

LEGISLATIVE COUNCIL

Thursday, 7th May, 1992

The President (The Hon. Max Frederick Willis) took the chair at 10.30 a.m.

The President offered the Prayers.

BUSINESS OF THE HOUSE

Precedence of Business: Suspension of Standing and Sessional Orders

Motion by the Hon. E. P. Pickering agreed to:

That so much of the standing and sessional orders be suspended as would preclude Government Business taking precedence of General Business on Thursday, 7th May, 1992, after 4.15 p.m. or at the conclusion of debate on the Order of the Day relating to the Constitutional Monarchy, whichever first occurs.

LEAVE OF ABSENCE

Motion by the Hon. R. S. L. Jones, on behalf of the Hon. Elisabeth Kirkby, agreed to:

That leave of absence be granted to the Hon. Elisabeth Kirkby for the period 12th June, 1992, to 12th July, 1992.

PETITIONS

Forestry Commission

Petition praying that the Forestry Commission of New South Wales be reformed in accordance with the recommendations of the Public Accounts Committee and that the House urge the Government to act immediately for the good of our environmental heritage and the health of the plantation timber industry, received from the **Hon. R. S. L. Jones**.

Woolloomooloo Finger Wharf

Petition praying that public money not be wasted demolishing the structurally sound finger wharf and establishing a walkway on the western side of Woolloomooloo Bay but instead that basic renovations be carried out on the wharf and an integrated multimedia arts centre be established, received from the **Hon. R. S. L. Jones**.

Cat Desexing

Petition praying that because wildlife is threatened by predatory feral cats, and because unrestricted breeding of cats results in their destruction, starvation, injury and

disease, there should be compulsory desexing of all domestic cats other than those with registered breeders, received from the **Hon R. S. L. Jones**.

Page 3734

STANDING COMMITTEES

Motion, by consent, by the Hon. E. P. Pickering agreed to:

That paragraph 29 of the resolution of the House adopted on 2nd July, 1991, regarding Standing Committees be amended by the addition of the following:

(2) If, at the time at which the Government seeks to report to the House, the House is not sitting, a Minister may present copies of the report to the Clerk of the Parliaments.

(3) A report so presented shall:

- (a) on presentation, and for all purposes, be deemed to have been laid before the House;
- (b) be printed by authority of the Clerk;
- (c) for all purposes, be deemed to be a document published by order or under the authority of the House; and
- (d) be recorded in the Minutes of the Proceedings of the Legislative Council.

KIAMA DISTRICT HOSPITAL CLOSURE

Matter of Public Interest

Motion by the Hon. Dorothy Isaksen agreed to:

That the following important matter of public interest should be discussed forthwith:

The closure of Kiama Public Hospital and the efforts of the community to maintain the hospital for the provision of health services.

The Hon. DOROTHY ISAKSEN [10.40]: I thank the Minister for allowing me to proceed with this matter forthwith. By courtesy of the Save Kiama Hospital committee's submission to the Illawarra Area Health Board dated 22nd November, 1990, I will give a short history of the Kiama District Hospital. Kiama Cottage Hospital was opened on 21st May, 1889, supported by many large donations and a subscription system. In January 1911 Kiama Cottage Hospital opened its first operating theatre, dispensing with the need to utilise ordinary rooms and rudimentary equipment, such as a kitchen table. A few years later a private ward was opened for patients who could afford additional fees. However, despite these additions it was only a matter of time before a new purpose-built facility would be required.

On 5th July, 1930, the district hospital was moved to a purpose-built facility in Bonaira Street, and by this time, whether by choice or otherwise, the new hospital was

accepting treatment for all streams of medicine. The community nature of the hospital remained, this being highlighted by the continuation of donations of goods and services, such as food and labour. On 24th November, 1951, a major addition to the new hospital took place. The addition was called Birrahlee, which is Aboriginal for babies. I draw the attention of the House to the fact that the first baby born in Birrahlee was the well-known international footballer, Mick Cronin. Birrahlee was a 10-bed maternity wing, which increased to an 18-bed wing in 1963. From that time to the mid-1980s there was an expected growth in services offered by Kiama District Hospital to cater for increasing surgery in the 1960s, with the completion of a new operating theatre in 1974, involvement in Meals-on-Wheels from 1970, the appointment of a full-time physiotherapist in 1974, and the establishment of both a day care centre and rehabilitation unit in 1984.

Page 3735

Despite these expansions in services, in 1988 under this Government we saw the closure of Birrahlee obstetric unit, the operating theatre and approximately 39 beds, reducing the 63-bed capacity to 24 operational beds. Before these changes were introduced, Kiama District Hospital treated an average of 35 patients a day, and handled more than 850 operations and an average 225 births annually. It is sad that this fine community hospital, which has been the focus of health delivery in the Kiama district since May 1889 - 102 years - has been closed, despite a firm commitment from this Government that it would be protected. The Premier gave this commitment when he was Leader of the Opposition, and the former Minister for Health, Peter Collins, gave a commitment prior to the May 1991 elections, in press release No.91/123 dated 15th May, 1991 - almost 12 months ago. The last sentence of the press release reads, "The hospital will not close after the State election, Mr Collins said". I draw attention also to the strategic priority statement of the Illawarra Area Health Service dated January 1989, titled "Looking Ahead 1989-93", under the signature of the Chairman of the Illawarra Area Health Service Board, Mr J. McKenna. That statement reads:

This strategic priority statement outlines the general directions and priorities that the Illawarra Area Health Service will take over the next five years. It has been prepared against a background of major organisational change and increasing financial constraint. The strategic priority statement has been prepared to allow both health care providers and the community to gain an appreciation of planned growth and development of health services in the Illawarra. Such an appreciation is essential if we are to work together for a healthier community.

The statement continues:

The population of the Illawarra is relatively youthful with the area having a larger percentage of children and a smaller percentage of aged people than New South Wales as a whole. However, there is a marked variation throughout the area, with the Shoalhaven and Kiama having a large and growing proportion of over 65s. In addition, the number of older people is expected to increase faster in the Illawarra than in New South Wales as a whole. The ageing of the population will result in an increased need for health services. Public transport in the Illawarra is poor, resulting in a high dependence on private cars. For residents without private cars, transport is a major factor in the lack of accessibility to health care.

Page 6 of the statement reads:

In 1987, 85 percent of health care for Illawarra residents was provided in the area. By 1991, it is the board's objective that 95 percent of the health care will be provided locally in either the private or public sector. In order to achieve this goal, the area health service will . . . upgrade and renovate the Kiama District Hospital, to allow it to develop a specialist role in rehabilitation.

Page 10 of the statement, under the heading "Kiama District Hospital", reads:

The Kiama District Hospital will continue to perform a local role for Kiama and surrounding towns, with general practitioners being the key providers of medical services. The hospital will provide primary and emergency care and medical services and will continue to act as an observation facility for children. Seriously sick children will be transferred to Wollongong. In recognition of the needs of the local community, the Kiama District Hospital will develop a new role in providing rehabilitation service linked with services provided at Port Kembla hospital. In addition, the Kiama area will be incorporated into a network of palliative care services to provide for the needs of the terminally ill.

The plans of the Illawarra Area Health Service were to span the years 1989 to 1993. Some months after the release of the priority statement a well-attended public meeting was held in Kiama to consider the views of the community on the future of Kiama District Hospital. The chairman of the Illawarra Area Health Service Board, Mr McKenna, attended the meeting. A committee was set up under the title of "Save Kiama Hospital" to investigate ways of retaining and improving the hospital services. The Save Kiama Hospital committee has four major objectives: to have hospital services

Page 3736

in Kiama reinstated and upgraded; to seek some form of direct community input or community control of hospital services in Kiama; to provide for community access to the hospital via the continuing provision of public beds; and to ensure that the jobs of existing staff at the hospital are protected.

Over a period representatives from the Illawarra Area Health Services met with members of the community and decided to proceed with the proposal for the establishment of a community co-operative which would run the hospital and enable the Illawarra Area Health Service to fund 13 beds. The deadline for the commencement of that arrangement was 1st November, 1991. It was extended to 1st December and then to 1st February, 1992, but nothing has happened. Prior to Christmas the Minister commissioned the Reid Harris report, which was to be completed within a short period. It was established that nothing could really be resolved because a group of consultants was looking at the matter at that time. It was with extreme difficulty that the community eventually obtained a copy of the report, which states in part:

The issues confronting the Illawarra Area Health Service are complex. The extent to which some of these are addressed in this review has necessarily been limited. In fact the capacity to undertake the review within the time frame was largely attributable to the excellent information base maintained by the Area Health Service and the strategic and corporate planning which had already occurred.

The report established that the decision had already been made by the area health service, and the people it was representing. The whole process was a farce. The report justified

the area health service closing Kiama hospital to balance the budget, which at the time was something like \$4 million overdrawn. The outcome was that the Chairman and the Deputy Chairman of the Illawarra Area Health Service decided to resign as a result of the decision to close Kiama hospital. I am now informed that the Chief Executive Officer of the Illawarra Area Health Service, Mr John Rasa, has this week tendered his resignation. All the pawns in the game have had enough. Their loss of face in their community has taken its toll. Where does this leave the people of Kiama? Their local member, Bob Harrison, has on a number of occasions tried to arrange a deputation to the Minister for Health Services Management to discuss the future of the hospital. This has been denied him. At the same time, the Minister received a somewhat secret deputation which included the Mayor of Kiama to discuss the hospital. To deny Mr Harrison, the elected representative of the people, the right to speak to the Minister on behalf of his community is a very petty, silly and childish performance from a Minister of the Crown. After all, Kiama is regarded as a safe Labor seat. Perhaps that is the problem.

The Government has chosen to make a political decision about the allocation of health resources in the Illawarra region. The former Chairman and Deputy Chairman of the Illawarra Area Health Service were Government supporters but even they had had enough. The people of Kiama want to know what are the Government's plans for their now empty hospital. I understand it is a very valuable piece of real estate. Is it the Government's intention to sell the land? I understand that the Illawarra Area Health Service has title to the property. This property was purchased by the people of Kiama, and the Government has no right to dispose of it to balance its budget. I ask the Minister to assure the Kiama community that the hospital will not be sold either for real estate or to a private hospital operator. If the Government is determined that the hospital is surplus to its health needs I ask the Minister that the deeds of the hospital be returned to the council so that the property can be returned to the community.

The Hon. ELISABETH KIRKBY [10.54]: After the Hon. Dorothy Isaksen gave notice yesterday to bring on this debate today I wanted to prepare myself, so I obtained

Page 3737

a number of press clippings about the problem with the hospital at Kiama from the Parliamentary Library. It seems to me that, for whatever reason, the people living in the Kiama area have suffered as a result of confusing messages from members on the hospital board, from their own local council and from the Illawarra Area Health Service as well as from the Minister for Health Services Management. I say that because in the space of just over two months the whole situation has escalated because of these confusing messages. For example, the *Illawarra Mercury* of 13th March, carried the headline "Hospital board chiefs quit. Government steps in." On that date the Minister for Health Services Management, Ron Phillips, intervened to prevent the closure of Kiama hospital in-patient services after the shock resignations of the Illawarra Area Health Service Chairman, John McKenna, and Vice Chairman, John Hinton. They resigned after the board had voted to remove patients and permanent staff to Shellharbour hospital until the Department of Health decided whether to convert Kiama hospital to a community co-operative.

At that time a ministerial spokesperson said that Mr Phillips would refuse any reduction in services until a final decision on the hospital's future was made; the Minister would allow services in Kiama to be maintained in their present form until the future of Kiama health services had been resolved. That was only on 13th March. Some days later the *Illawarra Mercury* reported that the Community Hospital Co-operative's proposal to contract 13 public beds would give the community 4,745 bed days, compared with only 2,620 beds that would be offered at the Shellharbour hospital. Dr Grant, who

was leading this move for the Kiama Community Hospital Co-operative, said that Kiama was growing as fast as the Shoalhaven, and that any excess beds at Shellharbour would soon be taken up by the growing population. It was then pointed out to the community that the Illawarra Area Health Service had offered only eight beds at the Shellharbour hospital for residents from Kiama and therefore of course the committee, which by that time had been fielding all the public protests, demanded the re-opening of Kiama hospital.

This further confused residents in the community, who really believed at that time that Kiama hospital, which originally had been set up by the community on land donated by charitable benefactors in the community, did not belong to the Department of Health, that it did not belong to the Illawarra Area Health Service, that the land and the building belonged to the community and therefore the Minister had no control over it. This was widely circulated. The local council decided to search for the title deeds, called for legal advice and tried to prove that it had a right to that hospital; that as it belonged to the community, it should remain under community control. The search and the legal investigations took some time. During that time the escalation had continued and by Wednesday, 1st April the Minister, who only two weeks previously had been saying he wished the Kiama hospital to remain open, had made a statement that his word was now final, the hospital would close. He told the *Kiama Independent* that further deputations and protests by the community to have the hospital reopened would be a waste of time. In the space of only two weeks the Minister had totally and absolutely changed his position. I cannot understand why, because certainly within that two-week period he had been receiving more information. Indeed, he must have been flooded with information. Some of it came from leading doctors in the area, who pointed out to him the demographic fact that Kiama's population is expected to grow from 15,000 to 24,000 in the next 15 years and that there will then be 250,000 people living south of Dapto.

What does the Minister say in response to this situation? He says, "It is quite

Page 3738

okay. It will take only 20 minutes for patients from Kiama to be taken to the Shoalhaven Hospital in Shoalhaven Street, Nowra". The distance between Kiama and Nowra is 61 kilometres. I have begun to believe that there are members, both of the Cabinet and the bureaucracy, who have no idea of the distances in country New South Wales; they certainly have no idea of the condition of the roads. If the Minister expects a private car or an ambulance to travel from Kiama to Nowra, 61 kilometres, in 20 minutes, he has rocks in his head - to put it crudely. A driver would certainly be hauled over the coals by police because he would be required to break the speed limit. An ambulance carrying a seriously sick patient could not travel at that speed without endangering the life of the patient. This is a totally specious argument, and it is quite wrong for the Government to try to persuade the community that everything is all right.

The result of the search was very disappointing. By Wednesday, 22nd April, it was discovered that quite legally in 1986 the Kiama District Hospital was transferred to the Illawarra Area Health Service and the body corporate of the Kiama District Hospital was dissolved on that date. Therefore, there is no legal recourse for the people of the Kiama area. In the Port Stephens area yesterday a one-man ambulance carrying a very sick patient had to be driven by that patient's son so that the one ambulance officer could sit in the back of the ambulance and attempt to revive this seriously ill elderly woman, who later died. Just as it cannot be suggested that a one-man ambulance can provide suitable health services, it cannot be suggested that suitable health services would be provided to the people of Kiama by having the nearest hospital service casualties and serious emergencies when the nearest hospital is 61 kilometres away. That is why it gives me great pleasure to support the matter of public interest proposed by the Hon.

Dorothy Isaksen.

In conclusion, I hope that next week at the Special Premiers Conference the colleagues of the Hon. Dorothy Isaksen will bring some pressure to bear on the Federal Minister for Health, Brian Howe, and insist that funds from the Medicare levy be paid to New South Wales on the basis of the size of our population. The Medicare levy cannot be regarded as ordinary income tax. It cannot be shared out among the States at the whim of the Federal Government. New South Wales has the largest population. Therefore, it must receive the largest share of funds from the Medicare levy. It has to be taken into account that not only is New South Wales the largest State in population but also it has large numbers of people living in country towns. Although, from an accountant's point of view, it may not be economic to keep some of the smaller country hospitals open, it is essential that they be kept open if there are not to be further tragedies such as the one that occurred in the Port Stephens area yesterday.

The Hon. ELAINE NILE [11.3]: I support the matter of public interest that seeks an inquiry into the reopening of Kiama District Hospital. I am a resident of the South Coast area. I have been backwards and forwards from that area since 1953. I am very concerned about the closing of Kiama hospital, especially as last February a member of our family was involved in an accident in that area. We were told to go to Shellharbour Hospital, not realising that Kiama hospital was open. There is a lack of awareness in the area about what is happening with that hospital. Politics has marred the debate on Kiama hospital since the late 1980s, but the final blow to the century-old hospital has been blamed on the politics of the 1990s. Kiama Town Clerk, Brian Petschler, predicted in February this year that political influences may decide the final fate of the community hospital. The honourable member for South Coast has been outspoken on health cuts to his electorate and an inequitable share of the health dollar. Mr Hatton has put pressure on the New South Wales Government for a fair share of the State's funding to be allocated to meet the needs of Shoalhaven residents, which has had
Page 3739

an impact on Macquarie Street, Sydney, and the Department of Health bureaucrats. Some sections of the Kiama community blame Mr Hatton for the final rejection of the plans of the Kiama Hospital Community Co-operative. However, the political battles over the hospital have hit the headlines since the late 1980s. Under the Wran and Unsworth Labor governments, Illawarra's health funding declined. Ironically, in 1987 the then Opposition health spokesman, Peter Collins, said:

Labor's record in the whole of NSW tells of massive neglect and mismanagement.

In the Illawarra region the story is the same.

In August 1987, Kiama mayor, Arthur Campbell, predicted that the proposed closure of the maternity ward would signal the start of a program to downgrade the hospital. The then Labor health Minister, Peter Anderson, overruled the decision of the Illawarra Area Health Service to close the maternity ward just six months before the March State election. However, despite the rhetoric and political posturing of the Liberal Opposition, the major cuts to the hospital, which received wide media coverage, occurred under the coalition Government after it ended 12 years of Labor in 1988. In December 1988 the hospital's maternity ward and operating theatre were closed. Nursing numbers dropped by almost half to 22, and only 20 general medical beds were in use at the hospital compared with 57 before the closure of the two wards. Several well-attended public meetings in the municipality stalled further cutbacks. A save the Kiama hospital committee was formed which received bipartisan support in the town. The committee

produced a report that stated that it was feasible for the hospital to be run by the community, with there being a mixture of public and private beds. The report, which was amended several times, was rejected in the middle of March by the Department of Health and this week by the Illawarra Area Health Service. But the 10,000-plus community continues to fight for its hospital. Dr David Grant warned that tourists visiting Kiama would be endangered by the latest moves to close the hospital. He said that regular tourists would be unaware of cuts to hospital services and would still show up at Kiama hospital. Dr Grant said:

We're coming straight up to Easter - the second busiest time of the year . . .

They'll get here and there won't even be a hospital. They won't be able to go anywhere in the traffic.

Honourable members, and especially the Ministers with portfolios in the health area, if put in the same position as my husband and I when a member of our family was put at risk, would have a better understanding of the situation. Dr Grant said:

It's something that's very hard to advertise to people in Sydney.

Dr Grant said that the Illawarra Area Health Service plans to open Shellharbour Hospital beds to accommodate Kiama residents, but this will result in a further service reduction for local residents. He said that the proposal of the Kiama Community Hospital Co-operative to contract 13 public beds would have given the community 4,745 bed-days compared with only 2,620 to be offered at Shellharbour. He said:

We are growing as fast as the Shoalhaven. Any excess beds at Shellharbour will soon be taken up by the growing population here . . .

Is there some kind of guarantee they're not going to close beds again?

Page 3740

Dr Grant said that while Kiama doctors were being offered admitting rights at Shellharbour, some would be unable to offer equal care. He said:

I don't feel I can look after my patients at Shellharbour the way I can at Kiama. I just can't be as available.

Mr Brian Petschler of Kiama council said that on 15th May, 1989, a record public meeting called to express concern at the steady loss of services at the Kiama District Hospital elected the Save Kiama Hospital committee. The committee was empowered to undertake negotiations with the Illawarra Area Health Service on the future of the hospital. Following investigations up to February 1990, the committee realised that the hospital would eventually be closed if it remained in the public system. It was put to the Government that it be transferred from the IAHS to a community-based organisation to be run as a community hospital. Consultants were engaged, funded by the Kiama Municipal Council, to present a case. The issue was taken to the Minister for Health Services Management by deputation. He advised that the committee would have to deal with the IAHS board of directors, which would make the final decision. A proposal was developed and eventually agreed to by the IAHS as follows: a community co-operative was to be established; the hospital would be leased to the co-operative on a 10-year lease, with a further 10-year option; the co-operative would engage professional management,

input at least \$1 million in capital works during the first 10 years and a further \$1 million in the second 10 years; and ensure a high standard of care. The IAHS would approve a 30-bed hospital, with 13 beds to be available for public or uninsured patients. The IAHS would provide funding for the 13 public beds at a starting rate of \$245 per day. That funding would be for two years and adjusted in accordance with the consumer price index. For example, if eight beds were used, it would pay for only those eight beds. This daily bed rate is at least \$60 less than the lowest cost of any of the IAHS hospitals. It is more than \$100 per day less than the cost at Shellharbour Public Hospital.

The Kiama Community Hospital Co-operative Limited has undertaken to raise the necessary capital prior to taking over the hospital and has a co-operative membership plan and a professional fund-raising plan in place and ready to go. It is planned to raise in excess of \$500,000 in the first three months and for the initial fund-raising in the first year to exceed \$1 million. Tax exempt status has been obtained from the Australian Taxation Office, and a professional management team has been selected. The legal documents with the IAHS had been drawn up. However, the Minister then advised that the New South Wales Department of Health would not issue the necessary licence approval and subsequently the hospital has been closed, despite the IAHS approval of the agreement. The people of Kiama feel as if they have been bypassed. Most members and constituents living in Kiama, Gerringong and Gerroa in the Illawarra electorate believe that if a member of the Legislative Assembly could only represent and speak on behalf of the Kiama hospital in the lower House, perhaps something would happen. We do ask the Minister to think very deeply about the whole issue.

Reverend the Hon. F. J. NILE [11.12]: I am pleased to support the matter of public importance dealing with the closure of the Kiama District Hospital and the efforts of the community to maintain the hospital for the provision of health services. The issue being discussed is a matter of urgency and concerns the reopening of Kiama hospital. I urge the Government to accept the offer made by the Kiama Community Hospital Co-operative, which is comprised of responsible leading citizens and doctors and has the full support of the Kiama council and its aldermen. I urge the Government to accept that offer to reopen the hospital. I know that the Government is deeply concerned about budget considerations because of the serious \$1.5 billion deficit. But Kiama hospital

Page 3741

should not be a victim of economic cost cutting in an endeavour to meet budget constraints. The Kiama Community Hospital Co-operative is offering to run the hospital. This morning I had discussions with the officers of the hospital, and they are prepared to negotiate a two-year trial with the Government. I am aware that the Government may have other advice that such a proposal is not viable.

The best way to test the viability of the offer made by the Kiama Community Hospital Co-operative is to give it a chance and give it an opportunity to reopen the hospital under the Minister's direction and authority, for example, to conduct from 11th July a two-year trial period until 30th June, 1994. In such a trial period the Government would have full opportunity to assess the efforts made by the co-operative, and the co-operative also will have a fair chance to make this big and expensive project, where costs are to be borne by the local community, financially viable. That is what it is prepared to do. I believe it is unique to our State that people in local communities are not merely lobbying the Government for more money but are really saying to the Government, "Give us a chance and we will show you that it works". Unfortunately, the handling of this whole issue, from a political point of view - and I think the Minister would agree - in many ways has been disastrous. The entire community in the Illawarra electorate and the Kiama residents in particular are very angry and disturbed about what has happened and how it has been handled by the Government and by the Illawarra Area

Health Services Board, and with the litany of broken promises, backtracking and confusion. Promises were made that the hospital would not be closed down, yet services have been whittled down and removed. That whittling down process led to the people of Kiama suspecting instinctively that the Government would close down the hospital, but they were reassured that it would not be closed. Last weekend I visited the Kiama hospital. That hospital is not dilapidated but is efficiently run and has well laid out buildings in beautiful grounds on an excellent site surrounded by parklands and is blessed with ocean and mountain views. The hospital should not be closed down. People suffering health problems could not find themselves in a better environment for the restoration of their health, assisted by the medical profession, than at Kiama hospital.

During my visit at the weekend to the hospital and again this morning I had discussion with the hospital co-operative about the draft agreement that has been drawn up. A big sign at the front of the hospital has the word "closed" stuck over the name "Kiama District Hospital". That is a slap in the face for Kiama residents. The hospital is on a prime site that is passed by many residents and tourists on their way to the beach areas. In my discussions with representatives of the Kiama Community Hospital Co-operative I said that the Government must have some way of evaluating the viability of the project. Those representatives acknowledged that, and in fact their agreement has been drawn up incorporating all those checks and balances and procedures necessary for monitoring the Kiama hospital under the co-operative. The co-operative does not want to receive a blank cheque from the Government but later to be forced to say, "It has not worked and we need the Government to bail us out". That will not happen due to the built-in process of evaluation of the economics of the project and provision of services. The Government, through the Illawarra Area Health Services Board, would have hands-on monitoring and would not be taken by surprise.

I have just been handed a copy of a letter from Mr Petschler, Secretary of the Kiama Community Hospital Co-operative Limited. This letter has only just been sent to the Minister for Health Services Management. I understand that a similar letter has been sent to the Minister for Health and Community Services, though he may not yet have seen it. Debate has reached a point at which this matter may be easy to resolve. Though such resolution in detail may not be possible on the floor of the House today, the

Page 3742

Government would be taking a tremendous step forward in its relations with the people of Kiama and would enhance good will if it indicated willingness to reopen this matter, to meet with officials of the co-operative, to examine the proposed agreement in detail, and to put any further questions, however hard those questions may be, for the co-operative to come up with answers. The hospital could be reopened by 1st July this year. The co-operative says that it is ready to go; everything is in place. Today I asked whether it was possible to reopen the hospital if the Government said yes. The co-operative said: "Yes. The doctors are available and the staff are available". The letter from the Kiama Community Hospital Co-operative Limited reads:

Dear Mr Phillips

Future of Kiama Hospital

The Co-operative is in receipt of a letter from Mr. Amos the Director General of the NSW Health Department, to Mr. R. J. Harrison, M.P., Member for Kiama, which provides the basis on which the Co-operative proposal for Kiama Hospital was not approved at this time.

The Co-operative believes that the decision should be reviewed. The

"forward commitment of public funds" to which Mr. Amos referred was, in fact, the payment for bed use by uninsured patients at a rate significantly lower than can be achieved at any of the other public hospitals in the region. There may be some short term financial gain from re-opening the currently unused beds at Shellharbour Hospital, but after the initial budget benefits (applicable to this year only) the annual costs of those beds will far exceed the cost of the Kiama proposal.

The Director General also expressed concern at the Co-operative's "financial viability". The Kiama community has clearly shown its strong support for the proposal, and a plea is now made to you for the Co-operative to be given the opportunity to show it can succeed by granting it a 2 year trial period, commencing on 1st July, 1992, for that viability to be tested.

The lease agreement and the bed licence agreement which has been drawn up provide an opportunity for the IAHS to monitor both the Co-operative's operations during this period as well as the high standard of care which it will provide. The continuation of the proposal can be reviewed at the end of the trial period.

The Co-operative is aware of the pressure on both Shellharbour and Shoalhaven Public Hospitals for acute care beds and to the Chief Executive Officer's advice that these must remain as a IAHS high priority. The Kiama Co-operative proposal provides some cost effective, slow stream medical beds for the region's use which will enable the IAHS to focus more effectively on that high care requirement in the major hospitals.

Your urgent reconsideration of the Co-operative proposal is now respectfully requested.

Yours faithfully,
B. Petschler,
SECRETARY.

I know that the Government is involved with controversy in Port Macquarie about privatisation but let us work with the community in Kiama. [*Time expired.*]

The Hon. I. M. MACDONALD [11.22]: I support the matter of public interest raised by the Hon. Dorothy Isaksen. I congratulate her and Reverend the Hon. F. J. Nile on his positive contribution on Kiama hospital this morning. It is an excellent idea that the project proceed under the auspices of the Kiama Community Hospital Co-operative Limited. That would be achievable. Reverend the Hon. F. J. Nile has pointed out that doctors and staff are available in the area and there is a great need for such a hospital in Kiama. The Illawarra Area Health Service, in its priorities statement of January 1989, made it clear that there was a major role for Kiama District Hospital. At page 10 the
Page 3743
report states:

The Kiama District Hospital will continue to perform a local role for Kiama and surrounding towns with general practitioners being the key providers of medical services.

The hospital will provide primary and emergency care and medical services and will continue to act as an observation facility for children.

Seriously sick children will be transferred to Wollongong. In recognition of the needs of the local community, the Kiama District Hospital will develop a new role in providing rehabilitation services linked with services provided by Port Kembla Hospital. In addition, the Kiama area will be incorporated into a network of palliative care services to provide for the needs of the terminally ill.

The Kiama District Hospital played a most necessary role in the area. It is some distance from Kiama to alternative health care. The Kiama area is growing enormously. Recently when I attended meetings of the State Development Committee in Kiama I noted how much the small village of 12 years ago had grown into a large dormitory suburb to the whole of the Illawarra region, and particularly for the work force of Wollongong. As a consequence it has great medical and health needs. The Illawarra Area Health Service made it clear in its priorities statement that there is a strategic need for the hospital to remain open to service the community. When the Premier was Leader of the Opposition he made many strong statements about the need to retain Kiama hospital. For instance, in the *Kiama Independent* of 18th June, 1986, an article stated that the then Leader of the Opposition, Mr Greiner, was very keen to ensure that the Kiama hospital remained open. He said that he regarded the previous treatment as being the "death of a thousand cuts". He went on to make it clear that such a hospital had a major role to play in the health services of the Illawarra area. He said that Mr Unsworth, the Premier at the time, should have ensured the survival of the hospital's existing services after the introduction of the area health boards in October. He said that the speculation at the time was part of the long running saga of doubt over the hospital's future, each episode only decreasing community confidence in the hospital's survival. It upset the staff, the patients and the public. He went on to say that Kiama also deserved an autonomous hospital administration which would decide the best way of meeting the health care needs of the community. He said:

The ALP promised during the Kiama by-election this year that the hospital will remain - that promise must be kept if the ALP hopes to maintain any integrity at all.

How ironic. Those words are coming from the present Premier. In 1986 he was saying that the ALP must keep its promise to keep the hospital open. He pointed out the need for the hospital. Yet this Government has closed the hospital and so far has made no clear statement that the hospital could be reopened in future under the proposals of the co-operative supported here so ably today by Reverend the Hon. F. J. Nile. The previous Minister for Health, Peter Collins, issued the following statement on the subject:

Alderman Harrison's claims about the future of Kiama Hospital are totally without foundation. The Hospital will not close after the State election.

This statement was made on 15th May, 1991, just four days prior to the election. The Premier and his possible successor in the near future, Peter Collins, both directly stated that the hospital would not close after the election. The press release by Mr Collins was headed "ALP running scared in Kiama". The press release also stated that the ALP candidate for the seat of Kiama had:

. . . resorted to "bottom of the barrel" tactics with claims about the future of Kiama Hospital.

Mr Collins said that the ALP is showing signs of desperation by trying to create fear in

Page 3744
the Kiama community.

"The Labor Party candidate has taken up the theme of lies and deception currently being run by the Shadow Minister for Health.

"The ALP knows that time is running out, and has embarked on a campaign designed to spread fear by making misleading statements about the future of health services.

He went on to say that the hospital would not close after the State election. Mr President, I ask you and all honourable members: who is acting with integrity in relation to this matter? Those sorts of statements by two senior members of the Government - the Premier and the potential future Premier - about Kiama hospital have been shown to be abject lies. The hospital has been closed and the Government is not seriously endeavouring to reopen it. The co-operative proposal outlined by Reverend the Hon. F. J. Nile is reasonable and shows community initiative. It shows a desire by the community to become involved in the running of the hospital. The proposal has a chance to succeed if it is given proper and adequate support. I reiterate that, as Opposition members have stated on many occasions in this Chamber, the history of the Greiner Government will be recorded as a litany of broken promises, of promises idly made to the people of New South Wales prior to elections and promises quickly broken without the integrity of the Government being questioned. The media statement by the Hon. Peter Collins, the then Minister for Health, fits into a long line of promises which have been broken after an election has been disposed of. I support the attempts by Reverend the Hon. F. J. Nile and the Hon. Dorothy Isaksen to try to get the Government to exercise some common sense in relation to health policy, to stop playing politics and to allow a community hospital to reopen. Documentation about the health needs of the area shows that such a hospital has served and can continue to serve a demonstrated need in the community of Kiama.

The Hon. J. P. HANNAFORD (Minister for Health and Community Services) [11.31]: I was interested to note the comment of the Hon. I. M. Macdonald that the proposal put forward by the Kiama Community Hospital Co-operative Limited was a most excellent proposal.

The Hon. I. M. Macdonald: No. I referred to the proposal put forward by Reverend the Hon. F. J. Nile.

The Hon. J. P. HANNAFORD: The Hon. I. M. Macdonald said that he completely supported the proposal by the Kiama co-operative for a two-year trial for the hospital to be run by the co-operative. If I heard the Hon. Dorothy Isaksen correctly, she also called for such a proposal and lent her support to the co-operative taking control of the hospital. Two Labor members in this House support the proposal. I want to place it clearly on the record that that is the approach taken by the two speakers from the Australian Labor Party on this proposal. No member of this House has any doubt that they have said in this House and to the people of Kiama that the Kiama Community Hospital Co-operative Limited should be given control of the hospital for a two-year period. I welcome the new approach of the Australian Labor Party to the delivery of health services in New South Wales. I want to place it clearly on the record that the Labor Party has now changed its policy towards the provision of health services in New South Wales and has welcomed a private investment proposal for the delivery of health services in New South Wales that is exactly in line with the Port Macquarie hospital joint venture proposal.

The approach taken by the Labor Party in this House is a total rejection of the approach taken by the Leader of the Opposition and the shadow minister for health in the lower House towards the Port Macquarie joint venture proposal. I make it clear that the Labor Party in this House is adopting the Port Macquarie joint venture concept in relation to Kiama hospital. The Hon. I. M. Macdonald is shaking his head; the record will clearly show what he said in this House. He must stand for one proposal or another. He either supports the co-operative proposal, which is what he spoke in favour of in this House, or he does not. His words on this issue will hang him. They will be taken by me to Port Macquarie, to the Public Accounts Committee, and to Kiama. The Government will clearly remind the people of New South Wales of his words during the next few weeks.

The Hon. I. M. Macdonald: The Minister would be verballing me.

The Hon. J. P. HANNAFORD: The Hon. I. M. Macdonald has rejected completely the approach of his health spokesman to joint venture investments in public hospitals. I should like to summarise the present circumstances in Kiama and the important events leading to the decision in relation to Kiama hospital. The admission of inpatients to Kiama hospital ceased in mid-March 1992, about two months ago. From that time patients and staff have been transferred to nearby Shellharbour hospital, a new state-of-the-art hospital less than 10 kilometres from Kiama. It is interesting to note that the Hon. Elisabeth Kirkby made no reference to Shellharbour hospital in her contribution but referred to proposals in relation to Nowra. The journey from Kiama to Shellharbour takes about 15 minutes - 20 minutes at the most. The doctors' admitting rights were also transferred at that time. The area health service proposed that a community consultative process be established to explore further options for health services in Kiama. I am advised that local community groups and Kiama council have been approached to participate in that process. Other health services have continued to be provided by Kiama hospital to the local community. The day service unit, which is in the hospital's grounds, continues to offer dental services, speech pathology, social work, physiotherapy, diversional therapy and podiatry services. Kiama residents also have access to a broad range of community health services which are available from the community health centre located in the Kiama central business district.

In answer to questions asked about what is proposed for the hospital site, I inform the House that the site will be retained for health purposes and those community health services to which I have referred will continue to be provided from the site. The site will continue to be available for that purpose; the department has no other purpose for it. The suggestion by the Labor Party - for its own political purposes - that the site will be sold is totally without foundation. Kiama hospital was downgraded by the Labor Party to 13 beds. That downgrading could only be described as leaving the hospital as a low-grade facility. The hospital was not providing, nor had it been providing for some time, genuine acute hospital services. Accident and emergency services were not provided. Ambulance emergency cases had been bypassing Kiama hospital since the opening of Shellharbour hospital in 1985. That is, for seven years ambulances had not been going to the hospital. Treatment room facilities were available for those local residents who did not have a general practitioner. However, the treatment room was staffed only by nurses with doctors attending only when they were called. So doctors' services were not automatically provided at the treatment room. The majority of accident cases were treated by general practitioners in their rooms. Inpatient services which were provided included slowstream medicine and rehabilitation, and accommodation of patients

awaiting nursing home placement.

I should like to place some important figures on the record. In 1990-91 only 9 per cent of Kiama residents who were admitted to public hospitals generally were admitted to Kiama hospital. Ninety-one per cent of Kiama residents who needed to go to hospital were admitted to hospitals outside Kiama. Seventy-five per cent of Kiama residents who needed hospital treatment were admitted to other hospitals in the Illawarra area. The majority of them, 22 per cent, went to Shellharbour hospital; 28 per cent to the local private hospital; and 19 per cent to the Illawarra regional hospital. Obviously the hospital was not providing the services required by the majority of residents in the Kiama area. Reverend the Hon. F. J. Nile made some reference to the extent of demand during peak and holiday periods. Figures taken out in December 1990, which is a holiday period, show that only 221 people attended for accident and emergency service - in other words, to seek treatment from the nurses. That is an average of about seven people a day. In January 1991, 254 people attended the hospital - an average of seven and a half patients a day. They were seen by nurses and, where necessary, services were provided by general practitioners, either by referral to the general practitioners or when the general practitioners visited the hospital.

Reverend the Hon. F. J. Nile: We are not happy with that situation.

The Hon. J. P. HANNAFORD: It is a matter of making certain the information is available. The local general practitioners provide GP services. The level of care is so low that one might well question whether or not it is optimal care. I make it clear to the House that the people of New South Wales want reasonable access to quality health services. Beds are not health services; buildings are not health services. Quality health services must be reasonably available. In 1986-87, under the Wran Labor Government, obstetrics and surgery services were no longer available and the operating theatre was closed. At that time the hospital lost 39 beds. After that action, its role as an acute hospital ceased. Kiama hospital was providing slowstream, long-term care for Kiama residents as well as residents from other parts of the Illawarra. The downgrading marked the beginning of the end for Kiama hospital as the focus of acute and emergency health care for residents in the Kiama municipality. As honourable members have indicated and acknowledge, it was the decision of the Labor Government which rang the death knell for that particular facility. The changes coincided with the commissioning of acute services at nearby Shellharbour hospital. Services provided by the 124-bed Shellharbour hospital include surgical and medical services, accident and emergency and obstetrics services, as well as inpatient-outpatient acute psychiatric care. Under normal circumstances that hospital is less than 15 minutes away by road from Kiama - much less by ambulance.

Reverend the Hon. F. J. Nile: It used to have a children's ward.

