifetime care and services for those catastrophically injured, whether they were at fault or not in accidents, is an infinitely fairer system than the existing one, under which the at-fault driver is denied third party insurance coverage. While certainly not condoning people who drive recklessly and cause injuries to both themselves and others, we know that terrible accidents are a fact of life. This legislation recognises that fact. It puts in place a mechanism to ensure everyone is provided with the care that is essential for their wellbeing.

The Greens also congratulate the Government for identifying the needs of children, and for establishing a new special children's benefit for children injured in a no-fault situation. Given that children are almost always passengers in motor vehicles, any child involved in a car accident is, to all intents and purposes, without fault. It is commendable that this legislation will ensure that all children, even those not currently covered under the compulsory third party scheme, will now be covered.

We have heard criticism from some in the legal profession that this legislation will remove the right of injured people to pursue a lump sum compensation payment through the courts, and as a result will deprive those people of the right to manage themselves any lump sum they might receive. This portrayal, however, is not quite accurate. Victims will still be free to pursue lump sum compensation for other claims, such as for loss of income, and pain and suffering. Under this legislation there may well still be lump sum payments in excess of $1 million awarded for such claims. Victims will still be entitled to retain those payments and to access the care and support fund. This legislation relates only to funding for lifelong care and support. It is only the care component that no longer will be able to be awarded as a lump sum.

Unfortunately, there is ample evidence of people being awarded large lump sums only to have them run out within a decade or two, leaving a high-needs patient with little or no financial resources. This can happen for a number of reasons: either because the payment was inadequate in the first place, unforeseen changes in a person's support needs, medical costs being higher than anticipated, or simply poor financial management. But the result is the same: people with unmet high support needs are left to struggle on welfare payments. This legislation will ensure that those needs will now be met, irrespective of any miscalculation, changes in circumstances or needs, or a person's financial management skills.

The Greens observe that this legislation lets insurance companies off the hook. It is not surprising that they are generally supportive of the legislation. Motorists will pay a percentage of their annual green slip payment as an additional cost, estimated by the Government to be $20 a year. Motor vehicle owners, via the proposed new Lifetime Care and Support Authority, in effect will be the financial backers of the new scheme. The Government will not be paying, nor will the insurance companies, which will be handsomely compensated for their contribution to the scheme by the removal from them of the cost of paying for ongoing lifetime care of victims who are insured by them. Nor will vehicle manufacturers that build vehicles capable of exceeding 200 kilometres an hour be contributing to the scheme. They will not be required to put up any money to provide for the needs of those whose injuries are attributable to the lethal nature of the cars that they drive.

The New Zealand no fault accident compensation scheme is relevant to this debate. Although the bill covers only motor vehicle accidents, the New Zealand legislation covers all types of no fault accidents. A paper by John Miller of the Australian Institute of Criminology describes the basics of the New Zealand legislation in the following terms:

> The scheme provides compensation for those who suffer personal injury and it does not matter whether the injury was caused by a careless motorist or doctor, by the victim's own fault in skiing too fast or by a criminal in a deliberate assault. All that has to be shown is that the victim suffered a personal injury that has come under the Act. Personal injury is defined as physical injury and includes any mental injury which is an outcome of the physical injuries.
>
> Benefits available to injured persons include: weekly compensation; an independence allowance; cover for medical costs; and, rehabilitation assistance.
>
> Whilst the benefits available in fatal claims include: surviving spouse weekly compensation; and, compensation for each child under 18 (or 21 if studying).
>
> Other payments include a survivor's grant and a funeral grant.
>
> The scheme is funded from premiums paid by motorists, employers and earners. The Government also makes a contribution for injuries which cannot be attributed to the above categories (for example non-earners).

There is much to be said for giving all injured people an alternative to the expensive tort-based system by providing them with adequate compensation regardless of fault. Unfortunately, during the 1990s a series of amendments to the New Zealand legislation resulted in payments being reduced to subsistence levels. The Greens fear that future State governments, whether of a Liberal or Labor persuasion, will fail to ensure that the scheme remains adequately funded and that victims receive the level of care they require. Although the New South Wales scheme we are debating differs from the New Zealand scheme, we must be on guard to ensure that our system is not eroded in the same way that the New Zealand scheme has been undermined by lack of funds. Our system will relate only to victims of catastrophic injury and only to injuries sustained in motor vehicle accidents. As a result, we are seeking to provide coverage for, on average, 135 victims each year. We hope that the Government has done the sums and that adequate funds will be collected from insurance companies. Adequate funding is essential if we are to ensure a high-quality cover for those needing lifetime care.

We must remind ourselves that receiving a multimillion-dollar compensation package is not akin to winning Lotto. After all, the victim confronts a lifetime of catastrophic impairment. Far more important than any lump sum payment is the security that comes from victims being able to access the lifetime care and support services they require. Money is nothing more than a means to purchase services to help victims cope with the damage that results from a catastrophic motor vehicle accident. Sadly, victims of these injuries already are paying a terrible price. I have met young men in their twenties who are in wheelchairs because they sustained spinal injuries in motor vehicle accidents. It is an awful readjustment for anyone to make, let alone a young person who was physically active and full of vigour prior to an accident. Injuries make no distinction between fault and no fault. In most cases family and friends of the victim are left to pick up the pieces and to ensure that the victim's life goes on. We no longer can justify or tolerate an insurance scheme that makes a distinction between those who are at fault technically and those who are not. The bill goes at least some way towards removing such anomalies and providing the support and care that all victims desperately need.

[*The Deputy-President (The Hon. Amanda Fazio) left the chair at 6.24 p.m. The House resumed at 8.00 p.m.*]

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [8.00 p.m.]: The Motor Accidents (Lifetime Care and Support) Bill and the Motor Accidents Compensation Amendment Bill aim to extend coverage of compulsory third party [CTP] insurance to victims of accidents in which no-one was at fault. In particular, it will extend to children who are injured in a no-fault accident. The effect of this scheme is to relieve the CTP insurers of the high-cost risk of having to pay lifetime care and support. In New South Wales approximately 125 people who are injured in motor vehicle accidents require lifetime support. Only 65 of those are likely to be eligible for compensation because the other at-fault driver can be identified. The new plan proposes that all people catastrophically injured in motor vehicle accidents receive lifetime support, regardless of who is at fault.

Guidelines for eligibility for support will be determined by an advisory committee and applied by assessors. A person may become a member for the whole of his or her life or for a limited time, subject to review. Disputes will be settled by a panel of three assessors who must be medical practitioners. If a dispute concerns whether the injuries are the result of a motor accident, it will go before a review panel consisting of three assessors who are senior legal practitioners. The principal bill sets up a Lifetime Care and Support Authority to administer the scheme. The authority will comprise one chief executive officer and four part-time directors, one of whom will be nominated by the Treasurer and three of whom will be nominated by the Minister.

The Minister will be able to give directions to the board of directors and the chief executive officer, which they are obliged to follow. There is also an advisory council of eight members that will be established under of the direction of the Minister consisting of two health practitioners recommended by the Australian Medical Association, two health practitioners recommended by treatment and care organisations, two health professionals representing severely injured people, a chairperson appointed by the Minister and a chief executive officer of the authority. The advisory council will keep the guidelines under review and monitor the operation of the scheme. The Life Time Care and Support Scheme [LTCS] will be funded by a levy that will be collected when CTP insurance is paid. A letter from the Insurance Council of Australia has indicated that premiums will decrease on average by $46 while the levy would be on average $66. That means a net increase in CTP of $20 per driver per year.

The Hon. John Ryan: Per car per year.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Or per car per year. The same letter stated that the commercial insurers would like to be involved in the scheme. A participant in the LTCS scheme is excluded

from obtaining lump sum compensation under a common law settlement. The scheme provides only for the cost of care and support and does not provide compensation for loss of earnings. The cognate bill amends the Motor Accident Compensation Act so that the assessment of a victim by a medical assessor is conclusive and therefore binding on the courts, claim assessors and the insurer. The amendment provides a special benefit for children at fault in accidents and extends CTP benefits to injured people in blameless accidents. In the case of children, a special no-fault benefit does not prevent them from pursuing a fault-based CTP claim. The amendment puts a cap of $200 million on the amount the CTP insurer has to pay out for multiple claims arising from one accident. Aggregate claims above this cap will be met from the Nominal Defendant Fund. This means that the CTP insurer is relieved of another low-risk, high-cost insurance.

I have quite a lot of experience in this area because I worked in the spinal unit at the Royal North Shore Hospital for some time and I have been involved with people with disabilities. I note that Spinal Cord Injuries Australia supports the bills. The association points out that currently less than a third of the 120 people suffering catastrophic spinal injuries per year receive any form of compensation. Mr Bergan says that the important thing is having a scheme that covers all injured people, which would mean a reduction in waiting lists of the Program of Appliances for Disabled People [PAPD] and attendant care programs. My experience is that most of the people who are injured in catastrophic accidents are young people. The most common injuring agent is the motor bike, but sports involving vigorous action are also involved—although they have not been involved in CTP schemes.

Accidents involving motorcycles frequently result in the most meaningful compensation being paid because the person was at fault. The idea that a claimant must be not be at fault is an idea that insurance companies and the legal system love. But the fact is, whether one is hit by someone who slipped on a road on a wet night or whether one just slipped makes millions of dollars of difference to the rest of one's life and one's quality of life. However, it is sometimes totally arbitrary as to who slips on a wet road in the middle of the night. Why should people be punished their whole lives for what amounted to a mistake in their youth in a difficult situation—or even in a situation in which they are excited and young and perhaps a little headstrong? The punishment is far greater than the crime.

The Insurance Council of Australia is in favour of the idea of a no-fault or no-discount-for-contributory-negligence scheme and no lump sum payouts for ongoing care and support. The council would like to be involved in the underwriting of the scheme—presumably because the Government levy of $66 is payable by the insurers to the Government to cover the lifetime care scheme. I must confess, having seen the way insurers run workers compensation, I do not believe they should run anything. I think the niggardly and nasty approach they have and the penny-pinching tough time they give people who are on workers compensation insurance is a disgrace.

Previously in this House I have mentioned how insurers do not open letters for three or four weeks. That is because requests for medical services must be answered within a month and they prefer to have the money in the bank earning interest over that period without the expenditure involved in examining claims. In the meantime, the poor injured person is in agony and waiting for surgery because the insurer has not opened the letter, much less given permission. That is the sort of approach that insurers adopt. I was in the United States of America on a public service fellowship in 1985 researching absenteeism. I recall an officer of an insurance company telling a lady on the phone in my presence that she was insured for only three days in hospital after having had a baby. Although she had a breast abscess, she could not stay in hospital another day and she could not get information from the nurse. Everything was being done for the sole purpose of saving money.

A plus for this scheme is that a person with disabilities, someone who understands what is needed, created it. The question with all legislation is: Who should be empowered? Should we empower the Government so that it becomes the dead hand of bureaucracy? Since becoming a member of this Parliament I have heard nothing but criticism of the Office of the Protective Commissioner. Obviously that office could have been given the function of managing people in a protective role. Indeed, that would be consistent with what it has been doing for a large number of disabled people. It is curious that it has not been suggested that a body be set up to carry out a similar role—a new bureaucracy may have a new approach. That is almost an admission that bureaucracies have characters; they behave as an organic person in their orientation towards a situation.

The Law Society of New South Wales argues that the injured should be given a chance to opt in or opt out of the scheme. For a couple of years when I was studying various subjects I did a lot of work as an after-hours doctor all over Sydney. I found that most people who had suffered catastrophic injuries were still living with their major source of injury while on a disability pension. I remember one man who was an exception. He

lived in a large, attractive house near Tom Ugly's Bridge with a wonderful view over the Georges River. He had been about to set up a video hire business when he suffered a catastrophic injury that made him a high-level quadriplegic. His car was modified to enable him to go to work and he had 24-hour nursing care. He lay on a specially equipped bed in his office and gave orders for running his business.

The business was quite successful and he was reasonably wealthy. His business began operating only after he became a quadriplegic. He said, interestingly, that if he had the choice of movement or pain he supposed he would chose movement. However, he added that it was hard to know what he would choose, because the pain was so bad. He could move only one finger, but said he would rather have lack of pain than movement—that is how bad his pain was. He managed his life quite efficiently. Presumably he had received a lump sum payment—I do not know how much he received. He was able to manage his video shop. Whether the lump sum helped with that management or whether he was a very enterprising fellow, despite his pain and disabilities, I do not know. He certainly was an inspiration. I do not know what happened to him.

The vast majority of people are not able to get money; most do not get money under the current scheme. Those who do spend the money in a short time. My view is that the institutions are a problem. Indeed, I was shocked to learn that when Lidcombe hospital closed the ParaQuad Association hostel, the group home for paraplegics, also closed. Reverend the Hon. Dr Gordon Moyes said that the home was taken over by Lottie Stewart Hospital and the Wesley Mission, and that has made an important difference to the lives of those who needed that assistance. My experience with lump sum payments is that no matter how much is awarded it never seems to last. Yet I have heard that when recipients of awards die, millions of dollars go to their relatives. That is absurd. In those situations the Office of the Protective Commissioner interferes with the way that money was spent, creating a lot of controversy. This brings me to the point: Who can we trust? The problems with lump sum payouts is that it is difficult to estimate how long someone will live and how much his or her care will cost. Putting money with a financial adviser is no guarantee, because investments can go wrong.

There is also a problem with the partner of the injured person. I remember a social worker who was having counselling because she was so depressed. She said that all marriages of quadriplegics fail. They start off very courageous. Usually the wife, or the girlfriend, tries to stay with her partner but finds that the anticipated life of fun and excitement becomes a very mundane existence of looking after catheters, bowels and bedsores, having to lift, and having very limited recreation and sexual activity. Eventually the marriage would fall apart, with a great deal of guilt and sadness all round. The social worker sought counselling because the success rate was so awful. When a marriage splits, the money is also split. Presumably the partner who leaves would take half the money, leaving the injured person in trouble. That is another problem with lump sum payouts. If the injured person dies early the remaining money is a windfall benefit to the relatives, which is not taken back—and, arguably, it should not be.

The problems of amounts allocated by an authority have certainly been well illustrated by the Protective Services Commission, which doles out the money in a very controlling fashion. Of course, people have to take some risks. They may choose to do a university course or take some recreational time, and they will need a variable amount of money. There has to be a creative tension between the person who has responsibility for the money and an advocacy body. I certainly believe that there needs to be advocacy for disabled groups for a generic term and perhaps even advocacy at an individual level. Deinstitutionalisation and the provision of home help develop a real personal relationship; and that is an intimate, close, nursing relationship. Occasionally an injured person needs to have his airways cleared, and the way that is carried out is critical. The management of bedsores, lifting and catheterisations are important. If catheters are not well managed, people die.

John Grant, who set up the spinal unit at the Royal North Shore Hospital many years ago, said that everyone is looking for the miracle cure for spinal injuries, but in fact people die from infected bedsores or urinary tract infections travelling up catheters that are not properly managed. His point was that the simple things are important. A new approach is needed, whereby people who do the treatment run the show and tell the Government how much is needed to do a reasonable job. Disabled groups should have a good input into the running of the show. A sympathetic Government would recognise that inflation causes medical costs to rise higher than the consumer price index and that more dollars should be put on compulsory third party insurance slips. That would be a better model than the current adversarial system of lawyers who assume that they can guess the amount and get a good deal or the dead hand of the Office of the Protective Commissioner, which really does not seem up to the job.

I am not sure I will support the opt-out option; it favours people such as the man I referred to who manages a video store. It is frequently unsuccessful and involves an element of guesswork. People who go along

that path are vulnerable to exploitation by others who are after their money and by people who become their friends. Of course, disabled people look for friends. I remember a paraplegic who paid people to go out in his boat so that he could go out in the boat. As he said, if no-one took out his boat he could not go boating. He did not know how long his money would last, although he said he was relatively rich compared to his friends. He said that if he were a drag on his friends, they would leave him. That is a cynical view, but it is the cold, realistic view one takes if one wants to keep friends—not to be a drain on them.

The essence of needing to do courses to improve oneself, which have some risk of failure, and undertaking recreations that are necessary to have a decent quality of life can be seen as luxuries. In fact, they probably are not. The key to all of this is the concept that I have tried to push in discussions through the disability sector and so on: that is, what is needed is graded support in the community. This is another form of graded support. There should be a market of people who specialise in community support and who are hired as individual practitioners. It should not be run by insurance companies, bureaucracies and national contracts which, of course, have come to be the way services are provided. I do not mean to knock the churches, but the Government would rather deal with a couple of big providers than with a lot of individuals.