The Hon. J. P. HANNAFORD: Yes, it was closed seven years ago. Because of improvements in efficiency through the New South Wales health system Shellharbour hospital has been underutilised, with bed capacity in excess of the demands of its catchment area. A 1992 independent analysis of the health services in the Illawarra region, carried out by Reid Harris and Associates, examined the current arrangements for the provision of hospital services for the population of the area. The report proposed strategies to best meet health needs for the nineties and on into the next century - that is,

concentrating on the provision of services. In making its recommendations, the report urged that strategies should be developed to make further use of the Shellharbour

hospital, and pointed to significant problems with the financial and planning arguments for continuing with the proposal for privatising Kiama hospital.

Addressing this issue should be a matter of importance to this House. I emphasise that the Opposition has fallen into a classic trap of measuring the performance of the New South Wales public health system by referring to the numbers of beds, not the number and types of services which should be provided. What is vital to this issue is that there has been no change to the number and quality of health services available to the Kiama community. Acute care services ceased to be provided in 1985-86 under the Wran Labor Government, when the then health Minister, the present member for Liverpool, reconstructed Kiama hospital. The Opposition was obviously not concerned at that stage that it was an issue because, quite rightly, services were available at nearby Shellharbour hospital. In reality, this matter of public importance relates to the relocation of services provided by 13 slowstream beds from an ageing hospital needing significant expenditure, to a new, state-of-the art hospital 15 minutes away.

The action taken by the Illawarra Area Health Service was sensible and rational, and, above all, was taken in the interest of providing the best quality of health services for the Illawarra community. It is vital that honourable members fully understand the context of the recent decision by the board of the Illawarra Area Health Service to close that hospital. I wish to comment on the remarks of Reverend the Hon. F. J. Nile and the Hon. Elaine Nile, who I know are genuinely interested in the expansion of health services and in ensuring that those services are readily and reasonably available. I also know they are supportive of the joint venture public hospital approach being taken in Port Macquarie. That is why they have advocated a similar proposal for Kiama. I draw the attention of the House to the reasoning for that approach. Such a private hospital has to be licensed, under the Private Hospitals and Day Procedure Centres Act. That Act defines a number of set standards which must be met before a licence will be issued. Kiama hospital, as a public hospital - at the present time and when it was operating - does not and did not comply with the standards required of a private hospital, should it be the subject of a joint venture proposal.

It is interesting to note the approach taken by the Labor Party. It insists on the retention of hospitals which do not meet current standards required of the private sector. To bring Kiama hospital up to that standard, several hundred thousand dollars, possibly up to one million, would need to be expended - to bring a 13-bed facility up to the standard to enable it to be licensed in accordance with the current health standards provided by the Private Hospitals Act. The Opposition has suggested, in relation to this particular proposal, that the Government should trial the co-operative's approach over a two-year period, and allow a joint venture public hospital to operate. The Government must either do that on a permanent basis or not at all, because a two-year period will not be sufficient time to recoup the investment. The Government would have to make a decision whether or not to buy services from such a hospital under a contract of service, which is the contract before the Public Accounts Committee in another place. [*Time expired.*]

The Hon. DOROTHY ISAKSEN [11.46], in reply: I thank honourable members for participating in this debate. The reason I brought the debate on today was because I believe the people of Kiama are owed an opportunity to air their grievances over the
Page 3748

loss of their hospital. For six years the Government promised that the hospital would be maintained. The Opposition has used the term "another broken promise" and the people of Kiama feel they have been betrayed by the Government because they were assured by the present Premier, when he was Leader of the coalition Opposition, that the hospital

would remain open. Also, prior to the elections in May last year, the then Minister for Health, Peter Collins, gave an absolute assurance that the hospital would remain open. It is interesting to note that, less than 12 months later, the present Minister says the hospital is old and rundown, and a lot of money would need to be spent to maintain it. Surely the condition of the hospital has not changed so much in 12 months. Clearly the Government is looking for excuses to justify the fact that it has changed its mind over this period. The Hon. Elisabeth Kirkby referred to the geographical problems of the area. I do not know whether the Minister for Health and Community Services has spent any time on the roads in the area, but -

The Hon. J. P. Hannaford: I was there over Easter, at the worst time.

The Hon. DOROTHY ISAKSEN: That is right. The Manly-Warringah peninsula has a similar problem: only one main road provides access to medical facilities.

Reverend the Hon. F. J. Nile: A single-lane road.

The Hon. DOROTHY ISAKSEN: That is right. In holiday periods motorists experience many traffic jams, making it difficult to travel from point A to point B. This can cause problems particularly for elderly people and asthmatic children seeking emergency health services. The people of Kiama want to retain their community hospital, which they have built up throughout the past 102 years. Over the years criticism has been made about Kiama District Hospital's incorporation into the Illawarra Area Health Service. I do not disagree with that move. However, the people of Kiama wish to preserve their security and retain their hospital. As the strategic statement revealed, Kiama has an increasing population of elderly people to whom the hospital represents security should they require urgent medical treatment. The Hon. Elaine Nile spoke about the efforts of members of the community to retain the hospital and the repeated assurances by the Government that the hospital would not be lost to them. Several local meetings attended by about 700 people have brought the community together in an effort to try to save the hospital. I resent the way the Minister for Health and Community Services has verbalised us and sought to compare the Kiama District Hospital proposal with the Port Macquarie hospital proposal. That is a totally different situation.

The Hon. R. B. Rowland Smith: Why?

The Hon. DOROTHY ISAKSEN: The hospital at Port Macquarie exists and is working well whereas the Kiama District Hospital has been closed. A number of scenarios have been suggested. The best scenario is that Kiama District Hospital be allowed to remain open. The worst scenario is the current situation: no hospital at all. The community has put forward the proposition that it run its own hospital - a totally different proposal from that in Port Macquarie where a private company is seeking to manage the hospital. The Kiama co-operative proposes that the people themselves run the hospital. They are the ones who should say how the hospital should be run. The organiser of Kiama Community Hospital Co-operative Limited, with whom Reverend the Hon. F. J. Nile has had some contact, pointed to a number of agreements in the lease about which assurances have been given to the Illawarra Area Health Board. The agreements were that the hospital co-operative must maintain the premises to the standard required by the Illawarra Area Health Board; the board will have the right to enter the premises at any time for inspection; the co-operative must indemnify the Illawarra Area

Illawarra Area Health Service must monitor; the co-operative must maintain accreditation status throughout the term of the agreement; and the co-operative must institute a system to survey patients' satisfaction, which is to be approved by the Illawarra Area Health Service.

The Hon. Dr B. P. V. Pezzutti: Does the honourable member want everything to be owned by the State?

The Hon. DOROTHY ISAKSEN: Public hospitals should be owned by the State, not handed over to private organisations. This debate, if anything, has achieved -

The Hon. Dr B. P. V. Pezzutti: It has been a waste of time.

The Hon. DOROTHY ISAKSEN: It has not been a waste of time. When I asked the Minister what is to happen to the Kiama District Hospital he gave an assurance that the Government will not sell the hospital. The debate achieved that, therefore it has been worthwhile. The Minister has assured me that the hospital will be retained and maintained for hospital services. I thank honourable members who participated in the debate. Something worthwhile has been achieved for the people of Kiama.

CONSTITUTIONAL MONARCHY

Debate resumed from 26th March.

Reverend the Hon. F. J. NILE [11.57]: I have much pleasure in concluding the speech that I commenced on 26th March in support of the motion moved by the Hon. J. M. Samios that this House affirms its support for the constitutional monarchy as being essential to our Westminster parliamentary system and the stability and cohesion of our multicultural society. Call to Australia is absolutely committed to the motion and rejects the amendment moved by the Hon. R. D. Dyer, particularly the claim that the majority of Australians desire that Australia become a republic. Call to Australia believes that that claim is not representative of the views of the Australian people. I am sure that given the complete collapse of the Italian republican system of government - Italy has no president or prime minister - honourable members would not contemplate a similar system for Australia. I am also sure that the Hon. Franca Arena, who is obviously proud of her Italian heritage, would concede that the Italian republican system is an absolute disaster.

I have made valid, strong points in support of our constitutional monarchy, with a non-political head of State who provides stability and leadership to the nation. At present the Italian republic is leaderless. It is to the credit of the Italian people that they are surviving. The republican system has failed in Italy. It is a model of what not to do. We strongly support the motion because we believe, as I have stated in previous remarks, that the Queen embodies our cultural origins and especially our Christian heritage. She promises to uphold the laws of God and the true profession of the gospels. This is a very important factor for the majority of the Australian community who are and claim to be Christians. Between 76 per cent and 78 per cent of Australian people claim to be Christians. Others who may not be Christians are still loyal supporters of the Queen. I refer to people of other religions, the Jewish community, the Moslem community, the Buddhist community and so on. I would even say there would be atheists who also support the Queen.

The PRESIDENT: Order! Pursuant to sessional orders, business is interrupted for the taking of questions.

QUESTIONS WITHOUT NOTICE

ELCOM POWER STATIONS PRIVATISATION

The Hon. Dr MEREDITH BURGMANN: My question without notice is to the Minister for Planning and Minister for Energy. Did he canvass the option of privatising one or all of ELCOM power stations in a speech delivered to the Institute of Municipal Management at Moree on 2nd March? Is the privatisation of ELCOM now clearly on the Government's agenda?

The Hon. R. J. WEBSTER: The answers to the honourable member's questions are yes and yes. Yes, I did make that speech in Moree and, yes, I did allude to the fact that the privatisation of one or more of Pacific Power's generators is on the Government's agenda. I am somewhat surprised at the honourable member's question. If she had bothered to read the Premier's "Facing the World" statement she would have discovered - it just shows how little the mob opposite do read because they do not know a hell of a lot of what is going on in this State - that he in fact canvassed the idea of privatising one or more of the State's power stations. It is hardly earth shattering news, but just so that the honourable member does know, yes, we had canvassed the idea. There are no plans to do it at this point in time but it is on the Government's agenda. Of course the honourable member will also know that her factional colleagues in Victoria are in the process at this moment of privatising the new Loy Yang B power station in Victoria. As the Premier has said many times, only North Korea, Cuba and the New South Wales Branch of the Labor Party are against privatisation. I am surprised by the honourable member's question, but I know that she has developed the habit of asking me a question every day and I must say I really look forward to it.

PRIMARY SCHOOL LANGUAGE STUDY

The Hon. PATRICIA FORSYTHE: My question is to the Minister for School Education and Youth Affairs. Will the Minister inform the House about initiatives undertaken to increase the study of languages in primary schools?

The Hon. VIRGINIA CHADWICK: I thank the honourable member for her very important and timely question. Despite the very difficult economic circumstances we face in New South Wales and indeed right across the nation, it is true that in view of the priority which we place on the study of languages we have allocated a little more than \$272,000 additional funding to expand the program of language studies in a further number of primary schools. We regard this as a very timely and important development. I notice the excitement of the Hon. Franca Arena opposite; I know it is a matter of interest to her. She, of all people, would be well aware that from 1988 there has been a dramatic increase in the number of primary school students able to study community languages in New South Wales. Of the order of 12,000 students were able to participate in this program in 1988. That number rose to 18,000 in 1991 thanks to the initiatives of the Greiner Government, and with this additional \$272,000 we anticipate that the number will rise to approximately 20,000 students studying community languages in our primary schools this year. That is a significant increase. To recap all those figures, in 1988, 12,000 students; by the end of this year with the additional funding, 20,000 students. That represents an increased number of students who will be able to study a language in primary school and hopefully will maintain the interest that they developed in primary school and continue to study languages in secondary school. I am very pleased that we

have been able to find the funding for this development bearing in mind particularly that
Page 3751

by 1996 all students in secondary schools will be required to undertake some study in a language other than English. This brings this commitment of our Government that much closer to reality and fruition.

ILLAWARRA AREA HEALTH SERVICE RESIGNATIONS

The Hon. ELAINE NILE: I direct my question without notice to the Minister for Health and Community Services. Is it a fact that the Chairman of the Illawarra Area Health Service, John McKenna, and its Vice-Chairman, John Hinton, both resigned after the IAHS board voted to remove patients and permanent staff to Shellharbour hospital until the Department of Health decides whether to convert Kiama hospital to a community co-operative? Is it a fact that the chief executive officer resigned yesterday? What action is the Government taking to restore health administration and health services in the Illawarra area?

The Hon. J. P. HANNAFORD: Yes, it is a fact that the Chairman and Deputy-Chairman of the Illawarra Area Health Service did resign following a resolution of the board in relation to Kiama hospital. I understand they indicated that they resigned because they were not able to support the board in relation to that particular decision. The board then subsequently dealt with the Kiama hospital proposal as outlined in debate earlier today. In relation to the Chief Executive Officer of the Illawarra Area Health Service, Dr Rasa, it is correct that he has also resigned. His resignation was for reasons totally unrelated to this or other financial management measures in the Illawarra. It related to issues which at this particular time I do not think it is appropriate for me to comment upon publicly. I am able to indicate that a new chairman of the board has been appointed this week to take the place of Mr McKenna. I believe the deputy director-general is responsible for this appointment and will be advertising for a new chief executive officer to fill the vacancy that has been created by the resignation of Dr Rasa.

MARK FITZPATRICK TRUST

The Hon. FRANCA ARENA: My question without notice is directed to the Minister for Health and Community Services. Will he please inform the House how the arrangements to provide financial assistance to medically-acquired HIV sufferers are proceeding? Has the Mark Fitzpatrick Trust agreed to distribute the funds, and when will these funds be allocated? The Minister should keep in mind that since his statement on 3rd March at least six sufferers have died.

The Hon. J. P. HANNAFORD: On this important question I am able to indicate that agreement has been reached for the Mark Fitzpatrick Trust to administer the fund. Legal agreements had been drafted by the various lawyers for the Government and the trust. As a result of discussions with the trust we are looking at ways by which to maximise upfront payment to people who are entitled to receive funds. Honourable members might recall that the Standing Committee on Social Issues recommended that \$10,000 be paid to the families of deceased persons. The Government, in its recommendation, was not prepared to draw a distinction between those who acquired HIV medically or otherwise, and indicated that it would make available up to \$50,000 to people who were able to establish a need for financial assistance.

As a result of discussions with the trust, it has indicated that we should be prepared to adopt the same approach to the trust, that is, to make a global payment and therefore reduce significantly administrative costs which would absorb some of the

income from the fund. As a consequence I referred proposals to an actuary to determine the level of lump sum payment that could be made upfront to enable a sufferer to maintain a reasonable corpus, and which would attract interest so that there could be ongoing payments to people in need, recognising that the period of the disease will vary. I hope that that actuarial advice will be available to me today. I expect that the amount able to be provided to families of the deceased will be significantly increased above the \$10,000 recommended by the standing committee. Indeed, a factor of ten could be involved. The same would apply with people still suffering the disease. We have been considering whether there could be a much increased upfront payment. The amount now provided to people as a first payment under the Mark Fitzpatrick Trust is less than \$10,000. We are studying some factors associated with that.

I also indicated at the time of the announcement that the Mark Fitzpatrick Trust - after it has identified the amount of money which would need to be made available from the trust for payments - would administer any residue funds to provide support and assistance for those in need who were general carriers of the disease. As a result of those discussions I am able to indicate - perhaps the Hon. P. F. O'Grady would be interested to know this - that we will now be providing funds to the Bobby Goldsmith Foundation. Rather than have the Mark Fitzpatrick Trust try to deal with non-medically acquired HIV syndrome patients, we will negotiate with the Bobby Goldsmith Foundation, which has experience of the allocation of funds. The amounts have not yet been finalised. I raise one other matter of concern to me. The Government made the decision to provide these funds in order to alleviate the difficult living conditions of people with HIV. It has come to my attention that the solicitors, Slatery and Gordon, who have acted for claimants in Victoria, are seeking to generate legal claims here. I am led to believe that in Victoria Slatery and Gordon had an arrangement under which it would act for the claimants in Victoria and no legal fees would be required upfront -

The Hon. Ann Symonds: That is not what they did in Western Australia. They acted for a Western Australian group, but there were fees.

The Hon. J. P. HANNAFORD: I wish to comment on that now. The Government will make funds available for the care and assistance of these people and to alleviate their stress. I would find it regrettable if these moneys were sought to be taken or used otherwise. The advice to me is that in New South Wales people who are seeking to make claims are now being asked to provide upfront funds in order to pursue their claims. If that is so, I am deeply concerned. These moneys have been made available to assist people to lead a reasonably decent life while suffering this horrible disease. I would hate to think that some of those funds were not being used for that purpose.

MINISTERIAL ADVISORY COUNCIL FOR TEACHER EDUCATION

The Hon. D. F. MOPPETT: My question without notice is directed to the Minister for School Education and Youth Affairs. Has the ministerial advisory council on teacher education been finalised? If so, will the Minister indicate the personnel to be appointed and when they will meet to carry on their task?

The Hon. VIRGINIA CHADWICK: I thank the honourable member for his continued interest in quality education in New South Wales. I am very pleased to be able to say that the membership of the Ministerial Advisory Council for Teacher Education has been finalised. It is perhaps timely that this has occurred because this week educators from tertiary institutions have held a conference. I had the pleasure of speaking with them. The council will be chaired by Dr Ken Boston, the

Director-General of the

Page 3753

Department of School Education. His appointment is appropriate, particularly in the first year of the operation of the council, given that the department has a strong interest in the quality of teacher education and is the major employer of teachers, employing about 47,000 qualified teachers.

The advisory council is widely representative of major groups with an interest in teacher education, including representatives from each of the universities in New South Wales, the Australian National University and the University of Canberra, and a representative from Technical and Further Education New South Wales and the Joint Council of Professional Teachers Associations. Other representatives are from the Board of Studies, the Teacher Education Council, the Catholic Education Commission, the Association of Independent Schools, the Teachers Federation, the Parents and Citizens Federation, the Parents Council and the Independent Teachers Association. As can be seen from that list there is wide representation from those most directly affected. I am particularly pleased - given that there is such an ebb and flow between the ACT and New South Wales - that tertiary institutions in the Australian Capital Territory have shown some interest in being involved in the council. I am particularly pleased that the Catholic Education Commission and the independent schools believe that involvement with the advisory council will be of value to them. As well as those who directly have a professional input and interest in this area, there are a number of community representatives who we believe will bring views of the broader community, and particularly the views of employers, to the important work of the council.

These people will include Heather Martin, representing the Australian Association for Special Education; Wendy Schiller from the Institute of Early Childhood Studies; Sir John Carrick, who has played such an important role in educational reform and will continue to provide the valuable input to education in this State and nationally that he has for many years; John Tingle from the Consortium of Broadcast Services; Imelda Roche, who represents a significant employer of international standing; Lindsay Connors, Deputy Chairman of the Australian Broadcasting Corporation; Renata Kaldor, the recently retired chairperson of the Women's Advisory Council in New South Wales; and Ken Brimaud, a representative of the legal profession who has a strong interest in the arts. I look forward to the work of this council. Its deliberations will be not only most important to me as the Minister, but its findings, recommendations and quality advice will be of critical importance to future generations of teachers and students in our State.

FEDERAL GOVERNMENT HEALTH FUNDING

The Hon. Dr B. P. V. PEZZUTTI: My question without notice is to the Minister for Health and Community Services. Can the States continue to provide a high quality of health care under the Commonwealth Medicare promise without an adequate level of funding from the Commonwealth?

The Hon. J. P. HANNAFORD: Medicare essentially involves a promise by the Commonwealth Government that all Australians have access to public hospitals without any financial barriers. To use the words of the Labor health Minister in Western Australia, the Commonwealth's promise is that there will be free access to health care under Medicare, but the States will pay for it. In fact that is the position. Many people seem to think that Medicare meets the cost of hospital services in the States. That is not so. This year the New South Wales Government will spend \$4.1 billion on health care in our hospital systems. Of that amount of money, only \$1.4 billion - that is one third

Page 3754

of the total expenditure on health services provided in New South Wales - will come from Federal Medicare funds. All honourable members should understand that. I think that Keith Wilson is absolutely right: the Commonwealth promises free health care, but the States will pay for it.

The Hon. R. D. Dyer: What about the tax reimbursement formula.

The Hon. J. P. HANNAFORD: I tell the honourable member that we receive only \$1.4 billion, and that is part of the problem. In the context of current intergovernmental financial arrangements it has become virtually impossible for the States, as the principal providers of public hospital services, to ensure that this open-ended commitment is met. Every health Minister at the recent health Minister's conference indicated to Brian Howe that Medicare as it is operating at the present time is failing. That was a unanimous statement to Brian Howe. The problem for the Commonwealth is that a party political position is not being taken by the States. All State health Ministers indicated that Medicare, as it is at present, is not functioning properly. I have indicated - and the Hon. I. M. Macdonald re-emphasised this on one occasion - my commitment to the principles of universal access, which is the fundamental issue concerning Medicare. I support it, as honourable members heard me say again this morning, and it is an issue supported also by Bob Woods.

The Hon. I. M. Macdonald: What about John Hewson.

The Hon. J. P. HANNAFORD: Bob Woods is the shadow health minister and he speaks on this issue. I have never spoken to John Hewson about it but I have little doubt that he would take the same approach as I do, that Medicare is not working. Since the introduction of Medicare, the growth in Commonwealth funds for hospital purposes has not kept pace with demand. As a result, the Commonwealth share of hospital funding has declined. Since the introduction of the Medicare scheme in 1988 the real level of both Commonwealth hospital and general revenue grants - addressing the issue raised by the Hon. R. D. Dyer - has fallen. The combination of Commonwealth hospital and general revenue grants has fallen by 18.7 per cent. In the same period Australia's population has grown by 11.2 per cent. In 1985-86 the Commonwealth contributed approximately 40 per cent of the New South Wales health budget; in 1991-92 it contributed only 34 per cent.

The Hon. I. M. Macdonald: How much is this State receiving in untied grants?

The Hon. J. P. HANNAFORD: The honourable member wishes to continue to play around with untied grants. It is well known that the States and the Commonwealth have negotiated on untied grants. The question is: What was Medicare established to provide? What was its role, and what is its role? Its role is to provide health care services. The reality at the present time is that that aspiration is not being met. During the past six years the Commonwealth Government has shortchanged the New South Wales health system by \$1.3 billion. It is no wonder that the States are finding it impossible to continue underwriting the open-ended entitlements of hospital Medicare. The States are unanimous that without additional funding hospital Medicare is not sustainable. Waiting lists will increase and the Commonwealth's commitment to universal access will not be able to be met. I noticed in a newspaper report today that the West Australian Labor health Minister is even advocating, in an initial draft paper, that a means test should be placed on people entering hospitals, and that public hospitals should be

Page 3755

available only to the poor. Effectively, a Labor health Minister -

The Hon. Franca Arena: Name him.

The Hon. J. P. HANNAFORD: Keith Wilson - is advocating virtually the total abolition of Medicare. That is the Labor Party. Members opposite must understand that if health care funding is getting to the point where a Labor health Minister is advocating the abolition of Medicare, that serves only to emphasise the failure of Medicare in its present form. Normally public health and hospital services consume at least 20 per cent to 30 per cent of the State's Budget. Hence it is imperative that the problems in Commonwealth-State relations in this area are resolved and that States are reasonably funded, consistent with the service demands made upon them. Since the introduction of the Medicare scheme there has been a sharp and continuing fall in private health insurance coverage: from approximately 61.5 per cent in December 1983 to 44 per cent in March 1991. I indicate to the House that advice given to me is that over the next five years the level of private insurance can be expected to drop from 44 per cent to approximately 30 per cent. In terms of the State's health budget, if the level of private insurance drops to that extent, within the next five years the State will have to find an additional \$377 million a year to look after previously private patients who would then have to be looked after as public patients. That would mean that about 200,000 additional patients would be added to the public hospital lists, as a result of the fall in private insurance. During the Health Ministers' conference I advocated -

The Hon. Elisabeth Kirkby: Most people want more private insurance.

The Hon. J. P. HANNAFORD: That is right; many of the rich can take out more private insurance but are not doing that. As Brian Howe, the Federal health Minister, said, the millionaires are taking places in hospitals that should be available for the elderly and the poor. That very issue should be addressed. The majority of State health Ministers told Brian Howe that what is happening to private health insurance should be put on the agenda; he should examine whether those who can afford to pay do so through private insurance. Brian Howe adamantly refused to recognise that private health insurance had any role in the funding of the health system in this country. He refused to allow it to be an agenda item for discussion. He said, "I expect that private insurance will disappear and the Commonwealth will pick up the difference". That is just unrealistic. It is devoid of any semblance of reality.

I have indicated that within the next five years we will have to find an additional \$377 million a year in this State, which has one of the lowest demands in terms of private care in the country. Where will the Commonwealth find the money? It cannot even find the money this year to keep the present system running. The Commonwealth is driving the health care system of this nation to a crisis point because of its attitude to Medicare funding. In New South Wales we have been dramatically reducing waiting lists. The Commonwealth will drive up waiting lists. Elderly people awaiting elective surgery - hip replacements and things such as that - may well never be able to have those operations because acute emergency care will always take priority. Labor members must ask Paul Keating - because the health Ministers were not prepared to leave responsibility for this with Brian Howe; they advocated it go to the Premiers and the Prime Minister - to step in and cause a complete redirection of the negotiations on Medicare. There is no doubt that Brian Howe is still bound by his left-wing ideology in this area. Realism must be introduced into the Labor Party's thinking about health care.

NELSON BAY AMBULANCE SERVICES

The Hon. ELISABETH KIRKBY: Will the Minister for Health and Community Services confirm that there are only two ambulance vehicles, operated by single officers, to serve the ageing population of 42,000 in Nelson Bay? How can the Minister justify the existence of ambulances manned by a single officer? Does the Minister believe it is appropriate that members of the public whose relations require the ambulance may be asked to drive the vehicle? What will the Minister do to address the appalling staff shortage in the region?

The Hon. J. P. HANNAFORD: All members of the House would want me to express sympathy to the family of the person who I believe died yesterday while being taken to hospital in the Port Stephens area, the area to which the honourable member referred. To put ambulance services into context, since coming to office in 1988 this Government has enhanced the ambulance service by providing some \$4.6 million for additional staff: 129 were added in 1988-89 and a further 25 in 1991. An additional \$3.8 million has been provided to the Ambulance Service for other enhancements, including helicopter services and the heart start defibrillator program. This financial year, as a result of cuts to State grants by the Commonwealth Government, the service will be required to meet some productivity savings, as other government services have. Administration services are being targeted but not the actual delivery of services. The Ambulance Service Board recently presented a report on the future management and direction of ambulance services. Proposed changes included a reduction of regions into four divisions. That proposal has now been implemented. Positions affected are mostly clerical, with a small number of senior management uniformed staff. The board of the service has also recently appointed a new State superintendent, Mr James McLachlan, after national advertising and interview by the ambulance board and government representatives. This appointment was contested recently in the Industrial Commission by the ambulance service employees. Mr McLachlan commenced duty on 6th April.

Professional service decisions are made by serving officers of the ambulance board, who always act in the best interest of the community. The question of whether ambulances should have one or two officers is based on professional decisions by the Ambulance Service to meet local community needs. Emergencies will always require patients being worked on by an ambulance officer, and a member of the community may be asked to assist by driving the ambulance. The nature of the service provided means that that will be a rare occurrence. It is unfortunate that such instances are blown out of all proportion by the media. It would not surprise me if the matter was blown up by activist members in the industrial arm of the union embarking on campaigns about other issues within the service. Such incidents do occur. Unfortunately, they will no doubt occur again. But that is not to say that what occurred in the incident referred to resulted in the unfortunate demise of the patient: clearly it did not. It is unfortunate that the newspapers generated the impression that it was a contributing factor. We are always sympathetic to the families of a deceased person when some elements take advantage of their traumatised situation, which serves to aggravate the pain and suffering experienced by a family as a result of the loss of a family member.

NELSON BAY AMBULANCE SERVICES

The Hon. ELISABETH KIRKBY: I have a supplementary question. In view of the Minister's very lengthy answer and the fact that he has stated that on some occasions it will be necessary in the case of single-manned ambulances to have a relative drive the ambulance, will the Minister explain to the House what would happen in the case of the relative not being able to drive and the incident occurring in a country area where there was no neighbour able to drive? In that case would the patient be left in the

back of the ambulance without any medical assistance while the driver, who is trained for the job, drove the ambulance? The Minister having given the answer he has, will he please give us some assurance that he does envisage situations in which a relative of the patient driving would be an impossibility?

The Hon. J. P. HANNAFORD: The honourable member has raised a hypothetical situation. Sometimes hypothetical situations are put forward to be interpreted by others as the norm. Speculating in that way does not contribute to a rational debate on the issue. The decisions made by ambulance officers are made by highly skilled and professional people. One thing that will always be certain is that those professional officers will make the best professional decision that they can in the circumstances.

TOBACCO SPONSORSHIP

The Hon. ANN SYMONDS: I ask the Minister for Health and Community Services: what were the guidelines he applied when he decided to allow some cultural groups to accept tobacco sponsorship earlier this year. What is his response to Dr Simon Chapman, President of the Public Health Association, who said that his decision breaches the spirit of the recent legislation on tobacco advertising and sponsorship?

The Hon. J. P. HANNAFORD: The honourable member is correct. I think that I approved an exemption from the legislation for three or four -

The Hon. Ann Symonds: At least five.

The Hon. J. P. HANNAFORD: Five cultural groups. One was the eisteddfod in the Illawarra. Another one was, I think, an eisteddfod in the Blue Mountains. Another one was an eisteddfod in Tumut. The organisers of those events had made arrangements with the Rothmans Foundation and funds were provided to assist them.

The Hon. Ann Symonds: This was prior to the legislation.

The Hon. J. P. HANNAFORD: I think the decisions were made at about the time of the legislation.

The Hon. Dr Meredith Burgmann: Surprise!

The Hon. J. P. HANNAFORD: The Hon. Dr Meredith Burgmann may express some surprise but the reality was that these community based organisations had made arrangements with the foundation. Had the exemptions not been granted, the operations of those community organisations for this year would have been affected. I took the view that as the organisations had been advised to that effect, on this one-off occasion their particular activities should be allowed to proceed with funding from the Rothmans Foundation. The comment made by the Hon. Dr Meredith Burgmann when she expressed surprise illustrates clearly her attitude towards community organisations. It clearly illustrates that she is not prepared to recognise -

The Hon. Dr Meredith Burgmann: I expressed surprise that the decisions were made at the time of the legislation.

The Hon. J. P. HANNAFORD: The Hon. Dr Meredith Burgmann is surprised

Page 3758

that I granted the exemptions. That expresses clearly her interest in community organisations. These local voluntary community groups sought to organise community activities and the amount of money involved was between \$1,000 and \$2,000 for each organisation. In a small country town such as Tumut or in one of the small villages in the Blue Mountains, community organisations would have great difficulty raising those sorts of funds. I was prepared to grant the exemptions. Other honourable members who are interested in community groups, certainly members of the right-wing faction of the Labor Party who at least take an interest in community groups, would support those decisions. The interjection of the Hon. Dr Meredith Burgmann is illustrative of the fact that the only people who are prepared to be critical of those decisions are the left-wing of the Labor Party.

TOBACCO SPONSORSHIP

The Hon. ANN SYMONDS: I ask the Minister a supplementary question. Does the Minister have a set of written guidelines for his use in making these decisions? If so, will he make them publicly available?

The Hon. J. P. HANNAFORD: No, I did not prepare a set of written guidelines. I deal with applications for exemptions as they come before me. However, I have indicated to the department the attitude I take in these matters. No one would expect otherwise. Perhaps the left-wing members of the Labor Party would like me to take a different approach.

MICALO ISLAND DEVELOPMENT

The Hon. D. J. GAY: My question is to the Minister for Planning and Minister for Energy. Did the Hon. R. S. L. Jones make certain false assertions in this House last night about the Minister's handling of the Micalo Island development? Will the Minister indicate if there is any reason why the Maclean shire local environmental plan is being delayed? Has the Minister issued any instructions to the Department of Planning regarding the local environmental plan? Did the Hon. R. S. L. Jones mislead this House again?

The Hon. R. J. WEBSTER: The answer to the last part of the Hon. D. J. Gay's question is yes, the Hon. R. S. L. Jones did mislead this House last night, as, unfortunately, he has done on many occasions in the past. He does not check his facts and he listens to the wrong people. As I have said to him before, if he has a problem in relation to a certain issue, he should come and see me or talk to my staff. We will be able to give him the correct information. He should not listen to these characters who contact him in the middle of the night with a whole lot of mumbo-jumbo. I know the Hon. R. S. L. Jones is a man who tries to get to the truth, so he should make sure he goes to the right source and does not listen to the ratbags who wander around on the North Coast. The facts in this matter are clear. The Maclean shire local environmental plan is not being withheld from gazettal. There is concern at the way the council is proposing to deal with the plan for the land on Micalo Island, which is of course the subject of a major tourist development application for which I am the consent authority. The proposed plan will rezone this land in a way which will prohibit major tourist development. I understand that the Department of Planning is seeking legal advice about the implications of this action regarding the approval to be granted by me for a tourist project. When that advice has been received, the processing of the plan can be

Page 3759

completed. I have given no instructions to the Department of Planning to rewrite clause 43, as the Hon. R. S. L. Jones asserted. I am advised by the Director of Planning that

this clause is not an issue which is causing delay. The department is in close consultation with Maclean Shire Council to finalise the conditions which will apply to the consent that I will issue for the Micalo Island tourist development. That is the end of the story. The Hon. R. S. L. Jones should check his facts.

ICAC APPEARANCES LEGAL AID

The Hon. B. H. VAUGHAN: I direct my question without notice to the Leader of the Government in this House, representing the Premier, Treasurer and Minister for Ethnic Affairs. I ask the Premier how he justifies his Government's grant of legal aid to himself, the Minister for the Environment and the head of the Premier's Department in relation to appearances before the Independent Commission Against Corruption when he refused legal assistance to the building unions that appeared before the royal commission into the building industry? Does the Premier recall his own letter dated 5th October, 1990, to the Building Workers Industrial Union in which he wrote:

You should appreciate that Royal Commissions are inquisitorial inquiries set up in the public interest, and all citizens have a duty to assist the Royal Commissioner to carry out his or her inquiries.

Persons giving evidence before a Royal Commissioner are witnesses, they are not parties to an action before the courts. The Royal Commissioner is not a judge presiding over a contest between litigants and making a determination that has legal effects.

Is the Independent Commission Against Corruption not referred to by the Premier as a standing royal commission?

The Hon. E. P. PICKERING: The Deputy Leader of the Opposition would know that I could not attempt to deal with a question of that nature by giving him any form of legal advice. However, as a result of recent events I am more than well aware that the granting of financial assistance to people appearing before the Independent Commission Against Corruption has certain legal aspects. I have learned that there is a section 52 of the Independent Commission Against Corruption Act, and that limited knowledge at least warns me, as an engineer, that these decisions are taken in a legal way. If I recall correctly, as a non-lawyer, only this morning the Leader of the Opposition in another place - it is a pity the Deputy Leader of the Opposition is not listening, and of course the Leader of the Opposition is never in the House -

The Hon. I. M. Macdonald: The Minister does not know the answer. He should refer the question to the Premier and sit down.

The Hon. E. P. PICKERING: I want to assist the Deputy Leader of the Opposition with a more meaningful referral because only this morning, on radio as I understand it, no less an authority than Bob Carr said, for the benefit of the people of New South Wales, that he agreed with the decision to grant legal aid to the people mentioned by the Deputy Leader of the Opposition. I suggest that rather than framing questions on the trot in this House to avoid the rigours of a decent question time, the Deputy Leader of the Opposition should slip down to the lower House and ask Bob Carr, who obviously has the answer to the question because he provided it to the people of New South Wales this morning.

The Hon. J. H. JOBLING: My question is directed to the Minister for Planning and Minister for Energy. As a former member of local government and a past president of the Local Government Electoral Association I ask: is it a fact that the Minister has established an inquiry under section 21 of the Energy Administration Act into the management, operations and finance of Prospect County Council? Will the Minister advise the House in what time frame he expects the inquiry to be completed?

The Hon. R. J. WEBSTER: I thank the Hon. J. H. Jobling for his question. Honourable members will be aware that the honourable member is a former chairman of Shortland County Council, and a very distinguished one, who implemented considerable reform for the benefit of the people of the Hunter Valley. Before I answer the question, I should, on behalf of all honourable members, offer congratulations to the members of the New South Wales rugby league team for their very fine win last night in the State of Origin match. In reply to the honourable member, it is a fact that, after very careful consideration, I have invited Mr Charles Curran to conduct an inquiry under section 21 of the Energy Administration Act into some aspects of Prospect County Council. I have asked Mr Curran to report by 31st July next and I have, on the advice of the Office of Energy, provided him with clear terms of reference. Prospect County Council is the fastest growing electricity supply distribution area in Australia. It has annual sales of \$835 million, assets approaching \$2,000 million, and services more than one million people in an area covering 16,000 square kilometres. My motivation in commissioning the inquiry is based on the size and rate of growth of the Prospect operation and my concern that, for the benefit of consumers, its operations be as efficient as possible.

It is obvious that the time has come for a fundamental and independent examination of council's operations to determine whether its constitution as a purely local government organisation is still appropriate. There has been criticism of Prospect by the Performance Agreement Committee, which is working with all county councils to establish a more efficient and commercial culture for their operations. There have also been community criticisms with regard to a number of issues. The inquiry will be asked to examine and report upon: financial, technical, operational, property management and governance aspects of Prospect County Council; council's performance in regard to managing community relations, including customer services and non-tariff charges; the justification for its head office relocating to Huntingwood and its benefits for Prospect's customers - indeed, Prospect has spent some \$90 million on this brand new Taj Mahal at Huntingwood - the impacts on Prospect and other affected county councils of transferring the whole or parts of the Blue Mountains, Lithgow and other fringe areas to other councils. I have specifically asked Mr Curran to make recommendations on governance and organisational arrangements which will give Prospect the capability to determine appropriate strategic directions to achieve a leadership position in a competitive electricity industry structure; the scope for achieving performance improvements; the future of the Huntingwood building in order to optimise benefits to Prospect's customers; and the advisability of proceeding with any boundary changes.

Both the Performance Agreement Committee and a more recent independent appraisal of the Huntingwood project have been critical of the processes which led to the commencement of this building. The building will be approximately 30 per cent larger than required for Prospect's staffing needs and the decision to relocate was taken despite the absence of rigorous evaluation. This is particularly significant when honourable members consider that the project cost, as I mentioned earlier, is estimated to be of the order of \$90 million which is equal, if we exclude the 132kV assets purchase from

Although it is arguable whether the move to Huntingwood is warranted, my advice is that there is no evidence that the council has ever seen or requested a proper capital evaluation of the project. Additionally, council does not appear to have seriously considered alternatives to the Huntingwood proposal. The question of the appropriateness of a purely local government governance of council is also under review. The Sydney Electricity model, which incorporates a balanced mix of local government representation and members specifically appointed for their commercial and financial expertise, has worked extremely well for Sydney.

I mention a few of the major achievements since the establishment of a reconstituted Sydney Electricity after another inquiry by Mr Curran. By June 1992 staff levels will be down by more than 20 per cent compared to 1989-90; the ratio of customers to staff was 171 in 1989-90 and will be more than 300 by the end of 1994-95; operating cost per customer has fallen 10 per cent in the past two years, and a further reduction of 16 per cent is projected for the next three years; payments of dividends and grants to the State Government, totalling approximately \$450 million in 1989-90 and 1990-91 and a further payment of \$410 million to Pacific Power for the purchase of 132kV assets; the introduction of total quality as the new corporate philosophy. Already, quality teams have produced yearly savings of more than \$1 million simply by improving work methods; regard for the environment - Sydney Electricity is proceeding with undergrounding of cables and strongly promotes energy efficient appliances; it is user friendly. Sydney Electricity publishes detailed statements of the service standards customers can expect, and is setting up customer service committees. It is also introducing more flexible opening arrangements. I am looking forward with anticipation to the report from Mr Curran and his committee. I will be examining their recommendations carefully. It is premature for anyone to predict or pre-empt what decisions will eventually flow. One thing is certain, and that is that the best interests of consumers in the Prospect area and the taxpayers of New South Wales will be the primary consideration in all the evaluations and decisions which flow from Mr Curran's inquiry and I commend it as a major initiative in electricity reform in New South Wales.

GOVERNMENT POLICY ON EDUCATION OF GIRLS

The Hon. JAN BURNSWOODS: My question is directed to the Minister for School Education and Youth Affairs. Will the Minister agree that there is a lack of awareness in schools of government policy on girls' education? Have resources previously devoted to girls' education been reduced by the mainstreaming philosophy. Will the Minister take steps to ensure that each region reports regularly on educational outcomes, and that schools have a teacher designated to oversee the implementation of policies relating to girls' education?

The Hon. VIRGINIA CHADWICK: It is a pity that in some ways, since the honourable member entered Parliament, the hotline she had to the Teachers Federation seems to have developed a few crackles. She is getting some fairly stale and out-of-date suggestions on the sorts of matters that she should pose questions about during question time. So that questions are asked on education that come anywhere near reaching the relevance, currency and standing of the questions that I enjoy from my colleagues, who are up to date on important educational issues, perhaps it would be in the interests of the honourable member to do a little research of her own, instead of relying upon the tired and out-of-date and quite irrelevant suggestions which are obviously coming to her from her old comrades in arms. The honourable member should think twice. All of us, as new members, have fallen into the trap of posing questions suggested to us by people who would not ask them themselves. Such questions can make one vulnerable and sometimes look quite foolish.

The question posed by the honourable member does not do credit to her genuine commitment to education and to equality of opportunity in education. She should well know that months ago questions were asked about girls' education and whether, in the restructure at central level, the Government had ensured that there was somebody of stature responsible for overseeing girls' education in New South Wales. If the honourable member had bothered to consult the Hon. Ann Symonds she would have known not only that that position exists but also that the person occupying it is Sandra Bushell. I believe Sandra Bushell will be just a teensy bit peeved that one of her sisters thinks that the work she is doing is totally inadequate. I do not propose to tell Sandra Bushell of the honourable member's question because I know how upset and distressed - and perhaps even angry - she might be at her sister opposite if she learned of the gratuitous insult made about the quality of the work that Sandra is performing. I promise I will not say anything about it and perhaps the honourable member will not be further humiliated.

[The President left the chair at 1 p.m. The House resumed at 2.30 p.m.]

CREDIT (AMENDMENT) BILL

CONSUMER CLAIMS TRIBUNALS (AMENDMENT) BILL

MOTOR VEHICLES TAXATION AND FEES (AMENDMENT) BILL

Formal stages and first readings agreed to.

**STATUTORY APPOINTMENTS LEGISLATION (PARLIAMENTARY VETO)
AMENDMENT BILL**

Message

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

COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

Collation of Evidence

The Hon. D. J. GAY [2.32]: I desire to lay upon the table of the House a collation of evidence of the Commissioner of the Independent Commission Against Corruption, Mr Ian Temby, Q.C., on general aspects of the commission's operations, before the parliamentary joint Committee on the Independent Commission Against Corruption on Tuesday, 31st March, 1992.

Ordered to be printed.

The Hon. D. J. GAY, by leave: The document I have tabled is a collation of evidence from the most recent hearing of the parliamentary joint Committee on the Independent Commission Against Corruption with the Commissioner of the Independent Commission Against Corruption, Mr Ian Temby, Q.C., on 31st March, 1992. This hearing was conducted pursuant to the committee's function under section 64(1)(a) of the Independent Commission Against Corruption Act to monitor and review the exercise by

the commission of its functions. I draw the attention of honourable members to the
Page 3763

questions and answers contained in chapter four on strategic intelligence, which the committee believes are most important. Before the hearing on 31st March the committee drew Mr Temby's attention to the fact that the National Crime Authority is now working towards the preparation of an overview of organised crime in Australia. The parliamentary committee on the National Crime Authority has commented that this overview will form a benchmark against which the National Crime Authority's target selection and impact upon organised criminal activities will be able to be assessed.

The committee asked whether the Independent Commission Against Corruption would see value in the preparation of a similar overview of corrupt conduct in New South Wales, and whether the Independent Commission Against Corruption would undertake to prepare such an overview. Written answers received from the Independent Commission Against Corruption indicated that it sees value in the development of such an overview. Furthermore, it was stated that the Independent Commission Against Corruption's strategic intelligence unit has the ability, but not at present the capacity, to conduct such an overview. The matter was discussed further with Mr Temby on 31st March and the questions and answers appear in the collation of evidence. A number of detailed questions were taken on notice by Mr Temby. Unfortunately the Independent Commission Against Corruption was not able to provide written answers to these questions in time for them to be included in the collation of evidence. As the committee believes that these questions are of fundamental importance to the work of the Independent Commission Against Corruption and the fight against corruption generally, I undertake to table before the House the Independent Commission Against Corruption's written answers to these questions as soon as they are received.

CONSTITUTIONAL MONARCHY

Debate resumed from an earlier hour.

Reverend the Hon. F. J. NILE [2.37]: Before lunch I had almost concluded my speech in support of the motion moved by the Hon. J. M. Samios. I reject particularly the third paragraph of the amendment moved by the Hon. R. D. Dyer on behalf of the Australian Labor Party, in which he said he believes that republican sentiment has grown to such an extent that the majority of Australians desire Australia to become a republic. I believe that the majority of Australians wish to retain both our constitutional monarchy and Her Majesty, Queen Elizabeth the Second, as Head of State. We certainly do not want to see repeated in Australia what has happened in Italy. That country has no president and no prime minister; the republic is in a shambles. In summary, I support the constitutional monarchy, particularly of Queen Elizabeth the Second. She embodies our Christian heritage. She has promised to uphold the laws of God and the true profession of the Gospel. The Queen embodies our democratic Westminster system of Parliament with its checks and balances. As is stated in the Federal Constitution, all States have agreed to unite in one indissoluble Federal Commonwealth under the Crown. Section 2 of the Federal Constitution states:

The provisions of this Act referring to the Queen shall extend to Her Majesty's heirs and successors in the sovereignty of the United Kingdom.

Therefore, the Queen, as Head of our State, is a vital part of both the Federal and State Constitutions. Section 1 of the Federal Constitution reads:

The legislative power of the Commonwealth shall be vested in a Federal Parliament,

which shall consist of the Queen, a Senate and a House of Representatives, and which is herein-after called "The Parliament," or "The Parliament of the Commonwealth".

Page 3764

A similar provision appears in the New South Wales Constitution Act 1902, which reads:

"The Legislature" means His Majesty the King with the advice and consent of the Legislative Council of New South Wales and the Legislative Assembly.

This House is the Legislative Council, the other place is the Legislative Assembly. The Queen unifies our nation. She is an essential to maintaining our unity particularly having regard to many different cultures represented in our society. We do not want the divisions, the hatred, and the bloodshed that is evident in Europe - in the former nation of Yugoslavia, for example. That should never occur in the nation of Australia. The Queen provides the continuity of history and culture. The constitutional monarchy is a vital part of our Westminster parliamentary system which maintains, preserves and protects our democratic freedoms. I conclude my remarks with words from what used to be called our national anthem, which I now call our national hymn:

God save our gracious Queen,
Long live our noble Queen,
God save the Queen,
Send her victorious,
happy and glorious,
long to reign over us:
God save the Queen.

The second verse, which, though I understand was written hundreds of years ago, could have been written today, reads:

O Lord our God arise,
Scatter her enemies,
and make them fall;
confound their politics,
frustrate their knavish tricks,
on thee our hopes we fix,
God save us all.

The third verse reads:

Thy choicest gifts in store
on her be pleased to pour;
long may she reign;
may she defend our laws,
and ever give us cause
to sing with heart and voice,
"God save the Queen."

The Hon. Dr MEREDITH BURGMANN [2.41]: Today I feel it incumbent on me to explain why I was one of two members of this House who did not attend the opening of Parliament by the Queen. There is certainly ground to argue that attending the opening of Parliament is part of a parliamentarian's duties; it is certainly true that it would generally be considered part of one's work. However, I believe that part of my work also

is representing the people of New South Wales who voted me into this position in Parliament. At the time of the Queen's visit on 20th February, 1992, 52 per cent of Australians - and that includes 52 per cent of the people of New South Wales - opposed the fact that she is Queen of Australia. Therefore, I was representing the 52 per cent of the people of New South Wales who believe that Queen Elizabeth the Second should not be Queen of Australia. I was in fact working when I refused to attend Parliament. It is interesting to note that since the Queen visited here in February the percentage of Australians who oppose her as our Head of State has increased from 52 per cent to 57

Page 3765

per cent. I hope she comes to visit us more and more. If the disapproval rate increases by 5 per cent every time she visits, Australia will soon be a republic. It is anachronistic for the Australian Head of State to be the British monarch. The main problem with the British monarch is not so much that it is British but that it is an inherited position. The present incumbent of that position has done nothing to earn her title. She has not displayed great talent; she has not great beauty; she has not great learning -

The Hon. Dr Marlene Goldsmith: On a point of order. In my view the honourable member is reflecting on the monarchy and, therefore, is in breach of standing orders.

The Hon. Dr Meredith Burgmann: On the point of order. I was not reflecting on the monarchy, I was reflecting on the position of the monarch.

The PRESIDENT: Order! I draw the attention of the Hon. Dr Meredith Burgmann and the House generally to Standing Order 79, which states:

No member shall use Her Majesty's or the Governor's name irreverently in debate, nor for the purpose of influencing the House in its deliberations.

I do not believe the honourable member has thus far transgressed that standing order. Therefore, no point of order is involved but I would ask the honourable member to take care.

The Hon. Dr MEREDITH BURGANN: With regard to inherited positions - and I do not wish to reflect upon the present monarch - there is an old saying in political science that the House of Lords is the most democratic House in the world because to be in it you do not need learning, brilliance or great wealth, you simply need to be born. At least the members of the upper House in New South Wales are democratically elected because of progressive Labor reform. I have had a lot of trouble trying to explain to my six-year-old son the concept of an inherited title. When my son saw the Queen on television he said to me, "Who is she?". I said, "It is the Queen". He said, "Why is she the Queen?" I said, "Because her father was the King". He said, "Why was he the King?" I had to say, "Because his father was the King". I was rewarded with a very puzzled look from my son.

[Interruption]

As the Hon. Ann Symonds has pointed out I should have said, "Because his brother ran away with a divorced woman". I found it extremely difficult to explain to a six-year-old child the concept that someone could be in a position of privilege and power merely because of the fact that she was born. To have the British monarch as Queen of Australia is a real problem in today's multicultural society. There are three groups of people who find -

The Hon. Dr B. P. V. Pezzutti: Britain is a multicultural society too.

The Hon. Dr MEREDITH BURGMANN: And many of her citizens object to the Queen too. I remind honourable members of the republican polls in Britain lately. There are three groups of people in Australia especially who find the concept of a British monarch as our Head of State problematical, to say the least. The first group is, of course, Aboriginal Australians. Their land was stolen from them in the name of Queen Elizabeth the Second's forebears. They have a real problem with the fact that -

Page 3766

Reverend the Hon. F. J. Nile: Aborigines respect the Queen.

The Hon. Dr MEREDITH BURGMANN: Absolute rubbish! The Aboriginal people of Australia today are strong in their republican sentiments. They know perfectly well what flag they would like for Australia, and it is not the one honourable members on the Government side of the House have sticking at peculiar angles from their seats. The flag that they would like for Australia today - and I would suggest it would be a good flag for Australia as it is very beautiful - is the Land Rights flag.

The Hon. Dr B. P. V. Pezzutti: I thought you would want to change the flag.

The Hon. Dr MEREDITH BURGMANN: Of course I want to change the flag. I want to change it to the Land Rights flag. The second group of people, and there is a large number of them in the Chamber today, who object to the British monarch being the Australian Head of State are Australians of Irish descent.

The PRESIDENT: Order! The honourable member is entitled to be heard.

The Hon. Dr MEREDITH BURGMANN: The Irish have had a long history of rule from Britain which, from time to time, they have tried to throw off. The present troubles in Ireland are a direct result of the people in Northern Ireland believing that they should not be governed by the British. The third group that are offended by a British monarch being Head of State in Australia are people with non-Anglo Saxon or non-Anglo Celtic backgrounds. It is interesting to note that the last census revealed that the majority religion in Australia today is Catholicism.

The Hon. Dr B. P. V. Pezzutti: It has been since 1981.

The Hon. Dr MEREDITH BURGMANN: What the Hon. Dr B. P. V. Pezzutti says makes what I say even more important. It means that for a long time Anglicanism has not ruled, okay. My old friend Nick Greiner, whom I have known for 25 years, is a Catholic. Under the archaic laws which govern the British monarchy, a Catholic can never accede to the throne of England. That means that our Australian Head of State is not representative of our majority religion.

Reverend the Hon. F. J. Nile: The majority religion is Protestant. Catholics are a minority. About 50 per cent of the population are Anglicans and Protestants.

The Hon. Dr MEREDITH BURGMANN: Reverend the Hon. F. J. Nile would have a lot of trouble convincing the Presbyterians and the Uniting Church that they are of the same religion.

The Hon. Dr B. P. V. Pezzutti: We have had two Jewish heads of state in this

country as Governors-General.

The Hon. Dr MEREDITH BURGMANN: The Hon. Dr B. P. V. Pezzutti is absolutely wrong. Has he not worked out that our Head of State is the Queen of England? The Governor-General is not our Head of State, although I would not mind if he were. The Head of State is the Queen of England. Another argument from those who believe that the Queen of England should be our Head of State is that thereby Australia's democracy is protected. We are prevented from electing a mistake as a president. How can that argument be sustained having regard to those who have been elected as President of the United States? The Americans elected Ronald Reagan as President. It is

Page 3767

patronising to say that the British are more likely to get it right by some form of Darwinian selection than Australians are by voting for a Head of State in a democratic manner. The Queen has enormous powers under our Constitution - three in particular. First, she has the power to appoint, instruct and remove the Governor-General under section 2 of the Constitution. Second, she has the power to approve or disapprove legislation reserved by the Governor-General for her pleasure under sections 58 and 60 of the Constitution. Third, she has the power to override the approval of the Governor-General and annul a law validly enacted up to one year previously under section 59 of the Constitution. I wish to quote a point made by Malcolm Turnbull.

[Interruption]

I thought Malcolm Turnbull was a Liberal supporter. I do not know why Government members carry on in such a way when I mention his name. Malcolm Turnbull said the following of section 59 of the Constitution:

I should note that this third power (under section 59) is by no means of academic interest only. The Keating Government could, for example, propose legislation which is approved by both the House of Representatives and the Senate as well as the Governor General. The new law could be proclaimed and enforced throughout the Commonwealth. A Hewson government could be elected a year later but without the control of the Senate. Mr Hewson could advise his Queen to exercise her power under section 59 and annul a law by Royal decree which he lacked the parliamentary support to do by conventional means.

Government members could say that that would never happen, but I remind them of the assurance that what happened in 1975 would not happen. It did. We were told that the reserve powers would never be used in that way.

The Hon. D. J. Gay: It was a peaceful coup.

The Hon. Dr MEREDITH BURGMANN: It was a coup. If a person were to try to count the number of countries which have perfectly normal governments, and whose Head of State is elected, he would run out of fingers. There is America, Germany, Italy, France -

The Hon. Dr B. P. V. Pezzutti: They are all in turmoil at present.

The Hon. Dr MEREDITH BURGMANN: And would the problems all be solved if there were a king? The most telling point about the way ordinary Australians feel about the matter is what happened on talkback programs the day after the infamous Botham and Gooch walkout and Botham's subsequent duck the next day in the World Cup. Honourable members should always listen to talkback programs. That is when ordinary Australians have their say. The entire audience of John Laws and Alan Jones

admitted that they supported Pakistan in the World Cup. Boofheads like Ian Botham, instead of helping are damaging our relationship with Britain - not to mention our own boofheads. I shall not name names and I am certainly not calling anyone a boofhead.

Reverend the Hon. F. J. Nile: Does the honourable member support female impersonators? That was the reason they walked out; a female impersonator insulted their Queen.

The Hon. Dr MEREDITH BURGMANN: The Hon. Elaine Nile and Reverend the Hon. F. J. Nile might find it interesting that, in an informal way, I have been listening to the comments that people make as they walk past the Queen's portrait that
Page 3768

was unveiled on the day of her visit. Most comments are to this effect: "Gee, doesn't she look like Gerry Connolly". One onlooker said, "It does not look at all like Paul Keating". On the subject of monarchist boofheads, it is interesting that after the significant act of the Hon. Ann Symonds and me in refusing to attend the opening of Parliament a number of conservative members of Parliament, including Reverend the Hon. F. J. Nile, called for us to be charged for treason. I am told that the honourable member for Coffs Harbour called for the Hon. Ann Symonds and me to be tried for treason and imprisoned in the tower. Those sorts of comments bring the debate about the monarchy into the medieval era, which is probably where it belongs.

Reverend the Hon. F. J. Nile: Were those comments as frivolous as the remarks of the honourable member about the Queen's portrait?

The Hon. Dr MEREDITH BURGMANN: It does look a bit like Gerry Connolly. I conclude with a quote from the late and great Willie Hamilton of whom many honourable members may not have heard. This Scottish gentleman was a member of the British Parliament for more than 25 years. When asked about the Queen, he said:

I have nothing against the Queen personally. I think she's probably a very nice lady - I just think she should be retrained as a steno typist and put to useful work.

The Hon. L. D. W. COLEMAN [3.0]: Let me commence my contribution to this debate with a quote that was also used by the Hon. Patricia Forsythe from Sir Robert Menzies' book *Afternoon Light*:

The creation of a republic does not make complete independence more independent. Why should people think it does?

Australia is completely independent in every sense. Nowhere in the world will an Australian be mistaken for a citizen of the United Kingdom or any other country. Australia is recognised and highly respected throughout the world as a leading nation positioned between the Pacific and Indian Oceans and as part of the southern end of Asia. Why our Prime Minister had to grovel and denigrate Australia on his recent trip, I have absolutely no idea.

The Hon. R. J. Webster: Shame, shame.

The Hon. L. D. W. COLEMAN: Exactly - shame, shame. Does the Prime Minister not realise that Asia understands, knows and respects our history? It is not what you say or call yourself that counts - it is what you do that matters. Most countries are proud of their past, learn from it and build upon the strengths of tradition. It is only the insecure and weak that are apologetic. Two days ago we were all very moved by the

Coral Sea debate in this House. It is interludes like that two days ago that remind us of our country's history. Why for no good gain should we destroy it? We must stand up and be strong and proud of our heritage. Our flag and our monarchy are integral parts and linchpins of Australia. Why destroy them for an uncertain alternative? I note that the Hon. Dr Meredith Burgmann has left the Chamber. That shows what the Opposition really thinks of her speech. There can be only one reason - to create a diversion. A diversion from what? From the lack of leadership, and the poor economic management of the Federal Government.

Reverend the Hon. F. J. Nile: The Keating recession.

The Hon. L. D. W. COLEMAN: Exactly. The Keating recession.

Page 3769

The Hon. J. H. Jobling: The recession we had to have.

The Hon. L. D. W. COLEMAN: Only some people thought so. It is all very well for some honourable members opposite to call for a republic.

The Hon. I. M. Macdonald: Unemployment decreased last month.

The Hon. L. D. W. COLEMAN: Thanks to the New South Wales Government, unemployment did decrease. It is all very well for some honourable members opposite to call for a republic, but they provide no balance sheet or profit and loss account of the cost. In fact, they seem to want to change for the sake of change. Instead of unifying the country, such a move would split it with dissension and would do the very opposite of what is so badly needed. Australia is in great need of leadership. Republican ideas and views vary considerably. There are hundreds of differing ideas on what flag Australia should have, yet more than 50 per cent of the population know what they want - no ifs, no buts. They mean the present flag and Constitution.

The Hon. Franca Arena: Fifty-seven per cent of the population want a republic.

The Hon. L. D. W. COLEMAN: The Hon. Franca Arena must be slow in her reading. If she had read the *Australian* last Tuesday she would be up to date on what has happened. Let us be democratic and get on with the job of running the country. People want jobs, for themselves and their children. It is shameful that Keating should be denigrating our flag while more than 30 per cent of our youth cannot get a job and many of them cannot even be trained for one. As my daughter would say, "Mr Keating, get real".

The Hon. I. M. Macdonald: On a point of order. During the past few minutes I have listened with interest to this rendition by the honourable member. He is now digressing from the motion, which deals with the constitutional monarchy and with an amendment by the Hon. R. D. Dyer. Nowhere in the motion or the amendment can I find any reference to the flag. That debate is entirely separate, listed on the business paper to be moved by the Hon. J. F. Ryan. I suggest that the Hon. L. D. W. Coleman is out of order in canvassing a future debate in this Chamber on the flag. He should confine his remarks to the issue of constitutional monarchy.

The Hon. D. J. Gay: On the point of order. The Hon. L. D. W. Coleman is talking about the flag in the general terms in which the Prime Minister has chosen to link the flag and the monarchy. The honourable member was attempting to make the point

that the link raised by the Prime Minister is being used to take attention away from the real issue in Canberra, that of the economy. At the moment the flag and the monarchy are linked in the Prime Minister's aims. The honourable member was making the point that that linking is relevant to this debate, which is about the value we place on the monarchy.

The PRESIDENT: Order! No point of order is involved.

The Hon. L. D. W. COLEMAN: The concept of the flag and the monarchy being interlinked has been raised by many honourable members, including those opposite.

The Hon. Ann Symonds: I can tell the difference; why cannot the honourable member?

Page 3770

The Hon. L. D. W. COLEMAN: A point of order was taken, but I think members opposite waste time. As my daughter would say to Mr Keating: "Get real. Start worrying about Australia and Australians. Start governing. Tackle the real problem of jobs and job training. Forget about stupid diversions such as having an Australian flag and forming a republic by 2001". If we do not get on with employment there will be no worthwhile Australia to govern by the year 2001. We will have lost economically what our fathers fought for 50 years ago. All their efforts will have been lost by a Federal government that came to power in 1983. Let us cast our minds back 50 years to the darkest hour in our military history, the year the world lost one Lloyd Coleman and the year in which it gained another. Twenty-five years previously Squadron Leader Lloyd Coleman had lost his father, Lieutenant Herbert Coleman, also fighting for his country. My call is to serve this great country not on the battlefield like some of my forebears, but in the Legislature, like two other of my forebears.

It is all very well for some of the young Australians, some of the newer Australians and some who are misguided to deem the flag and monarchy as needing replacing, but they are too young, too immature or too misled to understand and appreciate what really makes an Australian. The monarchy symbolises those whom Australians look up to. The Union Jack on the flag symbolises history, which cannot be changed no matter what, while the stars represent the Australian States which make up Australia. No other country has this flag. It is recognised and respected as truly Australian. No other country in the world wants Australia to change it, and there is no reason to do so. Some people want a kangaroo on the flag. Do honourable members understand this unique marsupial? It conjures up a cuddly, loveable Skippy, of speed and endurance, an animal of beauty.

The Hon. I. M. Macdonald: On a point of order. I could read the motion but I do not want to over-emphasise the fact that it makes no reference to whether marsupials are depicted on the Australian flag. I have read the notice of motion of the Hon. J. F. Ryan. That motion provides adequately for a debate about all the issues attendant to the flag, including enabling the House to debate the sort of flag Australia might have, its colour and whether it depicts a kangaroo. The Hon. L. D. W. Coleman is out of order when he speaks about the shape, size, colour and content of the Australian flag. The motion now being debated is that this House affirms its support of the constitutional monarchy and, following an amendment by the Hon. R. D. Dyer, acknowledges the historical role played by Her Majesty the Queen, notes that Australia effectively has severed the remaining legal links, and expresses the belief that with the changing nature of Australian society republican sentiment has grown to such an extent.

The PRESIDENT: Order! I have heard enough. I ask the Hon. L. D. W. Coleman to link his remarks to the motion.

The Hon. L. D. W. COLEMAN: The problem is that we have let the other side run with people such as Turnbull. White and Manning Clark have been mentioned. I am putting the other side to the story.

The Hon. Franca Arena: That is about the flag. We are not discussing the flag.

The Hon. L. D. W. COLEMAN: This is all part of the debate. It is all part of what you are throwing at us.

The Hon. Franca Arena: I am not throwing anything at you.

Page 3771

The Hon. L. D. W. COLEMAN: Yes you are. This not the time to have diversions. If we lose the economic war, we lose all. Our forefathers worked hard and fought hard for this country. We are only the second race to hold this land. We should be teaching our children the modern version of God, Queen and country, as without the United Kingdom and our ally the United States of America we would not be in this honourable House today. We are part of a world team; we must play our part. We will not gain friends, respect and markets anywhere in the world by denigrating the flag or the monarchy. Our Asian neighbours see this as weakness. There are many and varied ideas held by the minority of the population about changes to the flag. Why should we let this worry us? While my family lost members who fought for God, Queen and country under our flag in two world wars, many of our present population and their forebears gratefully flocked to this country and its flag and stable monarchical government to escape war-torn Europe, the effects of war, dictators and communists. They and the members of my family who returned from the war built this country under the monarchy and the flag.

It is sheer hypocrisy now for a minority to try to change what they have built. We have to change not the monarchy or the flag but our attitudes to values and work. It is the greed and mismanagement of the 1980s that have led to our demise. Only good old fashioned tried and true values will return Australia to its former glory. I know that as a descendant of pioneers in every sense of the word, including the first Presbyterian minister on the Darling Downs - another great grandfather was a Church of England minister in the Victorian goldfields, where Australia saw the first great migration to this country - we are richer and wiser for the many and varied reasons for which people migrated to Australia from all over the world. They all chose the flag, the monarchy, the legal system, the language and of course the political system - all with their inherent checks and balances. It is no accident that the Westminster system stood the test of time: it began in the time of Edward the Confessor some 1100 years ago. Most of Europe's major nations had major upheavals in the nineteenth and twentieth centuries, while England started refining its political system - later to become the Westminster system - some 1100 years ago. Apart from a few minor hiccups, it has come through without a major revolution. As the old Mortein advertisement said: "When you're on a good thing stick to it".

The Hon. Franca Arena unfortunately has not been in this great country long enough to understand the workings of the Westminster system. If there is any other reason for which she favours republicanism it would have to be for political ambitions.

Surely Australia's parliamentary system and future should be put before our own political agenda. Our democracy is like a fine old grandfather clock made by Britain's great clockmakers, tick-tocking on, year in, year out, always on time, in no hurry but in fine balance. Remove or upset just one cog in its workings and the clock fails. Likewise, remove any cog in our democratic Westminster system and it fails - let alone one as major as replacing our Queen with a president. Our constitution is as sensitive as the old clock. Why upset the stability of the monarchy? We have inherited the most highly developed system of monarchy in the world, which Australia has enjoyed for two hundred years. I still remember vividly in 1954 going down to the Toowoomba showground to see our young Queen and Duke. I well remember in 1952 the huge headlines on every billboard along the Pacific Highway stating, "King dead". By the time I was 10 this fine king had already set the standards which I still aspire to. The message has not been taken up by people on the other side of this debate. The workers, the mums and the dads, know what life is all about. They are the grassroots supporters of the monarchy.

Page 3772

The Hon. HELEN SHAM-HO [3.16]: I am pleased to support the motion moved by the Hon. J. M. Samios on 19th March affirming this House's support for the constitutional monarchy as essential to our Westminster parliamentary system and the stability and cohesion of our multi-cultural society. Indeed, it is an important matter of public interest that should be debated. Many honourable members have already expressed their views on this subject; I would also like to put on record mine. From my research, the question of whether Australia should become a republic was raised before Federation. In the 1870s the writer Anthony Trollope toured the Australian colonies and concluded that they would soon become republics. The Australian colonies, however, did not become a republican nation but a nation federated under a constitutional monarchy - in 1901. After a hundred years, in 1973, the republican movement foundation member, Donald Horne, confidently declared that Australia would be a republic within ten years.

The PRESIDENT: Order! I am having difficulty hearing the honourable member because of interjections.

The Hon. HELEN SHAM-HO: Nearly 20 years later, in 1992, we remain under a constitutional monarchy. More recently some Australians expressed their belief that Australia should and would soon become a republic. As pointed out by the Hon. J. M. Samios in his speech on this motion, in June 1991 the Australian Labor Party passed a motion calling for the establishment of an Australian republic in the year 2001. To me there is little evidence that we are any closer to becoming a republic than we were twenty years ago. The Advisory Committee on Executive Government on the Constitutional Commission, after reviewing two decades of surveys, concluded that "there is no prospect, on the evidence available to us, of a change in public opinion in the near future which would result in there being major support for a republic". For nearly a century Australians have voted no to even minor constitutional changes. They are unlikely to vote to tear up the Federation, the Commonwealth and the Constitution in every State. This is why the Australia Labor Party envisages an educational campaign to convince Australians otherwise. However, such a campaign could be highly divisive and destructive. According to the Hon. John Howard, the Federal member for Bennelong:

The Labor Party is now embarking upon a ten year period of division and the development of enmity and bitterness in the community over which an issue, if it were left alone, would in the fullness of time solve itself in a non-divisive manner.

I agree with him. Writing in the *Business Review Weekly* not long ago, Les Carylson said that the purpose of the public debate and campaign is to distract us from the economic chaos that State and Federal Labor governments have put us in. He noted that since Mr Keating became Treasurer in 1983 Australia's foreign debt has increased sixfold to \$145 billion. He said that we should ask Mr Keating if this debt will alter if we redesign the flag or dump the Queen. That is a good question. In my view there is no added value at all in doing either. At this point I would like to quote the former Labor Party leader, the former Prime Minister, who wrote on 5th April at page 29 of the *Sydney Morning Herald* on the subject of the monarchy. Bob Hawke said:

The well being of ordinary Australians would not be changed one iota if we became a republic tomorrow.

The Hon. Franca Arena: Calm yourself!

The Hon. HELEN SHAM-HO: Why don't you listen? I will quote again what Bob Hawke said, from the beginning:

Page 3773

The well being of ordinary Australians would not be changed one iota if we became a republic tomorrow.

The Hon. Franca Arena: That is your opinion.

The Hon. HELEN SHAM-HO: This is what Bob Hawke said. He continued:

When I see all the energy, not to mention expenditure going into the acceleration of the republic cause, I can't help but feel we would all be better off as Australians if that were channelled into supporting the process of reconciliation between Aboriginal and non-Aboriginal Australians.

I hope the Hon. Franca Arena heard that reference to the reconciliation between Aboriginal and non-Aboriginal Australians. Bob Hawke went on to suggest that there should be a referendum to decide whether Australia should become a republic. I quote further from what he said:

If we are really concerned about what's best for our country then waiting a little longer and so securing some greater degree of unity is sensible.

The Hon. Franca Arena: This is the first time I have heard the Hon. Helen Sham-Ho quoting Bob Hawke.

The Hon. HELEN SHAM-HO: In this instance I am saying he is right. Unfortunately many of his Australian Labor Party colleagues, including the Hon. Franca Arena and our unelected Prime Minister, do not agree with him. Despite having more than 100 years to fine-tune their arguments, the new republicans have surprisingly little to convince us with. After being approached to join the republican movement, I wrote a reply, as indicated by the Hon. Franca Arena in her contribution. I stated that to date I remain unconvinced by the republican movement. The Hon. Franca Arena did not hear me. I said I replied to the invitation to join the republican movement.

The Hon. Franca Arena: You told us, "Not at this time".

The Hon. HELEN SHAM-HO: It would seem that most republicans believe that there is a need to repair the psychological foundation of our nation.

[Interruption from gallery]

The PRESIDENT: Order! I remind those in the public gallery that it is disorderly for members of the public to interject or make comments.

The Hon. HELEN SHAM-HO: However, to suggest that Australia will come of age and exert her independence by declaring herself a republic makes about as much sense as an adolescent's claim that he will change his name to prove his adulthood and his independence from his parents. Australia has long ago achieved its nationhood and independence. The Hon. Franca Arena seemed to be ignorant of that fact when she argued in her contribution to this debate that "Australian nationhood will be retarded so long as there is a psychological dependence". The suggestion by the Hon. Franca Arena that Australia is not an independent nation is absolute nonsense. I should like to refer also to the ridiculous assertion made by the Hon. Franca Arena that "millions of migrants did not come to this country to become pseudo-British or Britons-in-exile". I would like to ask the Hon. Franca Arena why she migrated to Australia, knowing that Australia is a country with a constitutional monarchy, which she does not support. When she came here from Italy, was she thinking of becoming pseudo-British? Being a migrant myself - and I notice there are many migrants in the public gallery - I know that an overwhelming

Page 3774
majority of migrants coming to Australia have no confusion or resentment about the constitutional monarchy. I am sure that no Australian would have an identity crisis about being an Australian, whether by birth or by choice.

The PRESIDENT: Order! I suggest to the Hon. Franca Arena that the debate will proceed much more expeditiously if she curbs her interjections.

The Hon. HELEN SHAM-HO: I am sure the millions of former servicemen and servicewomen and their families, as referred to by the Hon. L. D. W. Coleman, have no identity crisis about being Australian. In Vietnam Australians fought under the Queen without any United Kingdom involvement. There was no doubt about our identity then as a nation, nor was there any during the Boer War, World War I or World War II. Australia is as independent as it can possibly be and has long been a fully recognised independent member of the United Nations. We have every reason to be proud of our association with the British monarchy. As has already been pointed out by the Hon. J. M. Samios and the Hon. D. J. Gay, the British Commonwealth is a shining example to the world of real multicultural harmony. In the Commonwealth many diverse nations with diverse cultures accept unequivocally the British Queen as their Head of State.

It is important to make our migrants feel welcome, but that does not mean we have to abandon what is important to us. The United States has received millions of migrants from a multitude of foreign countries. There has never been any question of Americans changing their Constitution to accommodate the wishes or prejudices of those who come from other countries. Canada, which has a formidable problem with its large French-speaking population in Quebec, has made many symbolic and substantial changes, including changing the national flag, to accommodate this minority population. However, that has not been followed by any improvement in community relations. Although some believe that business and trade will benefit if Australia becomes a republic, I dismiss that belief. Australia has a trading destiny in South-east Asia, whether it is a republic or a monarchical constitution. Asia will not be fooled into seeing

Australians other than as we really are. It is doubtful that our major trading partner in the region, Japan, would respect us more if we abandoned our constitutional monarchy for a republic. The Japanese revere their monarch and might well perceive such a move as barbaric.

The most obvious difference between a republic and a constitutional monarchy is that one has an hereditary, as opposed to an elected, Head of State. This has some advantages. The nation is spared the political gimmickry and fanfare that is so much part of an election. An obvious advantage in having a monarch as Head of State is that there is no political power struggle for the position which has an undisputed succession. There is never a gap in the succession to the Crown. There is always a sovereign and the succession is certain and assured. The monarch is above politics and this, as a consequence, adds dignity, stability and a great unifying influence to the highest office. The republican alternative can only be divisive if a president is elected, and undemocratic if he or she is nominated or appointed. I would like to point out that a monarchy is provided at no cost to the Australian taxpayer. All we do is pay for the Queen's security when she is in Australia, as we do for His Holiness John Paul II, United States President George Bush or any other distinguished person in our midst. No other system of government could be more economical. It is worth noting that monarchies, compared with other nations in our area, have demonstrated a superior capacity to provide stability and cohesion while co-existing with rapid and equitable economic development, as in Japan, Malaysia and Thailand. Australia has emerged from the status of a British colony to an independent nation in a sensible and orderly fashion and at a pace consistent with the wishes of the Australian people.

Page 3775

The system of government provided for in the monarchical constitution has in no way impeded this development. There has been no bloodshed. It has been self-developed over a period of some 150 years by constant and creative interaction of local and imperial factors. The reality is that the monarch exercises no real powers. The exercise of the executive power in Australia is entrusted to the Governor General, who is appointed by the Queen of Australia on the nomination of her Australian Prime Minister. Likewise, the State Governors are appointed by the Queen only on the advice of the respective State Premiers. This is the fact and the law. The enactment of the Australian Act 1986 absolutely clarified our relationship. Perhaps eventually, a majority of Australians will one day want change. As a totally independent nation, Australia is capable of becoming a republic if we so desire. However, this change should not be forced upon us like an abrupt political adolescence or by an education campaign or brainwashing. It should evolve naturally with maturity. The question that ought to be raised, and which was asked by a prominent Sydney Queen's Counsel, Lloyd Waddy, is:

Are we better off as we are or is there a better way for us to be governed?

Mr Waddy firmly believes in the current constitutional machinery. As he puts it:

... it is tried and true. Its greatest commendation is that it works, even in times of political stress such as 1975.

What Mr Waddy said is correct. I certainly agree with him. We should not change things that are working well. In conclusion, I concur with the sentiments expressed by the then Deputy Premier, Mr Heffron, when he spoke in this Parliament in 1954, on the occasion of the then young Queen Elizabeth's first visit to Australia as Regent:

This country, in common with the rest of the civilised world, owes a great debt of gratitude to Britain, to British institutions and above all to the British way of life. In Australia we have developed, in keeping with the British democratic pattern of fair play, justice and tolerance, and, in doing so we have, since our beginning 106 years ago, attained a status of virile nationhood. We are a free and independent people, in fact the freest democracy in the world.