Some patients or victims of accidents need a number of people to care for them—nurses, physiotherapists, people who take them on outings and so on. The more flexible that model is and the more it is driven by people with disabilities the better it is likely to work, which is why the advocacy model is important. Clause 31 sets the rates for treatment in hospital. I hope that those rates are all right. If they are down near the Medicare level doctors will put their patients low on the list. If the rates are up at the Australian Medical Association [AMA] rate patients will be fine. The workers compensation rate is high because of litigation. If doctors get immunity, which I note is what the Government has given them, and there are not a lot of legal hassles, it might put the workers compensation rate way above the AMA rate. Doctors might feel that, if they are to spend many days in court over a period of 10 years, they need to load their bills.

I am concerned that the medical assessment guidelines prepared by WorkCover follow the model of the American Medical Association. I have said before in this place that I believe those guidelines are a farce. I could not let this legislation go through without saying that they are a complete farce. The idea is that doctors get all their work from insurance companies. There certainly is some bullying of doctors. Earlier the Hon. John Ryan said some documents had been found that showed doctors had been asked to alter their reports. I have frequently been asked to alter my reports. The typist for the doctor who took over my practice said she had had a hell of a time because there always appeared to be so many draft reports. I would like to say it was because he made a few spelling mistakes, but I do not think that was the case. I was able to withstand that bullying because fundamentally I was the treating doctor.

My practice in workers compensation involved injured people coming to me. If the insurance company did not want me to see cases my main work was not dependent on them. Importantly, that enabled me to maintain my integrity. Doctors get more work if they say what insurance companies want them to say and, if they do not, they do not get work. That occurs when doctors assess people. So there should be no illusions about the fact that independent assessors have only a degree of independence. We must have a panel that has the incentive to find out the truth about a person and what can be done about him or her. Such a panel should not be under pressure to find a cheap solution or to establish that a patient does not need something. If we are to maintain a balance the panel should play an advocacy role for patients. Should the Administrative Appeals Tribunal or the Consumer Claims Tribunal deal with disputes—a cheap way of resolving quasi-legal processes? A tribunal of professionals in the rehabilitation field would be ideal, as long as that body did not become an advocate for cheaper care. It must be a reasonable practising body with real expertise, not captured by concerns about bureaucratic costs. The danger is that it would act as a quasi-insurance company for cost minimisation.

The Motor Accidents Compensation Amendment Bill saddens me. I am concerned because I believe it might lessen the number of people that become eligible for compensation. I do not understand the Opposition's proposed amendments. The Opposition appears to be concerned about whether or not a car is faulty. The more opportunities there are for litigation the more insurance companies say, "If we do this we will cut out so many accidents and so many people will be stranded", which I find worrying. I am bothered about the fact that someone injured in a motor vehicle accident will get compensation but someone injured falling off a ladder will get nothing. There is an extraordinary arbitrariness in our compensation system.

The Hon. John Ryan: The Government's amendment means that more people will get nothing. The Government is confining the definition, not expanding it.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I note the honourable member's interjection and will check that out. A car that is defined as faulty will cut out a lot of those people who were injured and who presumed it was not faulty. We need cover that does not depend on fault at the moment of injury. It also needs a strong basis in the rehabilitation profession. If the Motor Accidents (Lifetime Care and Support) Bill supports that aspect I will look at these amendments in that light.

Ms LEE RHIANNON [8.25 p.m.]: The Greens support the Motor Accidents (Lifetime Care and Support) Bill and the Motor Accidents Compensation Amendment Bill. These bills will improve the quality of life of catastrophically injured people. We agree with the Government's suggestion that these bills provide the legislative framework for implementing significant improvements in the assistance provided to people injured in motor vehicle accidents. Nonetheless, we believe there are holes in this legislation that must be fixed before it is passed. As they stand these bills do two things: first, they raise revenue of the order of $250 million a year by adding an average of $20 to the cost of a green slip and, second, they put that revenue in a fund known as the Lifetime Care and Support Fund.

An important aspect of these bills is that the Government has identified the needs of children and established a new special benefit for children injured in a no fault situation. It is excellent that this legislation will ensure that all children, even those not currently covered under the compulsory third party scheme, will now be covered. Children regularly are passengers in vehicles and when there is an accident they are not at fault. We see this provision as a significant breakthrough. This scheme will remove the right of victims who can prove fault to exercise their existing rights to seek damages in court, which is a matter of concern. The Greens are concerned that these bills will create a new bureaucracy. The proposed levy will not be limited to $20. Time and again the Government tells us that it is a $20 levy, and that is it, but the levy will be a percentage of total costs of the compulsory third party green slip premium. That means young drivers and motorcyclists, for example, will pay more than $20 a year.

The Greens support the right of people who have suffered a catastrophic injury to opt out of the scheme if they so choose. Earlier I heard Government members arguing that going down the opt-out path would compromise the scheme and that the cost would be too great. That argument does not stand up. It should be remembered that only a small number of claimants would take up this right—that is, the opt-out position. I understand it is estimated that about 125 people will enter the scheme in any year. As half of them will not be able to make a fault-based claim, obviously they will not be able to opt out. That leaves about 65 claimants who can establish fault. About 70 per cent, or about 45 people, will have a brain injury and will not qualify as they cannot give legal consent or manage their affairs independently. That leaves about 20, many of whom will be minors under the age of 18, who also will not be able to give consent or manage their affairs. That leaves a handful of people who qualify. Obviously some of them will choose to enter the scheme because they believe the managed care provided by the scheme is the best option for their future wellbeing. So we might have about five claimants a year who choose to opt out—that is, decide to take a lump sum.

How could the Government argue that this small group of people that goes for the opt-out provision compromises the viability of the scheme? We are making an important decision. Most of this small group of claimants are paraplegics. We know that people with such injuries can live full, independent and productive lives. They should be able to control their lives. The opt-out provision will give them the dignity and ability to do that. People do not want to be stuck in a scheme run by the Government where they have to go through administrative hurdles to get the care and assistance that is their right.

While we congratulate the Government on the bills before us we note that Labor has been in power for more than a decade and has dragged the chain in this area. The Government needs a bit of a reality check. Conversely, the Government's enthusiasm for cutting the benefits available to injured people has been evident almost since Labor's first day in office. That is very disappointing. Many people in the community have not forgotten the Government's wholesale reduction in the benefits available to people injured in the course of their work.

The Hon. John Della Bosca: That's not true. You made that up.

Ms LEE RHIANNON: It is true. I acknowledge the interjection and the fact that, although the bills are pretty good, the Minister is still trying to fudge around the edges. We note also that the Government appears to have let the large insurance corporations off the hook as it has passed the risk, or the cost of providing care to catastrophically injured people, on to motorists by increasing the price of their green slips. The Government has left the insurers to continue gouging massive profits from the community.

The Hon. John Della Bosca: That's not how they see it, Lee.

Ms LEE RHIANNON: I note the Minister's interjection. I assume that the "they" in his sentence is the insurance companies. Unfortunately, the Minister has left the Chamber. It would have been an interesting exchange. The term "massive profits" is not alarmist; it is a statement of fact. Consider the following statistics provided by the Finance Sector Union on 16 February this year. It noted that IAG's half-year net profit after tax was $461 million, which is an increase of 40.55 per cent. Suncorp's half-year net profit after tax was $454 million, which is an increase of 2.9 per cent. Promina's full-year net profit after tax was $505 million, which is an increase of 9.8 per cent. QBE's full-year net profit after tax was $1,091 million, which is an increase of 27 per cent. These figures reveal that the Government could have paid for the scheme from the profits of the very wealthy insurance companies instead of via an increase in the cost of green slips. The Government has put a twist on the old conservative theory that sees losses socialised and profits privatised. The twist is that the risks in the form of payouts to catastrophically injured people are now socialised while the increased profits available through not having to care for these people have been privatised.

Nonetheless, the Greens are broadly supportive of the bills as they are an undeniable improvement on the existing state of affairs, which leaves some catastrophically injured people at the mercy of ever-dwindling Centrelink payments or of drawn-out litigation, with the risk of massive legal fees. To make these bills even fairer the Greens will move amendments in Committee to ensure that the interests of catastrophically injured people are placed above all else. The Greens amendments, if passed, will result in injured people being able to receive payments from the authority to cover the cost of their education, vocational training and domestic assistance; and injured people having access to free legal advice to challenge the decisions of the Lifetime Care and Support Authority and having their legal costs paid by the authority. They will also have a right of review in the Supreme Court. These amendments are needed to ensure that the rights and quality of life of catastrophically injured people are improved. I will examine the amendments in more detail in Committee. I congratulate the Government on the bills but urge it to adopt the Greens progressive amendments that will improve what is already quite good legislation.

Reverend the Hon. FRED NILE [8.33 p.m.]: The Christian Democratic Party supports the Motor Accidents (Lifetime Care and Support) Bill and the Motor Accidents Compensation Amendment Bill. Reverend the Hon. Dr Gordon Moyes outlined the details of the legislation. I will simply refer to the inquiry of the Standing Committee on Law and Justice into the Motor Accidents Scheme, which recommended the provision of lifetime care and support to people injured catastrophically in motor vehicle accidents. The object of the Motor Accidents (Lifetime Care and Support) Bill is to establish a scheme to provide lifetime care and support for persons who suffer catastrophic injuries in motor accidents that are covered by the Motor Accidents Compensation Act 1999. The scheme will extend to injured persons who are "at fault" for the accident and to motor accidents for which no person is at fault. The Motor Accidents Compensation Amendment Bill will amend the Motor Accidents Compensation Act 1999 to make further provision with respect to the motor accidents to which the Act applies. It will provide a no-fault benefit for children injured in motor accidents and provide for an entitlement with regard to blameless motor accidents. It also deals with insurance premiums, claims against nominal defendants and caps on insurer liability.

Those members who have come into this place in recent times may be unaware that the Standing Committee on Law and Justice conducted an extensive inquiry into the Motor Accidents Scheme. I have been looking through the three reports—the interim report, the second interim report and the final report—produced by the committee. The inquiry, which ran from December 1995 to November 1998, was probably the most extensive ever conducted by a committee of the Legislative Council. All members of the committee learned a great deal about this issue. The committee was chaired by the Hon. Bryan Vaughan—a Labor Government member who retired in 1999. He was an excellent chairman and very broad-minded—even though he was a solicitor. He was always more concerned about the needs of people than the legal profession and its fees. Different members served on the committee during the inquiry. They included the Hon. Helen Sham-Ho, the Hon. Jan Burnswoods, the Hon. Janelle Saffin, the Hon. John Ryan, the Hon. Peter Primrose and me.

The committee voted to visit overseas jurisdictions and the Hon. Bryan Vaughan selected me to accompany him and one staff member in inspecting the various policies and programs in a number of countries. In San Francisco, Cincinnati and Washington we met representatives of both government and the commercial world who were concerned about these issues. We inspected the schemes in Toronto, Canada and in London. I will not go into the details of the visit. The second interim report of the committee contains an exhaustive report of the overseas inspection tour, the various people we met and the recommendations that flowed from it, particularly regarding long-term care for victims. The committee was most impressed by our reports and by the

evidence of witnesses from all sections of the community that strongly supported the concept of long-term care. I refer honourable members to the committee's reports. Too often nothing comes of the hard work of parliamentary committees but in this case the seeds that were sown by the Standing Committee on Law and Justice have at last borne fruit in the form of these bills. In chapter 3 of the second interim report the committee recommended the development of a no-fault long-term care scheme. It states:

> The Committee therefore recommends that the Motor Accidents Authority, the Ageing and Disability Department, and their working party, continue the development of detailed proposals (which the Committee has been told will be completed by April 1998) for the introduction of a no fault long term care scheme, including a range of options for funding and administrative arrangements for such a scheme.

Obviously, it did not meet the 1998 deadline, but we have the bills now. The committee's report continues:

> The Committee recommends that the Motor Accidents Authority prepare for public release a document setting out options for achieving savings within the current CTP scheme (together with the final detailed proposal for the introduction of a no fault long term care scheme).

Those recommendations were followed and developed by the Motor Accidents Authority. I know that it has taken some time to develop policies and bring this most important legislation before the House, and I enthusiastically support it. John Walsh, to whom honourable members have referred, worked for Coopers and Lybrand and was given the consultancy to determine how much it would cost to provide long-term care to seriously injured persons. He was involved in this matter in 1997 and was a very valuable resource person to our inquiry. This legislation is in many ways a result of Mr Walsh's hard work and perseverance with a policy for long-term care.

I am pleased to support the legislation. Some people have suggested a lot of amendments and pressure has come from the Law Society and others to change the bill to give an opt-out provision, which in my opinion would undermine the underlying purpose of the legislation. I believe we should continue with the legislation as it is drafted and not accept the foreshadowed amendments. We should review the working of the scheme to ensure that some of the things feared by certain honourable members will not occur. If they do arise, the legislation may need further fine-tuning in the future.

The scheme will be a disaster if the Government does not take into account membership of the authority that oversights the long-term care arrangement. The people who will provide the quality of care to catastrophic accident victims should be saints, angels, loving and caring people. We know that members of other bureaucratic bodies are harsh in their attitudes in other areas but we do not want those attitudes transferred into this very sensitive area. I urge the Government to seek out people who have appropriate qualifications. It is vital that their previous employment demonstrate them to be caring, loving, compassionate people, particularly those on the authority and those on the next level who provide the care.

I notice David Blunt is at the table. He did an excellent job when he was the committee director in those years. I know the committee thanked him at the time but I now thank David. I am pleased that he is still participating in the activities of the Legislative Council as Clerk Assistant. I support the bills.

The Hon. Dr PETER WONG [8.44 p.m.]: I support the Motor Accidents (Lifetime Care and Support) Bill and the Motor Accidents Compensation Amendment Bill. I speak not only on my own behalf but also on behalf of many doctors who have contacted me by phone or email and expressed their support for this legislation. They are concerned that these bills will be amended. I do not believe the bills are perfect. I share the view of Reverend the Hon. Fred Nile that once the legislation is passed it will need to be closely monitored in particular to ensure that those managing such a scheme are sympathetic and caring to the critically ill. Having listened to be debate, I too believe these excellent bills are a good reform and will benefit those who are catastrophically injured. I congratulate the Government on these very worthwhile reforms.

The Hon. JOHN DELLA BOSCA (Minister for Finance, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, and Vice-President of the Executive Council) [8.45 p.m.], in reply: I thank all honourable members for their considered contributions to this debate and their support for these important bills. The Motor Accidents (Lifetime Care and Support) Bill and the Motor Accidents Compensation Amendment Bill represent a significant achievement in greatly improving the assistance provided to people injured in motor vehicle accidents. Importantly, these reforms will provide increased assistance for those suffering the most serious and profound injuries, and also for children, who are the most vulnerable road users in our community.

I join my honourable colleagues in placing on record the invaluable contribution of Mr John Walsh on these far-reaching new initiatives. His expert advice and commitment to the development of a no-fault lifetime care scheme for motor accident victims in New South Wales will benefit many people in this State. I also note the valuable contribution to the development of the Motor Accidents Scheme by the Standing Committee on Law and Justice. Reverend the Hon. Fred Nile has already noted that committees of this House often deliberate in inquiries on a variety of matters and that many of their outcomes have a comparatively long gestation, but I would think it is a reasonable expectation of this House and the community that these reforms will provide a generation of positive effects for people. As Reverend the Hon. Fred Nile said, provided we make the scheme work, and I am very confident it will, these reforms will have a lot of positive effects for a generation or two. This House has taken 7½ to 8 years to finally legislate along the lines of the determination of its committee a few years ago, but that delay viewed in perspective is probably not as significant as would otherwise be thought.

Reverend the Hon. Fred Nile: There were no dissenting reports.

The Hon. JOHN DELLA BOSCA: That is a very important point. I also note that specific members of that Committee remain in this House—Reverend the Hon. Fred Nile, the Hon. Jan Burnswood, the Hon. John Ryan who led for the Opposition, and the Hon. Peter Primrose—who I hope share my delight at seeing the lifetime care and support and no-fault children's benefit proposals before the House. I note the contribution of my good friend from many years past, a former Chairman of the Australian Labor Party Credentials Committee when I was a member of it, the Hon. Bryan Vaughan, who was a good chairman and had a lot to do with the earlier deliberations. He made a great contribution and was a great contributor to these kinds of debates.

These changes to the motor accidents scheme will establish a new scheme to provide no-fault lifetime care and support for those who suffer catastrophic injuries such as spinal damage or brain trauma; provide a new special children's no-fault benefit to meet an injured child's medical treatment, rehabilitation and care needs; and extend scheme coverage to include those who are injured in inevitable or blameless accidents. The Government's reforms will provide a practical and compassionate safety net for victims of motor vehicle accidents who would not otherwise be compensated under existing arrangements.

In reply to some remarks made by the Hon. John Ryan, I point out that these reform initiatives have been fully and independently costed. The Government's Lifetime Care and Support Plan, on which there was extensive public consultation during the second half of last year, includes a comprehensive independent actuarial costing study prepared by PricewaterhouseCoopers. I note that this costing study also reflects work that has been undertaken on a national level for insurance Ministers across Australia. Children have always been considered in the cost of providing a no-fault lifetime care scheme. The lifetime care scheme costings have been based on the total number of people catastrophically injured in motor vehicle accidents in New South Wales. The provision of a no-fault benefit for those children receiving less serious injuries in motor vehicle accidents can be accommodated at a minimal additional cost to the scheme and within the $20 average increase in the green slip resulting from the Government's scheme. There will not be a windfall to insurers from the introduction of this scheme, as was suggested by Ms Lee Rhiannon.

The Government's consultation plan costing analysis clearly indicated that approximately 70 per cent of the costs of the new scheme will be met from savings from the current green slip premium because CTP insurers—that is, private insurers underwriting the scheme—will no longer be at risk for the cost of providing for the future treatment and care needs of participants in the scheme. That is the way in which it operates. Insurers will no longer be retaining that premium. Instead, that amount will go to funding the Lifetime Care and Support Scheme. It is important to note in relation to impacts on the profitability of insurance participants in the CTP scheme that there will be no windfall at all from the operation of this scheme. During the consultation on the Government's plan to provide no-fault lifetime care and support the plan was enthusiastically endorsed by medical specialists, health professionals, disability support groups, motorist organisations and actuarial associations.

I note that the bills have also been considered by the Legislation Review Committee. The committee has raised with me directly two matters which have been detailed in the committee's report. The committee sought my advice regarding the operation of the "deeming" of fault provisions contained within the Motor Accidents Compensation Amendment Bill. In my response to the committee I advised that deeming fault on the part of the owner or driver is considered to be a practical way of enhancing the motor accidents scheme while preserving the current scheme and retaining its underlying character of fault-based compensation. In the limited circumstances detailed in the bill the accident is deemed to be the fault of the owner or driver for the purposes of and in connection with any claim for damages in respect of the death or injury. The language of the clause is

also necessary to invoke the corresponding coverage of the CTP policy and other provisions of the Motor Accidents Compensation Act 1999—the MAC Act. In my response I also note that I have been advised that there are no other legal consequences to the deeming of fault within the bill, which operates solely under the MAC Act.

The committee also sought my advice as to why there is no requirement that panels dealing with disputes regarding eligibility and treatment and care needs under the Lifetime Care and Support Scheme must include a person with suitable legal expertise. In my response to the committee I advised that scheme eligibility is dependent upon the severity of the injury sustained and its impact on the person's functional capacity and the requirement that the injury result from a motor vehicle accident. The dispute resolution processes included in the bill make provision for the appointment of assessment panels comprising the appropriate expertise to deal with the issues relevant to the type of dispute in question. For example, disputes about whether the injury is a motor accident injury clearly raise legal issues, and for this reason the bill proposes that such disputes will be dealt with by a panel of three claims assessors appointed under the Motor Accidents Compensation Act 1999. All claims assessors appointed under that Act are legally qualified senior practitioners with extensive experience in motor accident injury claims. The assessment of injury severity and resulting functional impairment and the assessment of treatment and care needs are assessments involving the consideration of medical, rehabilitation, care and support issues. Accordingly, the bill provides that the panels conducting those assessment comprise medical practitioners, health professionals and other suitably qualified persons.

I am happy to inform the Hon. John Ryan that clause 6 (3) of the bill specifically provides for the Lifetime Care and Support Authority to enter into an arrangement with a scheme participant to self-manage their care where they are competent and wish to do so. In such a case the engagement of carers will be entirely a matter for the injured person, with the Lifetime Care and Support Authority making a regular payment to the person. This provides a mechanism to address concerns raised about enabling participants to manage their own care. It will also address concerns raised about providing treatment and care needs of those visitors to New South Wales injured in a motor vehicle accident.

Clearly, the key objective of the reform package is to better meet the needs of people injured in motor vehicle accidents. In achieving this objective the Government is also aiming to assist their families. Caring for a family member who has suffered a catastrophic injury or a young child seriously injured in a car accident can have a devastating impact on families. Families that provide such intensive care and support often do so at the cost of their own health and their financial stability. The expanded motor accidents scheme also will help ease the burden and financial strain on the families of motor accident victims, especially those who continue to support a motor accident victim.

It was remiss of me, in commencing my reply, not to note the presence in the gallery of Judie Stephens, whom most honourable members would know. She is Jackson's grandmother, and one of the main community advocates on whom I have relied for the key features of this scheme. I think it important to note her contribution to this debate. In closing, I would like to thank David Bowen, General Manager of the Motor Accidents Authority, and his staff for the excellent advice they have put together in the development of this scheme. It has been a quite long process. Not only has the scheme had a long political gestation since committees of this House deliberated on it some six, seven or eight years ago, but the more recent iteration of that work has involved 15 to 20 months of sharpening our pencils and looking at the way in which the scheme could work.

There has been a lot of interaction, as has already been noted, with John Walsh. But David Bowen and the staff of the Motor Accidents Authority, and my own personal staff, have been very diligent at keeping the pace going and keeping the consultation going. As a consequence, a complex matter, with a lot of potential controversy built into it, is proceeding in a way that is quite satisfactory. As I have said, I share the very high hopes of honourable members of this House that this scheme will provide long-term improvements for people in New South Wales who are, in the main, catastrophically injured in motor vehicle accidents. Hopefully, this legislation will ease some of the burdens on the disability network and so on and have generally positive effects throughout the community. I thank honourable members for their support, and I commend the bills to the House.

Motion agreed to.

Bills read a second time.

In Committee

The TEMPORARY CHAIRMAN (The Hon. Kayee Griffin): Order! The Committee will deal first with the Motor Accidents (Lifetime Care and Support) Bill.

Clause 1 agreed to.

The Hon. JOHN RYAN [8.58 p.m.], by leave: I move Opposition amendments Nos 1 and 6 in globo:

No. 1 Page 2, clause 2, line 6. Omit all words on that line. Insert instead:

(1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).

(2) Section 66 (Auditor-General to report on Costing Study) commences on the date of assent to this Act.

No. 6 Page 30. Insert after line 34:

66 Auditor-General to report on Costing Study

(1) In this section:

Costing Study means the study entitled *NSW CTP No-Fault Long Term Care Costing Study* prepared by PricewaterhouseCoopers Actuarial Pty Ltd (ACN 003 562 696) and issued on 17 June 2005, which forms the Appendix to the New South Wales Government publication entitled *Lifetime care and support for people with a catastrophic injury from a motor vehicle accident* (ISBN 1 876958 22 7) issued by the Motor Accidents Authority in June 2005.

(2) The Auditor-General is to conduct a review of the Costing Study in order to determine whether the assumptions and costing projections set out in the Study are soundly based.

(3) The Auditor-General must, as soon as practicable after the expiration of the period of 6 months commencing on the date of assent to this Act, prepare a report on the conclusions reached on that review and furnish a copy of the report to the Minister.

(4) The Minister is to lay (or cause to be laid) a copy of the report before both Houses of Parliament as soon as practicable after the Minister receives the report.

(5) If a House of Parliament is not sitting when the Minister seeks to lay a report before it, the Minister may present copies of the report to the Clerk of the House concerned.

(6) The report:

(a) is, on presentation and for all purposes, taken to have been laid before the House, and

(b) may be printed by authority of the Clerk of the House, and

(c) if so printed, is for all purposes taken to be a document published by or under the authority of the House, and

(d) is to be recorded:

(i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and

(ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly, on the first sitting day of the House after receipt of the report by the Clerk.

If the Opposition amendments are agreed to, the costs involved in various aspects of the scheme will be referred to the Auditor-General for examination. The scheme will impose a significant new potential liability on the public purse. Even though the Government believes it has costed the scheme appropriately—it will generate a revenue stream of about $250,000 per year, which, over time, will involve billions of dollars—we should not embark on such a scheme without comment by the Auditor-General. The Opposition is mindful of the fact that the Government has made a number of promises and estimated that individual motorists will pay an additional $20 for their annual compulsory third party green slip. As I stated in the secondary reading debate, the $20 average is estimated in 2005 dollars not 2007 dollars, which is when the scheme will be introduced. The work done by PricewaterhouseCoopers involved one of the strongest advocates of the scheme, Mr John Walsh, on whom I heap loads of praise. It is appropriate that the Auditor-General, Mr Sendt, examine the scheme and report to the Parliament about its long-term viability. The Opposition moves the amendments prudently, understanding that the public will be exposed to significant liability. It is not unlike our repurchasing the insurance schemes we sold.

The Hon. John Della Bosca: Don't say that.

The Hon. JOHN RYAN: It is almost like that. The Government is about to get back into the insurance business. It was a significant benefit to the public purse when the old Government Insurance Office [GIO] was sold. One of the advantages of selling the GIO was that it took billions of dollars in contingent liability from the balance sheet of the New South Wales Government. This scheme has the potential to return billions of dollars in contingent liability to the public purse. It might be a widely boring discussion that does not excite us at 9 o'clock at night after dinner, but it is a big call for the State Government to open up such a scheme. It is prudent and wise to refer it to the Auditor-General for report. It may well be that the Auditor-General's report is as good as the Government's report—no likelihood of any risk. I note that we will receive the report after the passage of the legislation, so that it is not as if we are delaying the legislation. I commend the amendments to the Committee because it is prudent and wise to do so.

The Hon. JOHN DELLA BOSCA (Minister for Finance, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, and Vice-President of the Executive Council) [9.03 p.m.]: The Government supports the amendments. I will respond briefly to one aspect of the Hon. John Ryan's concerns, in case it is shared by other honourable members. The Government is not jumping into a time tunnel and going back into insurance. The bill provides a specific form of social insurance for approximately 120 very expensive cases a year. The introduction of the legislation and the shaping of the scheme have been lengthy because we did everything we reasonably could to determine whether the scheme would be viable if it were underwritten privately. Some honourable members will be pleased to hear that I am absolutely convinced that the scheme could be operated only along the lines the Government is advocating and not as a privately underwritten scheme. It is a classic case of market failure.

I know that some honourable members will be disappointed to hear that the Government is not going back into general insurance and changing its policy. I can put the concerns of the Hon. John Ryan and the insurance industry at rest: the Government has no intention of going back into monopoly insurance or any other kind of insurance. However, we are convinced of the need for this type of social insurance for a very specific category of persons. We are convinced that such a scheme run privately would not meet community standards, premiums would be far too high and, as the Hon. John Ryan pointed out, liability would be transferred back onto the public balance sheet while profits were swallowed up by private interests. We tested every conceivable option. The scheme provided for in the bill is very robust and will withstand the test of the Auditor-General or any other person examining the prudential, fiscal and financial modelling. We are happy to accept the Opposition's amendments.

Amendments agreed to.

Clause 2 as amended agreed to.

Clauses 3 to 5 agreed to.

Ms LEE RHIANNON [9.06 p.m.], by leave: I move Green's amendments Nos 1 and 2 in globo:

No. 1 Page 4, clause 6 (2). Insert after line 17:

(g) domestic assistance,

No. 2 Page 4, clause 6 (2). Insert after line 19:

(i) education and vocational training,

These amendments are designed to ensure that the scheme provides for domestic assistance, and education and vocational training. The purpose is to expand types of expenses that the lifetime care and support authority may provide for catastrophically injured people to include domestic assistance, which is covered in amendment No. 1, and education and vocational training, which is covered in amendment No. 2. It is appropriate to provide catastrophically injured people with domestic assistance because if we do not they will not get it; or alternatively their families, if they have families, will be left with a massive burden. The current section of the bill refers to attendant care services and respite services but lacks ongoing domestic care. Catastrophically injured people will need people to put out the rubbish, mow the lawn and change light bulbs. Amendment No. 1 will ensure that these essential but simple tasks are completed. They are an important component in assisting people in these tragic situations to lead independent lives.

It is also appropriate for catastrophically injured people to be provided with educational opportunities and vocational training as a means for them to obtain financial and personal independence. Although many catastrophic brain injuries will preclude education, many catastrophic injuries include spinal injuries and people with such injuries should have the capacity to find work. Therefore training and education are critical. Amendment No. 2 provides a positive measure, and it will allow people to become independent over time. In the long term this amendment will assist catastrophically injured people to build an independent life, and reduce their claims on the scheme. I commend Green's amendments Nos 1 and 2 to the Committee.

The Hon. JOHN DELLA BOSCA (Minister for Finance, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, and Vice-President of the Executive Council) [9.09 p.m.]: The Government does not support Greens amendments Nos 1 and 2. By clause 6 (2) (c), rehabilitation, and clause 6 (2) (f), attendant care services, the bill defines attendant care services as services that aim to provide assistance to deal with everyday tasks and includes, for example, personal assistance, nursing, domestic maintenance and domestic services. Clearly, domestic assistance would be included within the broader category of domestic services in that definition, and the kinds of services that Ms Lee Rhiannon outlined—for example, changing light bulbs, mowing lawns, putting garbage out and so on—fall within that definition, if they are the services required by the claimant. Similarly, rehabilitation is defined in the Motor Accidents Compensation Act 1999 as:

> … the process of restoring or attempting to restore the person, through the combined and co-ordinated use of medical, social, educational and vocational measures, to the maximum level of function of which the person is capable or which the person wishes to achieve and includes placement in employment and all forms of social rehabilitation such as family counselling, leisure counselling and training for independent living.

Clause 5 provides that words and expressions used in the bill but not defined have the same meaning as in the Motor Accidents Compensation Act. Clearly educational and vocational training will be included within the broader category of educational and vocational measures in the Motor Accidents Compensation Act definition of "rehabilitation". Therefore the amendments are unnecessary.

The Hon. JOHN RYAN [9.10 p.m.]: The Minister has argued that the amendments are unnecessary. I think the Minister has just made a good case that the amendments may not make any material difference. But one difference that they would make is that they would make the legislation easier to comprehend. I point out that in the white paper that was distributed by the Government, in which the proposal was costed, it listed a number of schemes in which it said the LTCS scheme will typically provide: aids and appliances, home transport modifications, personal care, domestic services, child care services, nursing care, assistance with community access, educational and vocational services—services to help the injured to enter or remain in school or in the work force—and respite care. These amendments either mean something, or they do not mean anything at all. I really get the impression that there are some weasel words in the provisions, and that is what bothers me.

Why should a person with a disability have to refer to some other Act to get some other definition in order to work out what their rights are? If the addition of these words makes no difference, as the Minister has just said, I cannot see any good reason why they should not be included for the clarification and assistance of those who will use the legislation. I urge the Minister to accept the amendments because if they make no material difference, the one difference they will make is that they will assist people in accessing their rights.

The Hon. JOHN DELLA BOSCA (Minister for Finance, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, and Vice-President of the Executive Council) [9.12 p.m.]: The Government does not want to die in a ditch over this. Indeed, I do not think the Government will necessarily die at all over this. But in the spirit of the popular front, or in the spirit of collaboration, or in the spirit of clarification of the matters raised by the Hon. John Ryan, and to satisfy all honourable members that the Government is not trying to get out of obligations under the scheme for proper domestic assistance or proper vocational provision, the Government will accept the amendments.

Amendments agreed to.

Clause 6 as amended agreed to.

Clause 7 agreed to.

The Hon. JOHN RYAN [9.13 p.m.], by leave: I move Opposition amendments Nos 2 and 3 in globo:

No. 2 Page 5, clause 8 (2), line 21. Omit all words on that line. Insert instead:

> (2) An application by an insurer may only be made with the consent of the person unless the person suffers from a legal disability.

(3) For the purposes of subsection (2), a person suffers from a legal disability if the person:

(a) is a minor, or

(b) suffers from any physical or mental incapacity (whether of a temporary or permanent nature) that makes the person unable to understand communications, or to express his or her intentions, respecting the person's property or affairs, or

(c) is otherwise incapable of managing his or her property or affairs by reason of some mental incapacity.

No. 3 Page 5, clause 8 (3), line 24. Insert "(subject to subsection (2)) after "insurer must".

As I foreshadowed in my second reading speech and as mentioned by all members who participated in the second reading debate, these amendments provide for a certain category of people to opt out. First of all, for the benefit of honourable members who feel that simply because the Law Society and others representing legal practitioners were the strongest advocates of these proposals, I point out that these amendments have absolutely nothing to do with standing up for lawyers as stakeholders. As the shadow Minister for Disability Services, the first benchmark by which I judge anything I do in regard to this bill is how it will impact upon disabled people. I am sure the Minister feels the same way, so I do not propose to be sanctimonious about this, nor will I claim any monopoly on concern for people with disabilities.

I make it absolutely crystal clear that my first and only reason for moving these amendments is that I am standing up for the rights of people with disabilities. I draw honourable members' attention to legislation that was passed by this Chamber more than a decade ago, the Disability Services Act. While the Act is not binding, nevertheless it provides general principles that are supposed to underpin government services that have anything to do with people who have disabilities. One of the principles outlined in schedule 1 of the Disability Services Act is principle (e), which states.