At a time when our society is beset by the divisive stresses of absorbing the largest per capita migrant intake in the world and the worst recession since the great depression of 60 years ago, we should think long and hard before plunging the Australian community into a potentially bitter and divisive debate and precipitously severing our links with the monarchy, along with so much of our heritage. The Westminster parliamentary system with the constitutional monarchy is essential to providing stability and cohesion in our multicultural society. I support the motion before the House.

The Hon. R. S. L. JONES [3.35]: Even though I was born in England and am a direct descendant of Henry VII, I still believe it is a quaint anachronism to have an English-born Queen representing Australia as our Head of State. One can accept that she fills the role well and that she is loved by the overwhelming majority of her subjects, both in the United Kingdom and Australia. Nevertheless, it is a curiosity that we have such a person representing this nation of some 17 million people who have come from all over the globe to make up the melting pot which represents the Australian population today. Many of these people who are now Australians have absolutely no relationship with England, and simply do not understand why we have an Englishwoman, an hereditary monarch, representing Australia as Head of State. One can understand why so many people favour the retention of the monarchy for Australia, even though we only see our Head of State every few years on fleeting visits. Australia has few traditions and customs of its own which are not affected by or borrowed from Britain or other countries. The exceptions, of course, are our Aboriginal traditions and customs, which

Page 3776

have been largely overlooked by white Australians. People feel comfortable having traditions. It gives them a sense of security and something to cling on to, some sense of continuity of existence. That is the reason why the President and officers in this Chamber still wear these traditional costumes - to give us a sense of continuity with our past both in this Chamber and in the House of Lords.

Britain has now well and truly thrown in its lot with the European common market, which we were unable to join. As a result of this, our ties with Britain have been greatly diminished. Our ties were also weakened when restrictions were placed on Australians entering Britain and British people coming to Australia. It is completely inevitable that Australia will one day become a republic. Our ties with Britain - what some people used to call home not so very long ago - are being progressively diminished and weakened. Paul Keating is correct when he says that our destiny lies with Asia. One only has to look at the map to see that we are physically inextricably tied in with the Asian region. We are part of that region, and the sooner we realise it the better it will be for us economically. We can no longer look to Britain for leadership or for customs, or even for the majority of our migrant intake. There is also a serious question about the validity of an hereditary monarchy, regardless of whether this hereditary monarchy is Her Majesty Queen Elizabeth II or King Charles III. The world is becoming more democratic each year. Eastern Europe and the Soviet Union are now essentially democratic. The very concept of hereditary monarchs or hereditary dictators is an anachronism.

Kim Il Sung of North Korea believes he will be able to anoint his son as his successor. I doubt very much whether his dictatorship will survive his death. By what

right does someone who happens to be born of a royal family have to be the Head of State of another country nearly 20,000 kilometres away. On the face of it, it really does seem an absurd proposition. They do not achieve this position by merit or by having been voted there by the populace; they achieve this position by pure accident of birth. It really is extraordinary. The whole concept of an aristocratic elite elevated above the general populace which is dominated by the ruling monarch is also absurdly anachronistic. Australians, and also the Americans and others, still kowtow to those who have hereditary titles. There is a belief that somehow, because a person has inherited a title which may have been bestowed on their ancestors by Queen Elizabeth I or one of the Henrys or perhaps Queen Victoria, they are better than you or I. It may well have been that the person who received the original title had achieved much for his or her country. It does not, however, mean that that person's successors - children, grandchildren and great grandchildren - should be treated with the same deference as the person who was originally awarded the honour. This has been acknowledged, in that many titles awarded now are for life only and are not hereditary.

It is obvious that in the past 10 or 20 years Australian attitudes towards the royal family have changed considerably. The reception Her Majesty the Queen and the Duke of Edinburgh received on their last visit to Australia was far less fawning and enthusiastic than on previous visits. When the title passes to Prince Charles, I can not imagine Australians treating him with the same awe as many Australians now treat Her Majesty the Queen. Indeed, Prince Charles has queried why Australia is not yet a republic. Notwithstanding the curious anachronism of having an hereditary monarch as our Head of State, it has certain safeguards of a practical nature. I would prefer to have Her Majesty the Queen as our Head of State than someone such as a President Reagan or a President Hawke. The problem with republics often is that the person elected or appointed as Head of State is often involved with one side or another of politics. Because of the hereditary nature of her position, the Queen is quite apart from politics. Although the Queen is the head of the establishment, she is almost totally neutral. I believe it is

Page 3777

far safer to have a neutral Head of State with very few powers than an elected Head of State such as President Reagan or President Bush with considerable powers. If elected this year President Bush will almost certainly be elected by a small minority of the total number of American people, perhaps as few as 20 per cent of the total population. Though he is Head of State he represents a minority of Americans.

Likewise, if Australia were to become a republic - and I believe inevitably it will - and a president were elected, we may well have a Bill Hayden, a Bob Hawke or a Malcolm Fraser as president of Australia, and I do not relish that prospect. There are few people living today who I imagine would be a universally respected president of Australia. Perhaps we need someone like Don Bradman, a universally loved and national treasure, or perhaps a woman such as Justice Elizabeth Evatt or Janet Holmes á Court. It concerns me that whoever is elected president of Australia will be the person who can organise the most support and the most donations from supporters. Honourable members would be aware that Ross Perot has announced that he may stand for the American presidency. Ross Perot made billions of dollars developing supermarkets. He is an extremely interesting character. Although he is the second or third richest man in the world, he drives an old pickup truck and is highly regarded by his staff. It is not impossible that, with his billions of dollars and his popularity, this odd-ball character could become the next president of the United States of America. Only a person with \$100 million could become a president. It is regrettable that effectively money buys the presidency of the United States of America. Similarly if there were to be a vote for a president of Australia, almost certainly the likely candidates would need several million

dollars each in order to conduct an adequate campaign. Once again, the candidate with the most money and the most media sway would be the person who would become our Head of State. Frankly, that would not be healthy for Australia.

On the Ross Perot model we could well have Sir Peter Abeles or Kerry Packer becoming president of Australia merely because of the resources that are available to them to campaign. Could honourable members imagine a President Abeles, a President Packer or even a President Murdoch? The real problem with replacing a quaintly anachronistic, hereditary monarch with an elected president is that we might be throwing out someone who is relatively benign and neutral for an elected president who is associated with a political party or a business and is not generally accepted by the populace. It is highly likely that an elected Australian president would want considerably more powers than those that our monarch currently has. In other words, having the Queen as our Head of State is in itself a safety factor for our democracy. She rarely makes controversial statements and does not involve herself in politics or the day-to-day running of the country. We can be reasonably certain as to who will be the next Head of State and the Head of State after that. There is no speculation, no jockeying for position, no major election campaign and millions of dollars are not wasted. Though I believe that inevitably Australia will become a republic, it would not surprise me that, when the majority of Australians do eventually vote for this, many of those who supported the idea of a republic will find the replacement - the president of the day - is not to their liking. They may yearn for the good old days when we had an hereditary monarch.

There is nothing malign in having a hereditary monarch. It is something of an odd curiosity, but it does not actually harm Australia or Australians. We do not suffer from having an hereditary monarch. Rather, it adds colour and pageantry to our somewhat humdrum lives. It gives us a sense of connection to what was our mother country and a sense of a continuation of a tradition going back more than a thousand years. It is somewhat like being part of a family. Many people, particularly

Page 3778

conservative people, like this sense of continuation of tradition. They feel comfortable with retaining long-standing traditions. There is a certain amount of security and certainty in retaining such traditions. Venturing into the unknown and overthrowing the current system for a republic may sound exciting, but it may result in a Head of State who interferes with the running of the country, who becomes involved in the political process, and who is elected by only half the people of Australia. I should not like to see the position of Head of State politicised as it has been in many countries. I would prefer that our Head of State be above politics, revered by the vast majority of the populace and symbolic but nevertheless a safeguard to the continuity of our traditions and democracy. It is curious that a neutral, unelected Head of State can be more of a benefit to our democracy than an elected political president.

The Hon. R. B. ROWLAND SMITH [3.45]: It gives me great pleasure to support the motion of the Hon. J. M. Samios that "this House affirms its support of the constitutional monarch as essential to our Westminster parliamentary system and the stability and cohesion of our multicultural society". I congratulate the honourable member on moving this important motion. Though born in this country, the Hon. J. M. Samios comes from an ethnic family of Greek origin, which speaks particularly highly for his feelings and for the millions of people of ethnic backgrounds on the importance of the constitutional monarchy. I have been pondering why so many people, particularly members on the Opposition benches, want to change the system that made this country such a great country. Change for the sake of change is something to which I have never subscribed. If I had felt deep in my heart that there was a need to break away from the

constitutional monarchy I would be the first to agree with it, but there is no cause or reason for change, irrespective of what the Australian Labor Party has to say. Recently the Prime Minister, Mr Keating, stated that there was a need for an Australian identity, hence the reason for him supporting the change to a republic and a change to our traditional flag. I shall dwell on the subject of our identity for a few minutes.

It is pathetic, to say the least, to think that in 1992 we need to state that we must have an Australian identity. For heaven's sake, we have had an identity ever since this country was first founded. One only had to witness the march of the sailors up George Street in commemoration of the fiftieth anniversary of the Battle of the Coral Sea or to be present at the cenotaph on Monday at the laying of wreaths on that great memorial to recognise that Australians have a definite identity and are recognised for what we are. The world knows Australia and Australians so why do we need in 1992 to seek an identity for ourselves? The various expressions that we use are recognised throughout the world - giddy and good on yer mate. Indeed, it was that fellow Hogan who in the two movies "Crocodile Dundee" and "Crocodile Dundee 2" brought home to millions of people throughout the world the identity of Australians. I recall a story told to me by my late uncle who served in Galipolli - and this appears in *Hansard* when honourable members commemorated the seventy-fifth anniversary of the landing at Galipolli - about the whimsical side of the Australian digger under adverse conditions. Two diggers were in the trenches. One was rolling a cigarette and lolling at the back of the trench and the other, being more alert, said to his friend, "Didn't the colonel say he would give us 10 bob for every Turk we shot?", to which his companion replied, "Yeah, I guess that's right". The fellow who was on the alert said, "Well, there is 4,000 quids worth coming down the hill right now".

Even under adverse conditions Australians still retain a sense of humour peculiar only to this country. One only has to travel the world, particularly the United States of America, and say one comes from Australia to be welcomed. Why? Because of the friendly hospitality which was meted out to millions of American servicemen and others

Page 3779

who were here, English as well as French. That is one of the many reasons we are regarded so highly in the world. I return to the question of constitutional monarchy, which has been adequately covered by previous speakers, particularly by the mover of this motion. In my speech in the Address-in-Reply debate I referred to the visit of His Royal Highness the Prince of Wales, Prince Charles, in October 1974 when he addressed this House. His Royal Highness spoke about our peculiar brand of parliamentary democracy with its extraordinary capacity for improvisation, evolution and change, and of his belief that the institution of the monarchy is one of the strongest factors in the continuance of a stable government. Experience demonstrates to me how fortunate we are to have a system which gives all men and women the opportunity of serving the State and Commonwealth in our various parliaments. I am firmly of the opinion that the monarchy itself has helped tremendously to achieve stable government. The institution of the monarchy has reacted favourably to change, an example of which was given in the speech of His Royal Highness in 1974. In his address he said:

No one has the monopoly of self-rightfulness in our human existence and no one, person or organisation or party has the answers. That is why parliamentary democracy, as we know it, is such a sound system for the simple fact that it allows debate and civilised argument to take place free of restrictions or fear of censorship.

He went on to say:

The great advantages of the evolutionary change - as opposed to revolutionary - is that it

can be assimilated much more easily, is more conducive to sound and sensible government, and it is also indicative of an advanced form of civilisation which is based upon tolerance, self-discipline and adult appreciation on the concept of freedom.

One only had to witness the excitement of the very young during the recent visit of Her Majesty the Queen at the various functions she attended to realise that even these young people understand that she is our Queen, Queen of Australia, and I want to see that the monarchy continues for a long time to come. The Hon. R. D. Dyer has moved by way of amendment some five parts. In the first one he says:

(1) recognises and respects the historical role played by Her Majesty Queen Elizabeth II and her predecessors in the government of New South Wales and the Commonwealth of Australia;

He therefore recognises the role the constitutional monarchy has played in the growth of this nation. He continues to say, though I do not believe it has any real bearing on the issue:

(2) notes that the Australia Act 1986 effectively severed the remaining legal links between Australia and the United Kingdom.

I did not take any notice of that as I believe that appeals to the Privy Council were unnecessary and could have been settled here. In the third part of his amendment he states:

(3) believes that, with the changing character of Australian society, republican sentiment has grown to such an extent that it is probable that a majority of Australians will desire Australia to become a republic.

That is conjecture of the worst order. Where is the changing character of Australian society? Just because our intake of immigrants has increased, is that changing our society? These people play cricket, football, go to the pub, swear like other Australians; in fact I think that many of the ethnic people that come to Australia swear a lot more than Australians do. So what is this changing character of Australian society and why should
Page 3780

we change because a few radicals such as the Hon. Franca Arena and some of her ilk want to change to a republic? It is utter nonsense and must be knocked on the head as soon as possible. Again I congratulate the Hon. J. M. Samios, and I ask all members of this House to support the motion. God save the Queen.

The Hon. K. J. ENDERBURY [3.54]: A certain gentleman's name was mentioned earlier in the debate, a Mr Malcolm Turnbull. We all know about Mr Malcolm Turnbull being a very prominent Liberal. I started wondering how many other republicans there are in the Liberal Party. I am just wondering whether sitting on the opposite benches there could be some covert republicans. At least Malcolm Turnbull has the honesty as a prominent Liberal to come out and say, "I am a republican". So it is very interesting. I do not see this issue as a simple party matter because my party also represents a wide range of views. I would hate to think members opposite have secret views but have been bound to vote on this motion in a particular way. I believe one day Australia will become a republic, but that should only be the clear will of a great majority of Australians. I will not be in the vanguard pushing for a republic because quite frankly - this is where I differ from some of my colleagues - I believe there are better things worth fighting for. I do not believe Australia has suffered in any way by being a monarchy. In any event, I wonder about what we would replace it with. I believe that a republic will come about, but in removing one institution what do we replace it with?

Do we want the American system, with an elected President? Do we want an appointed Governor-General, as is the present custom, to take over the full role of the monarchy. I take the view that, if we are to have an appointed Governor-General or President, former politicians should not occupy that position. I say that with the full knowledge that the present Governor-General is Bill Hayden, former leader of the Australian Parliamentary Labor Party. I do not agree with the general principle.

However, I will not be fighting to preserve the monarchy either; I have always believed that we do not need it. I believe that change will come but only when the people want it, and that is when it should occur. I rather resent the anti-British theme that has been introduced into this debate. My parents were English; my father came to Australia at 19 years of age and my mother when she was 17 years of age. They were married here and I was born here. I am proud of my British heritage. I would never dare attack Italy; I would not want to offend my friend and colleague the Hon. Franca Arena. Nor would I attack Greece, offending my friend the Hon. Jim Kaldis; or Lebanon, offending my friend the Hon. Eddie Obeid; or even China, which would offend my friend and colleague the Hon. Helen Sham-Ho. I would certainly never dare offend anyone from Ireland. So I rather resent it when people turn this debate into an anti-British debate because I am proud of my heritage and where I came from. I reflect the feelings inherent in all of us about where we sprang from by mentioning what Scott had to say in the "Lay of the Last Minstrel". I am sure many of you are familiar with this quote:

Breathes there a man with soul so dead,
Who never to himself hath said,
This is my own, my native land.

I understand the sentiments and philosophy of people who were born here and in other parts of the planet. I would like to say a few things about Prime Minister Paul Keating's remarks which have been mentioned in this debate. I listened carefully to his speech on the occasion of Her Majesty's recent visit. I found his remarks to be moderate, accurate and respectful. But there was a violent overreaction from crusty conservatives both in the United Kingdom and here. I might say they were not typical of British sentiment generally. What terrible people they trotted out on television to attack Paul Keating and the Australian Labor Party. They were pretty poor representatives of the British people.

Page 3781

I do not believe they represented the British people anyway. I harken back to that great British Prime Minister, Disraeli. In 1880 he said:

Everyone likes flattery; and when you come to Royalty you should lay it on with a trowel.

Things have changed since 1880, but after listening to some members in the House one would not think so. They have been laying it on with a trowel. They gush about royalty. It is absolutely unnecessary. There has been criticism of the role of Britain in the last great conflict, World War II. Many British died fighting for what they believed in on the Malay Peninsula. At that time Britain was fighting for its very life. It was about to be invaded by fascist armies from Nazi Germany. Quite frankly, it could not do any more than it did. Britain should not be held responsible for so-called deserting Australia. I do not believe she did. She was about to fall herself. However, the great Australian Prime Minister John Curtin was very right to recall Australian troops from that theatre of war and bring them back to Australia, against the wishes of that crusty conservative, Winston Churchill, who wanted to keep Australian troops there. John Curtin did the right thing. He later turned to the United States of America to develop the

alliance which saved this country at that time of great conflict.

I pay tribute also to the British tradition, as have other honourable members, which we all owe something to. Our language, culture, law, Parliament and very way of life has come from British tradition. I have no argument whatsoever with what is decided by Australians about the monarchy. However, I will fight to retain our membership of the Commonwealth. Even if Australia became a republic, I would fight to keep Australia within the Commonwealth. I was in London at the time of the terrible assassination of the Indian leader, Rajiv Ghandi. I was one among other representatives of the Commonwealth countries who went to the Indian High Commission to pay respect to India on the occasion of its loss. I was very moved by the feeling of kinship between people from all races in the Commonwealth who came to pay tribute to that Indian leader. India is a republic, but it is very much within the Commonwealth. Australia should always stay in the Commonwealth. I will fight for that. I just wish that some elements of the republican movement would cease their anti-British attacks. They are not desirable; they are not necessary; they are offensive to many people; and it weakens their cause and their argument. I believe that Australia will one day become a republic. When Australians decide to do so, I hope it will be without the rank bitterness and some of the sheer nonsense that has been put forward in this debate.

The Hon. BERYL EVANS [4.2]: I have great pleasure in supporting the motion moved by the Hon. J. M. Samios. I cannot find anything of real substance that would convince me that Australia should become a republic. So much superficial rhetoric seems to monopolise the reasons given for change - for example, the suggestion that the sooner we become a republic and the sooner we abolish all the nonsense of honour systems, royal visits and British nostalgia, the greater will be our chance of survival. Survival from what? Is our survival dependent upon a position between what we have now - a monarchy - and a republic? Some are still opposed to the honour system. Many Australians receive honours from such other countries as France and America. Are we not to receive these also? So far as royal visits are concerned, I cannot name any country that has not welcomed a royal visit and, by so doing, been disadvantaged. How does one look at the future without looking back to the nostalgia of the greatness of the British Empire and the Commonwealth of Nations, of which we are a part. This era played a very real part in our development through belonging to a group of nations. If we progress towards having no loyalty to anyone but ourselves, we will join the ranks of the

Page 3782

isolated. One of the greatest problems in the world today is lack of communication between people and nations. To isolate ourselves as a republic would reduce the communication we have now, not only with those who share our Crown but also with other nations. It leaves us as a very small fish in a very large ocean.

It is said that we are making use of someone else's monarchy. It is argued that a country thousands of kilometres away from Britain, now inhabited by many people not of British origin, should free themselves of the forms and customs of a far away land and fashion its own distinctive system. We draw three important benefits from Britain. The first is a functioning system of constitutional monarchy, the result of hundreds of years of constitutional development in the direction of liberty. The modern British Crown is a symbol of liberty, not repression, and remains the ultimate bulwark against the illegal use of power by a government. The Queen, as the Head of State of this democracy, inspires loyalty and a vote for a powerful sense of allegiance and therefore national unity. Where she lives is irrelevant. For Australians living in Broome - and I suppose all honourable members know where Broome is - there is little difference between Buckingham Palace and Yarralumla. The royal family is a ready-made, off-the-shelf, non-political provider

of a Head of State; a repository of personal and family values that cannot be guaranteed by a locally organised system of election or appointment.

The argument that people of non-British origin find the institution of a British monarch distasteful is completely unpersuasive. People have come to Australia to enjoy the fruits of the liberal tradition developed primarily in Britain. They do not come here to be oppressed by Britain. They come here for freedom and prosperity, and the benign nature of the British monarchy is surely a symbol of these benefits. A moment's thought about the twentieth century history of the countries from which most of the non-British migrants have come reinforces this perspective. The other side of the coin in this debate on the monarchy is: what would it be replaced with, and would that be better? Do we really want to spend enormous amounts of time arguing about what kind of precedent we should have, how the president should be elected and so on? There are many more important issues in this country on which we should be spending our time and energy.

For Australia to have a non-political president, by appointment to be ratified by a vote of both Houses of the Federal Parliament, would be a contradiction in terms. How could such a person be non-political? He or she would have to be supported by someone or by some party. If it is suggested that Australia is to have an executive president, as in the United States of America, then the focal point is an office occupied by a person who would be frequently criticised and often abused by the electors. A presidency would collect around it a group of elites in exactly the same way as the Crown is now accused of doing by the republicans. There would be the same desire for people to attend a presidential function as there would be to attend a royal garden party. Human nature does not change with the whims of political decisions.

Let us consider some more rhetoric: the monarchy glamourises our stuffy conservatism, our failure to link ourselves with Asian countries, our failure to develop the north, our failure to develop technology. How can anyone today seriously say that there is a correlation in Anglo-Australian policy? The simplest and most often quoted example used to prove this is our participation in Vietnam without the British and the separate decisions taken at different times for the recognition of Red China. Since Britain's entry into the Common Market, we have linked ourselves more and more with Asian countries. This to me is a normal economic progression and completely unrelated to the relativity of a monarchy or a republic. On developing the north, will Australia being a republic ensure that we make more responsible policies than we make now as a

Page 3783

monarchy? It could be due to many reasons: that technology has lagged in some areas; geographic isolation; Government policies; and so on. We are repeatedly told that our migrants are offended by the monarchy. Some appear to be offended by the English language, compulsory voting, and our eating and drinking habits. Are we to change these too to please a few? Surely, it is not too much to ask them to accept some of our customs. We all have so much to learn from one another.

Ad nauseam - to me, at least - such people as Donald Horne have continually repeated their antagonism towards the flag and the Crown. Why is there this repugnance to our heritage, this cry for a so-called identity. I do not understand this attitude. To me it displays an immaturity in these people. I know we have an identity. We have so many things of which we can be proud. We are a people of a developing country with a potentially tremendous future; we have rich resources of a quality and quantity we are only just beginning to realise. We are proudly Australians. Those who do not believe or understand this belong to the past and not to the future. I know that I can go anywhere in the world today and say, "I'm an Australian", and it means something. It does not just mean kangaroos, koalas, meat pies and Holden cars. Being Australian now

gives us a place to stand in the world and be recognised as such. Those who feel that they must be branded by signs and songs and heralded as Australians before Australia can be recognised as a nation live in the past.

Finally, let me mention the flag, for the benefit of the Hon. Franca Arena, if for no one else. I will not see a new flag proclaimed for much the same reasons as I believe the monarchy must be retained. The two issues are different in scale, of course, as the constitution is infinitely more important than symbols. The presence of the Union Jack in one corner of the flag appears to symbolise to our multicultural society subservience to Britain. To do so is to misread the symbolisation. That quarter of the flag which is the Union Jack reminds me of the inheritance of liberty and cultural freedom; of our history, our heritage and our very beginnings; of my ancestors who came to this land and carved out the beginnings of this nation: it does not symbolise domination. The remaining quarters of the flag with the Southern Cross in a blue sky and the seven-pointed star of the Federation of the States and Territories symbolises our uniquely Australian contribution, past, present and future that builds our inheritance and extends its nature. The flag is an authentic home-grown symbol springing directly from the consciousness of Australian nationhood. Interestingly, the flag of Hawaii also has the Union Jack on it as part of its heritage and history. The Australian flag was designed and came into being at the beginning of Australian Federation. I offer the following quote:

The flag that is now Australia's National flag, which is based on the blue ensign, is a very beautiful flag and you would probably believe the most beautiful flag in the world.

Few Australians would argue with that forthright statement but many would be surprised at its source - the controversial political Judge H. B. Evatt, speaking as the Leader of the Opposition in 1953. Since then the flag has been flown on all significant national occasions, from the beaches of Gallipoli -

The Hon. Franca Arena: On a point of order. A ruling was made earlier that this debate is about whether Australia should be republic or monarchy. The honourable member has been speaking about the flag for a considerable time. The Opposition has been patient, but the debate is not about the flag. I ask that the honourable member be requested to refrain from commenting on a topic that is not referred to in the motion.

The Hon. D. J. Gay: On the point of order. Earlier a ruling was made on a similar point of order taken by the Hon. I. M. Macdonald that the flag could be mentioned in debate if linked to the monarchy. The Hon. Franca Arena is seeking to canvass that earlier ruling.

The PRESIDENT: Order! There is no point of order but I ask the Hon. Beryl Evans to link her comments to the motion.

The Hon. BERYL EVANS: To suit the convenience of honourable members and because of the lateness of the hour, I shall skip the story I was about to tell the Hon. Franca Arena. That will be her loss - not mine. The first flag flown in this country was John Bowman's flag in 1806. John Bowman was my sons' ancestor. My family and my husband's family were those early settlers who had the courage to migrate to this land and prepare a path for others to follow. It amazes me and offends me that the new settlers to this land today are unable to say thanks for the peace and liberty they have gained. Not only do they want to change our way of life, but they want to go back to the very standards from which they had escaped. Our heritage and traditions are British and as such include our attachment to the concept of the monarchy and to the person of a

monarch. No elected or appointed Head of State will ever achieve the station and degree of respect that is enjoyed by our present Head of State and the system that produces it. We have the oldest democratic constitutional monarchy in the world. It was the first of its kind to have full adult suffrage with women entitled to stand for elected office. It has given us a stable, peaceful, tolerant multicultural society in which migrants have found a haven from conflict, a new start in life. It is a society that welcomes the contributions they make. It is because I love this country that I believe that democracy, justice, equality and liberty need to be safeguarded by an institution that is trusted by the people and that is above the sordid level of daily politics. This why I support the Crown. I am a monarchist.

The PRESIDENT: Order! It being 4.15 p.m., proceedings are interrupted to permit the Minister to move the adjournment of the House should he so desire.

The Hon. E. P. Pickering: No, I do not so desire.

The Hon. J. M. SAMIOS [4.16]: I seek the leave of the House to move a motion to suspend so much of the standing orders as would enable Government business to take precedence after 4.15 p.m. I do so because of the historic nature of this particular motion. Many members have contributed to the debate and others have expressed a wish to do so.

Leave not granted.

POLICE SERVICE (VOLUNTEER POLICE) AMENDMENT BILL

Bill introduced and read a first time.

Second Reading

The Hon. E. P. PICKERING (Minister for Police and Emergency Services and Vice-President of the Executive Council) [4.17]: I move:

That this bill be now read a second time.

This is a simple piece of legislation. However, the issues addressed are very important. Over recent years the New South Wales Police Service has adopted community-based policing as its primary operational strategy. police operations are now more orientated towards serving the community. Better relationships have now been built with local communities through the deployment of beat police and increased police participation in local forums and activities. The proposed introduction of volunteers in policing is a

Page 3785

logical extension of community-based policing. As honourable members are aware, the tradition of volunteer service to the community is a particularly strong one in Australia. In New South Wales, volunteers play a crucial role in the emergency services, for example.

However, the concept of using volunteers in policing is new to Australia. This is not the experience overseas. In the United Kingdom, Canada and many parts of the United States, volunteers have a long history and continue to play an important support role in providing policing services to the community. I believe the time is now right to trial the concept in New South Wales. No specific overseas scheme would be suitable for complete adoption in New South Wales. Various components need to be used to fashion a scheme particular to New South Wales, which would take account of local

conditions and customs. In particular, any scheme would need to build upon community based policing and the New South Wales tradition of volunteerism. I have, of course, been aware for many years of the utilisation of volunteers in policing in overseas jurisdictions. My attention to the potential benefit of the deployment of volunteers in New South Wales was first aroused by reading a report from two New South Wales commissioned officers who examined the concept as part of an executive development visit to Canada.

Subsequently, I arranged for the concept to be studied in more detail during an overseas study tour by representatives of the Police Service and the Police Association. More recently, the introduction of volunteer policing and the design of an appropriate trial have been the subject of deliberation by a task force established by the Commissioner of Police. Conscious of the need for informed public debate on the issue, I recommended and Cabinet accepted that a green paper be issued, based on the task force report. I launched the green paper on 12th February. As part of the launch, I wrote to all honourable members. The period for public comment in response to the green paper expired on 27 March. Relatively few comments have been received and public debate has been muted. However, apart from the attitude of the unions representing members of the Police Service, most notably the Police Association, many responses have been supportive.

All the principal unions in the Police Service - the Police Association, the Commissioned Police Officers Association and the Public Service Association - have expressed their strong opposition to the concept of volunteer policing. Frankly I find this attitude disappointing, if somewhat understandable, in that the unions are not prepared to give the concept a fair trial and then make up their minds based on objective evaluation criteria. However, I acknowledge that the very vocal opposition of the Police Association, in particular, may make the conduct of a trial difficult. It is not my intention that police officers be forced to participate in a trial. Indeed, I believe the trial should proceed only if and when individual police patrols are prepared to participate voluntarily in the trial program.

Given the importance of the matter and the continuing attitude of the unions the Government believes the opportunity for public debate should be extended. Therefore, I will be leaving the bill to lie upon the table of the House until the budget session. This will enable all interested parties to study exactly what legislative changes are proposed. Virtually all responses to the green paper, including those of the unions, were supportive of the concept of volunteers in policing. As outlined in the task force report, volunteer policing involves the use of citizen volunteers in community policing centres such as at the pilot program at Airds, near Campbelltown, and in victim support roles. No legislation is required for these initiatives and I have directed that the Police Service
Page 3786
actively pursue this concept.

I now turn to the provisions of the Police Service (Volunteer Police) Amendment Bill. As I said in my introductory remarks, this is a simple piece of legislation. It is proposed to amend the Police Service Act to provide for the engagement of police volunteers, known collectively as the volunteer police. As the introduction of volunteer police is to be on a trial basis the bill contains a sunset clause - in clause 91H - which will repeal the amendments on 31st December, 1994, unless the Parliament passes amending legislation or the clause is repealed sooner. This is a clear indication from the Government that it approaches the trial with an open mind. For the benefit of honourable members I will be tabling explanatory notes prepared by the Parliamentary Counsel which explain the provisions of the bill. It is not my intention to

speak to the specific clauses of the bill in any detail. I will point out that while the volunteer police are included in the Police Service the bill makes it clear that police volunteers are not police officers for the purpose of the Act. However, police volunteers are required to share the same mission and values as persons in other branches of the service and are subject to the general management and control of the Commissioner of Police.

Item (6) to schedule 1 defines the powers, duties and terms of service of police volunteers. The main features include that: police volunteers while on duty have the same powers, authorities and privileges as special constables; police volunteers are to be appointed for a fixed term, but may be dismissed for any reason the commissioner thinks sufficient; the commissioner will also determine the functions of police volunteers, but these must include that the functions are to be exercised under the supervision of a police officer at all times; complaints against police volunteers are to be handled in essentially the same way as complaints against police officers; police volunteers are to be issued with such equipment as the commissioner determines but not with firearms. The bill contains a number of consequential amendments to the Police Service Act and other legislation governing the Police Service. The bill departs from the green paper in that it does not prescribe accident cover for volunteer police by way of amendments to worker's compensation legislation. Rather such cover will be provided by an insurance policy taken out by the Police Service. Volunteer policing is a practical way of increasing community-based policing. The matters before the House today form but one variation of the use of volunteers in policing. As Minister for Police and Emergency Services, I am convinced that volunteers have as important a contribution to make to policing as they have done in the other parts of my portfolio. Accordingly, I believe that the use of volunteers in the Police Service deserves a fair trial under a variety of conditions.

The model of volunteerism which is the subject of this bill involves the use of uniformed volunteers undertaking a range of police functions. The bill clearly defines the limits under which these volunteers will be engaged. The bill gives the commissioner power to determine what functions these volunteers will perform under police supervision. I would imagine that their deployment would be very much in accordance with the proposals contained in the green paper. As honourable members will recall from their reading of the green paper, the volunteer centre of New South Wales will be involved with the Police Service in choosing sites for the trials. I have received a number of approaches from interested parties about being involved in the trial and will be passing these on. I have said on a number of occasions that volunteer policing will not succeed without the good will of all concerned. That good will need only extend to allowing a fair trial of the concept. This legislation is an important stage in allowing such a fair trial. As I said earlier given the importance of the matter the Government believes the opportunity for public debate should be extended. Therefore, I will be

Page 3787

leaving the bill to lie upon the table of the House until the budget session.

Debate adjourned on motion by the Hon. R. D. Dyer.

MINING BILL

Second Reading

The Hon. E. P. PICKERING (Minister for Police and Emergency Services and Vice-President of the Executive Council), on behalf of the Hon. Virginia Chadwick [4.28]: I move:

That this bill be now read a second time.

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

Leave granted.

It originally had been intended that this be simply a bill which would amend the Mining Act 1973. The result would have been such a complex bill that Parliamentary Counsel recommended bringing forth a new bill. Many provisions in the bill, including those relating to opal prospecting licences, agricultural lands, access to lands and the Mining Museum are unchanged. The Coal Mining Act will be repealed and incorporated in this bill in simpler form. The amendments brought forward are the results of years of deliberation by officers of the New South Wales Coal Association, the Chamber of Mines, Metals and Extractive Industries, the Department of Planning and the Department of Minerals and Energy. Few, if any, practitioners involved in the application for, or the processing of, mining and exploration titles under the Mining Act 1973 or the Coal Mining Act 1973 would say the process is uncomplicated. Indeed, most would agree it is unnecessarily very complicated indeed. There are currently ten titles under these Acts. Prospecting licences, honorable members would recall, were abolished last year.

It is proposed to streamline administration by integrating the provisions of the Coal Mining and Mining Acts. The Mining Act now will include coal, shale and methane - where methane is extracted as part of a title for coal. The existing cumbersome system of ten forms of title is being replaced with just five titles: the opal prospecting licence - this is unchanged - mineral claim, exploration licence, assessment lease and mining lease. These proposals are aimed at improving and streamlining the current mining approvals process. The effect will be to remove duplication between mining legislation and planning legislation. The Environmental Planning and Assessment Act is not being changed. In line with this Government's comprehensive environmental policies, considerable emphasis is being placed on the environmental aspects of mining. In future, it will be a requirement that private mining agreements be registered with the Department of Mineral Resources. Environmental and rehabilitation conditions, including the lodgment of a security deposit, will be imposed on registration. This will ensure proper rehabilitation of private lands used for mining. Existing provisions of the Coal Mining Act 1973 and the Mining Act 1973 relating to environmental protection and rehabilitation are being brought across into the new Act. The environment is given careful attention both before and after an authority is granted.

The Mining Act will continue the major emphasis on rehabilitation of land following mining activities. All mining projects will continue to require approval under the Environmental Planning and Assessment Act. The bill will ensure that the public is aware of all exploration and mining proposals. As soon as possible after an authority is applied for, granted, renewed, transferred or cancelled, a notice must be published in the *Government Gazette*. This will ensure accountability. In line with the Government's deregulation policy, fossicking licences are to be abolished, although people will still be able to fossick. It is also proposed to abolish mining districts, the Prospecting Board, licensing of tourist activities on mining titles, licences to remove tailings and licences to construct tunnels towards further deregulation and simplification of titles. Existing provisions which relate to the payment of rent and front end cash payment on lease grant are to be repealed. Rent will become part of future compensation arrangements.

It is proposed to proclaim mineral claim districts similar in concept to an opal prospecting area. Before such a district is proclaimed, the local community, including small scale- miners, will be consulted. It will also be necessary to obtain the concurrence of local councils and relevant government authorities. Rules and conditions will apply to a minerals claims district. It will be

possible, after marking out an area, to apply to a Mining Registrar for a mineral claim in a mineral claim district and have it registered without delay. The claim will be registered subject to conditions which may include rehabilitation of the claim area and the lodgment of a security deposit. In the case of land outside a mineral claim district, before making an application the land must be marked out and adequate notice given to the occupier of the land. The occupier may object on the basis that the land is used for agricultural pursuits. A mineral claim will be registered, subject to conditions, over an area not more than two hectares and for not more than five years.

Before commencing work on the claim development consent, if required by planning legislation, must be obtained. The current compensation provisions will continue to apply. They will, however, be expanded to provide for compensation to owners and occupiers of private land affected by claims. The new exploration licence is basically unaltered from the current exploration licence and coal authorisation. It will authorise the licensee to carry out exploration activities in an exploration area for an initial period of up to five years. An exploration licence does not necessarily guarantee the grant of an assessment lease. The assessment lease is a new concept which will significantly improve the responsible progression from the exploration stage to the mining process. The Minister will be able to grant an assessment lease to cover the period between exploration and mining. This will enable further detailed prospecting and feasibility and other studies to be carried out so as to determine the economic viability of the area of interest and/or retain the area until markets or other circumstances are appropriate for development. Industry sees a need for this form of title, which has already been provided in some other States. The maximum term for holding an assessment lease will be five years renewable for further periods of five years if the Minister considers it necessary. Before an assessment lease can be granted, notice of the application for such a lease is required to be given to all materially affected government authorities and the Director of the Department of Planning. If there is a dispute which cannot satisfactorily be resolved the matter must be referred to the Premier who will arbitrate.

Environmental matters that may in some circumstances arise, relating to the decision to grant an assessment lease will be considered under part 5 of the Environmental Planning and Assessment Act. As is the case at present, the granting of a mining lease will be subject to the applicant fulfilling the requirements of the Environmental Planning and Assessment Act and of relevant statutory authorities. Consent is also required from landholders where agricultural land or improvements are included. At present the Minister will not be able to grant a mining lease without the consent of materially affected Government authorities and the Director of the Department of Planning. Where consent of relevant authorities is withheld, the Minister will refer the application to the Premier for resolution. The automatic right of objection to the mining warden by a landholder objecting to a Mining lease will be removed. This existing power duplicated the development application process under the Environmental Planning and Assessment Act. Where this does not apply the warden will inquire and report. Nevertheless, if representations are made, the Minister still has the power to direct that the mining warden conduct the inquiry. This removes duplication on environmental matters which are properly dealt with during the environmental impact assessment procedure. Matters such as compensation and conflict of title will still be able to be dealt with by the warden.