> persons with disabilities have the right to choose their own lifestyle and to have access to information, provided in a manner appropriate to their disability and cultural background, necessary to allow informed choice

The Disability Services Act certainly defends the proposition of people with disability, no matter how their disabilities are acquired, to make informed and independent choices of their own. The other important point I make with regard to the amendments I have moved is that often propositions are put as if they are all or nothing situations. Honourable members should bear in mind that the manner in which this choice will be made is something quite different from anything that has existed before. At the moment the choice is lump sum or nothing. The Minister seeks long-term care authority or nothing. People in a specific category of disability will have the opportunity to choose, knowing that there is another alternative of long-term care, so they could not be in a better position in which to make their choice. They will not be in the position of having to choose a lump sum. Many people will be informed about the opportunity for long-term care and I believe probably most people who are in this situation will elect the security afforded to them by the long-term care scheme.

Nevertheless, I have met many people with disabilities who want the opportunity for either privacy or just the affirmation of their own independence. They want to exercise their independence and they see that as a very important expression of their overcoming their disability. In my view they have a right to make this choice, particularly with regard to the new situation that exists where there is the opportunity for long-term care. They will know about it. They will make that choice. I believe the types of people who will make this choice will be people who are particularly independent minded, particularly strong willed and highly motivated, who place a premium on their independence and on their privacy. In my view that is something which ought to be respected.

The other argument that the Government will obviously advance is that, somehow or other, allowing five or six people out of the scheme in a year will catastrophically undermine the financial viability of the scheme. Let me assist honourable members at least in two respects. The average claim made by claimants is in the order of a million dollars with regard to their long-term care needs.

Reverend the Hon. Fred Nile: Fourteen million.

The Hon. Dr Arthur Chesterfield-Evans: No, no, $15 million.

The Hon. JOHN RYAN: Each year four and a half million motor vehicles participate in the CTP green slip scheme. Therefore, were we to add $1 to each CTP payment, there would immediately be available $4.5 million. Honourable members should bear in mind that the scheme is supposed to include amounts of money for these people. If it ran over $1 million or $2 million, it would not be an expensive option to fund one

or two extra people. The other point is that the scheme has been costed from the point of view that there might be 120 or 125 people a year participating in it, so the scheme already has a level of tolerance for up to five people.

The Opposition's amendments have been very carefully crafted. Over the past week I have spent considerable time ensuring that the amendments did not allow a mass exodus from the scheme. The Opposition's amendments have been specifically designed so that persons with acquired brain injury and children under the age of 18 will not have the opportunity to opt out because, as the amendments provide, such people are unable to express their intentions in respect of property or affairs. They are limited either by their mental capacity or their legal capacity to make such decisions.

I agonised over whether this provision should be extended to children or to people with brain injury. I have rationalised that decision in this fashion. It is fair not to do this for people with acquired brain injury because the reality is that such people do not make such decisions. Someone, by definition, make those decisions for them. Giving people the opportunity, carte blanche, to participate is not important to them and such an opportunity will have no effect on them. However, there is a category of people, those with paraplegia or quadriplegia, who have the capacity to manage their own affairs, and they exercise that capacity regularly. The Minister will know that during consultations such people have made it crystal clear to the Government that they want this opportunity. The Australian Lawyers Alliance submitted:

> The views of paraplegics and quadriplegics were aired at our forum last August and they confirm this. Moreover, we have canvassed those who have been the subject of the old TransCover scheme, similar to the one that is proposed, and can provide details of those people and their carers who are almost universally unhappy with the operation of that system. They have no freedom to choose what care is provided and are subject to the determination of others who hold the purse strings in respect of every need …
>
> It seems manifestly unjust that a drunk and reckless driver who negligently collides with an innocent victim, rendering both catastrophically injured, receives his right to compensation at the expense of an innocent victim. There can be no doubt that there are those victims who can prove fault that will be materially disadvantaged by this scheme, and some will take that view.

In my view it is important for us to allow people to exercise a choice. Many people have expressed the view that all people with disabilities have to be looked after and nurtured by some sort of nanny-State option under which somehow or other the State beneficently looks after them and steps in when required to make sure that they do not cause themselves injury. Many disabled people do not want to be looked at in that way: They want to be able to participate in the community in the same way as everyone else, and they will be enormously offended and affronted if they are not given the opportunity to make a choice for themselves. As I said earlier, I well recall my discussions with two people with disabilities who came to see me here at Parliament House. They explained to me a range of choices they felt would be thwarted if they had to discuss them with a lifetime carer or someone from the Lifetime Care and Support Authority.

Reverend the Hon. Fred Nile: They were catastrophic victims?

The Hon. JOHN RYAN: Yes, they both had paraplegia. However, they both played sport. One was a young mum who looked after a tribe of teenagers. They participated in society as openly and freely as able-bodied people and they were perfectly capable of managing their own affairs, and had been doing so for more than a decade. They wanted that opportunity to make a choice, and I believe it is incumbent on us, so far as it is possible, to ensure that they are given that opportunity. The Opposition has attempted to construct amendments that are limited in scope but nevertheless offer the choice to people with disabilities. That choice will be informed and they will have the opportunity to opt for long-term care and support. They do not want to discuss with some public authority such sensitive issues as access to the in-vitro fertilisation program, assistance with their sexuality—and I can understand why a person may not want to discuss that with a government authority—where they go on holidays, where they live, and what sorts of recreations they can pursue. They want to make that choice.

I note the Minister said that this scheme has been designed so that it is possible for the Lifetime Care and Support Authority to basically administer a quasi lump sum scheme that would advance funds to a person with a disability to administer on their own behalf. That is a fair halfway step and is certainly advantageous. However, I ask members to bear in mind that such a scheme would be administered at the authority's rate; it will administer a lump sum to a person calculated on the average cost of that person's care. An amount will be advanced to the person after a detailed analysis has been carried out after possibly some disputation about what should or should not be included in that lump sum. And again, some people will resent such assistance. They do not need it, nor do they want it. That is something that honourable members need to take into consideration.

In order to offer that level of choice the Opposition crafted amendments that are deliberately intended to be narrow in application and that will not undermine the scheme but will allow people the opportunity to make a choice. In making a choice some may make mistakes, but that is one of the joys of being a human being: one gets the opportunity to make choices. This is important for some people. Indeed, I have met some highly motivated and independent people who do not want this assistance; they do not regard it as an improvement to their lot. We should shut the door on them running their lives as they do now. The Opposition has provided an opportunity for the Committee to make this decision this evening.

The Hon. Dr PETER WONG [9.26 p.m.]: I do not support the amendment, on the following grounds. I listened with interest to the earlier argument of the Hon. John Ryan that perhaps the Government's scheme may not have been properly costed and that, therefore, the Auditor-General should be involved. He is now proposing something that will cost more. Whatever way we look at it, his proposal has not been costed in the amendments, that is for sure. He is arguing against himself. Further, I accept that there is a category of people who are totally independent and who would like to manage their own affairs. Conversely, the honourable member must accept that there is a category of people who will be swayed by their lawyers, friends and relatives and who, therefore, would lose their money—their resources and support—in the event of a wrong decision. I do not support the amendments.

Ms SYLVIA HALE [9.27 p.m.]: This is an extraordinarily difficult question. It is not quite the case of balancing the lesser of two evils. It is rather the case of which of the two alternatives would provide the better outcome. Obviously there is a need, a concern and a wish to protect people from the consequences of inadequate lump sum payments or from the making of unhappy investment decisions that can leave people who are suffering a catastrophic injury essentially destitute and unable to afford the level of care that they require. On the other hand, there is the need to treat all people equally, working on the assumption that all people are entitled to fundamental human rights, and we derogate from those rights only for extraordinarily good reasons. We are obliged to qualify the rights of people suffering from brain damage, or minors or people clearly unable to make informed decisions for themselves. It could be said that it is extraordinarily difficult, almost impossible, for such people to make an informed decision.

However, when injured people are capable of making an informed decision I cannot see the strength of the argument that we should deny them the right to make such a decision. We afford to all others in society—all those adults in possession to a greater or lesser degree of their faculties—the right to make foolish decisions that can have extraordinarily bad consequences on their long-term welfare and on the long-term welfare of people with whom they are associated. That is their right. In this case no convincing argument has been put forward to justify denying people who may have suffered catastrophic physical injuries the right to make foolish or wise decisions.

Reverend the Hon. FRED NILE [9.31 p.m.]: I am concerned about these amendments and do not support them. Catastrophic accident victims who might want to regard themselves as independent are very vulnerable. The Hon. John Ryan quoted from a document prepared by the Australian Lawyers Alliance that lends support to the amendments. That confirms my belief that these vulnerable people would be under pressure from lawyers to opt out and to take a lump sum. That is the only reason they would make such a decision.

It would not be an independent decision; it would be a decision that they were advised to make after they had been told they would be better off, when only the lawyers involved in such a scenario would be better off. We heard much evidence from independent victims about the abuse of lump sum payments by well-meaning people, their parents or relations. A lump sum payment would be rapidly used up and catastrophically injured victims would need to seek assistance from social welfare in order to survive. The whole idea of the Lifetime Care and Support Fund is to ensure guaranteed lifetime care and support. This is the only way we can guarantee it.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [9.32 p.m.]: In essence, this scheme will ensure that people get a much better deal than they do from a disability pension. A large percentage of people will not receive anything in the first place because of the concept of fault. In my experience the money of a large percentage of those who receive compensation would run out after about 10 years and they would be back on a disability pension. Over dinner I talked to Reverend the Hon. Fred Nile, who said that was apparent from evidence given to the committee that examined this issue. I obtained my experience in hospital wards and in the homes of catastrophically injured people.

We do not have any hard data, which presents us with a problem. We should get a university or a quality, academic body to research areas of social policy so we can quantify things such as this and have data on

which to base our assumptions. How many people survive and what happens to them in the long term? When we make these policy decisions what are they about? Honourable members come into this Chamber and espouse fine rhetoric but they never have any data on which to base their assumptions. We base our assumptions on whatever is fashionable in literature or on talkback radio. We have good intentions but we have no facts.

The cost of running such a research body would be small compared with the amount of money that is thrown at other issues pursued by this Parliament. If we assumed that the likelihood of failure would be high the lawyers of catastrophically injured people would say, "If you get the money you might not be able to manage it. With the amount of money I get for you—all this other bureaucracy may or may not do the right thing by you—you will be able to manage your own life." It will be a great fund of hope for people but will they have the courage to manage their own lives or will they fall back on this tired old bureaucracy?

People will have a go. If they get a lot of money there might be a brief flash in the pan while they spend their money, wisely or unwisely, and at the end of day they will not be on the scheme. This scheme exists to look after such people but they will be on disability pensions, struggling to survive as best they can. I refer for a moment to the amount of money in the workers compensation scheme. Insurance companies and the court system get their cut but the defendant's cut is always hidden, or it is immensely padded out by the costs of private investigators, which are of the magnitude of the costs of treating doctors. They are always so busy trying to catch people out.

The total amount paid for the administration of insurance, legal systems and sordid little investigators is about 50 per cent. That percentage might be a little lower if there is less investigation. However, if there is disputed medical evidence we will have the same story. Doctors know they will not get any more work if they do not come to conclusions that are convenient to insurers and the whole sorry saga would then be repeated for the catastrophically injured. Compulsory third party insurance companies have to acknowledge that possibility. The Hon. John Ryan said that represents five people a year at about $4.5 million for each person. Insurance companies will say, "We do not know whether it will be five people or 50 people. We cannot lower the premiums because we have to cover every possibility." This game is all about risk. Effectively, the benefit of the scheme, which is to save premiums, would be lost to the community.

The Hon. Patricia Forsythe: You just picked a figure out of the air after you accused the Government of not having statistics.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I did not pick a figure out of the air; I referred to the figure cited earlier by the Hon. John Ryan. He referred to $1 million for each person, which I think is far too low. I said it would cost about $4.5 million for each person. We are taking figures out of the air, which is what risk is all about. If there is uncertainty insurance companies want more premiums and that is what they are all about. In the absence of facts we have philosophies and fine principles on which to base our decisions. We are saying, "Some people with catastrophic injuries will have wonderful financial facilities and they will be able to manage them. Those who take a chance will overcome the odds and, with a lump sum, they will get a better deal than a benign bureaucracy might have given them."

Rehabilitation specialists for the catastrophically injured will run this scheme. We have moved away from the insurance model which, as I said earlier, is money driven, and we have moved away from the dead hand of the Office of the Protective Commissioner who does not seem able to think these things through. We are trying out a new experiment—one with which I am sure all honourable members will agree wholeheartedly. It might take away the opportunity that is available to some people but that is a small cost. If this rehabilitation specialist driven model works it will give people dignity, freedom and security, which is a great thing.

It is not the dead hand of bureaucracy when someone understands about empowering individuals and tailoring programs to them. It is a wonderful new model that offers hope. It is a question of who to trust—whether we trust lawyers to deliver windfall profits or bureaucracies to provide minimal funds according to a statutory classification. This model offers a new option that has never been tried before. I must admit that I think the Government deserves all praise for the scheme. We should give it a go. I oppose the Opposition's amendments.

The Hon. JOHN DELLA BOSCA (Minister for Finance, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, and Vice-President of the Executive Council) [9.40 p.m.]: The Government opposes the Opposition's amendments. The Government's proposal to establish a no-fault lifetime care and support scheme recognises that the emphasis must be on meeting needs,

not on adversarial proceedings that determine fault. The new scheme will provide lifetime support to people injured catastrophically in a motor vehicle accident to assist with the everyday tasks that they would otherwise be capable of doing for themselves. The scheme will support people in achieving educational, social and employment goals and also help them to participate in the life of the community. The scheme will provide that support in a way that enables individuals to live independently and exercise rights about their choice of lifestyle, free from institutional constraints.

These objectives cannot be delivered in a lump sum legal environment. The legal system deals with people only until they get a lump sum. Under the current scheme, of 124 people catastrophically injured each year only 65 are eligible for compensation. Of the 65 people who access compensation, 20 will have their benefits reduced by between 10 per cent to 90 per cent because they contributed to the accident through their driving conduct or contributed to their injury by not wearing a seatbelt, for example. Of the 45 people who receive full compensation, within 20 years eight will sadly have died and 20 will no longer have funds available and be relying on either welfare services for care and support or whatever they can cobble together from family members, relatives and friends. Under the current scheme it is very difficult to assess properly in advance the lifetime treatment and care needs of a person so as to provide an accurate cost. Under this scheme some people will end up being overcompensated and some will end up being undercompensated. Often the reasons for this have less to do with the needs of the claimant and more to do with other factors.

A review of brain and spinal cord claims undertaken as part of the review of large personal injury claims across all States—which is published in the white paper that was the first step in the consultation process on the legislation—indicated that the level of damages was often unrelated to the level of disability. The key factors in assessing the lump sum were not the needs of the client but the degree of family support and their ability to advocate for the client. Other important factors were the ability of the legal representative, the willingness of claimants or their personal representatives to litigate and the level of family support required to get a person through the litigation process, which, as we all know, can be extremely arduous and would be almost untenable for someone who had already suffered the trauma of a catastrophic injury. The current system will always deliver winners and losers. The proposed lifetime care scheme will make everyone a winner for life and is much preferable to the current lump sum lottery.

The proposal advanced by the amendments enables a compensable motor accident victim to opt out of the scheme unless the person suffers from a legal disability. Whilst this option to opt out of the scheme would not be available to all compensable participants, independent actuarial advice provided to the Motor Accidents Authority suggests that it is not possible to predefine the likely number of potential scheme participants who may be eligible to elect this option and seek lump sum compensation from the compulsory third party [CTP] insurer. Accordingly, CTP insurers would be required to continue to charge a premium that covers being on risk for this potential liability. This would lead to hedging between the CTP privately underwritten scheme and the long-term care scheme. Retaining an option to receive a common law lump sum award for future care and treatment for this restricted group of catastrophically injured people will still impact on the reduction in the CTP risk premium and associated savings in reinsurance costs and insurer profits achieved by the Government model, which takes CTP insurers completely off risk for this highly volatile aspect of their claims costs. It is important to understand that for all other categories of damages the at-fault claimants will still be able to make at-fault claims.

Independent actuarial costings prepared for the Government by PricewaterhouseCoopers estimate that the option advanced by the amendments could add an extra $15 to $16 to the average cost of a green slip. This would result in an additional cost to motorists of up to $36 to implement the scheme as proposed by the amendments compared with the average increase of $20 per green slip for the cost of implementing the Government's proposed scheme. The bills provide specifically for the Lifetime Care and Support Authority to enter into an arrangement with participants to self-manage their own care when they are competent and wish to do so. In such cases the engagement of carers will be entirely a matter for the injured person, with the Lifetime Care and Support Authority making a regular payment to the person and providing such other assistance as the person wants. This provision will enable the new scheme to address the issues raised by the amendments while guaranteeing the insured person a lifetime of necessary treatment, care and support. It will also enable the new scheme to be introduced at an affordable cost to motorists.