The bill provides for the potential grant of mining leases for longer periods than the 21 years presently allowed. If it is proposed to grant a mining lease for more than 21 years it will be necessary to obtain the concurrence of the Premier. One factor which discourages mining investment in this state is a lack of security of title for mining activities. At the request of industry, it is proposed to provide that title cannot be challenged in any legal proceedings commenced later than three months after the notification of a grant in the *Government Gazette*. This accords with similar provisions in the State's planning legislation relating to development. Large mining applications involve expenditure of many millions of dollars. It is unrealistic to

expect companies to undertake large financial commitments and commence operations while it is uncertain that their title to mine is valid. The procedure for consolidating leases is being simplified. This should enable the issue of consolidated leases to be expedited to the mining industry's obvious benefit. It is proposed to provide that only a magistrate is eligible for appointment as a mining warden. At present there is no requirement that a warden be legally qualified. This will put beyond doubt the judicial nature and independence of the position. Specific rules will be formulated for wardens courts. It is also proposed to streamline the workings of the wardens courts. For example, every warden will be a warden for the whole State. This will mean that an injunction of extraordinary urgency will be able to be obtained from any wardens court. The definition of compensable loss is being clarified to

Page 3789

make it clear that damage to crops will include fruit and vegetables, and interference with stock on land will include products of that stock, for example milk.

On 30 May 1991, the New South Wales Court of Appeal handed down its decision in *The Chief Mining Warden V The District Court of New South Wales and Others*. The Court of Appeal held that certain decisions of the mining warden, which up to then had been considered to be administrative in nature, were in fact of judicial character. This means, in effect, that the District Court would have jurisdiction to entertain appeals from wardens' courts in purely administrative matters such as cancellation of registration of a claim. It has never been intended that the District Court should have such an appellate jurisdiction in such matters. Clause 337 of the bill makes it clear that there is no appeal against a warden's administrative functions.

The bill has been further reviewed by the New South Wales Coal Association and the Chamber of Mines Metals and Extractive Industries (NSW), and many of the suggestions of those industry bodies have now been incorporated. The chamber, on the advice of its legal advisers, Mallesons, submitted that the bill should contain a provision precisely stating when property in minerals passes to a miner. Similar provisions are contained in recent Victorian and Queensland legislation. The chamber believes that lack of such a provision in this bill could create difficulty in some joint ventures where foreign investment is sought. The Government is keen to encourage investment in mining in this State and has agreed to the chamber's request in this regard. Clause 11 of the bill proposes that any lawfully mined mineral becomes the property of the miner when the material from which it is recovered is severed from the land, at the time it is dug from the ground.

Clause 161 proposes that any person claiming a legal or equitable interest in an authority may apply for registration of that interest. In any subsequent legal proceedings, a registered interest will have priority over an unregistered interest, and an earlier registered interest will have priority over a later registered interest. The period during a caveat can remain in force has now been extended from 28 days to three months. Additionally the period for which the warden can issue a permit to enter lands to carry out environmental studies has been increased from six to 12 months. This will remove the need for the warden to conduct a fresh hearing if an environmental study, which may be quite expensive, takes longer than six months. Mining plays an essential part in this State's economic development.

Let me remind any such honourable members that coal provides 95 per cent of this State's electricity, that coal is the nation's largest export earner and that we are the world's largest coal exporter. More than 1000 dollars in export earnings for each New South Wales family every year comes from coal. The mineral industry contributes significantly to the well being of our State. In 1990-91, production was valued at about four billion dollars or 3 per cent of gross state product. Coal is the State's largest export revenue asset, earning nearly two billion dollars. Metalliferous ores and metal scrap contributed another 300 million dollars. Open cut mining by its very nature affects the landscape. What is important is that when mining operations cease the land is responsibly rehabilitated for other productive uses. The environmental conditions imposed before an authority or mineral claim is granted will ensure full rehabilitation of the land. If the mining

operator does not do this his security deposit will be used to ensure rehabilitation. When authorities are renewed the amount of deposit will be reviewed and increased if circumstances indicate this is desirable.

I believe ecologically sustainable development is the answer to problems in this area. We in New South Wales have been practising this long before Canberra ever found out about it. This State's future prosperity depends on our mining industry. This legislation will encourage future investment for New South Wales. Of prime concern to the mining industry has been the length of time taken to gain an approval to mine. The proposals contained in this bill will reduce that time to a minimum whilst still observing stringent development controls and retaining legitimate rights of objection. Productivity gains will be achieved by removing duplication. Western Australia, Queensland and Victoria have recently simplified their mining legislation and those States are already reaping the benefits.

The proposals in this bill will speed up administrative procedures, simplify the various mining authorities, remove over-regulation and, within the bounds of strict environmental controls and rehabilitation of land requirements, free the mining industry so it can get on with exploration and stimulate investment in New South Wales.

I commend the bill to the House.

Page 3790

The Hon. R. D. DYER [4.28]: The Opposition welcomes this bill. I refer the House to the television advertisements by the mining industry which show that mining is absolutely essential. Our modern way of life depends on the viability and continuance of the mining industry. Honourable members would have seen the advertisement in which light switches disappear, walls fall down and so on. We tend to take things such as being able to switch on a light for granted in our daily lives. Without the mining industry modern conveniences would not exist. Mining not only is essential for our modern way of life; it is also essential to the health of the economy of this nation and the State of New South Wales. I remind the House that one commodity, coal, provides 90 per cent of all electricity generated in this State; that it is the nation's largest export earner and that Australia is the largest exporter of coal in the world. The mineral industry in this State contributes significantly indeed to the economic well-being of New South Wales. In the last financial year, 1990-91, mineral production was valued at about \$4 billion, or 3 per cent of gross State product. Coal is the State's largest export revenue asset, having earned nearly \$2 billion in 1990-91. Metalliferous ores and metal scrap, which must be added to that figure, contributed another \$300 million. From those few brief statistical details it can be seen that coal and metalliferous ores contribute significantly indeed to the economic welfare of New South Wales and Australia. The purpose of the bill is to repeal and re-enact the Mining Act 1973 and the Coal Mining Act 1973 and to consolidate the existing provisions of those two Acts into one enactment. Clearly that will be of considerable convenience to the mining industry.

By way of brief background, I remind the House that during the 1980s many representations were received from the mining industry - and I include the previous Labor Government in that statement - to the effect that the Mining Act 1973 and the Coal Mining Act 1973 could be improved substantially. Extensive discussions took place with representatives of the industry and other parties regarding those approaches. Following those discussions, a white paper was produced at the time the Hon. Ken Gabb was Minister for Mineral Resources. That white paper was awaiting approval from the then Premier, the Hon. Barrie Unsworth, at the time of the change of government from the Labor Government to the present non-Labor Government. It is relevant to note that

the bill incorporates the major provisions contained in that white paper. The present Government introduced the new Mining Bill, that is, the consolidated measure incorporating the provisions of the Mining Act 1973 and the Coal Mining Act 1973, prior to the 1991 State election. Because of the onset of that election, regrettably the measure did not proceed beyond the Minister's second reading speech in another place. At that time the Hon. Neil Pickard was Minister for Minerals and Energy.

During the period between the introduction of what might be termed the present bill and the bill in its current form, some new measures were incorporated in it. For example, following a decision of the Court of Appeal, which declared that what were considered to be administrative functions of the Mining Warden were in fact judicial in nature, the bill makes clear that no appeal is available against a decision of the Mining Warden in the exercise of his administrative functions. That provision certainly has the support of the Opposition. Another new provision inserted in the bill clarifies when property in minerals passes to the miner. That has been a matter of some concern to the mining industry, and a provision has been inserted to overcome difficulties which have arisen in some joint venture arrangements where foreign investment is involved. I note also in passing that a similar provision relating to when property in minerals passes to a miner has been included in interstate legislation. I refer in that regard to the States of Victoria and Queensland. In addition to the consultation process to which I referred earlier, the opportunity has been taken in this bill to give effect to a number of other

Page 3791

significant reforms. For example, the existing mining legislation has been improved by reducing from 10 to five the number of different mining titles which can be granted. That clearly will be of advantage to the mining industry. To the extent that the title process is rationalised and simplified, great efficiency will be injected into the process leading to the granting of mining titles.

Another reform included in this measure is the introduction of what might be termed a retentional holding form of tenure between the exploration phase and the mining phase of mining development. The bill also contains provisions to facilitate the speeding up or streamlining of the title application process. The bill seeks to eliminate duplication between mining legislation and other legislation. A number of concerns about this measure were expressed to the Opposition by the environmental movement. Those concerns were considered carefully, particularly in another place by my colleague the honourable member for East Hills, Pat Rogan, who is the Opposition spokesman on mining and energy matters. As a result of those approaches to the Opposition, it is my understanding, and I certainly have advice to this effect from Mr Rogan, that a number of amendments were inserted in the bill in another place. I am assured that to a large degree those amendments meet the concerns expressed by the environmental movement. In saying that I do not suggest to the House that the concerns of the environmental movement have been allayed totally. The movement probably still has on its agenda third party appeals regarding mining developments.

The Opposition takes the view that to permit such appeals would be going too far and would inject undue uncertainty into the process of obtaining a mining title. It has to be understood that before mining developments can proceed, many millions of dollars, sometimes tens of millions of dollars, have to be invested. If amendments along those lines were to be moved in Committee, I indicate firmly on behalf of the Opposition that they will not have our support. However, I believe that to a large extent the Opposition has addressed the concerns of the environmental movement. I note also that the bill places considerable emphasis on environmental aspects of mining, as mentioned in the Minister's second reading speech. For example, in future, private mining agreements will be required to be registered with the Department of Mineral Resources. In addition,

environmental and rehabilitation conditions, including the lodgment of a security deposit, will be imposed upon the registration of those agreements with the department.

The provisions of the Coal Mining Act 1973 and the Mining Act 1973, relating to environmental protection and rehabilitation, have been taken from the existing legislation and included in the bill currently before the House. I note that the mining legislation will continue the major emphasis that has existed in the past with regard to the rehabilitation of land following mining activities. As part of my background, I served on the personal staff of the Hon. Ron Mulock for two years before I entered this House in 1979. During part of the time I was with Mr Mulock, he was Minister for Mineral Resources, and I became very much aware of the emphasis that the Department of Mineral Resources places on rehabilitation of land following mining activity. That rehabilitation includes the lodgment of security deposits to ensure that the work is done or, if it is not done, that the bond or deposit lodged was sufficient to meet the cost of the rehabilitation. Modern technology allows for rehabilitation to a very sophisticated and advanced degree. It no longer happens that, following mining activity, a dreadful mess is left which scars the landscape. That should no longer occur. It is a thing of the past. Rehabilitation can and does occur very successfully indeed.

Another particular provision of this bill to which I shall make brief reference - and which I outlined earlier - concerns the new retention or holding form of tender
Page 3792

between the exploration and mining phases of project development, which has been introduced under this bill. In that regard, I note that the Minister will be able to grant an assessment lease to cover the period between exploration and mining. This provision will enable further detailed prospecting, feasibility and other studies to be carried out to determine the economic viability of the area of interest to the particular miner and permit a particular applicant for a mining title to retain the area until markets or other circumstances are appropriate for development. The mining industry has seen a need for that new form of title and I believe it is a worthwhile initiative. The holding of an assessment lease, to which I have just referred, will be permitted for a period of five years, but it will be possible to renew assessment leases for further periods of five years if the Minister considers it necessary or appropriate.

I note also a particular provision of the legislation to the effect that the bill provides that only a magistrate is eligible for appointment as a mining warden. Under the existing law there is no requirement that a warden should be a magistrate - or, indeed, even be legally qualified. I believe it is appropriate that a mining warden - who is, after all, operating in a quite technical area - should be legally qualified; indeed, should be a magistrate. The Minister has noted that this will put beyond doubt the judicial nature and independence of the position of mining warden. The last matter to which I wish to refer concerns the drafting of the legislation. Honourable members will observe that it is drafted in plain English, which is a welcome change. All measures in the bill are very clearly expressed. It is a major piece of legislation, not only in regard to its importance but in regard to its content and weight, and I am delighted to see that ready understanding of it will be facilitated by its drafting in plain English rather than what might be termed legalese. A lot more could be said about the bill but, having regard to the pressure of business before the House, I conclude with those few remarks and warmly welcome and support the bill on behalf of the Opposition.

The Hon. R. S. L. JONES [4.45]: It is unfortunate that the Minister who introduced this bill in the lower House, the Minister for Natural Resources, Mr Ian Causley, is virulently anti-green. In the past four years he has shown himself to be incessantly anti-conservation and anti-wilderness. On television recently he called the

conservation movement the "green rot". Mr Causley and other anti-environmentalists continue to propagate the myth that the conservation movement in New South Wales is seeking to stop all mining. That is clearly an outrageous lie. The conservation movement is well aware that we all depend on mining to maintain our current lifestyles. I, for one, could not even read this speech if it were not for mining; I would not be able to get home tonight; I would not be able to cook a meal; I would not be able to drink a glass of water; I would not be able to watch television. Honourable members can see the results of mining everywhere. It is a ridiculous proposition to suggest that I or any other conservationist is opposed to mining per se. The mining industry is one of the key components of the New South Wales economy. Our standard of living, indeed our quality of living, would be significantly reduced without the mining industry.

I want to place some facts on the record to indicate just how important the New South Wales mining industry is and how it has increased in the past few years. I quote from the 1991 New South Wales Pocket Year Book in respect of mining and energy. In 1983-84 the value of the gross domestic product of mining in New South Wales was \$1.56 billion. The mineral industry Year Book Australia - and I do not have the date of the publication - shows that in 1988-99 the value had risen to \$2.1 billion, value added, the turnover was \$3.58 billion, and the mining industry employed 19,737 people. Honourable members will realise from those figures just how important the mining industry is. In 1990-91 New South Wales produced 33,939 tonnes of copper, 7,258

Page 3793

kilograms of gold, 233,058 tonnes of lead, 66,339 tonnes of titanium dioxide, 46,645 tonnes of zircon, 312,702 kilograms of silver, 298,238 tonnes of sulphur, and 376,917 tonnes of zinc. They are significant tonnages. Apart from those, many other minerals are mined in this State - for example, antimony, barite and various clays which are exceedingly important to the mining industry in New South Wales. No one denies that mining is very important to Australia generally.

Australia is the world's largest producer of bauxite and alumina. In 1988-89 the value of mineral exports rose by 9 per cent to a record \$24.5 billion, according to the *Mineral Industry Yearbook - Australia*. Though I and most other people in New South Wales regard the mining industry as being extremely important, I take issue with the environmental and social irresponsibility of some segments of the industry. It was the National Lead Incorporated subsidiary, Mineral Deposits Limited, that first prompted me to stand for Parliament in 1972. At that time, Mineral Deposits Limited was busy destroying some of the most magnificent dune country at Myall Lakes on the coast of New South Wales. That area is now a beautiful national park, though it was badly damaged by that company. It has been proved that it is impossible to restore a pristine wilderness once it has been destroyed by a mining operation. Some parts of the environment are too precious, too rich to allow any company to destroy them. Myall Lakes and wilderness areas along the coastline, such as wetlands, littoral rainforest, koala habitat and old growth habitat should never be disturbed. They should be allowed to remain in their pristine condition to maintain the wilderness values and the habitat for rare and endangered species, and in addition to provide recreation areas in which local people as well as tourists may escape the stress of cities.

Tourism is our fastest growing and most valuable export dollar earner. It makes environmental, social and economic sense to retain these areas. The mining industry constantly complains that it has access to only 95 per cent of the State and wants access to the other 5 per cent of national parks. Some areas, not yet in national parks, are too valuable to be allowed to be destroyed by the mining industry or any other industry. There must be a balance. Surely the mining industry should be content with having access to, say, 95 per cent of undeveloped land in the State. The remaining 5 per cent,

either in national parks or other areas, is too precious to be allowed to be disturbed. For the sake of future generations of both people and the multitude of native species that inhabit New South Wales, the mining industry should co-operate by not seeking to destroy every last piece of wilderness in order to retrieve mineral resources. The environment movement has expressed some concerns to me about this legislation in a letter dated 27th April, which in part reads:

No exemptions from Environmental Planning and Assessment Act

Under section 65 (2) of the Bill mining leases can only be granted once development consent under the Environmental Planning and Assessment Act 1979 (EP&A Act) has been obtained, however under section 65 (3), once a lease has been granted, any conditions attached to the development consent by the consent authority are void if they are conditions which relate to mining and rehabilitation ("special purpose conditions").

Conditions which relate to mining and rehabilitation can only be attached to a mining lease by the Minister under the Mining Act. The only conditions which can be attached to the development consent by the consent authority under the EP&A Act are those which do not relate to mining or mining rehabilitation.

While the Minister must give local councils and Government agencies the opportunity to propose conditions to be added to the list (schedule 1, Part 2) the Minister can choose to completely ignore their proposals.

Page 3794

For example, a local council may grant consent on the condition that eucalypts are planted on the site afterwards. A lease can then be granted which does not require tree-planting, as the local council's development consent condition is now void.

This is effectively an exemption from the EP&A Act. The process of gaining development consent has been overridden and so becomes completely ineffective.

Any kind of exemption from the EP&A Act has been consistently and unanimously opposed by NSW environment groups since the Act was introduced.

The following is recommended:

Mining should be treated like any other development. Conditions attached to a development consent by a consent authority should stand. When considering whether to grant a mining lease the Department of Minerals should only be able to add additional conditions to the mining lease which strengthen or improve environmental protection measures.

Objections must be heard through the EP&A Act

Section 28 of Schedule 1 of the Bill is of major concern because it precludes any person entitled to object to the granting of development consent from objecting to the granting of a lease.

While much of the Bill merely re-writes the Mining Act 1973 and the Coal Mining Act 1973, this is a new process which is of major concern to the environment movement.

Although objections can be made to the development application, any gains made during this process may be completely overridden or ignored when the mining lease is being granted.

As explained above, the granting of development consent is a process with no substance and no power to determine the final form of the development. The objector has no right to object to the final form of the mining lease despite the fact that it may be completely different to the development consent and its attached conditions.

The movement recommends:

As this process of objection and resolution is an integral part of the development approval process, the outcomes of that process must be respected. Any person must be entitled to object to aspects of a mining development during both the granting of development consent and the granting of a mining lease.

Broad Standing to Ensure the Law is Enforced

As discussed above the Bill entrenches the unacceptable situation in which the only conditions which can be attached to a mining development under the EP&A Act are those which do not relate to mining or rehabilitation.

I seek leave to have the remainder of this letter incorporated in *Hansard*.

Leave granted. [*See Addendum.*]

The Hon. R. S. L. JONES: In summary, the Australian Democrats fully acknowledge the value of the mining industry to both New South Wales and Australia in general. However, we ask the mining industry to co-operate with the community - as represented sometimes by conservation groups and at other times by ordinary community groups - to speak with them and ascertain their problems in relation to certain developments, and to acknowledge that often these groups are correct when they object to certain areas being destroyed. The mining industry should work with communities to ensure that when mining does take place it will benefit New South Wales and not merely the company. It should be for the long-term benefit of the State and the community. Certain instances of mining, such as at Diamond Beach, are not of benefit to the community. Once again Mineral Deposits Limited want to mine this area, as it did at

Page 3795

Myall Lakes. It is clear to me and to others who have studied the Diamond Beach project that mining would be detrimental to the local community. It would be of more value to the community and to tourists to maintain the area in its present state. I ask the mining industry to be more sensitive to the needs of the community and to maintain more areas in a pristine state and not assume it can take over whole areas for mining. With that caution I accept that the mining industry is valuable and that my lifestyle would not be complete without it.

Addendum

This is compounded by section 74 which states that:

"While a mining lease has effect:

- (a) nothing in, or done under, the EP&A Act or an environmental planning instrument operates so as to prevent the holder of the mining lease from carrying on mining operations in the mining area; and
- (b) to the extent to which anything in, or done under, that Act or any such instrument would

so operate, it is of no effect in relation to the holder of the mining lease."

In contrast, a breach of the conditions attached to a consent for a non-mining development can be challenged in court by any person under the third party standing provisions of the EP&A Act.

Under this Bill, a person with a mining lease and with development consent who is breaching the conditions of that consent (i.e. those conditions which are not special purpose conditions) cannot be challenged under the EP&A Act because "nothing in . . . the EP&A Act . . . operates so as to prevent the holder of the mining lease from carrying on mining operations in the mining area.

In addition, as this Bill has no third party standing provisions, breaches of the conditions attached to the mining lease cannot be challenged in court by a third party either.

Third party standing is a well established principle in much NSW legislation (e.g. National Parks and Wildlife Act 1974, Heritage Act 1977, Environmental Planning and Assessment Act 1979, Environmentally Hazardous Chemicals Act 1985, Uranium Mining and Nuclear Facilities (Prohibitions) Act 1986, Wilderness Act 1987, Protection of the Environment Administration Act 1991).

It is essential to the effective enforcement of environmental laws because it ensures that both the private and public sector fulfil their legal obligations to protect the environment. It also allows the community to exercise its right to protect the environment, whether or not it is materially affected.

RECOMMENDATION 3: Breaches of both mining lease and development consent conditions should be publicly enforceable through third party rights of appeal under the EP&A Act. Conditions attached to mining lease should be considered to have been added under the EP&A Act. In this way, the implementation and enforcement provisions of that Act (i.e. broad standing, Commissions of Inquiry) can be activated. The Land and Environment Court is the relevant Court for the hearing of all appeals relating to the environmental impacts of a development, not the Warden's Court.

RECOMMENDATION 4: Third party standing provisions for challenging breaches, or apprehended breaches, of the Act should be introduced into the Mining Bill.

Environment protection must be mandatory

Section 237 of the Bill requires the Minister to take into account the need to conserve and protect a number of environmental attributes when considering granting a mining lease.

Section 238, however, does not ensure that any conditions will be added to a mining lease to conserve and protect the environment. It states that "The conditions subject to which an authority

Page 3796

or mineral claim is granted or renewed may include conditions relating to the conservation and protection of" these environmental attributes.

RECOMMENDATION 5: In section 238 of the Bill, replace "may" with "shall, where relevant,".

RECOMMENDATION 6: As the Bill refers to protecting the environment, yet contains no definition of 'environment', the definition from the Protection of the Environment Administration Act 1991 should be added to the 'Dictionary of Words and Expressions'.

Rehabilitation conditions must apply to all phases of mining

Under the Bill, rehabilitation conditions can only be attached to a mining lease or a mineral claim, but not to other mining authorities. This is despite the fact that both the exploration and the assessment phases of mining have the potential to damage the environment. It is also despite the fact that sections 237 and 238 require the Minister to consider the environment when granting any mining authority or mineral claim.

Exploration can include vegetation clearance, access road construction, bulldozing of seismic lines, use of explosives, trial mining, test drilling and the excavation of costeans (trenches); none of these are benign activities. The exclusion referred to here implies that these effects are insignificant.

RECOMMENDATION 7: To ensure that rehabilitation conditions can be attached to all mining authorities, replace "a mining lease" with "an authority" in section 239 of the Bill.

NPWS and EPA must approve rehabilitation conditions

The Bill requires that only the Commissioner of the Soil Conservation Service approve rehabilitation conditions attached to a mining lease. The Soil Conservation Service may be highly skilled in the physical aspects of stabilising the land, but it has little expertise in choosing appropriate species and management plans for revegetating an area to something approaching its original condition. The NPWS is the appropriate body to approve these conditions.

The Soil Conservation Service is also not the appropriate body to assess the environmental effects of pollutants which may be discharged from a rehabilitated mine site. This is the province of the Environment Protection Authority, which should be involved at this stage.

RECOMMENDATION 8: To section 239(3) add ", the Director of the NPWS and the Director-General of the Environment Protection Authority".

Return of rehabilitation bonds must be publicly reviewed

Section 168 of the Bill gives the Minister complete discretion to determine how much of a security deposit is returned. This is an unacceptable process for security deposits held to ensure that mined areas are fully rehabilitated.

While the Soil Conservation Service must approve the conditions when they are added to the authority, there is no requirement that they be consulted to ensure that those conditions have been fulfilled. In Recommendation 8 we recommended that the National Parks and Wildlife Service be involved in approving rehabilitation conditions. This involvement, and that of the public, should continue to the stage of determining whether the rehabilitation conditions have been fulfilled.

RECOMMENDATION 9: Before a security deposit is returned, the Soil Conservation Service and the National Parks and Wildlife Service must concur that the conditions relating to rehabilitation of the mine site have been satisfied. A process of public review and appeal, involving public submissions, should be followed before any security deposit is returned.

The public must be involved in every stage

As was mentioned above, the public's right to be involved in decisions affecting their environment, and natural resources which are the property of the Crown, is being increasingly recognised in legislation. Mining should be treated no differently.

We are encouraged to see that the Bill contains a separate schedule of procedures for public

consultation, however a number of these provisions should be improved.

RECOMMENDATION 10: As an assessment lease is a "holding lease" before mining commences, the public should be notified of, and be allowed to object to, the granting of an assessment lease. The process should be similar to that used for a mining lease, as described in Division 5 of Part 2 in Schedule 1.

RECOMMENDATION 11: The resolution of objections (Section 10 of Schedule 1 of the Bill) should use the same process as used in Section 12(4) of the Protection of the Environment Administration Act 1991, to ensure openness and public accountability.

RECOMMENDATION 12: As the Bill makes no provision for public participation in the renewal of mining authorities, these processes should be introduced into the Bill so that they apply equally to the renewal of mining authorities as to the initial granting of an authority.

Information on mining authorities must be freely available

While section 159 requires the Director-General to keep a record of all authorities granted, renewed, transferred or cancelled, there is no requirement in the Bill that these be available for public inspection.

The community has a right to know how resources vested in the Crown are being used.

RECOMMENDATION 13: The Bill should be amended to ensure that the records referred to in section 159 are available for public inspection during business hours. Copies should be able to be made at reasonable cost.

Information collected under mining authorities must be freely available

In the process of prospecting and exploring, holders of mining authorities are collecting information about a publicly-owned resource. This information is of great importance to the community in its long-term planning for mineral exploitation.

RECOMMENDATION 14: All information collected under mining authorities about mineral resources vested in the Crown should be publicly available.

Less Ministerial discretion in cancelling authorities

Under section 125, the Minister has the discretion whether to cancel a mining authority if the holder of the authority has breached the authority's conditions, this Act or its regulations. Other reasons for cancelling an authority are also listed.

We believe that the breaches listed above are sufficient for a mandatory cancellation of a mining authority. This division of the Bill has an appeals process which should be sufficient to remedy any unwarranted cancellations.

RECOMMENDATION 15: In section 125, the Minister should be required to cancel an authority if the holder of that authority has breached the conditions of that authority, of the Act, or of any regulations under the Act.

All conservation areas should be protected from mining

While it is no longer possible to issue mining leases over national parks and nature reserves, many mining leases are still extant over existing reserves. There is no guarantee that these will not be

activated at some time in the future.

RECOMMENDATION 16: All mining should be prohibited within and beneath all areas within the NPWS estate. All mining authorities in areas reserved for conservation should be cancelled.

In addition, a precautionary approach should be taken in relation to areas proposed as national parks and nature reserves. Until a full and proper assessment of the conservation value of each proposed area has been made by the National Parks and Wildlife Service, no mining activity should be approved, and none should be allowed to go ahead. Such an exclusion is included in the NSW

Page 3798

Government's Coastal Policy.

RECOMMENDATION 17: Mining authorities should be excluded from areas which have been proposed as conservation reserves until their conservation value has been fully assessed, the NPWS has relinquished its interest in the area, and the decision has been publicly notified.

Prospecting must be bound by the EP&A Act

NSW peak environment groups have consistently argued for a strict adherence to the EP&A Act, without exemption. Section 381 of this Bill is in direct opposition to our clear position. No exemptions to the EP&A Act are acceptable.

Prospecting should be subject to the EP&A Act like any other activity in the State. We reject the implication that all prospecting is environmentally benign. We draw attention to the possibility of unacceptable impacts from vegetation clearance, access road constraints, the use of explosives, test drilling, excavation and the like.

RECOMMENDATION 18: Section 381, which exempts prospecting from the EP&A Act, should be deleted.

Fossicking must be defined in the Bill

Section 12 of the Bill states that fossicking is a lawful activity, yet fossicking is not defined in the Bill. That is to be defined by regulation at some later date. We cannot approve of allowing Ministerial discretion being used to decide what is and what is not lawful. This is certainly a matter for the Parliament to decide.

RECOMMENDATION 19: A clear definition of "fossicking" should be added to the 'Dictionary of Words and Expressions' attached to the Bill. Fossicking should be by non-mechanical methods only. The use of lightweight portable dredges, which has been banned in New South Wales, should be specifically excluded.

While many of the provisions of this Bill are similar to those in the current Mining Act, we do not want to see the inadequacies of the Act perpetuated. We have sought to identify those inadequacies in the existing Act, and in the proposed legislation, and to remedy them with our recommendations.

The Hon. J. P. HANNAFORD (Minister for Health and Community Services) [4.57], in reply: I thank honourable members for their support of the legislation and I commend the bill.

Motion agreed to.

Bill read a second time and passed through remaining stages.

NSW GRAIN CORPORATION HOLDINGS LIMITED BILL

Second Reading

The Hon. J. P. HANNAFORD (Minister for Health and Community Services), on behalf of the Hon. E. P. Pickering [5.0]: I move:

That this bill be now read a second time.

The purpose of this bill is to provide for the privatisation of NSW Grain Corporation Holdings Limited. The sale of Graincorp will ensure that the organisation can continue to operate efficiently without placing unnecessary demands on the taxpayers of New South Wales. There is no justification for the Government's continuing involvement in a commercial operation such as Graincorp. The recent deregulation of the wheat industry and the resultant increase in competition have only served to highlight the need for

Page 3799

Graincorp to be freed from government ownership. Significantly, the sale of Graincorp is widely supported by the company, by growers and by the industry generally. The privatisation of Graincorp will bring New South Wales into line with the other grain producing States of South Australia, Western Australia and Queensland, where ownership has been transferred from government to industry. Western Australia and South Australia are established precedents which clearly demonstrate that the industry can successfully own and operate grain handling facilities. Queensland also recently moved to industry ownership. Further, industry ownership of Graincorp will result in a more efficient New South Wales grains industry through vertical integration.

The Government has conducted an extremely thorough sale process which has involved seeking potential purchasers, both nationally and internationally, to ensure that all sale options were considered and sale proceeds maximised. After taking into account relevant commercial considerations and the requirement that bidders demonstrate support from the grains industry, the Government determined that an offer from the Prime Wheat Association Limited was the preferred bid. The bill facilitates the sale of Graincorp to the PWA. A sale of Graincorp to the PWA is in the State's best interest for a number of reasons. First, the price to be received from the PWA is greater than Graincorp's estimated value of between \$90 million and \$120 million as provided by the Government's advisers, Rothschild Australia. The PWA is to pay a minimum purchase price which has a present value of \$90 million. Depending on the level of grain receipts the price is capable of being increased to \$110 million. Also, the State is to retain Graincorp's residual cash of around \$12 million plus its head office, which is estimated to have a value of \$5 million. Therefore New South Wales will in effect receive between \$107 million and \$127 million for Graincorp. Second, and most significantly, the PWA has demonstrated that in making its offer it has the support of the New South Wales grains industry. In particular, the New South Wales Farmers Association unanimously supported the PWA's offer by way of resolution at its last annual conference.

Further, the PWA is widely representative of the grains industry, having over 8,000 members who represent approximately 90 per cent of the New South Wales grains industry. A sale to the PWA will ensure that ownership of Graincorp remains in New South Wales and that use of New South Wales rail and port infrastructure is maximised. Above all, ownership by the PWA will make a more viable grains industry through vertical integration. The bill essentially contains mechanical provisions to facilitate the

sale to the PWA. Graincorp, as a State owned corporation, cannot be privatised unless its name is removed from schedule 1 to the State Owned Corporations Act by way of Act of Parliament. This bill provides for the removal of Graincorp from the schedule. The bill also protects the position of Graincorp's employees and ensures that they will not be prejudiced by the sale. Under the bill the entitlements of Graincorp's employees are preserved. Further, as part of the sale, the Government is to require the PWA to undertake to honour all existing contracts and awards. Also, in relation to superannuation, all accrued benefits of employees are to be preserved by way of regulation. It is to be a condition of sale that the PWA establishes a superannuation scheme for Graincorp staff on no less favourable terms than the current State schemes. Privatisation of Graincorp is not an ideological matter but is, rather, the only option for the State to ensure the ongoing viability of the grains industry. The privatisation has widespread industry support and, in addition to financial benefits, the privatisation allows Graincorp to remain in New South Wales under grains industry ownership. I commend the bill.

The Hon. ELISABETH KIRKBY [5.4]: The Australian Democrats support the
Page 3800
NSW Grain Corporation Holdings Limited Bill. As the Minister in his second reading speech has explained, the object of this bill is to permit the sale of NSW Grain Corporation Holdings Limited (Grain Holdings) and, as a consequence, of its subsidiary NSW Grain Corporation Limited (Grain Corporation). Grain Holdings is a State owned corporation. After the Liberal Party-National Party Government was elected in 1988 it moved into corporatisation which was to lead to privatisation, and my colleague the Hon. R. S. L. Jones and I held the balance of power in this Chamber. At that time we were very concerned about the corporatisation of the Wheat Handling Authority. Therefore, before we decided to vote in favour of Graincorp, we had many long consultations and advisings from officers of the Premier's Department. At that time an undertaking was made to us that the bill that was passed then, the State Owned Corporations Act 1989, was only to provide for corporatisation, not for privatisation. We were very concerned that the Grain Handling Authority in this State might fall into the hands of one of the high flying entrepreneurs. Indeed that was the feeling, as I am sure you well know, Mr Deputy-President, of many of the members of the Prime Wheat Association. They too felt at the time and there was even the fear that perhaps it might be bought by Mr John Elliott who would have control not only of the industry but also of the means of export from the industry, and that would have created a very undesirable situation.

In our negotiations at that time with the Prime Wheat Association, it was said that if the Government did move to privatise the association would make a bid. It hoped it would be able to run the New South Wales Grain Corporation as a co-operative and sought our support in that aim. I was concerned at the time because I believed that, however much it might wish to do this and however sincere its desire was to run the Grain Corporation, financial considerations might make that impossible. However, we gave the association our assurance. About 10 days ago I received a confidential letter from the Premier's Department advising me that the Government has now decided it proposes to move to privatisation and that it has the full support of the National Farmers Federation. However, at that time I got in touch again with Tom Keene of the Prime Wheat Association to assure myself that the legislation currently before the House had the support of the Prime Wheat Association and that the arrangements the Government has made were arrangements that the graingrowers themselves felt would meet their needs. He gave me that assurance. He told me that this is what the association had been working towards. It was concerned about the debt it would inherit, but it believed that the price of wheat would pick up. I believe almost certainly it will, provided the weather is not against us and we do not suffer from another debilitating and devastating drought.

However, in spite of what is happening in Europe and the competition our graingrowers face from highly subsidised American graingrowers - I do not have to tell you that, Mr Deputy-President - we should be able to open up new markets in Asia, particularly if we grow the type of grain which Asians can use in their basic diet of noodles rather than the type of wheat we more commonly grew in the past for use in bread making. The association is happy with what the Government is doing. It is happy that this bill has been presented to the House, and it has asked for our support. It is for that reason we are supporting the legislation before the House. I also place on record my gratitude to the Premier's Department for giving me prior warning of the legislation, for holding to the agreement that was made between us when my colleague and I held the balance of power, and for keeping us fully informed.

The Hon. R. D. DYER [5.9]: I am not sure that I am enjoying my new-found status as an "expert" on the agricultural activities of the State. The object of the measure before the House is to permit the sale of the NSW Grain Corporation Holdings Limited and, as a consequence, of its subsidiary NSW Grain Corporation Limited. All I wish to say on behalf of the Opposition is that, for the reasons outlined in another place by my

Page 3801

colleague the honourable member for Port Stephens and Opposition spokesperson on agriculture, lands and forests, the Opposition is not opposed to the bill before the House.

The Hon. R. T. M. BULL [5.10]: It gives me a great deal of pleasure to support the NSW Grain Corporation Holdings Limited Bill. A number of wheatgrowers -

The Hon. M. R. Egan: The honourable member is filibustering because he does not have any bills to go on with.

The Hon. R. T. M. BULL: The Leader of the Opposition wanders into this place. We had to wait until Opposition members were here. They do not have a clue about the bill. They eventually put up the Hon. R. D. Dyer to speak on it. He said that he did not have a clue about it. It is disgraceful that this lot pretends to be the Opposition in this Chamber; it does not understand the bill and it has no spokesman on agriculture. It is an absolute disgrace that Opposition members call themselves Her Majesty's Opposition, yet they have no idea what is happening in this place. The legislation will be welcomed by wheatgrowers right across New South Wales. It has resulted from the State owned corporations legislation, which was fondly known as SOCs. This is the first Government enterprise to be corporatised under that legislation. It is notable because the Government, when it came to office, found that the Grain Handling Authority was \$320 million in debt. This Government bailed out the authority; it had to be bailed out before it could become a corporation. Following that, the Government told everyone that it intended at some stage to try to sell the Grain Handling Authority to whoever might be a potential buyer. At that point a number of concerns were raised, especially among wheatgrowers, that that buyer should be the wheatgrowers themselves.

I congratulate the Ministers involved on bringing about this successful conclusion of the sale of the Grain Handling Authority to the Prime Wheat Association Limited. Incidentally, the Prime Wheat Association is primarily based in the northwest of the State at Narrabri. It boasts some 8,000 members. It should be recognised that the overall cost of this venture is some \$90 million, and possibly \$110 million, depending on the success of the Prime Wheat Association. The Government will in turn retain a \$12 million cash residual and the head office in the Sydney central business district, valued at some \$5 million. Potentially, the Government may raise some \$127 million in total from the privatisation of the Grain Handling Authority. It is also noted that all existing

awards and contracts must be honoured, a matter raised by the Opposition in the Legislative Assembly. Obviously, debate of this matter is right over the heads of Opposition members. It has to be noted that an undertaking has been given that all existing awards and contracts will be honoured, including superannuation. At the 1988 election, an undertaking was given by the Government to corporatise the Grain Handling Authority and put it on a sound economic footing. I believe all honourable members would hope that from now on the Prime Wheat Association will be in a position to run successfully the new New South Wales Grain Corporation; that it will be financially successfully; that it will produce economic wheat freight rates and handling charges for all growers throughout New South Wales; and that at the same time it will provide the very good service which wheatgrowers are well accustomed to.

The Hon. ANN SYMONDS [5.15]: It was not my intention to participate in this debate, but it is important to make some comments on a matter of concern to my colleague in the other place the honourable member for Wollongong. He is very familiar with the Illawarra area and the problems of the people in that area. In his contribution to the debate he made very substantial and important statements about the fact that, although the Opposition is in support of the measure, it ought to be noted that the

Page 3802

construction of the infrastructure now up for sale was substantially financed by the Federal Government.

The Hon. R. J. Webster: The honourable member is not going to suggest that the money should go back to the Federal Government, is she?

The Hon. ANN SYMONDS: It is not untoward to request that the money expended by the Commonwealth for the betterment of industry and the citizens of that area be returned to that area. The Minister for Planning and Minister for Energy should not pre-empt what I will say. I would never suggest that the money should be returned to Commonwealth coffers when I am very well aware of the dire straits of the coffers in this State. Nevertheless, no matter how reprehensible I might find the sale because it reflects the pursuit of the privatisation of goods and services of this State and is therefore anathema to me, any finance accruing from the sale of the infrastructure, which was substantially constructed using Federal money, should be expended in the Wollongong area. This should be inherent in the Government's plans for the disbursal of the money. In an attempt to make a point on this matter in the lower House, my colleague the honourable member for Wollongong attempted to move an amendment to the bill. It read:

Page 4. After clause 8, insert:

- (3) That notwithstanding (1) and (2) above, all grant moneys contributed towards the construction of the Port Kembla Grain Terminal by the Commonwealth under the Steel Cities Plan, be refunded according to a formula to be agreed upon by the New South Wales Treasury and the Commonwealth, and that such funds be relocated to the Illawarra region.

He maintained that that would be a fair and just thing to do in response to the sale of this corporation because people in that area are suffering from very high unemployment rates. Apparently, in the Illawarra region unemployment is somewhere between 15 and 25 per cent, depending on how it is measured. Some unemployment is hidden in nature. Although when the honourable member for Wollongong attempted to move the amendment at the Committee stage it was ruled out of order on procedural grounds under section 46 of the Constitution Act and Standing Order 247 because, in effect, it sought to appropriate money, it is worth asking where the money came from and where it should be

returned to so that it has some beneficial impact on the people of that region. I commend the honourable member for Wollongong for endeavouring to represent the best interests of his constituents in this matter and urge the Government to consider the way in which it will allocate moneys from the sale for the benefit of those people.

The Hon. R. J. WEBSTER (Minister for Planning and Minister for Energy) [5.20], in reply: I thank honourable members for their contributions in debate. I have had immense personal satisfaction as Leader of the National Party in the Legislative Council in dealing with the Graincorp legislation. I also had great satisfaction a couple of years ago, as Assistant Minister for Transport, in being responsible for introducing the Graincorp legislation to and assisting it through the lower House. For about 18 months I had responsibility for the administration of Graincorp. During that time many reforms were put in place that have turned Graincorp from being an inefficient organisation into a business that can be sold for the benefit of the people of New South Wales and especially of the graingrowers of this State. In reply to the matters raised by the Hon. Ann Symonds, the sale proceeds are to be paid into the Consolidated Fund and will, in part, assist in the payment of the State's debt incurred following construction of the terminal. When Graincorp was corporatised in 1989 the State Government assumed \$240

Page 3803

million of debt from the Grain Handling Authority. The debt was incurred to fund construction of the terminal and costs the taxpayers approximately \$35 million a year in interest payments. The Opposition's amendment fails to recognise this fact.

Graincorp is being sold as a company. The present arrangements for the leasing of the Port Kembla land and berthing facilities from the Maritime Services Board will continue following the sale to the Prime Wheat Association. The terminal is an integral part of Graincorp's handling network and the sale of Graincorp will not alter this in any way, for the terminal will still be there. The benefits which the terminal has brought to the Illawarra region will continue following the sale of Graincorp. In particular, the terminal will continue to provide significant direct and indirect employment opportunities for the people of the Illawarra region. The honourable member should be happy about that. It should also be noted that the Commonwealth's contribution towards the terminal was less than 10 per cent of its total construction cost. Finally, the funds from the Commonwealth were provided to New South Wales as a grant, the terms and conditions of which did not provide for any repayment of the funds. For these reasons, in the lower House, the Government strongly opposed the Opposition's amendment which was also ruled out of order, as the honourable member has pointed out. The bill is the culmination of four years of policy work by the Government, some of which I was deeply involved in and some of which I had a strong commitment to. That the wheatgrowers of New South Wales will own a very viable business which has been restructured by the Government and has first-rate facilities is a tribute to the Government, the Premier and the work of every country-based Liberal Party and National Party member of this Parliament who understands anything at all about business. I commend the bill.

Motion agreed to.

Bill read a second time and passed through remaining stages.

CREDIT (AMENDMENT) BILL

Second Reading

The Hon. R. J. WEBSTER (Minister for Planning and Minister for Energy) [5.26]: I move:

That this bill be now read a second time.

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

Leave granted.

The purpose of this bill is to amend the Credit Act 1984 to enable the Commercial Tribunal of NSW to direct the payment of a civil penalty imposed on a credit provider under the Act into a financial counselling trust fund established with the object of alleviating the impact of credit overcommitment on consumers and advancing public education in all matters relating to the management of personal finances.

An automatic civil penalty is imposed on unlicensed credit providers, and licensed providers in breach of the contract formation and disclosure provisions of the Credit Act 1984. In the latter case the penalty is forfeiture of credit charges, and the credit provider can seek restoration of the amount through an application to the Commercial Tribunal. The tribunal, after considering all relevant circumstances, including the conduct of the credit provider and the borrower and any loss or damage suffered by the borrower, has to determine whether to restore the borrower's liability in part or in

Page 3804

full. If liability is partially restored, the outcome for the borrower may be relief from making further payments reduced payments fewer payments or a refund.

In recent years there have been applications to the Commercial Tribunal about contracts containing a range of disclosure errors, including incorrect calculation of stamp duty, failure to disclose the fact of a commission charge, "rounding off" the total amount of instalments so that the figure does not correspond to the total amount payable, and failure to disclose when and where repayments were to be made. In some cases a single application concerns thousands of contracts containing common disclosure errors. The credit provider's potential loss could be millions of dollars in forfeited credit charges.

The 1984 Act did not contemplate breaches on this scale, and amendments introduced by my predecessor, the Hon G.B.P. Peacocke, in 1990 addressed the issue in several ways. First, the prudential problem caused by automatic forfeiture was dealt with by reinstating the credit charges as soon as an application was made to the Commercial Tribunal and pending the tribunal's decision; second, the logistic problem caused by the need to serve notice on thousands of borrowers was dealt with by providing for notice by newspaper advertisement; and third, the perception that credit providers were being heavily penalised for innocent, technical mistakes that did not disadvantage borrowers in any way was dealt with by providing for a special application for "minor errors".

Despite these improvements to the system, it is clear that in cases involving thousands of contracts where the tribunal does not find that a breach is a "minor error" which ought to be excused, a credit provider whose credit charges are partially restored faces very considerable costs in identifying and locating past and current borrowers, reconstructing contracts, calculating refunds, adjusting existing loan accounts, processing and posting refunds and dealing with those returned unclaimed. The benefit to individual borrowers, on the other hand, may be small. This bill gives the tribunal an alternative: a discretion to direct that forfeited credit charges be paid into a fund used to benefit consumers of credit as a whole.

The creation of the Financial Counselling Trust Fund is a sensible solution to a vexed problem. As long ago as December 1990, the former Minister for Business and Consumer Affairs foreshadowed his intention to establish a financial counselling trust fund to finance consumer

credit education and financial counselling, and the Premier repeated the undertaking before the 1991 State election. Since my appointment as Minister for Consumer Affairs I have sought to interest the financial institutions in making voluntary contributions to such a trust fund as a means of honouring their obligations to address issues faced by all credit consumers, from knowing how to budget effectively and shop for credit to how to survive a financial crisis.

I have to say that, generally, the trust fund is not the finance industry's preferred means of meeting these obligations. A notable exception to the negative industry reaction has come from the State Bank of NSW, which suggested to the Government that the Credit Act be amended to provide for the payment of money into a fund for "purposes generally beneficial to consumers" in lieu of making refund payments to individual borrowers. The State Bank currently has applications before the Commercial Tribunal concerning more than 300,000 contracts involving \$400 million in credit charges. The tribunal has yet to make a determination and I make no comment on the case. I mention it so that honourable members can appreciate the magnitude of the problems presented by such large-scale applications.

It might be suggested that individual borrowers are being denied their right to a reduction in liability under the Act. Certainly the amendment will have the effect of transferring a benefit from some individual borrowers to the class of borrowers needing financial counselling and credit education services. The amendment will not, however, remove borrowers' rights to be heard by the tribunal if they consider they have suffered loss or damage as a result of the contravention by the credit provider. Where applications concern multiple contracts, it is current practice to direct the credit provider to place a prominent advertisement in daily newspapers notifying borrowers of the application and advising them of their options for action. This practice will continue, and individual debtors may still come forward. Once the application is heard, the tribunal will decide whether to exercise its discretion to direct payment to the trust fund. It will retain its discretion to make a determination on an individual contract, if the borrower has established particular loss or damage.

It is important to note that the civil penalty provisions in the Credit Act are primarily for compliance purposes, not compensation. In deciding whether to restore credit charges, the tribunal takes account of the conduct of the credit provider: for example, its compliance history, staff training programs,

Page 3805

audit procedures, and actions in response to the detection of breaches of the Act.

Even if there appears to be no quantifiable loss suffered by borrowers, the credit provider's conduct may warrant imposition of a civil penalty. Under the Act's current operation, each borrower benefits by having his or her liability reduced. This is in the nature of a windfall to the borrower. If, as is now proposed, the tribunal can direct that an aggregate sum be paid to the trust fund, the possibility of a windfall is avoided.

The Financial Counselling Trust Fund will distribute grants to community based financial counselling organisations providing counselling and advisory services using paid and voluntary counsellors. The Government already funds financial counselling services through the Credit Education and Advocacy Grants Program and as part of the 1991/92 Recession Support Program is funding a toll-free credit help line. However, there is still an unmet need for financial counselling in this State, especially in the middle of a recession, and establishment of the fund will encourage industry and consumer groups to accept that the Government does not have sole responsibility for funding.

The fund will be structured as a charitable trust, for three reasons. First, it will be able to take advantage of any exemption granted by the tax office on its income. Second, its objects can be entrenched and may not be changed by trustees. Third, the objects of the fund are best

characterised as charitable, making the charitable trust and the associated regulatory mechanisms the most appropriate.

The fund will be administered by a 5 member board nominated by the Minister for Consumer Affairs, comprising a chairperson, two members with knowledge of the interests of credit providers and two members with knowledge of consumer interests. Concerns expressed by the Financial Counsellors' Association of NSW that there should be no participation by a credit provider or its representative body in decisions about the distribution of funds derived from a civil penalty are addressed by making current employees of credit providers or representative industry bodies ineligible for appointment to the board.

The fund will be self-supporting and operated at arms-length from the government. The board will be made responsible for the money the fund receives and distributes. Decisions on the payment of grants must be consistent with the needs analysis and eligibility criteria embodied in the NSW Government's Financial Counselling Grants Scheme, and will be made in consultation with the administrators of that scheme to avoid duplication and ensure an equitable distribution of services to the community. The fund must distribute all income other than that needed for reasonable administrative purposes to accredited financial counselling services. There will be scope for the fund to accept voluntary contributions to supplement any moneys directed into the fund by the Commercial Tribunal.

I turn now to the provisions of the bill. Schedule 1 will amend the Act to provide for the establishment and administration of a financial counselling trust fund in accordance with the regulations and to enable the Commercial Tribunal to give directions for payments into the trust fund in accordance with proposed section 86B.

Section 85 of the principal Act allows a credit provider to apply to the Commercial Tribunal for reinstatement of credit charges forfeited under the civil penalty provisions of the Act. Section 86 allows a credit provider to apply for a determination under section 85 in respect of a number of contracts. The section allows such an application to be made without the need to identify the debtors under the contracts concerned and sets out the procedures to be adopted for the notification of those debtors.

Proposed section 86B will allow a determination arising from a section 86 application to direct that the debtors concerned are to continue to pay the whole of the credit charges for which they would otherwise be liable. The credit provider is to pay an amount determined by the Commercial Tribunal into the Financial Counselling Trust Fund.

This amount will be based on the number of contracts to which the determination relates. If necessary, where thousands of contracts are involved and the credit provider has not separately identified all affected contracts, the tribunal may base its calculation of the amount to be paid into the fund on an estimate of the number of contracts. It may direct payment to the fund in respect of all contracts to which the section 86 application relates, or only some of the contracts.

Such a direction is not to be given unless the tribunal is satisfied that, having regard to all the relevant circumstances it must consider under section 85(2), the contravention or failure giving rise to the section 86 application should not be excused and thus warrants the imposition of a civil penalty. The tribunal must also be satisfied that it would be unreasonable to require the credit provider to adjust debtors' account or to refund money to debtors, to give effect to any reduction in liability that would occur if credit charges were reduced. The bill indicates that the number of contracts might be one factor which would make such a requirement unreasonable. However, others not expressly referred to might be the level of consumer detriment and the cost and

difficulty in calculating refunds or adjusting current accounts and locating and paying debtors.

A proposed amendment to section 85 will ensure that the tribunal does not have to follow subsection 85(3) in calculating the amount of payment to the fund. This subsection currently requires each debtor's liability to be adjusted in line with actual loss or damage suffered. Earlier I made the point that these amendments do not interfere with a debtor's right to come forward and present evidence of particular loss or damage. Such debtors can be dealt with separately and the operation of proposed section 86B does not affect them. However, if the tribunal decides to use its discretion and make a direction under section 86B in relation to the majority of contracts, the whole purpose of the section would be negated if adjustments to individual contracts had to be made.

Proposed amendments to section 167, the regulation making power, provide for the establishment of a fund and a scheme for administering such a fund by reference to a trust deed under which such a fund or scheme is established; and prescribe the purposes for which, and the manner in which, money in the fund is to be applied.

The bill's final provision makes the amendments apply to proceedings in the Commercial Tribunal which were instituted before the amendments' commencement.

The Credit Act 1984 has been subjected to a great deal of criticism over the years. Much of it is justified. This is not the first time the House has had before it a series of amendments designed to alleviate the unintended consequences of the Act. In this case, however, the outcome is positive. Credit providers will benefit because there is now a practical, cost-effective alternative to the unproductive expenditure involved in identifying, calculating and paying relatively small amounts to many individuals. The community will benefit because there is now the possibility of a substantial increase in the availability of financial counselling for consumers in trouble with debt. These amendments will greatly enhance the availability of financial counselling services in New South Wales and will make credit providers even more accountable than they are under the existing legislation.

Accordingly, I commend the bill.

The Hon. J. W. SHAW [5.27]: This is an important bill and the Opposition has considered it in detail both in shadow Cabinet and in Caucus. The Opposition has no hesitation in supporting the constitution of a trust to fund community-based financial services, and believes that important principle embodied in the bill is an undoubted step forward. The Opposition has been concerned that the bill does not in any way assist the funding of community-based legal services, consumer advocacy and the like, which play an invaluable role. Those services are starved of funds and need further public support. However, the Opposition understands that the Government's view is that the bill has a particular and specialised focus on community-based financial services and not on funding other broader bodies. Indeed, the Government has gone so far as to say that it would not proceed with the constitution of the trust if Parliament insisted on a wider focus for some other purpose. In those circumstances the practical position taken by the Opposition is to support the bill to the extent of indicating agreement with the idea of a trust, as embodied in the bill, but to indicate an ongoing concern about the funding of other relevant organisations including community-based legal services. I understand that the Minister in another place has said that he would be willing to review the effect of the bill, to review the amount of money raised in relation to the trust, and to consider in due course whether a wider focus should be enacted, that is to say whether other bodies ought to be funded as well. Another aspect of the Opposition's concern that has been

Page 3807

articulated in the Legislative Assembly is about the composition of the trust. I

understand that the Minister has given assurances that the relevant consumer groups will be consulted as to the nomination or appointment of persons who constitute the trust. It has also been indicated that the names of those persons would be published in the *Government Gazette*, and certain legal consequences flow from that. Those assurances are useful, as has been the whole process of consultation and debate in the Legislative Assembly. With those reservations and notations, the Opposition supports the bill.

The Hon. JENNIFER GARDINER [5.30]: I have pleasure in supporting the Credit (Amendment) Bill. The main proposals include, first, giving the Commercial Tribunal discretion to order that civil penalties imposed under the Credit Act 1984 and the Credit (Administration) Act 1984 be paid into the Financial Counselling Fund. The second proposal is establishing an independent fund to receive these civil penalties and any voluntary contributions for the purpose of providing grants to financial counselling services. The result of these changes will be an increase in the availability of financial counselling for consumers in trouble with debt and a reduction in potential unproductive expenditure by credit providers on identifying, calculating and paying relatively tiny amounts to a multitude of individuals. Consumer credit transactions are regulated by the Credit Act 1984 and the Credit (Administration) Act 1984.

The legislation is based on the principle of truth in lending achieved by disclosure of specified information before and after a credit contract is formed. Failure to disclose the information involves both criminal and civil penalties. The civil penalty is automatic forfeiture of credit charges to the borrower, a severe sanction designed to deter credit providers from misleading their clients. In the case of credit providers operating without a licence, the penalty includes the amount of the loan as well as the credit charges. Upon application by the credit provider, the Commercial Tribunal may reinstate all or part of the credit charges or loan amount. Breaches of disclosure provisions may be replicated across many contracts. If the level of consumer detriment and the conduct of the credit provider are such that most of the credit charge is reinstated, a credit provider may be faced with identifying, locating and paying small refunds to many past borrowers or making small adjustments to the accounts of many existing borrowers. The cost and difficulty of doing this could well be in excess of the benefit conferred on the borrower.

The State Bank of New South Wales is one credit provider which has identified this problem, the problem which this legislation aims to rectify. All of the State Bank's fixed rate personal loans entered into since 1985 - more than 300,000 of them - used a standard contract which did not disclose information required by the Credit Act - for example, the place where the payments were to be made and the existence if any mortgage were not disclosed. The bank claims that these and other errors have not disadvantaged borrowers. But, as a consequence of this non-disclosure, the bank must apply to the Commercial Tribunal to have its credit charges reinstated. Should the tribunal reinstate, say, 99 per cent of its credit charges, the bank is concerned that it will be faced with the time-consuming and costly task of making 300,000 calculations and cash refunds or account adjustments. The bill removes the need to make individual calculations by allowing the tribunal to express the forfeited credit charges as an amount of money per contract instead of as a proportion of credit charges.

The difficulty in making a multitude of refunds or adjustments will be avoided by paying the civil penalties into the Financial Counselling Fund. It will be up to the Commercial Tribunal to assess the circumstances - the level of consumer detriment, number of borrowers and the difficulty of making individual refunds - and to decide to

use these new discretions. Individual borrowers will continue to have the right to

become a party to tribunal proceedings and to receive any refund of forfeited credit charges. The New South Wales Government, prior to its election, made a commitment to establish a financial counselling trust fund to receive forfeited credit charges which would be too costly to refund to individual borrowers. Although relatively small as individual refunds, when put together into a single fund they would benefit consumers as a whole, especially those with debt problems. Consumer groups support the redirection of individual refunds into a financial counselling fund subject to New South Wales Government financial counselling funding being maintained and individual borrowers retaining their right to claim a refund.

The fund will distribute grants to community-based financial counsellors for case work and education purposes. Criteria for selecting and monitoring grant recipients will be consistent with the continuing New South Wales Government grants scheme to ensure an equitable distribution of services. An important aim of the fund is to encourage industry and consumer groups to accept that the Government does not have sole responsibility for funding financial counselling. This is properly a community responsibility and industry should also play its part in providing this important advice to consumers. As a consequence, it is proposed that the fund be established and operated at arm's length from the Government. The New South Wales Solicitor General has recommended that the fund be structured as a charitable trust. This would take advantage of any exemption granted by the Australian Taxation Office on its income. Its objects could be entrenched and would not be able to be changed by trustees. As was noted by the Hon. J. W. Shaw, the trust is to be administered by a five-member board nominated by the Attorney General, Minister for Consumer Affairs and Minister for Arts - a chairperson and two members with knowledge of consumers' interests and two with knowledge of credit providers' interests. The Minister has given an undertaking that consumer groups will be consulted in the appointment of those persons. There will be scope for the fund to accept voluntary contributions in addition to those from the credit providers. These amendments will bring about greater availability of financial counselling services in New South Wales and make credit providers more accountable than they are at present.

The Hon. ELISABETH KIRKBY [5.36]: The Australian Democrats support the Credit (Amendment) Bill in principle but we have considerable reservations about its lack of detail. I believe it is necessary that members have an understanding of the background of the bill. The Credit Act 1984 established basic truth in lending principles in so far as lenders were required to disclose all basic information borrowers need to know about their credit contract. The legislation was handled in 1984 for the coalition Opposition by the Hon. Virginia Chadwick. She did a most amazing job with that piece of legislation. She also introduced several very valuable amendments. I give the Australian Labor Party credit for accepting the amendments. That was very unusual in those days. The Labor Government also gave her credit for the enormous work she had put in on the legislation. I would go so far as to say that the work she did was the final stepping stone towards her becoming a Minister.

The Credit Act 1984 established a civil penalty for non-compliance of automatic loss of entitlement to recover credit charges - interest from the borrower. However, under section 85 of the Act a lender can recover credit charges by asking the Commercial Tribunal for an order reinstating its entitlement. Borrowers may test claims made by the lender before the tribunal. However, if it has been found that a lender has made a mistake on many contracts, the lender can seek reinstatement of all contracts in one case.

Page 3809

The Act was further amended in 1990 to allow lenders to inform borrowers of their intention to seek reinstatement by placing an advertisement. This got rid of the need to

serve individual notices and it sensibly avoided enormous administrative costs. This bill continues the amendment of the Credit Act along similar lines. Recent applications before the tribunal by Westpac and the State Bank have involved in excess of 100,000 and 200,000 contracts respectively. The Westpac case would result in small payments to a very large number of borrowers who would have to be individually identified. This would have been extremely costly: the administration charge might have been greater than the benefit to the borrower. Therefore, this bill provides that the tribunal will have the discretion to direct that lenders pay the money into a statutory fund called the Financial Counselling Trust Fund. The bill states that the tribunal can only direct a payment into this fund if it is satisfied of a number of matters - and I quote from proposed new section 86B(3) as set out on page 2 of the bill:

- (3) A direction under this section may not be given unless the Tribunal is satisfied:
 - (a) that the contravention or failure giving rise to the application for the determination, and the relevant circumstances referred to in section 85(2), are sufficiently serious to warrant the credit provider being penalised; and
 - (b) that it would be unreasonable (whether because of the number of contracts concerned or otherwise) to require the credit provider to adjust the debtors' accounts, or to refund money to the debtors, to give effect to any reduction in liability that would occur if the credit charges were reduced.

The trust fund money will be used for financial counselling of debtors or for the education of the public in the management of their personal finances. That all sounds fine in theory but concern has been voiced that the details are sketchy. The first concern of the Australian Democrats relates to the circumstances under which the tribunal may order money to be paid into the trust fund. The directions given in the bill are extremely vague because the test of unreasonableness is used. The Consumer Credit Legal Centre et al indicate that the tribunal should consider the cost to the lender of identifying all debtors or a particular class of debtors, recalculating the credit charges, advising each debtor, and then determining whether the cost is disproportionate to the benefits to be obtained by the debtors. We also do not know what amount the Commercial Tribunal will direct the lender to pay into the trust. The only guidelines are to be found in the Minister's second reading speech. They are not in the bill or, so far as we are aware, in any promised regulations. On page 2474 of *Hansard* of 9th April, the Minister is recorded as having said in his second reading speech:

Concerns expressed by the Financial Counsellors Association of New South Wales that there should be no participation by a credit provider or its representative body in decisions about the distribution of funds derived from a civil penalty are addressed by making current employees of credit providers or representative industry bodies ineligible for appointment to the board. The fund will be self-supporting and operated at arm's-length from the Government. The board will be made responsible for the money the fund receives and distributes. Decisions on the payment of grants must be consistent with the needs analysis and eligibility criteria embodied in the Government's financial counselling grants scheme and will be made in consultation with the administrators of that scheme to avoid duplication and ensure an equitable distribution of services to the community. The fund must distribute all income, other than that needed for reasonable administrative purposes, to accredited financial counselling services. There will be scope for the fund to accept voluntary contributions to supplement any moneys directed into the fund by the commercial tribunal. Only community-based, non-profit financial counselling organisations whose primary activity is face-to-face counselling of borrowers will be eligible for grants from the fund. Under these criteria community legal centres will not be entitled to grants from the fund but will remain eligible for government funding. Consumer groups have expressed concern that

government funding will be reduced as a consequence of the establishment of the trust fund. I have undertaken to at least

Page 3810

maintain real funding levels.

That is an important statement by the Minister in another place and I hope that the Minister for Planning and Minister for Energy will give a further assurance in this House that there will be no cutbacks in government funding to community legal centres. I also wish to emphasise that it is most important that the fund should not be regarded as a way of allowing credit providers to pay a lesser penalty than might otherwise be the case. I agree with the Consumer Credit Legal Centre when it asks that "the amount of any order should be an amount sufficient in the total to provide to each debtor under a subject contract the amount by which the total credit charges are not reinstated". Furthermore, there is a lack of clarity about the rights of individual borrowers under the proposed scheme. The issue is whether individual borrowers can pursue their individual agendas. Will an affected borrower, if he or she so desires, be able to apply to the fund for a refund of a fixed sum? These matters must be raised because the bill overrides section 85(3) which says that if the borrower has suffered actual loss as a result of the breach, the tribunal must ensure that any reinstatement makes allowance for the loss so that the borrower will never have to pay more than what was due according to the contract, less the amount of the loss. At page 2475 of *Hansard* of 9th April, the Minister is recorded as saying in his second reading speech:

However, if the tribunal decides to use its discretion and make a direction under section 86B in relation to the majority of contracts, the whole purpose of the section would be negated if adjustments to individual contracts had to be made.

I agree with that reasoning in so far as it may be assumed that all borrowers affected by the lender's breach are affected more or less to the same extent. However, I question the Minister as to whether that is always the case. Will there be instances where some borrowers are due to receive substantially more than others under the one application? Perhaps the Minister for Planning and Minister for Energy will also address that issue in his reply. I now turn to the functions of the trust fund. In his second reading speech the Minister said that only community-based, non-profit financial counselling organisations whose primary activity is face-to-face counselling of borrowers will be eligible for grants from the fund. Obviously that has concerned such groups as the Australian Consumers Association and the Consumer Credit Legal Centre. They correctly point out that important services have been ignored. These include the research and monitoring of industry practices, policy development in the interests of consumers of credit, education for financial counsellors or welfare workers and the preparation of resources and aids for their use, a secretariat for the Financial Counsellors Association, advocacy for the same association, advocacy on behalf of a class of consumers, and legal advice to either consumers or the advising financial counsellor.

Although the Government has allowed the funds from this trust to be used in areas most closely tied to the areas to which it is required to give funding - for example, counselling - with financial products becoming more complex there is a growing need for funded research to keep consumers informed. Moreover, there has been some dispute over the constitution of the board of the trust fund. According to the Minister's second reading speech, the members of the fund will be nominated by the Minister and will comprise a chairperson, two representatives of credit providers and two consumer representatives. However, it is my belief that community groups and consumer organisations in the financial counselling area should have the predominant input into the administration of such a fund. The situation has been somewhat defused by the fact that

the establishment of the fund and the appointment of the members will be by regulation. I shall read that regulation closely and, if necessary, I shall support its disallowance.

Page 3811

Some amendments were moved in the Legislative Assembly. Those amendments eliminated provisions which would have meant that money would have been paid to consolidated revenue if the trust fund had not been established. The bill was amended to give borrowers the ability to make a second claim against civil penalties awarded against a lender by the Commercial Tribunal. At present, once an application has been made to the Commercial Tribunal, a borrower has a right to appear before the tribunal, which will determine what should be done with the civil penalty. If this bill becomes law, and there is no doubt that it will, the Commercial Tribunal will have a further option to deposit civil penalties into the trust fund.

I would appreciate it if the Minister in reply informed the House whether this will or will not be the case. The amendment will give lenders a second opportunity to make an application for civil penalties once a determination has been made but before the money is distributed by the trust to financial counselling services. This important and lengthy amendment appears in *Hansard* of 6th May, and I will not delay the House unnecessarily by reading it. It was suggested in debate that the Opposition was wrong to seek to incorporate the second opportunity provision. It had been advised by the Minister and his staff that such a course was unnecessary. The Opposition believed that, if it was going to err, it should err on the side of the consumer. The Opposition believed further that it would not be an onerous task for the lender to place a second advertisement similar to the first once the determination had been made to deposit money in to the trust fund. The Illawarra Legal Centre put strongly to the Opposition that the matter had to do with incentives. It is important to note that the centre stated:

The Credit Act acknowledges that the Government does not have the resources or political will to enforce its provisions on individual levels. It was therefore designed to provide an incentive to the civil penalty regime for borrowers to enforce it. The mechanism has worked so effectively that the current large cases arose.

That is a reference to the Westpac and State Bank cases that are now before the tribunal. The Illawarra Legal Centre continued:

The bill removes the incentive for borrowers to help to enforce the Act. The reduction in the credit charges have led borrowers to actively enforce their right by participating in the cases and being willing to present evidence.

The Opposition's arguments were cogent, but the Minister for Consumer Affairs refused to accept the amendment. The Minister stated that the amendment was far too complicated and that the Government's aim of increasing funds to provide financial counselling services would be achieved. It is important that the views of such bodies as the Illawarra Legal Centre, which in these times of high unemployment have many clients who are suffering greatly, should be taken into account when the difficult subject of credit and the legislation which governs the provision of credit is being dealt with. It is probably correct, however, to suggest that the Government has decided that only volunteer counselling services will receive grants. It is not so important that legal centres will miss out in this regard as such issues are generally handled by financial counsellors not lawyers. Legal Centres have handled most cases in the past and have been instrumental in pushing the reforms. Though it is possible that the reforms do not extend as far as the centres would wish, some achievements have been made. I ask the Minister for a commitment to giving consideration to expanding the purposes for which the trust fund can be used. The Minister may wish to indicate whether or not this will be

the Government's intention at some future date and if it is not the intention, why it is not. With those reservations, I support the bill.

Page 3812

The Hon. R. J. WEBSTER (Minister for Planning and Minister for Energy) [5.55], in reply: I thank all honourable members who contributed to this debate. I ask the Hon. Elisabeth Kirkby to accept the assurance that the Government and the department do not intend to reduce funding to the Consumer Credit Legal Service. On the contrary, the Government is very aware of its importance and is constantly reviewing allocations to it. The rights of borrowers to argue their individual cases will be preserved in the form of the Commercial Tribunal where an individual order may be made in their favour. The aim is to provide funds to areas of greatest need. As my advisers point out, the recession affects consumers, not lenders. With those few remarks I commend the bill.

Motion agreed to.

Bill read a second time and passed through remaining stages.

CONSUMER CLAIMS TRIBUNALS (AMENDMENT) BILL

Second Reading

The Hon. R. J. WEBSTER (Minister for Planning and Minister for Energy), on behalf of the Hon. E. P. Pickering [5.56]: I move:

That this bill be now read a second time.

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

Leave granted.

The Consumer Claims Tribunals (Amendment) Bill 1992 seeks to amend the Consumer Claims Tribunals Act 1987 to promote greater efficiency and accountability in the operation of the tribunals and to rectify certain deficiencies in the wording of the Act.

The Consumer Claims Tribunals in NSW were established in 1974. Their purpose was to provide a mechanism for resolving disputes between consumers and traders in the quickest, cheapest and least formal manner possible.

This is achieved by restricting legal representation and appeals, prohibiting both debt recovery action by traders and the awarding of costs, and by waiving rules of evidence. The tribunals help alleviate pressure on the court system and offer a service which allows referees to mediate in the settlement of a claim before handing down an order. The range of orders possible is wider than that available in the courts.

Since 1974 the Act has been amended and then revised in 1987. The former narrow definition of 'consumer claim' has been broadened so that small traders (suppliers of goods and services) may be claimants in respect of their 'consumer' purchases. The monetary jurisdiction is now \$6,000 and a rise to \$10,000 has been recommended to keep pace with the present day costs of goods and services.

Disputes which may be heard before the tribunals relate to such issues as faulty goods,

unsatisfactory professional and trade services, insurance claims and various disputes with utilities.

In 1989 the Building Disputes Tribunals were set up to provide a specialist building disputes jurisdiction. They operate within the organisation of the consumer claims tribunals. The amendments before you will apply equally to the building disputes tribunals, with certain minor changes being made to cater for their specific needs.

The need for the present amendments was established during a review of the tribunal system carried

Page 3813

out by the consultants Peat Marwick Hungerfords and attorneys Clayton Utz. This was followed by release of a discussion paper and a call for submissions from the public.

The level of satisfaction with the operation of the tribunals appears to be high and the present amendments are not a departure from their basic philosophy. They are more in the nature of a tidying-up in order to improve the functioning of the system.

The principal changes lie in the areas of extension of the definition of consumer, clarification of the procedure for lodging claims, provision of written reasons for orders, imposition of interest on unsatisfied orders and exclusion from jurisdiction of claims which have already been determined by a taxing officer.

An extension of the jurisdiction of the tribunals is proposed to include public companies limited by guarantee.

The present Act already allows use of the tribunals by certain classes of company: exempt proprietary companies; bodies corporate under strata titles legislation; and a company that owns an interest in land and has a memorandum or articles of association conferring on each owner of shares in the company various rights. At present the lodgment of claims by all other types of company is ruled out.

A case has been made for the inclusion of public companies limited by guarantee. These are public companies which, although classified public, are not listed on the stock exchange and do not have a share capital. The members of such companies guarantee on joining, to pay a certain sum of money in the event of the company being wound up. Such companies are usually sporting or social clubs and their profits must be put back into the club and not distributed to members. This extension of the jurisdiction is seen as a matter of equity. It is anticipated that it will be used only by smaller bodies and that the larger and more affluent groups will continue to use lawyers rather than the tribunal.

The clarification of the lodgment procedures for claims is a further move towards administrative efficiency. Because there are a number of places such as regional offices of the Department of Consumer Affairs where tribunal claims can be lodged and a number of staff who deal with the process it is important to specify the point in time at which a claim is formally lodged. This became an issue because of legal dispute which arose over which lodgment had precedence, when claims were lodged both in the local court and the tribunal by opposing parties.

Items (10) and (11) of the bill relate to the provision to clients of the tribunals of written reasons for referees' decisions. At present there is no obligation on the referees to provide either verbal or written reasons, although it is customary for referees to give oral reasons to justify their decisions.

The intent is to require referees to record and furnish brief reasons for their decisions, such record to be available to clients on payment of a fee and on lodgment of an application within a set period.

The mechanism to enforce compliance with tribunal orders has been improved. Clients have to seek satisfaction of overdue monetary orders through the local courts. This additional step lengthens the process and gives a financial advantage to slow payers. The amendment will allow the interest component on an unsatisfied order to run from the time of lodgment in court, rather than 21 days later. This arrangement should encourage more prompt settlement of such debts.

A clause has been included in the bill to prevent the 'double jeopardy' of a claim regarding solicitor's costs being taken to the tribunal when those costs have already been taxed by a court officer. While it has been the custom of the tribunal to take into account the mechanism of taxation of costs, the proposed provision will put the matter beyond doubt.

Further minor changes have been made to clarify certain parts of the Act. The definition of 'goods' has been expanded to specifically exclude real property, and the section concerning the finality of a tribunal order has been reworded to indicate the possibility of renewal of claims and of appeals to superior courts on the grounds of denial of natural justice or lack of jurisdiction.

In short, the bill contains a package of measures which are intended to eliminate problems of

Page 3814

interpretation which have arisen, to make the act more accessible to the public and to increase the tribunals' effectiveness and accountability.

These changes should enhance the operation of a service which is already very successful.

I commend the bill.

[The President left the chair at 5.58 p.m. The House resumed at 8.15 p.m.]

The Hon. JUDITH WALKER [8.15]: The Opposition proposes to support the now amended Consumer Claims Tribunals (Amendment) Bill. The bill is the result of work done by consultants in 1989 in a review of the operations of the Consumer Claims Tribunal. The consultants recommended amendments to existing legislation. The Opposition agreed with the amendments but was unhappy at the prospect of the tribunal being in a position to award costs against the consumer. However, in the other House last night the bill was amended to the satisfaction of the Opposition. The Government has gracefully accepted the amendments to the legislation. All other requirements, as laid down in the bill before the House, are good, particularly the provision increasing the monetary jurisdiction from \$6,000 to \$10,000. The Opposition opposed the provision that would have put the tribunal in a position where it could award costs in respect of so-called frivolous claims. That is a debatable issue. What might seem frivolous to a trader is not necessarily a frivolous argument to a consumer. An advantage of the tribunal has been the fact that consumers understand how much money they have to pay when they lodge a claim before the tribunal. The Opposition believes that should remain the case. In our view, it would disadvantage consumers if costs at the end of the day were to be unknown. The Opposition supports the amended legislation.

The Hon. ELISABETH KIRKBY [8.19]: The Australian Democrats support the Consumer Claims Tribunals (Amendment) Bill. As has already been pointed out by the Hon. Judith Walker, the provisions of this bill are in line with the recommendations of the Review of the New South Wales Consumer Claims Tribunals Legislative Issues, which was carried out by Peat Marwick Hungerfords, consultants, and Clayton Utz. We wish to point out the few deficiencies in the bill as it originally stood. Proposed section 28(3)(a) provided that the tribunal may award costs to a party to a claim for the reasonable costs incurred by that party in attending the hearing or rehearing of the claim

if the tribunal is satisfied that the claim was frivolous or vexatious. I wish to point out that the provision for the awarding of costs is not even-handed, in that while consumers may be penalised for unreasonable behaviour traders are not. As a matter of principle, I believe both consumers and traders should be treated equally. Item (13) in schedule 1 seeks to amend section 28 as follows:

Section 28 (Costs to be allowed in limited cases):

(a) After "consumer claim", insert ", except as provided by this section".

(b) At the end of section 28, insert:

(2) A tribunal may order a party to a consumer claim to pay costs in respect of the reasonable costs of obtaining expert advice or evidence in respect of the claim if the parties to the claim agreed to the obtaining of that advice or evidence.

(3) A tribunal may make an order for costs in favour of a party to a consumer claim for the reasonable costs incurred by the party in attending at the hearing or rehearing of the claim, but only if:

(a) the party is a respondent to the claim and the tribunal is satisfied that the claim is frivolous or vexatious; or

Page 3815

(b) the party against whom costs are to be awarded failed to attend at the hearing or rehearing.