In speaking to the amendments the Hon. John Ryan assigned blame and innocence—I do not criticise him for that because it is always a temptation. In his examples the completely innocent victim was injured by a driver who was obviously at fault. However, we know from the statistics that that happens only occasionally. It is a rarity. Those who are deemed to be eligible to make a claim are often found to be partially at fault by the

court. That occurs in a large percentage of cases. Many drivers who were at fault—including those who caused catastrophic injuries to others and perhaps to themselves—did not act in a culpable or criminal manner. They made a mistake and did something foolish that most of us with a driver's licence have also done during our driving careers but were lucky enough to escape the terrible consequences. We should not view that mistake in a moral light as an attempt to betray the at-fault scheme. It is rare for a case to involve a completely innocent victim who was injured by a driver who was completely at fault. There are usually shades of grey. Therefore, it is not appropriate to introduce into this discussion the idea that the levels of compensation awarded in criminal cases are required.

For the purposes of clarity, the broad advice is that the total cost of a claim by a claimant with quadriplegia or a severe brain injury—depending on their age and similar factors—would be about $14 million or $15 million, as Reverend the Hon. Fred Nile and the Hon. Dr Arthur Chesterfield-Evans suggested. However, the lifetime care component of that total claim would be more like $5 million to $6 million. The amendments moved by the Hon. John Ryan appear to focus on younger people who suffer a catastrophic injury and whose lifetime care costs might be estimated by a court to be something approximating $1 million. The point of this scheme is that it attempts to balance inequities. It is designed to give options within a lifetime care framework to those who are able to make the most choices while providing appropriate, focused and extreme-level care to those with severe brain injuries or quadriplegia. It is a balancing act and I think the bills have the balance right. For that reason I ask the Committee to reject the Opposition's amendments.

The Hon. JOHN RYAN [9.50 p.m.]: I will respond to comments of honourable members in respect to these amendments. I thank all honourable members for the manner in which this debate has been conducted. We are dealing with sensitive issues and nobody would seek to have a monopoly of wisdom in regard to these matters. I counsel honourable members that we need to look at these issues objectively. That is the manner in which I bring these amendments before the Committee. Certainly the Government has not dealt with one category of people who will want to opt out of this scheme; that is, people who have sustained injury after having arrived in Australia from overseas.

Such people will want an opportunity to pursue a lump sum simply because the costs of care in America, Great Britain or Europe would clearly be greater than in Australia. If they go to court and have a clear and obvious claim for negligence they will not only wind up better with a lump sum to determine how they will spend their future but they will have the opportunity to apply for amounts of money that take into consideration the fluctuations of foreign currency and the increased costs of care in places other than Australia. It is beyond doubt that that group of people would want to opt out of the scheme if they were given that choice. It is not the case of robbing one group of people with a disability to pay for the benefits of someone else.

I refer to comments that people with a disability are not in their own mind, are vulnerable and will fall under pressure from lawyers. To be fair, that description applies to us all. Many of the people to whom I am referring would not want themselves described as "vulnerable". They are independent, highly motivated people who want the right to live. It is insult enough that they have been injured and lost their bodily capacity; it is a further insult that they have to spend the rest of their days negotiating with a government authority, no matter how benevolent and expert it is. They would prefer to make a choice. I accept it is a choice of values, but it is an exercise of human rights that I feel compelled to support.

It is not true to say that they have lifetime care and support guaranteed. Just as lump sums can fluctuate, government policy, the courage to which government policy will apply the levy to ensure that it properly funds the scheme and the capacity with which this scheme is properly administered can also fluctuate. I do not expect this to happen in New South Wales, but I instance the situation in New Zealand where the person in charge of a scheme was arrested and charged with misappropriation from the scheme, if I recall correctly. Gross levels of misappropriation are certainly possible, and that is a risk.

I refer to another risk people may want to size up. If I were an injured parent who had dependent children I might take the view, "I don't know about my survival. I've got a disability. I'm not sure how long I'm going to live. I may wish to have the lump sum option because, in the event of my premature death, the available lump sum would enable my partner to bring up my children." Obviously the funds would be used in that fashion. There has been discussion about relatives sharing funds, but I do not think anybody would deny the right of a parent to make a choice. Were I in that position, it would be one of the considerations I might make. People might want to ensure not only their future care but the future care of the people who are dependent on them, including children. Under this scheme, when the person dies there is no further recourse to funds.

If people have been negligently injured they will have the opportunity to claim other heads of damages, but for a non-working spouse with limited skills it may well be that their claim for economic loss is modest by comparison to others. The claim for long-term care and support would be a larger head of damage. Some people might believe it is immoral for a parent to be put under that type of pressure, but other parents would gladly put themselves under that pressure. I take the view that people with disabilities who have that capacity are entitled to have that human right to make those sorts of decisions. We all take risks and some people with disabilities want that choice. The Hon. Dr Arthur Chesterfield-Evans requested hard data that indicates how people waste their money. Fortunately, L. Kemp did a study entitled, "Spinal Injuries from Road Trauma Claiming Compensation 1997". The Government's white paper refers to that study and states:

> A study prepared for the Motor Accidents Authority indicates that more than 40 per cent of spinal injured recipients of lump sum payments were eligible for social security benefits within 17 years of receiving their damages.

That suggests a large number of people—40 per cent—do not have resources after 17 years, but it is not most people. I would have thought that the number of people whose lump sums did not last would be reduced by the fact that many people who do not have great education, who are not the sort of profile of people to take risks, will have the option and will willingly go into this scheme.

Reverend the Hon. Fred Nile: Maybe the figure changed after 17 years.

The Hon. JOHN RYAN: Maybe it does, but a significant number of people manage their funds well.

Reverend the Hon. Fred Nile: After 17 years?

The Hon. JOHN RYAN: For many people 17 years is their lifetime. I guess it depends on for how long the study is conducted. Reverend the Hon. Fred Nile has to face the fact that some people manage their funds well, they want to manage their funds well and they do not want the help the Government is offering. Reverend the Hon. Fred Nile should understand that. He may want to give them this help but they do not want it, which is why I have moved these amendments. I am of the view that their rights have equally as much reason to be respected as those who might use the scheme. Bear in mind that it is a choice that is made with this other option available. I would presume that a minority of people who are not highly motivated, and accept they do not have financial skills, will know there is a scheme that may well meet their needs and they will jump into that scheme—an increasing number will. However, some highly motivated individuals will prefer to take the option through the court. It is a simple matter of giving them that choice. It is probably a fair point that insurers will take on additional risk, but that is what people buy now. They pay for green slips because they want insurance.

The Hon. Dr Arthur Chesterfield-Evans: You've got to have it.

The Hon. JOHN RYAN: You have got to have a green slip, but they pay for it because they wish to be in an insurance scheme—a choice they have a right to make. All honourable members have made their points strongly and I will respect the decision of the Committee. This is an important issue that needed to be discussed. I know the numbers and where these amendments are going. Importantly, I simply say that by having had this discussion we have affirmed the rights of people with disabilities. I hope that might have some impact on the culture of how this scheme is administered.

Ms LEE RHIANNON [9.59 p.m.]: I congratulate Mr John Ryan on his comments. He has been extremely articulate and has argued his case incredibly clearly.

The Hon. John Della Bosca: He has won you over.

Ms LEE RHIANNON: I miss his contributions in this House. He has put a good case that we all need to consider. The Greens have grappled with it. It is about the dignity of people, including people with catastrophic injuries. Independence is central to the human spirit, and providing this choice enables people to take charge of their of own lives. It is argued that lump sums might be wasted. Lots of people, including persons with great ability and intelligence, waste money. That is not a persuasive argument. Mr Ryan cited figures, but our commonsense tells us that some people would waste some of their money. People should not be so regulated that they are denied the ability to say, "We are not going to be dependent on government; we are independent, and we can manage our lives." I commend Mr Ryan for articulating the case incredibly well.

Ms SYLVIA HALE [10.01 p.m.]: As all honourable members know, legislation that is enacted is reviewed every five years. If ever there was a case to allow people to choose the least draconian of options—

that is, allowing them to opt out of the scheme should they so wish—I believe it is in this instance. Within a span of five years—sooner if the Government determines that the scheme is not working well—we will have an opportunity to review how these provisions are operating, and see whether large numbers of people are being tempted by unprincipled lawyers not to participate in the scheme. Then, we will have the evidence before us on how the scheme has been working. But closing off now the choice to opt out of the scheme, rather than first allowing the scheme to be put into practice and monitor how it has operated, as my colleague Ms Lee Rhiannon observed, detracts from the dignity of those who will in any case be suffering in order to be eligible for assistance under the scheme. At this stage we should afford them the same rights that we afford any other member of the community.

Question—That the amendments be agreed to—put.

The Committee divided.

Ayes, 15

Mr Clarke	Ms Hale	Mr Ryan
Mr Cohen	Mr Lynn	
Ms Cusack	Ms Parker	
Mrs Forsythe	Mrs Pavey	*Tellers,*
Mr Gallacher	Mr Pearce	Mr Colless
Miss Gardiner	Ms Rhiannon	Mr Harwin

Noes, 23

Mr Breen	Mr Hatzistergos	Mr Roozendaal
Ms Burnswoods	Mr Kelly	Ms Sharpe
Mr Catanzariti	Mr Macdonald	Mr Tingle
Dr Chesterfield-Evans	Reverend Dr Moyes	Mr Tsang
Mr Costa	Reverend Nile	Dr Wong
Mr Della Bosca	Mr Obeid	*Tellers,*
Mr Donnelly	Mr Oldfield	Mr Primrose
Ms Fazio	Ms Robertson	Mr West

Pair

Mr Gay	Dr Burgmann

Question resolved in the negative.

Amendments negatived.

Clauses 8 agreed to.

Clauses 9 to 15 agreed to.

Ms LEE RHIANNON [10.11 p.m.], by leave: I move Greens amendments Nos 3 to 8 in globo:

No. 3 Page 9, clause 16, line 16. Omit "The". Insert instead "Subject to Part 8, the".

No. 4 Page 9, clause 18, lines 29–35. Omit all words on those lines. Insert instead:

18 Legal costs

(1) If an Assessment Panel or Review Panel determines under this Division that a motor accident injury suffered by a person does not satisfy the criteria specified in the LTCS Guidelines for eligibility for participation in the Scheme, the Panel is to include in its determination a determination of the amount of the reasonable legal costs payable by the injured person for or in respect of legal services provided to the person in connection with the referral of a matter for or the making of a determination or review of a determination under this Division.

(2) The Authority is to pay those reasonable legal costs of the injured person as assessed by the Panel. No other legal costs are payable by the Authority for or in respect of legal services provided to an injured

person or an insurer in connection with the referral of a matter for or the making of a determination or review of a determination under this Division.

(3) The regulations may make provision for or with respect to fixing maximum legal costs for legal services provided to a person in connection with the referral of a matter for or the making of a determination or review of a determination under this Division.

(4) A legal practitioner is not entitled to be paid or recover for a legal service an amount that exceeds any maximum legal costs fixed for the service by the regulations under this section.

(5) This section does not entitle a legal practitioner to recover legal costs for a legal service or matter that a court or costs assessor determines were unreasonably incurred.

(6) This section and any regulations under this section prevail to the extent of any inconsistency with the Legal Profession Act 2004 and the regulations under that Act. An assessment under that Act of any legal costs in respect of which provision is made by a regulation under this section is to be made so as to give effect to that regulation.

(7) In this section, legal services and legal costs have the same meanings as in the Legal Profession Act 2004.

No. 5 Page 10, clause 20 (5), line 25. Omit "The". Insert instead "Subject to Part 8, the".

No. 6 Page 13, clause 26 (1), line 26. Omit "The". Insert instead "Subject to Part 8, the".

No. 7 Page 14, clause 29, lines 22–29. Omit all words on those lines. Insert instead:

29 Legal costs

(1) If an assessor or Review Panel determines under this Part that the assessment made by the Authority or an assessor of the treatment and care needs of a participant in the Scheme is correct, the assessor or Panel is to include in its determination a determination of the amount of the reasonable legal costs payable by the participant for or in respect of legal services provided to the participant in connection with the determination or review of a determination under this Part of a dispute about such an assessment.

(2) The Authority is to pay those reasonable legal costs of the participant as assessed by the assessor or Panel. No other legal costs are payable by the Authority for or in respect of legal services provided to a participant in the Scheme in connection with an assessment under this Part of the treatment and care needs of the participant or the determination or review of a determination under this Part of a dispute about such an assessment.

(3) The regulations may make provision for or with respect to fixing maximum legal costs for legal services provided to a person in connection with the determination or review of a determination under this Part of a dispute about such an assessment.

(4) A legal practitioner is not entitled to be paid or recover for a legal service an amount that exceeds any maximum legal costs fixed for the service by the regulations under this section.

(5) This section does not entitle a legal practitioner to recover legal costs for a legal service or matter that a court or costs assessor determines were unreasonably incurred.

(6) This section and any regulations under this section prevail to the extent of any inconsistency with the Legal Profession Act 2004 and the regulations under that Act. An assessment under that Act of any legal costs in respect of which provision is made by a regulation under this section is to be made so as to give effect to that regulation.

(7) In this section, legal services and legal costs have the same meanings as in the *Legal Profession Act 2004*.

No. 8 Page 28. Insert after line 15:

Part 8 Reviews of decisions concerning Scheme

56 Applications to Supreme Court concerning acceptance in Scheme

(1) Any of the following persons may apply to the Supreme Court for review of a decision of the Authority concerning the eligibility of an injured person as a participant in the Scheme:

(a) the injured person,

(b) if there is a dispute about whether the injury sustained by the injured person is a motor accident injury—any other interested person within the meaning of section 20 (2).

(2) An application under subsection (1) may be made only if the person has exhausted all of the person's rights:

(a) in the case of a dispute about whether the injured person satisfies the criteria specified in the LTCS Guidelines for eligibility for participation in the Scheme—to have the dispute determined by an Assessment Panel, or a determination of a dispute reviewed by a Review Panel, under Division 1 of Part 3, or

(b) in the case of a dispute about whether the injury suffered by the injured person is a motor accident injury—to have the dispute determined by a panel constituted under section 20.

(3) The application must be made in the manner, and within the time, (if any) prescribed by the rules of court for the Supreme Court.

(4) On any such application, the Supreme Court may make any of the following orders:

(a) an order requiring an Assessment Panel to re-determine under Division 1 of Part 3 a dispute about whether the injured person satisfies the criteria specified in the LTCS Guidelines for eligibility for participation in the Scheme,

(b) an order requiring a Review Panel to review under Division 1 of Part 3 a determination about whether the injured person satisfies the criteria specified in the LTCS Guidelines for eligibility for participation in the Scheme,

(c) an order that a panel constituted under section 20 re-determine a dispute about whether an injury is a motor accident injury,

(d) an order that the Authority accept the injured person as a lifetime participant or interim participant in the Scheme,

(e) an order that the injured person is not eligible to participate in the Scheme,

(f) any other order that the Court considers appropriate.

57 Applications to Supreme Court concerning treatment and care needs

(1) A participant in the Scheme who disputes an assessment or any aspect of an assessment by the Authority of the treatment and care needs of the participant may apply to the Supreme Court for a review of that assessment.

(2) An application under subsection (1) may only be made if the participant has exhausted all of the participant's rights to have a dispute about the assessment determined by an assessor, or an assessor's determination reviewed by a Review Panel, under Part 4.

(3) The application must be made in the manner, and within the time, (if any) prescribed by the rules of court for the Supreme Court.

(4) On any such application, the Supreme Court may make any of the following orders:

(a) an order that an assessor re-determine the dispute about the assessment under Part 4,

(b) an order that a Review Panel review an assessor's determination under Part 4,

(c) an order substituting a different assessment,

(d) an order that confirms the assessment.

58 Legal costs

(1) The Supreme Court may not make an award of costs against a participant in the scheme or any injured person (a protected person) in respect of an application made to the Court under this Part.

(2) The Authority is to pay the reasonable legal costs that are payable by the protected person for or in respect of legal services provided to the person in connection with an application to the Supreme Court under this Part. The Authority may apply for the assessment of such costs under Division 11 of Part 3.2 of the Legal Profession Act 2004 as if the Court had ordered the Authority to pay those costs.

(3) However, no other legal costs are payable by the Authority for or in respect of legal services provided to a protected person in connection with an application made to the Supreme Court under this Part.

(4) The regulations may make provision for or with respect to fixing maximum legal costs for legal services provided to a protected person in connection with an application to the Supreme Court under this Part.

(5) A legal practitioner is not entitled to be paid or recover for a legal service an amount that exceeds any maximum legal costs fixed for the service by the regulations under this section.

(6) This section does not entitle a legal practitioner to recover legal costs for a legal service or matter that a court or costs assessor determines were unreasonably incurred.

(7) This section and any regulations under this section prevail to the extent of any inconsistency with the *Legal Profession Act 2004* and the regulations under that Act. An assessment under that Act of any legal costs in respect of which provision is made by a regulation under this section is to be made so as to give effect to that regulation.

(8) In this section, legal services and legal costs have the same meanings as in the *Legal Profession Act 2004.*

The purpose of these amendments is to provide legal costs for unsuccessful applicants to argue that they should be included in the scheme, to provide a person with reasonable legal costs for representation before the assessment panel or the review panel if either panel decides that a person is not eligible for entry into the Lifetime Care and Support Authority Scheme. A decision to restrict a person from access to the scheme has profound consequences if that person is unable to recover compensation in other ways. Because of the serious implications of this decision it is appropriate for reasonable legal costs to be met so that the best possible case can be argued. Participants or their representatives would be required to complete forms and provide substantiating material, including medico-legal reports, to the assessment and review panels. Many people would be ill-equipped to access material properly to substantiate their arguments and present the material persuasively without obtaining legal advice and representation. However, the authority's panels will be resourced fully and comprise qualified and experienced assessors. It would be an unfair burden and a denial of procedural fairness to require participants and their representatives to bear the costs of legal representation in these circumstances. I commend Greens amendments No. 3 to 8 to the Committee.

The Hon. JOHN DELLA BOSCA (Minister for Finance, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, and Vice-President of the Executive Council) [10.13 p.m.]: The Government does not support Greens amendments Nos 3 to 8. In regard to amendment No. 4, it is not necessary for an injured person to seek legal advice in relation to the assessment or the review of an assessment of his or her eligibility to participate in the Lifetime Care and Support Authority Scheme [LTCS] based on the extent of the injury the person has suffered. A person's eligibility to participate in the scheme based on the injury is dependent upon both the severity of the injury sustained and its impact on the person's functional capacity, that is, the need for assistance and supervision in day-to-day living. Functional capacity will be assessed using the functional independence measure [FIM], which assesses such capacity functions as self-care, mobility, locomotion, communication, social interaction and cognitive function. A FIM rating of 1 indicates that the person requires total assistance and a rating of 7 indicates that the person is completely independent. A rating of 5 or less indicates that a person requires some supervision to perform the task.

Assessment of these matters does not involve legal expertise. Rather, the assessments require legal-medical decisions by relevant experts in catastrophic injury management. Accordingly, it is not appropriate for the scheme to have to pay for legal costs in preparing for these assessments. The amendment would create additional and unnecessary costs for the scheme because scheme funds would have to be diverted to paying lawyers' fees, which would be levied at the expense of catastrophically injured people. The funds should be used more appropriately and more usefully to provide care and treatment to participants in the scheme. In respect of Greens amendments No. 7, the Government's position is similar. It is not necessary for a participant in a Lifetime Care and Support Scheme to seek legal advice in relation to the assessment or the review of the assessment of the treatment and care needs because every participant in the scheme will have a lifetime care co-ordinator appointed to work with the injured person and the family. It is important that honourable members understand that care assessments be undertaken regularly through the person's life and as frequently as changing circumstances require, which is another argument as to why the scheme is a much better way to proceed than single, one-off, lump sum, court-based payments.

This is not a single one-off assessment that locks the injured person into a fixed entitlement. Treatment and care needs assessments will involve the consideration of medical, rehabilitation, care and support needs. Assessments will require the expertise of medical practitioners and other health professionals, and attendant care and rehabilitation specialists. This simply does not require legal advice or legal imports for the preparation of material relevant for these assessments. The payment of legal costs is not appropriate and would be an unnecessary impost on the scheme. In general terms, the same argument applies to Greens amendments Nos 5, 6 and 7, which are consequential to amendment No. 8, which deals with resolving disputes about whether catastrophic injury has been caused by a motor vehicle accident. The bill provides that the Lifetime Care and Support Authority's decision can be reviewed independently by a panel of three claims assessors under the Motor Accidents Compensation Act. Claims assessors are senior legal practitioners with extensive experience in motor vehicle injury claims. Most of them are members of the bar.

For treatment and care needs, assessments by the authority are ongoing throughout the participant's life and will be conducted on a regular basis. Whenever a person's circumstances change, the injured person can have a decision of the LCTS Authority reviewed independently in the first instance by a single assessor who, depending on the issues, will be a health professional or other suitably qualified person. The bill makes further provision for the review of an assessed determination by an independent review panel, which will comprise three assessors. The proposal contained in the amendment will be excessively expensive. The amendment proposes that every single decision made by an assessment panel potentially can provide the basis of an application to the Supreme Court no matter how unmeritorious the application may be. Scheme funds would soon be exhausted in this process and would come at the expense of providing care and treatment to the catastrophically injured, the participants in the scheme. The amendment has the potential to generate significant costs for the scheme. It also is potentially resource excessive for the court. The amendment is ill-considered and cannot be supported by the Government.

The Hon. JOHN RYAN [10.18 p.m.]: The Opposition does not support the amendments for some of the reasons outlined by the Government. The scheme outlined in the amendments probably is excessive in terms of the capacity for legal argument. The Minister has used a number of arguments about legal costs, which equally could have been applied to the Medical Assessment Service operated by the Motor Accidents Authority. It is anomalous that people are able to access legal expenses before the Medical Assessment Service, but they will not be able to access expenses under this scheme. Do not be surprised, because there will be disputes. Although they will not be legalistic disputes necessarily, some of them will be formalised and it will be necessary, particularly for people with disabilities, to access some sort of advocacy, which will come at some cost.

People with disabilities usually do not have enormous amounts of money to spend on costs. The Opposition is mindful of the fact that there is a need to assist people with disabilities to prepare themselves for disputes. I think it is fair to say an individual with a disability versus the new long-term care and support authority, armed as it will be with expert assessors and enormous funding levels, will result in an unequal contest. There will be occasions when it will seem appropriate that the contest ought to be evened up. These types of disputes are part of the Victorian scheme. As I understand it, participants before the Victorian scheme who have disputes have access to funds for legal costs.

The Opposition is sympathetic to the Government's objective not to have the funds of the long-term care and support authority dissipated by legal costs, but we nevertheless accept the fact that some middle point has to be found for people with disabilities who will need to make formal presentations to panels and assessors. They should somehow or other find some assistance in doing so. I am not sure what the middle point is, but perhaps the Government should provide a couple of people outside the authority who might assist people with disabilities to prepare their submissions. That might be a cheaper and easier way of providing assistance, but somehow or other the assistance should be provided. Perhaps existing agency services that are funded by the Government might be able to help people with disabilities make their submissions. Nevertheless, as matters currently stand, provision is inadequate.

The Opposition accepts that we will not go the whole hog of every dispute necessarily involving lawyers. With some regret the Opposition leaves the situation, as inadequate as it is now, but because at some stage or other a review of the scheme will be needed, the Opposition will be moving amendments which will allow the scheme to be reviewed by a committee of this Parliament so that this might be one of the matters that is considered when the scheme is first reviewed by the Parliament.

Reverend the Hon. FRED NILE [10.21 p.m.]: The Christian Democratic Party does not support these amendments. One of the objectives is to try to get the legal profession out of this area. It seems to be quite a strange set of amendments for the Greens to be producing amendments Nos 4 and 7 with legal costs presented in detail. I believe it has been proved over the years that too much money has been going to the legal profession and not to the victims. Let us keep the lawyers out of it.

Amendments negatived.

Clauses 16 to 24 agreed to.

The Hon. JOHN RYAN [10.23 p.m.]: I move Opposition amendment No. 4:

No. 4 Page 13, clause 25. Insert after line 24:

(5) In conducting its review, a Review Panel must take into account any written submissions prepared by or on behalf of the participant that are submitted to the Panel.

The Opposition seeks to amend the bill to allow for review panels which are largely the final appeal forum in relation to medical disputes. The amendment is designed to ensure that participants in the scheme have the right to make submissions and ensure that the review panel takes into consideration written submissions made by participants in the scheme. Otherwise, as the bill is currently written, it would be possible that a review panel and an assessor could meet without considering the exact circumstances of a person with a disability. I imagine the bill largely mirrors provisions which exist in the Motor Accidents Act. When those provisions are applied, the medical assessment panels are making fairly objective assessments about whether or not a person has, for example, experienced a 10 per cent whole of body impairment or not. But the review panels which meet in these circumstances are in fact considering some things that are not just limited to medical treatment.

A participant in the scheme who has a disability is entitled to know that an assessment panel fully understands their needs for treatment and care. The kinds of assessments made by these review panels are not exactly the same as the medical assessments made under the Motor Accidents Compensation Act 1999. These decisions are not limited to objective considerations about physical impairment. They also include issues relating to social situations in which the participants may find themselves. The support needs of a parent with dependent children may well be different to the support needs of a single adult. These needs vary with age or a participant's residential location. These considerations are very personal and a person with a disability should be entitled to express their needs or to have them expressed to a panel through an advocate, at least in a written form. I believe that this amendment expresses intentions found in the Disability Services Act. I sincerely hope that the Government is able to see its way clear to support the amendment.

The Hon. JOHN DELLA BOSCA (Minister for Finance, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, and Vice-President of the Executive Council) [10.22 p.m.]: The Government does not oppose this amendment. The Government is prepared to support the amendment.

The Hon. JOHN RYAN [10.22 p.m.]: I thank the Government for its support.

Amendment agreed to.

Clause 25 as amended agreed to.

Clauses 26 to 61 agreed to.

The Hon. JOHN RYAN [10.29 p.m.]: I move Opposition amendment No. 5:

No. 5 Page 30, clause 62 (2), lines 17–20. Omit all words on those lines.

This particular amendment addresses some protections that the Government proposes to insert into these bills to protect medical assessors from scrutiny by the courts. The Opposition has every sympathy for the reasons for which the Government wants to protect medical assessors from being sued and to ensure that people who sue medical assessors are suing the Government because medical assessors are acting on behalf of the Government. However, I believe a strong argument has been made that medical assessors should not be given exactly the same protection as that given to claims assessment and resolution service [CARS] assessors. That is where this amendment has come from. It is proposed that the same protection from scrutiny that is given to CARS assessors should be given to medical assessors. There is a world of difference between how a claims assessment is made by CARS assessors and how a medical assessment is made by a medical assessor, and in my view that difference well and truly justifies that they be treated differently. A CARS assessor is defined by law to be "independent of the MAA". Section 105 (2) of the Motor Accidents Compensation Act 1999 states:

> A claims assessor is not subject to control and direction by the Authority or any public servant with regard to any of the decisions of the assessor that affect the interests of the parties to an assessment, and the Authority or any public servant may not overrule or interfere with any such decision of the claims assessor in respect of any such assessment.

Clearly, claims assessors have a level of independence that is different to that of medical assessors. Whereas medical assessors are largely able to be directed by officers of the Motor Accidents Authority with regard to the Motor Accidents Act, claims assessors will probably be able to be directed by officers of the Lifetime Care and Support Authority. Indeed, they will be chosen by officers of the Lifetime Care and Support Authority to make these decisions. In my view it is not unimportant that when matters come before the court—obviously it will not happen often—there is a fair case to ensure that legal representatives have the opportunity to interview doctors and request documents.

In many instances the only means of appealing against a decision is to claim that there has been some failure of due process, and the only way to prove failure of due process is to get documents and sometimes to question the doctors themselves. I have no desire to see doctors dragged into court as a routine practice. I understand that in the year and a half that the Motor Accidents Scheme has been operating—it is phenomenally more controversial than anything these medical assessors will do—on only 40 occasions have assessors been subpoenaed in the dozens and dozens of cases before the courts. So there is no suggestion that having these people subpoenaed is onerous or difficult. In my contribution to the second reading debate I outlined a case that went before the courts in which there was a failure of due process. That would not have been uncovered if it had not been possible to bring the individual before the courts and request their documents.

There is a strong case for scrutiny of the people making important decisions on behalf of people with disabilities. As I do not want to repeat the same arguments during debate on the Motor Accidents Compensation Amendment Bill, I say again that there is a strong case for the assessors to be subject to scrutiny if necessary. The fact that these assessors could be subject to scrutiny changes entirely how they operate. If they are not subject to scrutiny they can operate in exactly the same way as was outlined in the court case to which I referred, as documented and determined by a judge, and no-one would know about it. As someone might say, sunlight is an important disinfectant, and it is important at least to allow for scrutiny of these decisions. I hope the Government will accept the Opposition's amendment.

The Hon. JOHN DELLA BOSCA (Minister for Finance, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, and Vice-President of the Executive Council) [10.33 p.m.]: The Government opposes the Opposition's amendment, which fails to recognise the role that an independent medical and care assessment plays in the Lifetime Care and Support Scheme, and does not reflect the independent statutory decision-making function assigned to the lifetime care assessors. Clause 62 indemnifies the lifetime care service [LTCS] assessors against personal liability for acts or omissions in good faith. The provision also declares a LTCS assessor to be competent but not compellable to give evidence or produce documents in court proceedings. This limited protection is recognition of the independent and determinative decision-making role assessment plays in the dispute resolution procedures of the scheme.

The Hon. JOHN RYAN [10.34 p.m.]: It will be said in the future that this provided an opportunity for cover-up. I simply make the point that the Opposition wanted to confront the Government with that fact. We accept that the Government has made this decision, but I simply say that a strong case has been made to the contrary. I think the Government will regret that it did not accept the amendment. We accept the need to indemnify these individuals, but I do not think anybody acting on behalf of the Crown and making the sorts of decisions these people make is entitled to do so with a cone of silence placed around them and legislative protection.

Amendment negatived.

Clause 62 agreed to.

Clauses 63 to 65 agreed to.

New clause 66 agreed to.

The Hon. JOHN RYAN [10.35 p.m.]: I move Opposition amendment No. 7:

No. 7 Page 31. Insert after line 8:

67 Appointment of Parliamentary Committee

(1) As soon as practicable after the commencement of section 33 (Constitution of Authority) 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 and the Advisory Council under this Act.

I do not think this amendment will be particularly controversial. The purpose of the amendment is to appoint a parliamentary committee—ultimately the Legislative Council will designate the committee—to provide oversight of the operation of the Act. It mirrors the provisions in the Motor Accidents Compensation Act. It

seems wise to provide the same in this bill. A lot has been said about the good work done by the Legislative Council's Standing Committee on Law and Justice, and it is appropriate that that committee should continue that work by overseeing the scheme and allowing for political ventilation of some of the issues that will undoubtedly arise from the operation of this scheme. I commend the amendment to the Committee.

The Hon. JOHN DELLA BOSCA (Minister for Finance, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, and Vice-President of the Executive Council) [10.36 p.m.]: The Government does not oppose this amendment. We hope that the Legislative Council will give this reference, as I think the Hon. John Ryan has foreshadowed, to the Standing Committee on Law and Justice, which already has this responsibility for reviewing the exercise and functions of the Motor Accidents Authority and the Motor Accidents Council.

Amendment agreed to.

New clause 67 agreed to.

Schedules 1 to 3 agreed to.

Title agreed to.

The CHAIR: Order! The Committee will now deal with the Motor Accidents Compensation Amendment Bill.

Clauses 1 to 5 agreed to.

The Hon. JOHN RYAN [10.38 p.m.], by leave: I move Opposition amendments Nos 1 to 6 in globo:

No. 1 Page 3, schedule 1 [4], lines 18–25. Omit all words on those lines. Insert instead:

motor accident means an incident or accident involving the use or operation of a motor vehicle that causes the death of or injury to a person where the death or injury is a result of and is caused during:

(a) the driving of the vehicle, or

(b) a collision, or action taken to avoid a collision, with the vehicle, or

(c) the vehicle's running out of control, or

(d) such use or operation by a defect in the vehicle.

No. 2 Page 4, schedule 1 [5], proposed section 3A (1), lines 2 and 3. Omit "(whether or not as a result of a defect in the vehicle)".

No. 3 Page 4, schedule 1 [5], proposed section 3A (1) (c), line 7. Omit "control." Insert instead "control, or".

No. 4 Page 4, schedule 1 [5], proposed section 3A (1). Insert after line 7:

(d) such use or operation by a defect in the vehicle.

No. 5 Page 12, schedule 1 [14], lines 18–26. Omit all words on those lines.

No. 6 Page 14, schedule 1 [22], proposed section 59A (2), lines 11–15. Omit all words on those lines.

Opposition amendment No. 1 relates to the definition of "motor accident". The Opposition wants to ensure that the Government and the public know that the Government is changing the coverage of the Motor Accidents Compensation Scheme. It is doing that in a way that has nothing to do with the lifetime care and support Act and in a way that will work to the detriment of people who currently make claims under the motor accidents scheme.