(4) A tribunal must not make an order in the circumstances described in subsection (3)(b) if satisfied that there was sufficient reason for the failure to attend.

This appears to be unnecessary. If both parties agree to the obtaining of advice or evidence, the Consumer Claims Tribunal would not need to order costs to be paid. Section 28(3)(b) and section 28(4) provide that a tribunal may award costs to a party to a claim for the reasonable costs incurred by that party in attending at the hearing or rehearing of the claim if the party against whom the costs are to be awarded failed to attend at the hearing or rehearing, unless the tribunal is satisfied that there was sufficient reason for the failure to attend. The problem that I see with this, and perhaps the Minister will address it in reply, is that it will be difficult to determine why the other party did not attend. Given the doubts about the justice or workability of the provisions for the awarding of costs, the Australian Democrats are pleased with the omission of the clauses relating to the tribunal's power to award costs in certain cases. Currently the Consumer Claims Tribunal Act provides in section 28 that a tribunal has no power to award costs to or against a party to a consumer claim. Consumer claims tribunals were established to get away from the legalism of the judiciary system. At page 1294 of *Hansard* of 12th March, 1974, when introducing the 1974 Act, the Hon. E. A. Willis stated:

Some people have been frightened to go to court - to the District Court or even a Court of Petty Sessions - because they have been frightened of the costs they may have to pay. But costs are not provided for in these hearings.

Although the discussion paper, headed "Review of the New South Wales Consumer Claims Tribunals Legislative Issues", recommended that referees be granted a discretion

to award costs within clearly defined guidelines, the reasons for maintaining the present no costs situation are compelling. In paragraph 3.3.6.5 on page 25 of the paper it was stated:

As mentioned above, there is a choice between awarding an amount equal to actual costs incurred, or awarding a fixed amount in each case. If a fixed amount is awarded, some people will be over compensated and some people will be under compensated.

If actual costs are awarded, the costs claimed by professionals like architects, doctors and solicitors would be over a hundred dollars per hour. The time for a hearing plus travel is likely to be two to three hours. The risk of costs of at least \$150 would be a significant barrier for many people with claims against professionals.

In courts, costs are based on standard scales for legal representation; as solicitors are officers of the court there is less likelihood of claims being exaggerated. As there is rarely legal representation in the tribunal, costs could only provide compensation for inconvenience, transport expenses, lost wages or expert evidence.

Other methods of dealing with the problem are suggested. Paragraph 3.3.6.6 in part states:

In summary the "no costs" approach can be justified on several grounds. It encourages greater access to the tribunal by minimising the expense that a party needs to undertake in order to resolve the dispute. It inevitably encourages more speedy resolution of a dispute as the matters are generally brought on for hearings swiftly.

However, the "no costs" approach can, and often does, result in unadvised and prepared parties inadequately presenting their evidence. This frequently necessitates adjournments in order to remedy the defect and increases ultimate costs.

Page 3816

One possible effect of the introduction of a power to award costs is that once an option becomes available in the litigation process, it is almost obligatory for both parties to pursue that option.

If an award of costs is open to the Referees, then the parties may be more inclined to undertake expensive preparation for the dispute. The possibility that potential losses could be greater than the loss already suffered by the claimant may, therefore, discourage some people from taking their claims to the Tribunal. Similarly, costs would tend to exacerbate any advantage one party has over another owing to greater resources. The "no costs" provision avoided this very dilemma, but the imposition of a ceiling on costs award would reduce this unwarranted effect.

The Australian Democrats agree that the terminology is too wide and would have disadvantaged consumers. The Bill provides for the monetary jurisdiction of the Consumer Claims Tribunal to rise from \$6,000 to \$10,000. This is a welcome increase, but I question whether it is sufficient. Civil claims under Local Court jurisdiction may rise to around \$40,000. If the tribunal is to be a valid alternative and alleviate pressure on the court system, which is the intention of the tribunal, the jurisdiction of the Consumer Claims Tribunal should be raised even higher. I ask the Minister to address this issue in his reply. I realise that an increase from \$6,000 to \$40,000 is a big jump in one go, but equally perhaps a median figure could have been found rather than \$10,000. I point out also that disputes over life insurance are not heard by the Consumer Claims Tribunal even though disputes over other forms of insurance are. I would like a reply

from the Minister, why this situation has been allowed to prevail. I have been informed that there are many disputes between life insurance companies and policy holders, particularly about superannuation. Life insurance agents often tell potential customers that they can terminate contributions at any time when this is not the case. The result is that policy holders tend to lose very large amounts of money. I believe that this aspect could have been included in the amendments to the bill.

Only yesterday in another place an amendment was moved on pages 6 and 7 to schedule 1(13) and on page 10 to schedule 1(17). It was suggested during the debate in another place that this was the issue to which the Opposition had strong objection. The amendment moved by the Opposition related to the provision of the bill dealing with the tribunal's power to award costs. It appears that the Opposition believes, and I support it in this belief, that the philosophy and intent of the Consumer Claims Tribunal to provide low cost access to consumers can be achieved by taking a trader to a tribunal and having the matter decided outside the court system. It is most important that we realise this about the tribunal. If a matter goes before a court the rules of evidence must apply and the fear of costs and the right of appeal and so on are also very daunting factors. I believe it is necessary to strengthen the powers of the tribunal and also, even though the Opposition is unhappy about it, to strengthen the powers of the tribunal to award costs. I have already pointed out a person who goes before a tribunal rather than a court must be prepared. In many cases it is necessary to obtain legal advice so that such a person can be adequately prepared and have his or her case adequately dealt with. With these few reservations, we support the bill before the House. I trust the Minister in his reply will answer the questions I have been asking.

The Hon. J. P. HANNAFORD (Minister for Health and Community Services) [8.33], in reply: I thank honourable members for their support for this legislation. A number of questions have been raised by the Hon. Elisabeth Kirkby, and I shall address those. She raised the matter of costs. I indicate that the provision to allow costs has been dropped in the lower House. So the position under the legislation as it stands in this House remains the same as it was originally, that is, the tribunal cannot allow costs in any circumstances. So the matter she was concerned about has been overcome in the legislation. [*Quorum formed.*]

Page 3817

The Minister in the other house has flagged that the increase from \$6,000 to \$10,000, to which the honourable member made reference, will be introduced by regulation, and it is not therefore in this bill for that reason. The honourable member also raised the matter of the amounts that are the subject of the jurisdiction. The difficulty with increasing jurisdiction to something like \$40,000 is that when amounts of that size are the subject of dispute there is pressure for legal representation. That leads to strict application of the rules of evidence and that type of approach, usually because of the amounts involved. That undermines the principle behind this legislation. That is the reason why at this stage the jurisdictional amount is kept down.

The Hon. Judith Walker: That sort of money would be contracts under deed.

The Hon. J. P. HANNAFORD: Yes, sizeable amounts would be involved and therefore substantial disputes. The other issue raised by the honourable member is in relation to exclusions from claims. The only exclusion is for insurance claims in respect of life insurance. One of the reasons for so excluding it is that the industries have developed their own mechanisms for dealing with disputes. In respect of life insurance, the other reason for excluding it is that the legislation deals with claims between two

parties. The parties in a life insurance claim are the person insured and the insurer. Disputes could arise in life insurance claims only after the purchaser of the service has expired.

The Hon. Elisabeth Kirkby: The person would not be terminated. There may be disputes while he or she is still alive.

The Hon. J. P. HANNAFORD: Yes. The advice from the department is that in those particular areas these industries have now set up their own disputes mechanisms which at this stage are working reasonably well. Obviously if we become dissatisfied with the way in which these areas do work we would need to review the legislation. With those few comments covering the issues I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

MOTOR VEHICLES TAXATION AND FEES (AMENDMENT) BILL

Second Reading

The Hon. J. P. HANNAFORD (Minister for Health and Community Services), on behalf of the Hon. R. J. Webster [8.40]: I move:

That this bill be now read a second time.

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

Leave granted.

The objective of the bill is to continue the Government's commitment to remove cross subsidisation between government departments and authorities.

At present, when State government-owned vehicles are registered, they are exempt from both the motor vehicle tax (weight tax) and registration fee components.

Page 3818

The bill provides for the abolition of these exemptions, with effect from the 1992/93 financial year.

The key benefits of the proposal are:

It is in accordance with the user pays principle.

If the Government is to achieve improvements in productivity and efficiency and identify the true costs of government programs, the principle of user pays should be applied across all public sector activities.

As mentioned earlier, it is consistent with the removal of cross subsidisation between government bodies.

It will enable the true costs of operating government vehicle fleets to be identified. This will in turn encourage a review of vehicle needs generally within the public sector.

And most importantly, it will provide an additional \$9.5M in weight tax for the State's roads programme.

The additional weight tax raised will be appropriated annually to the Roads and Traffic Authority fund for that purpose.

This is consistent with the Government's treatment of existing motor vehicle taxes and the State's fuel levies.

Revenue from registration fees, which will be approximately \$1.3M will be paid to the Consolidated Fund, for appropriation to government services generally.

The basic principle of motor vehicle taxation recognises that vehicles using the road system should contribute towards the costs of road maintenance and rehabilitation.

The rationale for the existing government exemptions is no longer relevant nor is it consistent with this Government's objectives.

There is increasing attention being given to the efficiency and effectiveness of operations in the public sector.

Hidden subsidies such as exemptions from weight tax and registration charges hinder this process.

The proposed changes to the existing legislation will ensure that State government departments and authorities are more accountable for their vehicle operations and contribute towards the costs of road enhancement and maintenance.

The existing specific exemptions for State owned ambulances, mine rescue vehicles and fire fighting vehicles are also to be eliminated.

However, the current legislation provides for a number of specific exemptions and concessions for primary producers, welfare categories, mobile plant, trailers and tow trucks and these concessions will continue to apply.

For example, fire engines would be classified as mobile plant and would therefore be eligible for the appropriate concession - in this case, they would pay only 12 per cent of the weight tax charge.

Similarly, all government agencies will be eligible for the majority of these concessions where they are relevant.

There will be no direct financial impact on the family as a result of the legislation, nor will it create any additional costs for business.

The financial impact on government agencies will be relatively small in the context of their total budgets. This, together with improved efficiency and productivity should avoid the need for significant reductions in the quality of services.

The whole community will, however, benefit from the enhancement, rehabilitation and increased maintenance of the road network that the additional taxation revenue will facilitate.

I commend the bill to the House.

The Hon. R. S. L. JONES [8.41]: I wish to put on record some concerns of the New South Wales Fire Brigade Employees Union and the United Firefighters Union of Australia about the effect the tax will have on firefighting appliances. They believe that the legislation is just a paper shuffling exercise to rob Peter to pay Paul. They suggest that as fire engines only travel on average 50,000 kilometres in seven years they will be paying more than their fair share of tax. If possible, I would like that matter to be clarified by the Minister for Health and Community Services. At present government-owned motor vehicles are exempt from weight tax and registration fees. This exemption is to be scrapped. Supposedly, this change will provide \$10.8 million for the Consolidated Fund. The money will go from one organisation to another. It will be a round robin. I presume that the intention is to make sure that government vehicles are being driven, as it were, on a level playing field and contribute fully to the cost of road maintenance. The Government would regard this as another minor microeconomic reform, although it seems to me a rather tortuous way of putting such an arrangement in place. I do not understand why the legislation is actually necessary. Nevertheless, the Australian Democrats are not opposed to the legislation.

The Hon. JUDITH WALKER [8.42]: The Opposition supports the Government's initiative, the Motor Vehicles Taxation and Fees (Amendment) Bill, although I share some of the concerns of the Hon. R. S. L. Jones. My concern is that - if any government department - for example the Police Service or the Fire Brigade Employees Union, which was mentioned by the Hon. R. S. L. Jones - under its existing budget, were required to meet the weight tax and registration fee costs, it would mean that other services would be downgraded to fund the additional costs. If the Minister can indicate the Government's view on that, the Opposition would be happy to support the legislation.

The Hon. J. P. HANNAFORD (Minister for Health and Community Services) [8.43], in reply: The Hon. R.S.L. Jones referred the effect of the legislation on bush fire fighting and civil defence services. Regulation 34 of the motor traffic regulations provides that vehicles used for bush fire fighting and civil defence purposes do not need to be registered if they carry a sign identifying the bush fire brigade to which the vehicles are attached. As the local bush fire fighting vehicles do not need to be registered, under the legislation they would not be required to pay vehicles taxes and registration fees. In addition, any council-owned vehicles for bush fire fighting or civil defence services are entitled to a specific exemption from tax, even if they are registered under section 16(1)(c), and no change is to be made to this section. Regulation 34 also covers vehicles used for civil defence purposes. The Hon. Judith Walker asked about the effect of the legislation on the Police Service. The Police Service will be subject to the legislation. However, the advice given to me is that calculations made by the Police Service indicate that the impact on its budget will be minimal. I commend the bill.

Motion agreed to.

Bill read a second time and passed through remaining stages.

STAMP DUTIES (AMENDMENT) BILL

Second Reading

Page 3820

The Hon. J. P. HANNAFORD (Minister for Health and Community Services), on behalf of the Hon. E. P. Pickering [8.46]: I move:

That this bill be now read a second time.

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

Leave granted.

The Stamp Duties Bill now before the House ensures that loan security duty is payable where loan securities are transferred between lenders at the instigation of the borrower, simplifies the payment of the fee on cancelled agreements, allows agreements which have been varied to be stamped at the final purchase price, clarifies the provisions relating to loan securities which are used to secure bill facilities, exempts from stamp duty conveyances pursuant to separation agreements as defined in the De Facto Relationships Act, tightens the trust provisions to ensure that ad valorem duty is paid at least once on the original trust property or the re-investment of that property, provides the chief commissioner with the authority to refund stamp duty under certain conditions, relaxes the requirements to obtain concessional rates of duty on conveyances of property to trustees, provides a concession where shares are transferred to trustees, exempts from conveyance and loan security duty Community Tenancy Scheme tenants who purchase their own home, exempts from duty any additional loan security taken out to further secure the obligations of First Home Purchase participants and Community Tenancy Scheme tenants and Department of Housing tenants, provides for relocatable home sites to be granted the same concession as residential leases, provides for the refund of stamp duty paid on a motor vehicle certificate of registration where the vehicle has been previously stolen prior to purchase and is repossessed, provides for the stamping of a document by the chief commissioner to be regarded as an assessment and makes number of other miscellaneous amendments.

The Stamp Duties Act currently provides that where agreements are rescinded or annulled, the ad valorem duty payable on the document is to be refunded less a fee of \$25.

However, agreements are often rescinded before they are lodged for stamping as there is a 2 month period after the date of signing when an agreement may be stamped without penalty.

The process of having taxpayers pay the stamp duty on an agreement in the above circumstances and subsequently receive a refund, less the administration fee, is inequitable and onerous.

The bill will allow for agreements which are rescinded or annulled within 2 months of signing and which have not been stamped, to be chargeable only with the administration fee of \$25, subject to the lodgment of satisfactory evidence as to cancellation.

At present, the Stamp Duties Act provides that stamp duty is assessed on documents in the form in which they are first executed.

Where there is an instrument of variation increasing the purchase price, stamp duty is payable on the higher amount, but where there is an instrument reducing the purchase price, the duty is still payable on the initial purchase price.

This practice is inequitable and the bill will provide that prior to settlement, an agreement may be stamped with duty calculated on its final purchase price where there is an instrument of variation reducing the initial purchase price.

Under current legislation, conveyances of property made in accordance with a court order under the De Facto Relationships Act are exempt from stamp duty.

However, couples terminating their de facto relationship who choose to enter into a separation

agreement, as provided for in the De Facto Relationship Act, rather than obtain a court order, are not eligible for exemption from stamp duty.

This is inequitable as couples entering into a separation agreement usually choose this option to settle their affairs as it is considerably less expensive than obtaining a court order.

Page 3821

The bill will provide for an exemption from stamp duty on a separation agreement, and any documents pursuant to it, when evidence is produced to indicate that the parties to the de facto relationship have terminated that relationship at least 3 months prior to the lodgment of the documents for stamping.

This amendment will bring the provisions relating to the transfer of property following the breakdown of a de facto relationship more into line with those relating to marriage breakups while at the same time, ensuring that separation agreements are not used to convey property when no termination of the relationship is contemplated.

Under the current provisions, nominal duty is assessed in respect of an instrument of appointment in favour of persons specially named or described as the objects of a power of appointment contained in a conveyance, on which ad valorem duty has been paid, or in a will.

This concession should only apply where ad valorem duty has been paid on the conveyance establishing the trust or power and that property, or a direct re-investment of the proceeds, is being conveyed to the appointee or beneficiary.

As an anti-avoidance measure, the bill amends the trust provisions of the Act to ensure that ad valorem duty is paid at least once on the original trust property or the re-investment of that property.

The Crown Solicitor has advised that the refund provisions for overpaid stamp duty require clarification.

Furthermore, the Crown Solicitor has suggested that the provisions for objections to assessments need strengthening to provide an explicit authority for any refund necessary following a decision on an objection.

In order to ensure that all refunds from stamp duty can be properly made, the Stamp Duties Act is being amended to provide:-

- * the chief commissioner with authority to refund overpayments of duty within 2 years of payment, subject to a discretion in respect of duty paid by a taxpayer and then passed on to its customer, that a refund shall only be made if the chief commissioner is satisfied that the customer who ultimately paid the duty will receive the refund;
- * the chief commissioner with authority to appropriate duty where duty has been overpaid on one transaction and underpaid on another;
- * the chief commissioner with authority to reassess the duty payable within 2 years of the date of the original assessment;
- * for amendment to the objection provisions to provide an authority for any refund necessary following a decision on an objection;

- * that no refund should be payable if the assessment or return payment was made in accordance with the chief commissioner's interpretation of the Stamp Duties Act at the time of the assessment or return payment.

Bill facility arrangements are frequently used for providing financial accommodation to large borrowers and a financier will accept or indorse a bill of exchange for a customer to facilitate a sale of the bill to a third party.

A loan security instrument is given to protect the exposure of the financier.

There has been some argument that the current bill facility definition is deficient and does not encompass the types of transactions for which it was originally intended.

The bill amends these provisions to clarify where duty is payable and ensure that there is no revenue leakage due to varying interpretations of the Act.

Loan security duty is payable by the borrower on advances of funds made under or secured by instruments such as mortgages and company charges.

Page 3822

As a general rule, when a borrower refinances through another lender, the borrower will give that lender a new mortgage and ad valorem duty is payable on the amount advanced by the new lender.

However, there are a number of different methods used in the practice of refinancing which result in differing levels of stamp duty liability.

Because of this and the potential for loss of revenue, the bill amends the principal Act to ensure that loan security duty will be payable except where the transaction is instigated by the lender.

The current exemption provisions in respect of refinancing by primary producers will not be affected by this amendment.

In 1982, the Stamp Duties Act was amended to prevent the widespread avoidance of conveyance duty through the use of trusts and creative conveyancing practices.

These amendments have been effective in controlling avoidance practices, however, they have placed restrictions on transfers to new or additional trustees particularly where non-profit organisations or clubs are involved.

The current provisions require that in order to attract nominal duty, conveyances reflecting changing trustees must be, amongst other things, pursuant to a specific document which is liable to nominal duty.

Many small organisations, such as clubs, do not execute documents reflecting changes in trustees but record them in other forms, such as letters or meeting minutes, thus falling outside the current concessional rate requirements.

The bill relaxes this restriction to allow the concessional rate of duty on a conveyance which is pursuant to any instrument recording the appointment of new or additional trustees or the retirement of existing trustees.

This amendment will also benefit trustee companies who hold securities and other assets for clients as they will no longer be required to execute documents which attract nominal duty in order

to gain a concession from the ad valorem rate of duty when changing trustees.

The bill will also amend the trust provisions to allow for marketable securities to be transferred to a trustee without the payment of ad valorem duty provided that the chief commissioner is satisfied that the transfer was not effected to change the beneficial ownership or in contemplation of the change in beneficial ownership in the marketable securities.

Also, marketable securities held by a manager or trustee will be able to be transferred to a custodian without incurring ad valorem duty, enabling the commercial practice of nomineeing shares to operate more freely on those securities with a New South Wales nexus.

It is expected that there will be no significant effect on revenue as a result of these amendments.

For some time, there has been some doubt as to whether Community Tenancy Scheme tenants are eligible for the exemption from stamp duty available to Department of Housing tenants on the purchase of a property and the associated mortgage.

While Community Tenancy Scheme tenants must be on the Department of Housing waiting list for accommodation and are eligible for low interest loans, if they are wish to buy a property they are not strictly Department of Housing tenants and therefore do not fall within the exemption provisions.

This situation has placed Community Tenancy Scheme tenants at a disadvantage to those already living in Department of Housing rental accommodation when purchasing a home.

In order to overcome this anomaly, the Premier and Treasurer approved of the Stamp Duties Act being administered on the basis that Community Tenancy Scheme tenants be given the same concessions as Department of Housing tenants.

The bill amends the Stamp Duties Act to validate this Variation to Statute.

The Stamp Duties Act currently provides that a loan security taken out by a participant of the First Home Purchase Scheme is exempt from loan security duty.

Likewise, a tenant of the Department of Housing or a Community Tenancy Scheme is also eligible for an exemption from stamp duty on a loan security taken out to purchase a property.

However, some lenders to these purchasers require additional security for the loans made, which is usually a loan security over another property such as a parent's home.

Under the existing provisions of the Act, such an additional loan security attracts full loan security duty, creating an inequitable situation.

To overcome this anomaly, the Premier and Treasurer approved of the Stamp Duties Act being administered on the basis that any additional loan security to secure a loan obtained by a participant in the First Home Purchase Scheme or a tenant of the Department of Housing or a Community Tenancy Scheme, is exempt from stamp duty.

The bill amends the Stamp Duties Act to validate this variation to statute.

Under the current provisions of the Stamp Duties Act residential leases not exceeding 5 years are exempt from stamp duty and there is a general exemption from duty on leases where the annual rent does not exceed three thousand dollars per annum.

However, there are no similar provisions for the lease of relocatable homes and home sites.

While some of these leases may fall within the above categories, many others would not.

As a result of concerns raised by my colleague the honourable Minister for Housing in respect of this issue, the Premier and Treasurer approved of the Act being amended to extend the current exemption for residential leases for a term of no more than 5 years, to include a lease of a site or a relocatable home in a caravan or relocatable home park where it is to be used as the principal place of residence of the lessee.

Stamp duty is payable on the issue of a motor vehicle certificate of registration as a result of the purchase of either a new or used vehicle.

However, instances occur where persons have purchased motor vehicles which were stolen prior to that purchase.

Persons who buy motor vehicles from licensed dealers obtain a guarantee to the title and can recover the purchase price if the vehicle is subsequently found to have been stolen, but there is no provision in the Stamp Duties Act for these persons to obtain a refund of the stamp duty paid on the motor vehicle certificate of registration.

The bill amends the Act to allow for the stamp duty to be refunded within one year from the date of purchase if the vehicle is repossessed from the current owner as a result of having been previously stolen.

The bill makes a number of other miscellaneous amendments to the Principal Act.

I commend the bill to the House.

The Hon. M. R. EGAN (Leader of the Opposition) [8.47]: The Opposition supports the Stamp Duties (Amendment) Bill.

The Hon. R. S. L. JONES [8.47]: I congratulate the Government on introducing the Stamp Duties (Amendment) Bill. The Australian Democrats support this bill most enthusiastically. It has some very humane provisions. It is essentially a tidying-up piece of legislation. Proposed Section 74C(B) will enable de facto couples who separate to have stamp duty waived even though they do not have a court order because of the high cost of court cases. That is a humane act on the part of the Government. I know of someone who will be affected beneficially by the adoption of section 73 - another humane

Page 3824

move by the Government. I refer also to amendments on page 15, which have already been given effect by the Premier, Treasurer and Minister for Ethnic Affairs by way of a variation to statute on 4th December, 1991, and 1st January, 1992. These humane amendments waive stamp duty for participants in the community tenancy scheme and the first home purchase scheme. This is good legislation, and I am happy to support it.

The Hon. J. P. HANNAFORD (Minister for Health and Community Services) [8.49], in reply: I thank honourable members for their support of this bill. The Stamp Duties (Amendment) Bill is an important piece of legislation. I note the support of the Opposition and the Hon. R. S. L. Jones. The bill will ensure that the loan security duty is payable where large securities are transferred between lenders at the instigation of the borrower. It simplifies the payment of the fee on cancelled agreements and allows

agreements which have been varied to be stamped with the final purchase price. The Government is generally pleased with the approach adopted in the bill, which clarifies provisions relating to loan securities used to secure bill facilities, and exempts stamp duty conveyances pursuant to separation agreements as defined in the De Facto Relationships Act. I am sure that honourable members are aware of the importance of such separation agreements under that Act. The bill also tightens trust provisions to ensure that ad valorem duty is paid at least once on the original trust property or on the reinvestment of that property. One payment is desirable for those who will be confronted by the need to pay stamp duties. An additional freedom provided for in the bill is that the chief commissioner will be given authority to refund stamp duties under certain conditions. The bill also relaxes the requirement to obtain concessional rates of duty on conveyances of properties to trustees, and provides a concession where shares are transferred to two trustees. These are significant benefits. I thank honourable members for their support of the proposed legislation and I commend the bill.

Motion agreed to.

Bill read a second time.

In Committee

Clause 2

The Hon. J. P. HANNAFORD (Minister for Health and Community Services) [8.53], by leave: I move the following amendments in globo:

Page 2, clause 2, line 7. Omit "(18) and (19)", insert instead "(19) and (20)".

Page 2, clause 2, line 9. Omit "(20)", insert instead "(21)".

These minor amendments are proposed to complete a description of shares and minutes to include the rights which are properly attributable thereto.

Amendments agreed to.

Clause as amended agreed to.

Schedule 1

The Hon. J. P. HANNAFORD (Minister for Health and Community Services) [8.55], by leave: I move the following amendments in globo:

Page 3825

Page 8, Schedule 1, line 13. After "scheme", insert instead "or of a right to acquire a marketable security or a unit in a unit trust scheme".

Page 14, Schedule 1. After line 9, insert:

Consequential amendment - payment of concessional duty on certain instruments of appointment

(17) Second Schedule - Stamp Duties and Exemptions:

Omit the matter relating to APPOINTMENT in execution of a power.

These amendments are consequential on the amendments that have just been agreed to.

Amendments agreed to.

Schedule as amended agreed to.

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

SUPERANNUATION LEGISLATION (AMENDMENT) BILL

Second Reading

The Hon. J. P. HANNAFORD (Minister for Health and Community Services), on behalf of the Hon. E. P. Pickering [8.57]: I move:

That this bill be now read a second time.

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

Leave granted.

This bill will effect further amendments to NSW statutory superannuation schemes for compliance with Commonwealth regulatory legislation. In December of 1991 the Superannuation Legislation (Amendment) Act 1991 received passage through this House and effected substantial compliance for the statutory schemes. At that time the need was foreshadowed for further amendments because of the complex and unsettled nature of the Commonwealth changes.

The changes still continue to flow from the Commonwealth Government in every area of superannuation - taxation, the financial arrangements of funds, contributions, benefit levels and administration. The Commonwealth has made retirement in Australia a jungle of rules and regulations with seemingly no prospect of relief from constant change.

Currently, the Commonwealth Government is trying to introduce its 'superannuation guarantee levy' - compulsory employer contributions starting at 5% of salary for each employee which will rise to 9% by the year 2000. This will result in weighty additional costs to all employers, including State governments, at a time when such extra costs can simply not be afforded.

Repeated approaches by the State Governments and industry representatives seeking consultation and co-operation on changes to superannuation have made little impact. The Commonwealth has continued its hard line approach in an area which has vital consequences for all Australians.

The primary purpose of this bill is to achieve substantial compliance with Commonwealth legislation in regard to contributions and benefits beyond age 65, the investment powers and financial arrangements of the funds, and preservation and vesting requirements of schemes.

Secondly, several amendments of an administrative nature will be effected. These amendments
Page 3826
provide consistency and clarity in several areas of public sector superannuation.

Finally, the bill includes several amendments from the statute law revision program of the Government's superannuation administration which have been included with this principal

legislation on the advice of the Parliamentary Counsel.

Mr President, the main body of compliance amendments will implement controls on contributions and payment of benefits in the various statutory schemes for members over the age of 65. The Commonwealth Occupational Superannuation Standards (or OSSA) legislation requires that contributions cease in respect of members over age 65, and no benefits can be accrued after that age. Persons who were over age 60 at 1 July 1990 will receive protection from short term transitional provisions that will allow them to continue to contribute and accrue benefits up to 70 years of age.

The Commonwealth Occupational Superannuation Standards Act and regulations (known as OSSA) also lays down certain circumstances in which benefits must be paid after age 65.

These circumstances are:

- * The member is over age 65 and is working less than 10 hours a week,
- * The member is over age 70 and is working between 10 and 30 hours a week;
- * The member is over age 65 and requests that payment be made; or
- * The member has retired from the workforce.

Our Government's commitment to the abolition of compulsory retirement in both the public and private sector in New South Wales is well known. As part of this commitment, amendments were made to the statutory superannuation schemes in 1990 to ensure that people who chose to work beyond the early retirement age were not adversely affected in their superannuation entitlements. These provisions remain operative and it is the Government's intention, within these restrictions now imposed by the Commonwealth, to continue to ensure scheme members are encouraged to work and that they have flexible working conditions and benefits to support them.

The approach taken in achieving compliance by our schemes with the Commonwealth legislation was to ensure that members receive the most advantageous style and level of benefit within the parameters set by the Commonwealth regulations. The achievement of flexibility within the provisions was also important, to enable members to arrange their financial affairs as best suits them at a very important stage of their lives.

Accordingly, the provisions will, in compliance with OSSA, crystallise members' benefits at age 65 and will give members the option to either take their entitlement at that age, or to preserve a lump sum amount within the scheme to accrue interest.

In the pension schemes of the State Superannuation Fund and the Police Superannuation Scheme, upon reaching age 65, members will be able to elect to take either their pension or commuted lump sum benefit entitlement as currently provided for in the scheme. Both benefits will be payable immediately, however a lump sum benefit can be preserved within the fund to earn interest if the member so desires.

Similarly in the lump sum schemes of SASS and PSESS, members will be able to elect to take their benefit entitlement at age 65, or to preserve that benefit within the scheme.

The second major OSSA compliance matter addressed by the bill relates to standards on investment and financial arrangements of funds. The Public Authorities (Financial Arrangements) Act 1987 already subjects New South Wales statutory schemes to control in some of these areas and as such, our schemes are generally already operationally compliant with the OSSA standards.

It is necessary however to insert appropriate provisions in the relevant acts because of the

additional Commonwealth regulatory requirement that the governing rules of funds reflect the OSSA standards. Amendments are therefore necessary for those Acts which contain investment or financial arrangements provisions. The Acts to be amended are the

- * Superannuation Administration Act 1991;
- * Coal and Oil Shale Mine Workers (Superannuation) Act 1941;
- * Parliamentary Contributory Superannuation Act 1971; and

Page 3827

- * Public Sector Executives Superannuation Act 1989.

Vesting and preservation standards are the third area in which this bill achieves compliance. Significant changes were made by the Superannuation Legislation (Amendment) Act 1991 in these areas - this bill will amend 2 further Acts in this regard. The Police Association Employees (Superannuation) Act 1969 will be amended to bring interest payable on withdrawal benefits in line with the OSSA standards and with other previously amended public sector schemes, in particular, its parent scheme - the police superannuation scheme. Secondly, the Public Sector Executives Superannuation Act 1989 will be amended to provide for the compulsory preservation of certain contributions made after 1 July 1990 where a member had no employer support in the scheme. Very few senior executives are in this category because of their flexible remuneration packages and the availability of having employer contributions made as a pre-tax salary deduction. However, where members of the PSES scheme do elect to make only member or post-tax contributions, these are required to be preserved until age 55 or in other circumstances as laid down by the Commonwealth. These circumstances are detailed in the bill.

The second series of amendments contained in this bill will implement a number of changes of an administrative nature to the superannuation statutes. These changes achieve a twofold purpose of providing a consistent and equitable approach in the administration of schemes, and secondly, providing clear and workable provisions in the legislation governing the schemes.

A principal amendment of this bill will alter the retrenchment benefit available under the State Authorities Superannuation Act to members with short service. Currently, members of SASS with less than 3 years service receive a benefit of their own contributions and earnings thereon. They do not receive any employer financed benefit and cannot preserve a benefit to attract any of the employer financed component. This is inconsistent with the benefits available in other public sector schemes which enable, in different ways, an employee to attract an employer financed benefit, either immediately or through the availability of preservation.

To remedy this anomaly, the 3 year requirement in SASS will be removed and members will have access upon retrenchment to the fully vested benefit, including both contributor and employer financed benefit. This will operate from commencement of these provisions on 1 July 1992.

Additionally, members will have the option of preserving their benefit if so desired. Advice is awaited from the Insurance and Superannuation Commission on whether the additional employer financed component of these benefits which will now be payable will be classed as an improvement in benefits and so subject by OSSA to compulsory preservation until age 55. Provisions have therefore been included in the bill to allow for the compulsory preservation of the employer financed component if this is necessary. This provisions will commence on a date to be proclaimed.

Provisions will be inserted into the police superannuation scheme to allow for members whose benefits are unreasonably delayed to receive interest on that benefit. This is provided for in all other schemes which are under the responsibility of the state authorities superannuation board. Similarly, debt recovery provisions comparable to those operating for the State Superannuation

Fund and other schemes will be inserted into the Police Regulation (Superannuation) Act.

Amendment to be made to the Police Regulation (Superannuation) Act will extend from 90 days to 6 months the time period in which appeals against hurt-on-duty benefit decisions can be made. This brings the appeal provisions of the scheme more in line with those in the workers compensation area, upon which these provisions are modelled.

Also in regard to decisions concerning hurt-on-duty benefits, the notification requirements in the Act will be extended to require notification in writing to be given to claimants and affected persons when a decision is made.

In 1988 a series of changes was made to the statutory superannuation schemes to provide for uniformity of employer coverage across the public sector. This enabled scheme members to move between employers without losing their superannuation entitlements. An amendment now proposed to the Superannuation Act 1916 will enhance those earlier provisions and allow existing contributors to the State Superannuation Fund to remain in the scheme if they move to payment at hourly, daily, weekly or fortnightly rates, or payment by piece work. The requirement for payment at annual rates under the Superannuation Act is a barrier to mobility. This provision will in no way extend the current coverage of the State Superannuation Fund, which was closed in 1985. It will only operate to ensure that existing contributors who change to this method of payment are not forced out of the

Page 3828
scheme.

Mr President, the principal costs arising from the amendments within this bill stem from the proposed changes to the retrenchment benefit in SASS for those with under 3 years service.

As I indicated earlier, advice from the ISC may require compulsory preservation of the proposed improvement to this benefit meaning a minimal cash flow impact of approx \$0.9 M per annum, and deferral of the full cost of approximately \$3.7M per annum until the retrenched contributors ultimately retire, die, or otherwise qualify to take the benefit.

If this full cost is compared against the estimated cost of providing preserved resignation benefits under the existing rules it is apparent that a more realistic figure of the additional cost involved is approximately \$2.2M per annum.

Mr President, the remaining matters in this bill are of a minor administrative nature or are part of the miscellaneous amendments from the statute law revision program concerning superannuation.

Included in the remaining amendments are:

- * the provision of more flexible arrangements for changing the level of contributions in the Public Sector Executives Superannuation Scheme.
- * Clarification of death or disability benefit calculations to be made under the Coal & Oil Shale Mine Workers (Superannuation) Act 1941 after transfer to Queensland.
- * The transfer of certain regulations made under the Superannuation Act 1916 and the State Authorities Non Contributory Superannuation Act 1987 into the provisions of the Acts proper;

I commend the bill.

The Hon. M. R. EGAN (Leader of the Opposition) [8.58]: The Opposition

supports the bill.

The Hon. ELISABETH KIRKBY [8.59]: The Australian Democrats support the Superannuation Legislation (Amendment) Bill. I do not need to make any further formal remarks about this mainly machinery bill, which will achieve compliance with the Occupational Superannuation Standards Act 1987 of the Commonwealth by amending a whole variety of Acts as listed in the explanatory note.

The Hon. J. P. HANNAFORD (Minister for Health and Community Services) [9.0], in reply: I thank honourable members for their support of this important legislation which I commend.

Motion agreed to.

Bill read a second time and passed through remaining stages.

[The President left the chair at 9.1 p.m. The House resumed at 10.33 p.m.]

WORKERS COMPENSATION LEGISLATION (AMENDMENT) BILL

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL

DAIRY INDUSTRY (AMENDMENT) BILL

Suspension of certain standing orders, by leave, as a matter of necessity and without previous notice, agreed to.

Page 3829

Formal stages and first readings agreed to.

JOINT SELECT COMMITTEE UPON THE PARLIAMENT MANAGEMENT BILL

Message

The President reported the receipt of the following message from the Legislative Assembly:

Mr President

The Legislative Assembly desires to acquaint the Legislative Council that it has this day agreed to the following resolution:

- (1) That a Joint Select Committee be established to consider and report upon the Management of the Parliament and, in particular:
 - (a) the Parliament Management Bill 1992 and cognate Bill; and
 - (b) any alternative models to these Bills which could achieve:
 - (i) greater involvement by members in the management of Parliament;
 - (ii) more accountability for the Parliament to its members and the community; and

- (iii) greater separation of the management of the Parliament from the Executive.
- (2) That, notwithstanding anything contained in the Standing Orders, the committee consist of sixteen members, namely:
 - (a) Three members supporting the Government nominated by the Leader of the House in the Legislative Assembly;
 - (b) Three members supporting the Government nominated by the Leader of the Government in the Legislative Council;
 - (c) Three members not supporting the Government nominated by the Leader of the Opposition in the Legislative Assembly;
 - (d) Three members not supporting the Government nominated by the Leader of the Opposition in the Legislative Council;
 - (e) Two members of the Legislative Assembly nominated by the Leader of the House; and
 - (f) Two cross bench members of the Legislative Council nominated by the Leader of the Government in the Legislative Council.
- (3) The Committee shall be chaired by a member from 2(a) above, nominated by the Leader of the House in the Legislative Assembly. The Chairman shall have a deliberative and no casting vote.
- (4) That at any meeting of the Committee ten members shall constitute a quorum, provided that the committee meets as a joint committee at all times.
- (5) That leave be given to Members and Officers of either House called to give evidence before the committee.
- (6) That the committee have leave to sit during the sittings or any adjournment of either or both Houses; to adjourn from place to place; have power to take evidence and send for persons and papers; and to report from time to time.
- (7) That should either House stand adjourned and the committee agree to any report before the Houses resume sitting -

Page 3830

- (a) the committee have leave to send any such report, minutes and evidence taken before it to the Clerk of the House;
- (b) the documents shall be printed and published and the Clerk shall forthwith take such action as is necessary to give effect to the order of the Houses;
- (c) the documents shall be laid upon the Table of the House at its next sitting.
- (8) That the committee shall report by 2nd September, 1992.