In my contribution to the second reading debate I outlined material which had been supplied to me by the Law Society as to the possible way in which this amendment would operate to leave people without coverage. The Committee should consider whether we should delete the use and operation of a car where the issue is the defect in the vehicle. Those who are at work obviously will be covered under workers compensation, but those who are not at work will find themselves without cover or will seek to find someone else's public liability insurance on which to make a claim. In fact, that might be more generous than the scheme currently provided under compulsory third party insurance.

Opposition amendment No. 2 relates to the same thing, and amendments Nos 3 and 4 are of the same manner. They are all necessary amendments to the definition of "motor accident". The second amendment moved by the Opposition relates to the proposal by the Government to provide for the consideration of whether a person is a trespasser on land where a claim might arise. I outlined in my contribution to the second reading debate a number of anomalies and lack of coverage that that change will have as a result of being enacted. In particular, in a number of situations people necessarily trespass onto land, or walk onto land, and may not necessarily be regarded as trespassers. It will be a lawyers' breakfast as to whether the entry onto land was trespass or not.

I am quite sure that if people are not able to get coverage under compulsory third party insurance they will start to look for landholders' public liability insurance, and suddenly landholders will be dragged into the courts as a major part of the argument, although they do not wish to be. In some instances, the land involved will be public land. Some people who will make decisions as to whether they are trespassers will be very young. I defy the Minister to explain how a 14-year-old boy who arrives with his off-road bike, sometimes with his parents, is able to make an informed decision as to whether he is a trespasser on the land. This is an ad hoc, one-off attempt to remove a decision made by the courts in favour of a claimant and assists the insurers with something that obviously irritates them. Nevertheless, little consideration has been given to consulting the community as to what it wants in regard to that. I suspect that most people would much prefer to leave this situation alone because of the anomalies it might create, no matter how the emotive term "trespasser" might be used.

The final Opposition amendments relate to the protection of assessors. I have already put forward the argument as to why assessors ought to be protected in part though not as completely as the Government proposes. I think we have made a strong case that medical assessors should be comparable; they should produce documents. I am enormously disappointed that the documentation of the Motor Accidents Authority in this respect will not be available to ensure there has or has not been a problem with process. It is the only means by which people can make a claim. Their capacity to uncover whether they have been given due process will now be exceedingly difficult. Perhaps that is what the Government wants. However, I do not believe that that is in the public interest. We ought to operate on a basis of fairness. In that respect, the Opposition commends the amendments to the Committee.

The Hon. JOHN DELLA BOSCA (Minister for Finance, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, and Vice-President of the Executive Council) [10.43 p.m.]: The Opposition amendments arguably broaden what is to be considered a motor accident for the purposes of the Motor Accidents Compensation Act. As has been explained in the other place, the motor accidents scheme's boundaries have become blurred through litigation, which, apart from adding to the scheme's costs, promotes uncertainty. For example, in the 2001 case of *Zurich Australia Insurance Limited v CSR Limited*, in which a worker injured his back while lifting a ramp onto a trailer, the New South Wales Court of Appeal held that the absence of any form of assistance for lifting items onto the trailer was a design fault in the trailer which caused the injury and was a "defect in the vehicle during its use or operation" and thus within the compulsory third party scheme.

On appeal, the High Court concluded that the defect was not in the vehicle but rather in the system of work. Of course, that meant that the worker was eligible under the workers compensation scheme. It must be remembered that additional costs to the scheme through litigation or a new class of claim are passed on to motorists who are paying green slip premiums to fully fund the scheme's liabilities. The proposed definition of "motor accident" in the Motor Accidents Compensation Amendment Bill restricts the circumstances in which a defect in a vehicle will give rise to an entitlement to claim under the Act. It will be restricted to those circumstances in which the injury is caused in the use or operation of a vehicle, whether or not as a result of a defect, during the driving, a collision, or the vehicle's running out of control. The amendment is to clarify that the purpose of the compulsory third party scheme is to cover injuries or death from motor vehicle accidents and not injury resulting from some activity that has an incidental connection with a motor vehicle. For example, it is doubtful that a motorist paying for a green slip would accept that the owner of the vehicle is at fault in causing a motor vehicle accident injury when the owner calls out the NRMA to replace a flat battery and, whilst working, on the battery the patrolman is struck on the head by the falling bonnet, which had a defective catch. These are the types of incidents that are rightly excluded from the motor accidents scheme.

The Hon. JOHN RYAN [10.45 p.m.]: Although there has been a response from the Government, I am not sure that it has responded to all of the Opposition's amendments, particularly with regard to trespassers. Although the Government argued strenuously that somehow this would add to the cost of the scheme, it has not

documented the cost of that. It has been put to me that the number of cases involved has been significant. The original intention of the Government was to have a scheme whereby surf lifesavers and others would not have a gap in coverage. Now there will be. The Government has made no explanation as to why it continues to widen that gap and why it is making unannounced changes by slipping them in and making them part of a long-term care legislation.

The Hon. JOHN DELLA BOSCA (Minister for Finance, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, and Vice-President of the Executive Council) [10.47 p.m.]: The Government is not slipping in changes. We are clarifying the boundaries of the scheme, taking it back to its original intention, because the boundaries have been blurred by litigation. That is a legitimate function, of course, to test these schemes. The Hon. John Ryan quite rightly made a point in principle, which I will refer to because it underpins this debate. He quite rightly made the point that there is an ongoing debate, not only within the Government but also within the community generally. It will be timely to have a debate in this Chamber in the near future about the implications of other ways in which other categories of injuries can be roped into the long-term care scheme that we are providing for motor vehicle accident victims.

One of the principles of that scheme—and this is the Government's clear intention, whether the scheme remains or whether the scheme were to be roped in as a form of social insurance such as this proposal, or under a privately underwritten scheme of some sort—is the need for a premium at risk, held and collected, to fund such a scheme. We need either notionally or actually to have a premium to match the exposure of the risk and the activity. To willy-nilly allow the green slip system to expand to cover all sorts of other accidents, as unfortunate and tragic as those accidents may be, would result in the medium-term and long-term outcome of undermining the financial viability of the compulsory third party scheme. It would not be of any long-term benefit to the victims.

In response to other elements of the contribution of the Hon. John Ryan, Opposition amendment No. 5 relates to the nominal defendant scheme. The Opposition amendment removing clause 33 (3A) from the Motor Accidents Compensation Amendment Bill prevents clarification of the boundaries and removal of inconsistencies in the operation of the nominal defendant scheme. The nominal defendant scheme provides compensation for injuries caused by the fault of an owner or driver of a vehicle that is either unregistered or uninsured or is unidentified. To take benefit of the provisions, the accident must have occurred on a road, or a road-related area, which includes areas that are open to, and used by, the public for driving, riding or parking vehicles, such as parking lots and so on. Increasing litigation on what constitutes an area open to and used by the public for driving a vehicle has added to the scheme's costs, again blurring the boundaries and creating inconsistencies in the operation of the nominal defendant scheme.

In a recent case—interestingly, called *Ryan v Nominal Defendant*, which might in fact be this evening's debate—the New South Wales Court of Appeal found that an injured person could still recover compensation under the motor accidents scheme through nominal defendant provisions even though that person was injured whilst trespassing on private property. This finding creates inconsistencies within the nominal defendant scheme with unfair consequences. For example, children riding unregistered bikes on a farm who crash into each other and suffer injury are not covered, whilst a person trespassing nearby who is injured in a collision would be covered.

To understand the inconsistency it is necessary to consider the civil law of trespass. The High Court in 1991 in the case of *Plenty v Dillon* reaffirmed the principles of trespass by holding that a trespass occurs where entry on land is without the consent of the person in possession, or entitled to possession of the land, and without any implied leave or licence. This exclusion is totally inconsistent with the existing requirement to claim under the nominal defendant scheme that the area in which the motor accident causing the injury occurred must be open to and used by the public for the purposes of driving. It is nonsense to suggest that a person on land without leave or licence—I think this is the very point that the Hon. John Ryan is making—is on land that is open to and used by the public. The bill removes this inconsistency and clarifies that, for the purpose of the nominal defendant scheme, a trespasser is excluded from coverage under the nominal defendant scheme.

The Government also opposes the provisions of Opposition amendment No. 6 because it fails to acknowledge the independent role medical assessment plays in the motor accidents scheme. The amendment does not reflect the statutory decision-making function assigned to medical assessors. Medical assessment replaces the costly and wasteful adversarial medicine process, or "duelling doctors" that we have talked about in so many other debates in this Chamber. Proposed new section 59A will protect medical assessors in the motor accidents scheme. The provision indemnifies an assessor against personal liability for acts or omissions in good faith.

The decision is of considerable significance as it is likely that the Medical Assessment Service will lose many of the very best practitioners it has been able to recruit to make decisions in medical disputes should medical assessors be comparable. The provision is necessary following—this is an amazing coincidence—the New South Wales Court of Appeal decision in *Ryan v Watkins* late last year. It is a very litigious family.

The Hon. John Ryan: The name is not as common as "Della Bosca".

The Hon. JOHN DELLA BOSCA: I do not think there have been any Supreme Court cases called Della Bosca versus anybody. In this case the court found that the general protections afforded decision makers under the Evidence Act are in some instances not available to medical assessors. This limited protection is recognition of the role medical assessment plays in the scheme and the task of statutory decision making that an assessor is being asked to perform, and is consistent with the protection the Act currently offers to claims assessors. In order to set at rest the Hon. John Ryan's mind and the minds of other members of the Chamber who might have been concerned about this, I am also happy to commit to the Committee that on the next occasion I bring this legislation before Parliament for review I will be prepared to amend the legislation to provide that the medical assessors are independent and not subject to direction in the form that currently applies.

The Hon. Duncan Gay: Next time it will be John Ryan who brings it before the Parliament.

The Hon. JOHN DELLA BOSCA: If that is true, the Deputy Leader of the Opposition has no problem.

Amendments negatived.

Schedule 1 agreed to.

Schedule 2 agreed to.

Title agreed to.

Motor Accidents (Lifetime Care and Support) Bill reported from Committee with amendments and Motor Accidents Compensation Amendment Bill reported without amendment, and bills passed through remaining stages.

ADJOURNMENT

The Hon. JOHN DELLA BOSCA (Minister for Finance, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, and Vice-President of the Executive Council) [10.55 p.m.]: I move:

That this House do now adjourn.

ENVIRONMENTAL TRUST AWARDS

The Hon. AMANDA FAZIO [10.55 p.m.]: In February I had the pleasure of presenting certificates to seven organisations in my duty electorates of Ballina, Burrinjuck and Orange that had been selected for Environmental Trust Awards. The Environmental Trust is an independent statutory body established in 1998 by the New South Wales Government to support exceptional environmental projects that do not receive funds from the usual government sources. The trust's main responsibility is to make and supervise the expenditure of grants. The trust is administered by the Department of Environment and Conservation. The trust is chaired by the Minister for the Environment. Members include the Director General of the Department of Environment and Conservation and representatives from the Local Government and Shires Associations, the Nature Conservation Council and New South Wales Treasury.

The objectives of the Environmental Trust are: to encourage and support restoration and rehabilitation projects; to promote research into environmental problems of any kind; to promote environmental education in both the public and private sectors; to fund the acquisition of land for the National Parks Estate; to fund the declaration of areas for marine parks and for related purposes; to promote waste avoidance, resource recovery and waste management, including funding enforcement and regulation and local government programs; to fund environmental community groups; and, to fund the purchase of water entitlements for the purpose of increasing environmental flows for the State's rivers and restoring or rehabilitating major wetlands. The trust offered seven

grants programs in 2005-06 and 157 grants were awarded, totalling $5.73 million. In addition to these the Eco Schools Program was offered again in 2005 with the amount for each grant increased to $2,500, an increase of $1,000 from previous years.

In 2005-06, 203 applications were received requesting $507,500 and 60 grants were awarded totalling $150,000. Three of those grants were awarded in Ballina. The Environmental Trust held 15 workshops across the State in 2005 to assist schools understand the program and prepare applications for funding. Schools were invited to send teachers or parents to one of these three-hour afternoon workshops free of charge. A school's attendance at these workshops would obviously provide it with invaluable information regarding the preparation of applications to the program. The details of the Environmental Trust Awards for which I presented certificates are as follows. On Thursday 9 February I presented an award to Goulburn Mulwaree Council. The council was awarded $50,000 for the project "Catchment Caretakers; Community partners for sustainable water cycle".

This project involves developing and implementing an environmental education project to achieve real and sustainable drinking water quality and conservation outcomes within an urban catchment by targeting specifically identified community sectors. On Monday 13 February I presented an award to Environmental Training and Employment Inc. Environmental Training and Employment Inc was awarded $70,150 for the project "Boulders Beach Rainforest and Wetland Restoration and Rehabilitation". This project involves the employment of professional bush regenerators to work with the Lennox Head Land Care Group and work-for-the-dole crews to rehabilitate the littoral rainforest at Boulders Beach, On that day I also presented an Environmental Trust Award to Cape Byron Headland Reserve Trust. Cape Byron Headland Reserve Trust was awarded $21,700 for the project "Cape Byron Littoral Rainforest Restoration Program". It was great to see the areas for which the grants had been awarded being restored to their natural habitats. The regeneration of the rainforest at the Cape Byron Lighthouse was proceeding well. The littoral rainforest at the cape has recently been gazetted as an endangered ecological community. I acknowledge the attendance of Linda Vidler and Dulcie Nicholls, both elders of the Arakwal people, at the presentation.

On Tuesday 14 February 2006 I presented an Environmental Trust (Eco Schools) Award to Mullumbimby High School. Mullumbimby High School was awarded $2,500 for the project "Rehabilitation of degraded riparian zone for use as learnscape". Later on that day I presented an Environmental Trust (Eco Schools) Award to Mullumbimby Adventist School. Mullumbimby Adventist School was awarded $2,500 for the project "Environmental Education and BPM for the Brunswick River". Also on that day I presented an Environmental Trust Award to Wetland Care Australia (Ducks Unlimited Australia Ltd). Wetland Care Australia was awarded $81,015 for the project "North Ballina Wetlands Rehabilitation Demonstration".

Wetlandcare Australia is a not-for-profit organisation that works closely with private landholders and local councils to regenerate wetlands by undertaking weed control, sediment erosion, pest control, and drainage management. On Friday 17 February I presented an environmental trust award to Orange City Council. Council was awarded $91,250 for the Gosling Creek riparian and immediate catchment restoration project. That work is being done as part of the Gosling Creek master plan.

During the past 12 months willows along the creek have been controlled using stem-injection techniques. These willows will be removed and the riparian zone and immediate catchment area will be planted out with native trees and shrubs grown from seed harvested from species occurring naturally in the area. Upper Coopers Creek Public School was also awarded an environmental trust eco-schools grant of $2,500 for its biodiversity gardens project, but I was not able to present it with its certificate in person.

The competition for these grants is very strong. I commend all the schools and organisations that were successful in applying for funding and wish them well in their vital work. I can think of no better way of encouraging schoolchildren to have respect for the environment than by actively engaging them in such projects. I commend the three schools in Ballina that were awarded these grants for their commitment to the environment.

SNOWY HYDRO LIMITED SALE

The Hon. MELINDA PAVEY [11.00 p.m.]: Tonight I refer to a matter of great concern to people in the Monaro electorate, that is, the rushed fire sale of the iconic Snowy Hydro scheme by the Iemma Labor Government to help it out of its budget black hole. This rushed fire sale will have unintended consequences for future generations if the Government does not deal adequately with major issues. Those issues include river flows, the land surrounding Jindabyne, a town owned by Snowy Hydro Corporation, and the impact of this sale on surrounding communities.

Tonight I wish to refer to the lack of local leadership to find solutions and a way forward for the local community. A major issue emerged after the Government's fire sale announcement. Mr Terry Charlton, Snowy Hydro's managing director, confirmed that Snowy Hydro Ltd would be owed compensation in excess of $100 million if environmental flows in the Snowy River were increased from 21 per cent to 28 per cent. Honourable members would be aware that the Government announced its target of a 28 per cent flow to the Snowy River. Hundreds of millions in compensation payments would be owed if the Government were to reach its goal.

The Government has not formally assessed the potential compensation liability for environmental flows greater than 21 per cent of the Snowy River's historic natural flow. On the Government's advice any liability could be estimated accurately only when flows above 21 per cent were anticipated, given the inherent variability of key elements of compensation, such as the evolving Australian water market and the market for trading water rights, and the evolving national electricity market, greenhouse and renewable energy markets. This Government is rushing into a fire sale to fill its budget black hole when it has not fully answered some significant issues surrounding Snowy Hydro.

The Government admitted that any liability for compensation would be allocated jointly to the New South Wales and Victorian governments. The Government agreed in the Snowy water inquiry outcomes implementation deed that compensation should be paid to Snowy Hydro Ltd for any revenue foregone as a result of an increase in environmental flows over 21 per cent. If the Government reached its target of 28 per cent it would take around nine years for Treasury to benefit from and to use the $1 billion in compensation payments for increased water flows. The Government has a lot of explaining to do on that front. It has to admit either that the 28 per cent will not happen or that it is prepared to pay compensation.

Some local leadership on this clear-cut issue would be welcome in the region. The shire councils of Cooma, Snowy, Tumut and Tumbarumba are concerned about the standing of their communities. They are telling everybody in the Monaro electorate that the local Labor member is not listening to their concerns, which is a great shame. The local member said he is against this fire sale but he has not voted on any Opposition motion in which it has demanded that the sale be stalled until many of these issues are answered and that Snowy Hydro is sold for the best price. He has not supported the Opposition and he is not supporting the local community, which are matters of great concern.

In 2002 Labor announced with much fanfare its target of increasing environmental flows to 28 per cent. Communities that rely on the Snowy River have a right to be worried about the future of environmental flows and about Labor's mad rush to privatise Snowy Hydro. George Martin, Mayor of Tumbarumba, who is known to many Government members, said that members of the community are concerned that profit will be put before community interests. He fears job losses, especially in Khancoban. Mr Martin said that financial contingencies always arise and that one of the biggest components of any business was the expense of wages.

People in the Monaro electorate are concerned about another major issue. The Iemma Labor Government failed to commence construction of Queanbeyan hospital, which it promised would commence late last year. There is a lack of leadership by Steve Whan on water supply and road infrastructure issues in the region. [*Time expired.*]

LAW AND ORDER

VENEZUELAN GOVERNMENT FOREIGN POLICY

Ms LEE RHIANNON [11.05 p.m.]: In recent years the politics of law and order have become synonymous with State politics. One of the defining characteristics of the Carr and Iemma governments has been a never-ending stream of law and order legislation. The Coalition has been desperate to join in. We can now see that the kind of law and order the Government has gone for—longer sentences, less bail and tougher prisons—has not made the community safer. It has not worked because those sorts of measures miss the point. Unless we tackle the causes of crime we are only treating the symptoms.

We can take sensible, practical and commonsense measures to reduce crime and to make our community safer. Gun control, drug law reform and improved mental health facilities are just some examples advocated by the Greens, yet more often than not the Government is hostile to those types of crime-reduction measures. It is a poorly understood fact that, following the Port Arthur massacre, only semi-automatic long arms were banned; not semi-automatic handguns. There is no logical basis for that distinction. As a result, semi-

automatic handguns are common in our society. Most are used legally by law-abiding sporting shooters but many semi-automatic handguns are used to commit crimes. The recent spate of gun violence in Sydney is evidence of that.

Both major parties are strongly opposed to extending the Port Arthur ban to semi-automatic handguns. In the context of their law and order fixation, that is impossible to understand. It is a simple equation: reduce the number of semi-automatic guns in our society and we reduce the incidence of crime and make our community safer. It is obvious, yet only the Greens are prepared to say it. Recently this gap between commonsense and government policy was taken to new heights when both major parties combined to support a Shooters Party bill to allow those convicted of criminal offences and given good behaviour bonds to own guns. That would include serious offences such as assault and kidnapping.

The Government spent a decade steadily increasing the severity of penalties for criminal offences with no clear benefits, yet now it supports softening the law to give some offenders access to guns. The reality is that the law and order debate is more about spin than results. As the years go by it is getting harder and harder for Labor and the Coalition to pretend that their solution is working. If the Government is doing such a great job why do we need a riot squad armed with water canons? Why do we need police in schools? It is an amazing admission of failure after 11 years of the Carr and Iemma Labor governments.

The Greens have practical solutions to make our community safer. Gun control is just one such solution and sensible drug reform is another. So much crime is driven by drug addiction—addicts stealing to fund their next fix—that we have to look at new solutions to break the cycle of drug-driven crime, such as practical programs to help addicts get clean, stay alive and stay out of gaol. It is a realistic, compassionate and effective way to reduce crime. We all want to see safe streets and homes but the major party consensus on law and order is not making it safer. The voters of New South Wales will have a clear choice to make between the Government's and the Opposition's empty rhetoric and stunts and the Greens practical solutions.

On another matter I recently had the opportunity to meet Mr Nelson Davila-Lameda, Chargé d'Affaires of the Embassy of the Bolivarian Republic of Venezuela. I urge honourable members to acquaint themselves with developments in Venezuela. The Chavez Government, as with many Latin-American governments, is forging an independent foreign policy. It is showing countries around the world that it is possible to be independent of the United States of America and to stand up to that country.

Venezuela is remaking itself as a socially just society with priorities in literacy, health care, housing and land rights. President Chavez is backed up by 80 per cent of the Venezuelan people—mainly people of colour living in poverty who elected President Chavez in 1998 and who reaffirmed their support for the country he is leading at the August 2004 referendum. And the support has been up against United States backed attempts to overthrow the legitimately elected President Chavez. There has been an attempted coup and an attempted oil lock out. One groundbreaking aspect of the Venezuelan Government is that this country has taken over almost one third of Argentinean debt. This is one part of a region-wide effort to free Latin American countries from the control of the International Monetary Fund. I congratulate all members of the Latin American community living in Australia on their support for the Venezuelan Government and the other progressive governments in Latin America. They are certainly inspiring at a time when we are up against the likes of Blair, Howard and Bush.

ABORIGINAL HEALTH

The Hon. CHRISTINE ROBERTSON [11.10 p.m.]: Tonight I speak about an important issue that most of us are aware of in one way or another, but all too often an issue that is buried at the back of our consciousness and too far down the list of priority issues that we as law makers must address. I refer to the state of indigenous health across Australia and our need to fix it so that the first Australians enjoy the same high level of health that the rest of the Australian population does. Australians on average have the second highest life expectancy in the world, yet indigenous Australians have the lowest life expectancy in the developed world. Amongst Aboriginal people a lower proportion of the population—around 70 per cent—live to the age of 65 than in countries such as Nigeria, Nepal and Bangladesh. The gap in life expectancy between indigenous people and non-indigenous people is 20 years and growing. By way of contrast, Aboriginal Australians on average live six years less than indigenous people in New Zealand, 10 years less than the indigenous citizens of the United States and 12 years less than Canada's indigenous population. And all three of those countries are closing the gap in the life expectancies of their indigenous and non-indigenous populations.

It is simply unacceptable that Australia is so far behind these countries in improving the life expectancy of our own indigenous population, especially at a time when our Prime Minister tells us that we have an

economy that is the envy of the world. The rate of infant mortality is 2½ times higher than that of other Australians, and is almost double that of the indigenous populations in New Zealand and the United States. The number of deaths from diabetes is eight times higher than in the rest of the Australian community. For respiratory conditions it is four times higher, deaths from circulatory conditions are at a level three times higher, whilst deaths from rheumatic heart disease are at a level that is a staggering 20 times higher than that in the non-indigenous population. It is an awfully long string of statistics and an appalling one. Indigenous Australians are twice as likely to require hospitalisation as other Australians are, three times more likely to suffer from heart disease, nine to 11 times more likely to suffer from respiratory disease, and nine times more likely to suffer from kidney disease.

I could go on rattling off statistics about indigenous health, but all of them point in the same direction—to an unacceptable standard of health, both relative to non-indigenous Australians, and in absolute terms. It is widely known that health problems are linked to social and economic disadvantage. Education levels, employment security and job satisfaction, incarceration levels and housing conditions are amongst a number of determinants of health standards. It will come as little surprise to honourable members that on a whole range of indicators related to these issues indigenous people lag well behind the rest of the Australian community. Aboriginal people have a median income of 40 per cent less than the Australian population as a whole; the rate of Aboriginal people finishing school is half that of the overall population; and the level of home ownership is at 30 per cent, whilst it is 70 per cent for the overall population. A range of other economic indicators and also an analysis of the prison population shows that indigenous people simply do not enjoy the same quality of living that the rest of us do.

What this shows is that addressing these health problems requires an overall approach to the inequality facing the indigenous community, something that is desperately needed in any event. The current Federal Government has stated that its indigenous affairs policy is based on the notion of "practical reconciliation". Unfortunately, research conducted by the Centre for Aboriginal Economic Policy Research at the Australian National University, combined with these figures, suggests that this policy is failing. Indigenous Australians have not shared in Australia's wealth and many practical outcomes are not being realised for a number of reasons. Of course, this is not the fault of any one government but the fault of all of us as a society. After the many years I spent in the Department of Health addressing these very issues I am under no illusions about the size of the task before us. If there were any "easy fixes" they would likely have already been introduced. We need to make addressing these issues a priority. The Federal Government talks about practical reconciliation, however funding has been decreased.

If we do not invest more in fixing these problems soon they will end up costing us more than we have saved. Australia should not, and cannot, accept this double standard in health for our citizens. These alarming figures are a challenge for all of us, across all sides of politics and at all levels of government, to take action and to arrest the slide. I call on anybody who can to assist indigenous communities and to work in partnership with the communities to help fix these problems in the very near future so that we might actually win. [*Time expired.*]

RAYMOND TERRACE POLICE STATION

PORT STEPHENS GREAT LAKES MARINE PARK

The Hon. ROBYN PARKER [11.15 p.m.]: Tonight I address a couple of issues raised with me by local people in regard to an article in the *Port Stephens Examiner* by Andrew Kelly on 28 March in which the local member, John Bartlett, gave wholehearted support to the new Port Stephens marine park and commented about policing issues in Port Stephens. I will address both subjects briefly tonight. The wholehearted support of the member for Port Stephens for policing in the electorate has been a long time coming. He has been the member since 1999. Since then there have been seven State budgets and a mini-budget in 2004. Now Mr Bartlett thinks it is time to make Raymond Terrace police station a priority. My question to Mr Bartlett is along the lines of the Australian tourism advertisement: Where the bloody hell are you, Mr Bartlett? We have not seen or heard his views on the issue for some time. We have certainly not seen active campaigning by him.

How naive does Mr Bartlett think the people of Port Stephens are? Does he think they are going to turn a blind eye to his seven years of inaction on this issue? The people of Port Stephens have long memories and remember the 1996 budget allocation and election promises of almost $2 million to give Raymond Terrace a new police station. They also remember the Carr Government breaking the promise and reallocating funding, and Mr Bartlett's complete inability to get the funding back since becoming the local member. Clearly, Mr Bartlett does not have the ear of the police Minister, the Treasurer, the current Premier or the former Premier.

When the member for Cessnock, Kerry Hickey, can get 12 extra police officers for an area command that is smaller than the one covered by Raymond Terrace police it shows just how ineffective Mr Bartlett is in representing the people of Port Stephens. While Mr Bartlett has been sitting on his hands Raymond Terrace police officers have been working in incredibly poor and unsafe conditions. The Raymond Terrace branch of the Police Association has been banging on his door telling him about these conditions and pushing for a solution but they continue to get nothing.

The police in Raymond Terrace work hard in our community in spite of the fact that their police station is an appalling working environment that no-one should be expected to work in. I have met Police Association of New South Wales representatives and I have seen their frustration. They have also expressed their concern in the media. They have written to Mr Bartlett who, after seven years, said:

> I guess the one thing I haven't achieved for all sorts of reasons is the Raymond Terrace Police Station … That's my number one capital works request out of the next budget.

It is too little, too late. Mr Bartlett is lavish in his praise of the marine park for Port Stephens. He is very proud of his achievements in supporting the gazetting of a marine park but he is one of the only people in Port Stephens who is. Some 600 people attended a recent public meeting on the subject in Port Stephens. Mr Bartlett was invited but he failed to show. Unfortunately, he was not there to hear local people express their concerns about the lack of consultation about the marine park, which will cover approximately 97,000 hectares from Cape Hawke near Forster to Stockton Beach. People are worried about the lack of scientific evidence and studies. They are definitely concerned about the non-appearance of the socioeconomic study. In this Chamber last week the Minister said that the study had been conducted but he refused to release it publicly.

But Mr Bartlett did not hear any of those concerns because he was not at the meeting. Mr Bartlett needs to know that the people of Port Stephens are very worried about the new marine park. Local tourist operators are particularly interested in the socioeconomic impact statement. They want to see the research that says that tourism in the area will not be affected. They want to know what scientific evidence says that marine species will benefit and that gazetting huge areas as marine park where recreational fishers cannot fish will make a big difference. There appears to be no basis for establishing the Port Stephens marine park, yet Mr Bartlett is very proud of his achievements in this area. The people of Port Stephens and I urge the Minister and Mr Bartlett to move slowly in gazetting the marine park. We ask them to wait until after the next State election. They should consult on the issue, allow the people of Port Stephens to vote on it and then we will see whether Mr Bartlett is proud of his achievements.

FALUN GONG PERSECUTION

Mr IAN COHEN [11.20 p.m.]: Tonight I draw honourable members' attention to the shocking human rights abuses that are occurring in China while the world stands by and does nothing to condemn the Chinese Government, and countries such as Australia fall over themselves to trade with this oppressive regime. This speech is timely as Australia is currently hosting a visit by the Chinese Premier, Wen Jiabao. It has been documented for a number of years that the Chinese Government has been persecuting practitioners of Falun Gong. I have been provided with information by the Falun Dafa Information Centre detailing horrifying accounts of death camps in China.

On 8 March the Falun Dafa Information Centre received detailed information from a Chinese Communist regime insider documenting a concentration camp that has been set up in Shenyang City, Liaoning Province for practitioners of Falun Gong. The camp is said to hold more than 6,000 Falun Gong practitioners, and apparently nobody has yet come out alive. According to the internal source, the camp's practices involve killing prisoners and harvesting their organs. Organ sales are said to be a profitable business in China. The source also said that the camp contains a crematorium and employs a large number of doctors. The camp, which has been dubbed the Sujiatun Concentration Camp, is allegedly surrounded by walls three metres high that are topped with electrified barbed wire. It is heavily fortified and the locals know very little about it. It is said that those inside are Falun Gong adherents from other provinces in China, some of whom have been transferred from various labour camps. It is said that while the camp has held up to 6,000 people only 2,000 are left. The remainder have had their hearts, kidneys, retinas and skin harvested and the rest of their bodies disposed of.

The persecution of Falun Gong members has been stepped up in the lead-up to the 2008 Olympics. It is alleged that in June last year Chinese authorities held a meeting in which China's Deputy Minister of Public Security, Liu Jing, was assigned the job of stamping out Falun Gong before the Olympic Games in 2008, according to Paris-based Intelligence Online. These allegations do not come from a single source. Various

human rights agencies have been reporting that concentration camps exist in China. In October 2000 a report by Agence France-Presse told of two concentration camps having been built specifically for Falun Gong detainees, each with the capacity to hold 50,000 people. The United States of America Department of State 2005 Country Reports on Human Rights Practices reported continued systematic abuse of the Falun Gong in China. Justice Michael Kirby's speech on Sunday night is timely, with the message that it is crucial not to forget the haunting memories of the Holocaust so that history does not repeat itself. Justice Kirby said:

> If it could happen in one of the most civilised countries on Earth, it could happen anywhere. Even in Australia. We have been warned. We must heed the warning.

Bystanders of the Holocaust have been judged by history. Will the world now stand by and allow persecution and death camps in China? With China as a major emerging economic power, it seems that governments, including Australia, are hesitant to raise human rights issues with the Chinese Government. It is absolutely appalling that trade interests are viewed as more important than abhorrent human rights abuses. While our politicians discuss potential uranium exports, people are dying in concentration camps for the crime of practising a spiritual discipline that the Chinese Government disapproves of.

The Tibetan people are suffering occupation under the same Chinese leadership that perpetrated the Tiananmen Square massacre. In Tibet today there is great oppression by the Chinese occupiers. Incidentally, uranium is mined in Tibet. The Australian Government claims that there are controls on the uranium that it will supply to China. However, the Tibetan uranium might now be used for weapons production. We are not dealing with a transparent society so there are no real checks and balances. As we have seen in recent times, the idea of checking on China is farcical. We must consider also the trade in uranium from Australia via the United States of America to Taiwan, China's arch rival. I wonder how that sits with the Chinese Premier, who signed a trade deal in Canberra the day before the deal with Taiwan was announced. It seems to be of little consequence that Australia is a signatory to the South Pacific Nuclear Free Zone Treaty that bans the sale of uranium to nations that are not signatories to the treaty. I will conclude with a quote from Reverend Martin Niemoller, a German Protestant pastor, who spent seven years in a concentration camp. He said:

> First they came for the communists, and I did not speak out
> because I was not a communist.
> Then they came for the socialists, and I did not speak out
> because I was not a socialist.
> Then they came for the labour leaders, and I did not speak out
> because I was not a labor leader.
> Then they came for the Jews, and I did not speak out
> because I was not a Jew.
> Then they came for me, and there was no one
> left to speak out for me.

I think Australia's headlong rush to sell uranium to China and to tighten economic ties, ignoring the human rights record of that country, is despicable.

[*Time for debate expired.*]

Motion agreed to.

The House adjourned at 11.25 p.m. until Wednesday 5 April 2006 at 11.00 a.m.