And the Legislative Assembly requests that the Legislative Council pass a similar resolution.

K. R. Rozzoli

Legislative Assembly
7 May, 1992

Suspension of Standing Orders

Motion, by leave, by the Hon. E. P. Pickering agreed to:

That as a matter of necessity and without previous notice so much of the standing orders be suspended as would preclude consideration of the Legislative Assembly's Message on the Joint Select Committee upon the Parliament Management Bill at a later hour of the sitting.

SWIMMING POOLS BILL

Bill received and read a first time.

Suspension of certain standing orders agreed to.

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL

Second Reading

The Hon. E. P. PICKERING (Minister for Police and Emergency Services and Vice-President of the Executive Council), on behalf of the Hon. J. P. Hannaford [10.40]: I move:

That this bill be now read a second time.

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

Leave granted.

This bill continues the now well established Statute Law Revision Program. All members have recognised the value of the Statute Law Revision Program as an efficient and economical means of dealing with amendments of the kind included in the bill.

Schedule 1 to the bill contains policy changes of a minor and non-controversial nature that the Minister responsible for the legislation to be amended considers to be too inconsequential to warrant the introduction of a separate amending bill.

Schedule 2 deals with matters of pure statute law revision, that is, minor technical changes to legislation identified as appropriate by the parliamentary counsel. Some amendments in schedule 2 are corrections of minor errors, others correct terminology and some make changes relating to consistency with modern style. In this bill, a number of amendments to acts are included that are consequential on the enactment of the Land Acquisition (Just Terms Compensation) Act 1991.

Schedule 3 contains repeals of Acts made due to the incorporation of amendments in reprints of the relevant principal Acts and repeals of obsolete Acts. Obsolete Acts repealed include the
Returned

Soldiers and Sailors Employment Act 1919 which made provision regarding the employment of returned soldiers and sailors who served in World War 1, the Food Preservation by Sulphur Dioxide Enabling Act 1920 which sanctioned and regulated the use of sulphur dioxide in the preservation of certain foods and the Public

Service (Temporary Officers) Act 1923 which made provision for the appointment of certain returned soldiers as permanent public servants.

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

The bill itself contains detailed explanatory notes after the amendments to each Act. As stated in this House in the second reading speech given in respect of the last Statute Law (Miscellaneous Provisions) Bill in December 1991, no good purpose is seen as being served by my restating, or expanding upon, explanatory material provided in the bill. Rather, honourable members are invited, as was the case last year, to examine the amendments and the accompanying explanatory material and, in the first instance, to approach my office regarding any concerns that they may wish to raise or any issues that they may want clarified. For the assistance of members, arrangements have been made again for government officers to be available to deal with queries that are raised concerning any of the amendments or repeals contained in the bill. These procedures appear to have functioned satisfactorily in relation to the last Statute Law (Miscellaneous Provisions) Bill.

If, after examining the amendments, honourable members consider that a particular amendment should not proceed by means of the Statute Law Revision Program or that an issue raised has not been satisfactorily clarified by the procedure to which I have referred, the government may consider it appropriate to defer the amendment concerned rather than allow the matter to become the subject of controversy.

I commend the bill.

The Hon. B. H. VAUGHAN (Deputy Leader of the Opposition) [10.41]: The Opposition supports the bill.

The Hon. R. S. L. JONES [10.41]: I note that at page 9 of the bill, the Minister for the Environment has put into the legislation what he promised he would do after the recent concert held at Centennial Park. The legislation provides that any event which will attract more than 20,000 persons will require a regulation authorising it to be laid before the Parliament for at least five sitting days. The Parliament will decide whether or not it wants large events to be held at Centennial Park. I note that the amendments to section 56 of the Crown Lands Act 1989 will enable the Minister to create easements over land dedicated for a public purpose under the Act over Crown land authorised to be sold or transferred by the Minister under any other Act. I hope that this is not related to the Goolawah Reserve and there is no intention by the Minister to sell that reserve. I am pleased that the Aboriginal Relics Advisory Committee has been reconstituted as the Aboriginal Cultural Heritage (Interim) Advisory Committee. This important move should have been brought forward as a separate piece of legislation. The members of the committee are to comprise five Aboriginal persons from the New South Wales Aboriginal Land Council, one to be a person selected by the Minister from three nominees of the Nature Conservation Council of New South Wales, one is to be an officer of the service and one is to be an appointee of the Minister. This reconstituted committee will be most valuable, and I congratulate the Minister. With those few remarks, the Australian Democrats support the legislation.

The Hon. ELISABETH KIRKBY [10.43]: I too support the bill. I refer in particular to two provisions of the bill. The first relates to the Children (Care and Protection) Act 1987 and the amendments to section 61A - child to be informed of reasons for removal. This section requires notice of reasons for removing a child from

premises to be given to the child and to the person who has care of the child. The proposed amendment to the section provides that notice may be given verbally at the time the child is removed from the premises but it must also be given in writing. The child,
Page 3832

if of or above the age of 10 years, must be given the opportunity to contact any person of his or her choice. This is an important amendment and I commend the Government for having introduced it. Concern has been expressed in the community that when children are taken into care many of them cannot understand why. It could be extremely stressful for a child under 10 years of age to be taken away from a home, however unsuitable that home may be deemed to be. I congratulate the Government on the amendment to section 8 of the Children (Detention Centres) Act 1987. The proposed new section 8A makes provision in respect of official visitors. The Minister will be able to appoint a person to be an official visitor for a detention centre. The person is eligible for appointment if, in the opinion of the Minister, the person is expert in some branch of juvenile justice and demonstrates concern for persons within the juvenile justice system. It is a most valuable step forward that the official visitor scheme has been established for detention centres. Previously detention centres were covered by the official visitor scheme under the Community Welfare Act. I am concerned about the amendment to the Justices Act 1902 which deals with warrants of commitment for non-payment of fines. It is an amendment to section 87 of the Act. This amendment will commence on the date of assent to the Act. The proposed section reads:

(6) A warrant under this section in respect of a person who, at the time it is issued, is remanded to or imprisoned in prison (including any such person who is, at the time it is issued, of or above the age of 18 years):

(a) is to commit the person, or is taken to commit the person, to prison; and

I looked at the relevant section of the Justices Act. Warrants of commitment for non-payment are dealt with in section 87(1)(a) of the Act, which reads:

Where it is adjudged by a conviction or order that a fine, penalty, cost or other amount of money be paid and that the person against whom the conviction order is made does not pay in accordance with the terms of the conviction or order the amount adjudged to be paid is that ascertained by the conviction or order.

At that time an authorised justice may, by warrant, commit the person to prison. Under this amendment, if such a warrant is issued to a person aged between 18 and 21 years who happens to be on remand or in prison, the warrant for the non-payment of a fine in respect of that person means that the person may be committed to a prison rather than to a detention centre. Considerable concern has been raised and the "Kids in Justice" report pointed out that there were cases of young offenders, particularly those who were on remand and were under the age of 18, being imprisoned or arrested because they could not pay fines that the courts had ordered them to pay. Even if they were arrested only one week after their eighteenth birthday, it was necessary for them to go to an adult prison rather than a detention centre. In theory the cut-off point at age 18 is necessary, which is when a young person becomes an adult and is no longer considered to be a juvenile. However, many juvenile offenders may be fully mature in age but certainly not so far as their behaviour is concerned. In many cases the payment of the fine may have been totally beyond them. I am concerned that once again we are going to imprison people for the non-payment of fines, and in the case of juvenile offenders they will be incarcerated in an adult prison rather than a detention centre.

It is well known that gaol is the university of crime. A young offender might

commit a crime that is not very heinous but one in respect of which the offender has only been fined, demonstrating that it could not have been a very serious crime. If, for whatever reason, that person was unable to pay the fine and was arrested and placed in an adult prison it would not further the rehabilitation of that young person, nor would it fully serve the cause of juvenile justice. I should like the Minister's advisers to assist by

Page 3833

providing a reply to this question as a member of the social issues committee. For almost two years the committee has been looking at suitable treatment and rehabilitation of young offenders. I am perturbed that at this time the statute law legislation of 1992 is introducing a very heavy penalty for what may be a totally unavoidable offence. If the young person has been fined a large sum of money, it may be totally impossible for that person to find the money to pay that fine. I would like to know in exactly what circumstances the Government intends this particular provision to be used. Apart from that concern, I am happy to support the legislation before the House.

Reverend the Hon. F. J. NILE [10.51]: The Call to Australia group supports the Statute Law (Miscellaneous Provisions) Bill 1992. We know from previous bills of this type that the bill simply collates a number of very minor amendments to various Acts. This one covers a wide range of Acts from the Bread Act, the Irrigation Act, the Lord Howe Island Act, the Motor Dealers Act, the Public Health Act, the Tow Truck Act, the Traffic Act, the Water Board Act, the Western Lands Act, and so on. We have no objection to the bill and we support it.

The Hon. E. P. PICKERING (Minister for Police and Emergency Services and Vice-President of the Executive Council) [10.52], in reply: I thank honourable members for their general support of the legislation. The Hon. Elisabeth Kirkby would appreciate by virtue of the nature of the statute law legislation that it is very difficult to have advisers available to the House on every conceivable subject covered by such a bill. Accordingly, in responding to her I am only in a position to discuss the amendments to the Justices Act 1902. I am advised that the amendment merely aims at clarifying the existing position. It will only apply to juveniles who are already in an adult prison for some other offence and will not result in 18 to 21 year old people being taken to an adult prison for fine default only. If that is not satisfactory by way of response to the honourable member I am happy to adjourn the debate until she is satisfied with my response. If she is so satisfied, I am prepared to continue. The honourable member has indicated she is happy to continue. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

WORKERS COMPENSATION LEGISLATION (AMENDMENT) BILL

Second Reading

The Hon. E. P. PICKERING (Minister for Police and Emergency Services and Vice-President of the Executive Council) [10.54]: I move:

That this bill be now read a second time.

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

Leave granted.

Mr President, this Bill provides for major improvements in the benefits available to workers suffering employment-related dust diseases.

The main purposes of the proposed legislation are:

- to increase the level of weekly benefits payable to workers incapacitated by dust diseases;
- to increase the lump sum and annuity benefits for dependent spouses and children of workers

Page 3834

who die from dust diseases; and

- to make minor amendments to the accounting procedures applicable to licensed workers compensation insurers.

Mr Speaker, last year, workers compensation premiums payable by employers were cut by \$80 million and, at the same time, a benefits package of \$400 million was provided for injured workers under the main WorkCover Scheme.

This Bill will provide an additional \$32 million in benefit provisions targeted at claimants covered by the Dust Diseases Scheme, who suffer the terrible consequences of asbestosis, mesothelioma or similar diseases.

The proposed benefit improvements are based on recommendations made by the Workers Compensation (Dust Diseases) Board, following a review of benefits in the light of the recent compensation increases under the main WorkCover Scheme.

The proposals in the Bill have been formulated with reference to extensive actuarial advice to ensure they are responsible and affordable.

The operation of the Workers Compensation (Dust Diseases) Act 1942 is funded from periodic levies determined as percentages of wages paid by employers in the various industries assessed as involving dust disease risk.

The cost of the benefit increases now proposed will be between 0.02% and 0.5% of wages paid by employers in those industries. In accordance with normal procedures under the Dust Diseases Scheme, these levy provisions will be structured, so that the extent of cost increase for particular industries depends on the level of their dust disease risk.

These relatively modest levy increases for employers are offset by reductions in general workers compensation insurance premium rates in the past few years.

In return, the following improvements are to be introduced in dust disease compensation benefits:

- first, a lump sum of \$145,500 for dependent family-members in the case of death of a worker - an increase of almost \$30,000 over the current amount;
- second, weekly payments to dependent spouses of \$141.40 - up by \$28 dollars per week - together with similar increases in the amounts for dependent children;
- third, for long term incapacitated workers, weekly income support will be increased by 20%. This will mean, for example, that - after the first six months of compensation at the award wage level - a totally disabled worker with a spouse and two children will receive \$408.40 per week.

It should be noted that the improvements in weekly entitlements will apply - after the proposed commencement on 1 July 1992 - to existing claims of workers and dependent family-members.

In the case of lump sum death benefits, the increases will apply to deaths occurring after the amendments have commenced.

These arrangements are in line with benefit changes enacted under the main Workers Compensation Act in December 1991.

In addition to these substantial improvements, all the amounts will be subject to current provisions for twice yearly indexation.

In regard to the main WorkCover Scheme, the Bill also streamlines accounting arrangements concerning statutory funds administered by licensed insurers.

The proposed changes will allow the separate funds which each insurer must presently establish for each financial year - and into which premiums received during the year must be paid - to be rolled

Page 3835

into one fund per insurer.

Provision is also made for greater flexibility as to the timing of actuarial investigations of insurer-managed statutory funds, to be carried out at the direction of the WorkCover Authority.

These measures will be more administratively efficient and will result in considerable savings in the operating expenses of the Scheme.

I commend the bill to the House.

The Hon. J. W. SHAW [10.55]: The Opposition supports the bill. It improves benefits for workers generally. Although it has been introduced at short notice we are content to support it in this House.

The Hon. ELISABETH KIRKBY [10.56]: The Australian Democrats support the bill.

The Hon. E. P. PICKERING (Minister for Police and Emergency Services and Vice-President of the Executive Council) [10.56], in reply: I thank honourable members for their generous support for the legislation before the House. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

DAIRY INDUSTRY (AMENDMENT) BILL

Second Reading

The Hon. R. J. WEBSTER (Minister for Planning and Minister for Energy) [10.57]: I move:

That this bill now be read a second time.

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

Leave granted.

In earlier years the dairy industry has tended to be strongly state orientated. The industry now recognises, however, the need to be competitive on a national basis. In February 1991 a meeting of representatives of all State dairy farmer organisations held in Ballarat reached agreement on a number of principles affecting the Australian dairy industry. Their decisions have become known as the "Ballarat Agreement".

The Ballarat Agreement provides, in part, that legislation be sought in each State, similar to section 38 of the Victorian Dairy Industry Act, to require that milk used for market milk be obtained from a State Milk Authority. This will ensure the stability of the production sector throughout Australia.

It is stressed that the proposals contained in this bill have nothing to do with restricting interstate trade in milk. The bill will put on the statute books of this State provisions which relate only to milk produced in this State and which is to be used as a market milk either interstate or intrastate.

The bill provides that the provisions will not commence until a date to be proclaimed. This date will be determined when other States have achieved the same end as this State's legislation.

In effect the intention is to show this state's good faith in the matter and be in the vanguard in legislating to achieve the wishes of the dairy industry throughout Australia.

Clause 1 of the Bill contains the short title and Clause 2 provides that the proposed act is to

Page 3836

commence on proclaimed day or days. Clause 3 provides that the amendments are contained in Schedule 1.

Schedule 1, item (1) includes a new definition of "Milk Authority" which includes the New South Wales dairy corporation and similar bodies in other States and Territories.

Item 2 provides that only milk produced in New South Wales is to vest in the corporation. Item (3) makes a consequential amendment.

Item 4 inserts a new section which makes it an offence for a person who sells or supplies milk for human consumption as milk, or for use by humans, as milk, unless the milk has been obtained from a milk authority. The section is to apply whether the milk is sold or supplied for the consumption or use within or outside New South Wales. The section also provides a defence to such a prosecution in certain circumstances.

Item (5) is to ensure that the corporation has power to fix a price to be paid to a dairy farmer for milk for human consumption within or outside New South Wales, as milk, or for use by humans within or outside New South Wales, as milk.

I commend the bill.

The Hon. B. H. VAUGHAN (Deputy Leader of the Opposition) [10.58]: The Opposition supports the bill. It is good legislation. The dairy industry from our point of view was not consulted to the extent it ought to have been. However, we support the legislation.

The Hon. ELISABETH KIRKBY [10.59]: I too support the bill. It is obvious

that the bill has been introduced because of those State dairy farmers and their organisations who in February of last year met in Ballarat and reached agreement on a number of principles affecting the Australian dairy industry. This indeed is the agreement that has now become known as the Ballarat Agreement. The proposals in this bill have nothing to do with restricting interstate trade in milk. The bill will put on the statute books of this State provisions which relate only to milk produced in this State and which can be used as market milk either interstate or intrastate. As the Minister pointed out in his second reading speech, the intention of the legislation is to demonstrate the good faith of New South Wales in this matter and to be in the vanguard of legislating to achieve the wishes of the dairy industry throughout Australia. The legislation which has been introduced by the New South Wales Government will not commence until a date to be determined, and the date will be determined when the other States have the same end as this State's legislation. So it is not likely to come into force immediately. Therefore, if the dairy industry have had second thoughts about it or wish certain provisions to be changed, there is still time for those to be taken on board by the Government. I support the bill before the House. I believe if the dairy industry in New South Wales had been concerned about the legislation it would have so informed me because I keep in regular contact with it. I am satisfied that the legislation is what it wants and I believe it should be supported.

Reverend the Hon. F. J. NILE [11.0]: The Call to Australia group supports the Dairy Industry (Amendment) Bill. There has been a great deal of controversy about milk coming into this State from Victoria and elsewhere. An important section of this bill is proposed section 32B, which states:

Acquisition of milk for sale or supply for human consumption or use

32B.(1) A person who sells or supplies milk, for human consumption as milk or for use by humans, as milk, is guilty of an offence against this Act unless the milk was obtained from a Milk Authority.

The bill defines the Milk Authority as follows:

Page 3837

- (a) the Corporation; or
- (b) any similar authority of another State or a Territory declared by the Minister, by order published in the Gazette, to be a Milk Authority for the purpose of this Act;

The legislation will help bring about the orderly marketing of milk in this State and should help to protect our dairy farmers.

The Hon. R. S. L. JONES [11.1]: I ask the Minister to clarify one point. I understand that section 32 of the Dairy Industry (Amendment) Bill relates to the deregulation of retail milk shops. Section 32B states:

32B.(1) A person who sells or supplies milk for human consumption as milk, or for use by humans, as milk, is guilty of an offence against this Act unless the milk was obtained from a Milk Authority.

Can we be sure that this measure will not affect farmers selling their produce to neighbours?

The Hon. R. J. WEBSTER (Minister for Planning and Minister for Energy) [11.2], in reply: This debate should not pass without my paying tribute to the Minister for Agriculture and Rural Affairs, the Hon. Ian Armstrong, who, without question, is the most successful agriculture Minister that I remember. Prior to the Hon. Ian Armstrong becoming Minister for Agriculture and Rural Affairs, every agriculture Minister had fought with the dairy industry, but he has done nothing but consult and co-operate with the dairy industry, and the dairy industry bills are a direct result of that. I place on record my appreciation - and I hope the appreciation of all honourable members - for the job the Minister has done, particularly in his dealings with the dairy industry. In the very brief contribution from the Deputy Leader of the Opposition in this place he made the very inaccurate suggestion that there had not been consultation with the dairy industry. Nothing could be further from the truth. I took the trouble to consult with the Minister's chief adviser, who told me that consultation on the Ballarat agreement and matters that flowed from it has continued for two years. The dairy industry wanted this legislation, but it was held up because of the Victorians. Honourable members would not be surprised by this. But thanks to the Minister and his very fine department, the problem with the Victorians has been resolved. The New South Wales Government, through this legislation, has once again led the way.

The Hon. R. S. L. Jones asked whether section 32B will prevent dairy farmers from selling milk to their neighbours. I hope that I can answer his question correctly. For longer than any honourable member could remember, it has been illegal to sell milk that has not been pasteurised. I do not know whether the Hon. R. S. L. Jones has been milking a cow and selling the milk to his neighbour, but if he has he should not tell anyone about it. Milk, by law in New South Wales, must be pasteurised before it is sold - and that has been the law for a long time. I hope that the Hon. R. S. L. Jones has learned something from this debate. I had the pleasure to represent a dairy farming area when I won the seat of Goulburn in 1984. There are a lot of cows and dairy farmers in that electorate. Those farmers were demanding industry reform then. As would be expected, the Opposition was dragging the bucket. It has taken a coalition government and a National Party Minister to introduce these wide-ranging reforms. They will have a tremendous impact on the dairy industry. Deregulation of the industry - past the farm gate - is a major step forward for milk consumers in New South Wales. The price of milk will be kept down. It is good news for milk drinkers such as the Deputy Leader of the Opposition, who probably has at least a couple of glasses of milk every day, the

Page 3838

Leader of the Opposition and the Hon. Dorothy Isaksen. I commend the bill.

Motion agreed to.

Bill read a second time and passed through remaining stages.

JOINT STANDING COMMITTEE UPON ROAD SAFETY

The Hon. E. P. PICKERING (Minister for Police and Emergency Services and Vice-President of the Executive Council) [11.11]: I move:

That the Joint Standing Committee upon Road Safety have leave to make a visit of inspection to the United States of America and Canada.

I understand it is intended that four members of the committee, which comprises 11 members of both Houses, are to travel on this particular fact-finding mission. I am led to believe that two members of this Chamber, one from each side of the House, will undertake the trip, which is expected to extend from about 6th to 14th June. It is

conceivable that during that timescale Parliament might be recalled to debate the Independent Commission Against Corruption report. I would anticipate that the two members of this House taking the trip would be self-paired during any such sitting. I commend the motion.

The Hon. M. R. EGAN (Leader of the Opposition) [11.12]: The Opposition agrees with the proposal of the Leader of the Government in this House that the two members of this House be paired.

The Hon. ELISABETH KIRKBY [11.13]: I wish to place on record that I do not believe this is a suitable time for members of the Joint Standing Committee Upon Road Safety to be making a trip to the United States of America and Canada. I am aware that from time to time it is the practice of this Parliament to send members of committees, standing committees and joint select committees overseas. In certain cases I am sure that experience is most valuable. Indeed, members of the joint select committee of which I am a member went to Canada about 18 months ago to investigate electoral funding systems. However, New South Wales now is in a serious financial situation. The State debt has blown out to enormous proportions, and we have high unemployment, though less than in other States. Taxpayers' money should not be spent on what I believe is a totally unnecessary trip. I do not think a visit by members of the Joint Standing Committee Upon Road Safety to the United States of America and Canada, where road conditions and everything connected with road safety are entirely different to conditions in this country, will significantly advance the committee members in their research.

The Government should be spending money on so many other more pressing needs, such as the provision of community services and more easily obtainable home care for people who are bedridden. The Government is cutting many services to the bone. The trip by the committee might cost the Government \$250,000 or \$300,000, which is a small amount compared with the State debt. However, it is not a small amount of money when one considers that a women's refuge facing closure may need only \$50,000 or \$75,000 to remain open. Nor is the cost of the overseas trip a small amount of money when home and community care services are grossly underfunded and need extra funds. I believe that sum of money, whether it is \$250,000 or \$300,000, should be spent for a more socially useful purpose. For that reason I oppose the motion. I realise my

Page 3839

opposition will make no difference and that the committee members will go on the trip anyway. But it should be put on record that the Australian Democrats do not believe that this is a suitable time for taxpayers' money to be spent on an overseas trip.

The Hon. E. P. PICKERING (Minister for Police and Emergency Services and Vice-President of the Executive Council) [11.16], in reply: I am disappointed that the Hon. Elisabeth Kirkby is opposed to the motion. I should have thought that the need to find out what is happening overseas with road safety would be accepted by all sides of the House. It is unfortunate that is not the case. I commend the motion.

Question - That the motion be agreed to - put.

The House divided.

Ayes, 24

Mr Bull
Mr Coleman
Mr Dyer

Mr Enderbury
Mrs Evans
Mrs Forsythe
Miss Gardiner
Mr Gay
Mrs Isaksen

Mr Jobling
Mr Manson
Mr Moppett
Mr Mutch
Mrs Nile
Revd F. J. Nile
Mr Obeid
Dr Pezzutti
Mr Ryan

Mrs Sham-Ho
Mr Shaw
Mr Rowland Smith
Mr Vaughan

Tellers,
Dr Goldsmith
Mr Samios

Noes, 2

Tellers,
Mr Jones
Ms Kirkby

Question so resolved in the affirmative.

Motion agreed to.

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

JOINT SELECT COMMITTEE UPON THE PARLIAMENT MANAGEMENT BILL

The Hon. E. P. PICKERING (Minister for Police and Emergency Services and Vice-President of the Executive Council) [11.23]: I move:

(1) That a Joint Select Committee be established to consider and report upon the Management of the Parliament and, in particular:

- (a) the Parliament Management Bill 1992 and cognate Bill introduced in the Legislative Assembly; and
- (b) any alternative models to these Bills which could achieve:

- (i) greater involvement by members in the management of the Parliament;

Page 3840

- (ii) more accountability for the Parliament to its members and the community;
and
- (iii) greater separation of the management of the Parliament from the Executive.

(2) That, notwithstanding anything contained in the Standing Orders, the Committee consist of sixteen members, namely:

- (a) 3 members supporting the Government nominated by the Leader of the House in the Legislative Assembly;
- (b) 3 members supporting the Government nominated by the Leader of the Government in the Legislative Council;
- (c) 3 members not supporting the Government nominated by the Leader of the Opposition in the Legislative Assembly;
- (d) 3 members not supporting the Government nominated by the Leader of the Opposition in the Legislative Council;
- (e) 2 independent members of the Legislative Assembly nominated by the Leader of the House; and
- (f) 2 cross bench members of the Legislative Council nominated by the Leader of the Government in the Legislative Council.

(3) The Committee shall be chaired by a member from 2 (a) above, nominated by the Leader of the House in the Legislative Assembly. The Chairman shall have a deliberative and no casting vote.

(4) That at any meeting of the Committee 10 members shall constitute a quorum, provided that the Committee meets as a Joint Committee at all times.

(5) That leave be given to Members and Officers of either House called to give evidence before the Committee.

(6) That the Committee have leave to sit during the sittings or any adjournment of either or both Houses; to adjourn from place to place; have power to take evidence and send for persons and papers; and to report from time to time.

(7) That should either House stand adjourned and the Committee agree to any report before the Houses resume sitting:

- (a) the Committee have leave to send any such report, minutes and evidence taken before it to the Clerk of the House;
- (b) the documents shall be printed and published and the Clerk shall forthwith take such action as is necessary to give effect to the order of the Houses;

(c) the documents shall be laid upon the Table of the House at its next sitting.

(8) That the Committee report by 2 September 1992

This matter is well understood by honourable members. I do not think it needs to be debated at length. I commend the motion to the House.

The Hon. ELISABETH KIRKBY [11.24]: I have not yet had an opportunity to study the long message which will establish the joint select committee. However, I am aware of the Government's intention of setting up the committee because about three days ago I received a letter from the member for Gordon, the Leader of the House in another place, in which he intimated that it was Cabinet's intention to set up this committee to

Page 3841

study the bill which he had previously sent to me, the Parliament Management Bill. The bill which is based on the Moore-Wilkins report, has been the subject of some criticism and in fact has been a matter of concern to many members of this Chamber and the other place. The letter pointed out how the Minister believed the committee should be constituted. On 6th May I wrote back in the following terms:

Dear Minister,

Thank you for your letter of May 5th in relation to the proposed Parliament Management Bill. I have two concerns about your proposal. The Moore-Wilkins report should, I believe, be considered by a proposed joint select committee, together with the response from the President of the Legislative Council and the Speaker of the Legislative Assembly. The committee that you propose is too big. I suggest an 11 member committee comprising five members of the Legislative Council as follows: one Liberal member, one National member, one Labor member, one Call to Australia member and one Australian Democrat member and six members of the Legislative Assembly comprising two Government members, two Opposition members and two Independent members - one of the Government members appointed from the Legislative Assembly to be designated as the Chair. The Chair will not have a deliberative vote, only a casting vote.

I believe such a committee would be less unwieldy. It will allow all shades of political thought to be represented and also gives the Government a majority of members. My opposition to the bill as it stands has already been publicly expressed. I do not think it can be suitably amended. The committee's report should precede the drafting of the bill, which has all-party support in very much the same way as the gun committee reported before the gun control legislation was introduced. I look forward to your response.

I have not had the courtesy of any response from the Leader of the House in the Legislative Assembly, the member for Gordon. Apparently he does not consider that any of the comments I have made are worthy of his consideration or his time. I attended a seminar on the legislation which was held in Parliament House about 10 days ago. The seminar was not attended by many. The first speaker at the seminar was Mr Hatton, the second was the member for Gordon. I spoke and you, Mr President, spoke, as did the Speaker. Although only, I think, three Parliamentarians attended the seminar, a great many interested Parliament watchers attended. Universally the Moore-Wilkins report was criticised, for many reasons. It was drawn up in haste. The people who are most affected by it were not even consulted. Mr President, you were not consulted, the Speaker was not consulted, the Clerk of the Legislative Council was not consulted and the Clerk of the Legislative Assembly was not consulted. It was suggested that the legislation which would follow the Moore-Wilkins report should be passed through this Parliament in a matter of days. We now find ourselves, at 11.30 p.m. debating a motion that has already been agreed to in another place without any of the flaws or the objections

being taken into account. What is worse is that the Parliamentary Remuneration (Amendment) Bill is cognate to the Parliament Management Bill.

The Hon. E. P. Pickering: It is not cognate.

The Hon. ELISABETH KIRKBY: It is cognate. The provisions of the Parliamentary Remuneration (Amendment) Bill are appalling. That we as a parliament at this time in this State should grant ourselves an employment benefit and extra allowances without proceeding through the usual channel of the Parliamentary Remuneration Tribunal is quite disgusting. I cannot condemn such action too strongly. It is totally wrong that this matter should be dealt with at a time when Parliament is being severely criticised because of the recent events which have led to an investigation by the Independent Commission Against Corruption. Events of the last two or three weeks have not only caused the media and the people of this State to be extremely critical of the

Page 3842
Government; they are a reflection on every member of the Parliament. We should therefore not be seen to support legislation that will grant to Members of Parliament such employment benefits as cars, even on the basis of a salary sacrifice because a tax rebate will apply and it is likely that the public purse will be responsible for the payment of the fringe benefits tax. The bill will also result in a 13 per cent pay increase for the manager of Opposition business and the Deputy Leader of the Opposition in the Legislative Assembly. These proposals are quite inappropriate during this time of recession, particularly having regard to the high moral position some members adopted over the "Metherell affair". Over the years the provision of employment benefits is a matter the Parliamentary Remuneration Tribunal, in its present role as impartial watchdog, has consistently refused to grant or even recommend to the Premier. I believe the Parliamentary Remuneration (Amendment) Bill is being used as bait to ensure the passage of the Parliament Management Bill.

The Parliament Management Bill in its present form will transfer the administrative control of the resources of the Parliament to a small parliamentary commission. Both bills are the result of consultations between the Independent members and the Government. Originally it was the intention, of the Independent members in their charter of reform to make the Parliament more accountable and to free it from what they regarded as the shackles of the Executive. There is no doubt that the Parliament Management Bill in its present form will not remove, in fact it will entrench the control of the Executive Parliament. I do not believe the Independents particularly in the absence of the honourable member for South Coast, Mr John Hatton, who is ill at present, have fully understood this matter. They have had a very heavy legislative program to deal with in the past 24 hours. They are clinging to the belief that the proposal will increase the ability of the Legislature to be independent of the Executive, but I cannot see how that will eventuate. The proposed parliamentary commission will consist of eight Government members including the Leader of Government Business in this House and in another place. More importantly the Parliament Management Bill seeks to tamper with Westminster democracy.

The Hon. R. T. M. Bull: On a point of order. The honourable member is canvassing two bills that will be the subject of discussion by a select committee. The motion refers to the establishment of a select committee comprising members of this House and of the Legislative Assembly to review both bills. I ask that the honourable member be directed to return to the motion.

The Hon. Elisabeth Kirkby: On the point of order. Because I am extremely concerned about the turn of events and I have not been granted the courtesy of either any

consultation or reply to my correspondence to the Leader of the Legislative Assembly, it is necessary for me to explain to the House and to state publicly why I believe this course of action is wrong. It is impossible for me to achieve that without canvassing the two items of legislation which it is proposed this committee will consider. It is appropriate that I be given the opportunity to state my objections publicly.

The PRESIDENT: Order! The question before the House is the motion proposed by the Leader of the Government which seeks to establish a select committee under certain terms. I would ask the Hon. Elisabeth Kirkby to direct her remarks to that issue in which context it is permissible for her to canvass the legislation that will be reviewed by the proposed committee. I ask the Hon. Elisabeth Kirkby to link the two matters.

The Hon. ELISABETH KIRKBY: My main concern about the documentation
Page 3843

we have been given and which this proposed joint select committee will have to consider is its effect on our Westminster system of democracy by subordinating the Legislative Council to the Legislative Assembly. It is suggested that the commission will be chaired by the Speaker and that the President of the Legislative Council will be relegated to the position of deputy-chair. My other concern, as I pointed out earlier, is that there has not been proper consultation with me - since the Leader of Government Business in the Assembly wrote to me - or with those far more intimately involved in the running of Parliament such as the Clerks of both the Legislative Assembly and the Legislative Council, yourself Mr President and Mr Speaker. The measures are based on the report by the member for Gordon and Roger Wilkins, Deputy Director-General of the New South Wales Cabinet Office. I believe that all honourable members would agree with me that they have never before seen a report signed by a Minister and a member of the Cabinet Office. It is most unusual and I cannot understand how it has happened. It would appear that they acted alone on a proposal contained in the Independents' charter of reform and did not wish to consult with anyone else in this Parliament.

The Hon. R. T. M. Bull: It is a discussion paper.

The Hon. ELISABETH KIRKBY: By way of interjection the Hon. R. T. M. Bull has said that it is a discussion paper. The honourable member for Gordon has made it clear that he does not regard it as discussion paper because he has already prepared a bill based on it.

The Hon. R. J. Webster: Then why would it be sent to a committee?

The Hon. ELISABETH KIRKBY: The bill is being sent to a committee; the discussion paper is not being sent to a committee. The request I made of the honourable member for Gordon was that the discussion paper be sent to a committee. I do not believe that this bill, whether or not it is referred to a committee, can be made acceptable by amendments. As I have said on two or three occasions in the last few minutes, the Moore-Wilkins report should itself be referred to a committee. In conclusion I wish to place on the public record that I believe these bills are totally unconscionable. Although such measures may have been expected from the Government, I would never have expected the Independents to accept them, and I do not think they would have been accepted if Mr Hatton had been present. With those remarks I leave the motion to be determined by the House. It is obvious that I have absolutely no power to alter matters. This committee will be set up whether I like it or not, but I do not believe that the terms of reference that have been given to the committee will enable it to carry out its duties in the proper manner.

The Hon. M. R. EGAN (Leader of the Opposition) [11.41]: I find it difficult to understand some of the arguments advanced by the Hon. Elisabeth Kirkby.

The Hon. E. P. Pickering: Particularly when one reads the terms of reference.

The Hon. M. R. EGAN: As the Leader of the Government points out, particularly when one reads the terms of reference. The Parliament Management Bill is simply the peg upon which the committee will base its deliberations. Certainly there is nothing to preclude the committee from looking at the discussion paper that was issued by the Minister for the Environment. I note that the Hon. Elisabeth Kirkby referred to him as the honourable member for Gordon. That might be prophetic. The discussion paper produced by the Minister for the Environment will certainly be part and parcel of

Page 3844

the committee's considerations. However, that is not why I have chosen to participate in this debate. I was concerned that the impression could be gained from some of the remarks of the Hon. Elisabeth Kirkby that anyone who supported this motion for the establishment of a select committee could somehow be accused of getting on the gravy train.

I want to make it clear from my point of view as Chairman of the Opposition Wastewatch Committee that I have always believed that the only remuneration, whether by way of salary or employment benefit, to which any of us as members of Parliament should be entitled is that remuneration, salary or employment benefit determined by an independent remuneration tribunal. I certainly would not support this Parliament increasing or improving our salaries or making additional benefits available to us by legislation. I have always believed that is the role of the Remuneration Tribunal. I am delighted that the Hon. Elisabeth Kirkby has become the newest member of the Wastewatch Committee. Only last year I withdrew from that outrageous trip to the United States of America which the Hon. Elisabeth Kirkby went on. That was 12 months ago. Australia was in recession then; Australia is in recession now. However, she did not seem to recognise that point 12 months ago. I was the only one who was consistent.

The Hon. Elisabeth Kirkby: On a point of order. It is unfair for the Leader of the Opposition to make that remark because I have already admitted to the House that I went on a trip with a committee last year. I did not deny that. In fact I bought it to the attention of honourable members not less than 15 minutes ago.

The PRESIDENT: Order! No point of order is involved.

The Hon. M. R. EGAN: That has proved my point. I am sorry that the Hon. Elisabeth Kirkby was not a paid up member of the Wastewatch Committee 12 months ago when I told everyone that the trip by that parliamentary committee, which did not report before the election, was a waste of time and money.

The Hon. Elisabeth Kirkby: Why did the Leader of the Opposition not oppose the trip by the Staysafe committee?

The Hon. M. R. EGAN: The Staysafe committee at least has a proper function to carry out. As I pointed out at this time last year, the purpose of the electoral funding committee going overseas was so that no recommendations would be placed before this Parliament prior to the last election. It was a stalling tactic using taxpayers' money. I made that clear last year. The Hon. Elisabeth Kirkby condemned me for it in the media

and on the radio. I was proven right and I am glad the Hon. Elisabeth Kirkby is finally conceding that I was right.

Reverend the Hon. F. J. NILE [11.46]: I support the motion to set up a joint select committee. I place on the record that as a member of the electoral funding committee, I was not even invited to go overseas last year. Perhaps I was on the out list. Clearly the Hon. Elisabeth Kirkby has missed the point. The reason the joint committee is being set up is because of expressions of concern by members of this House. Originally the Parliament Management Bill could have come before the House and been debated and perhaps even passed. The Government and the Opposition realised that far more discussion and investigation was needed. I am sure the discussion paper and the responses by the Speaker, the President and others to the bill will be before the joint select committee. Many honourable members have been troubled by the bill. Our concerns were aggravated by what we saw in New Zealand. I felt a degree of concern

Page 3845

about the operation of the Parliamentary Services Commission in New Zealand which was a complete break from parliamentary convention, the rights of members and so on.

I do not believe we should rush in where angels fear to tread. This is an important, sensitive and delicate area. It needs to be studied carefully. The joint select committee will have a balance of eight members from the Legislative Assembly and eight members from the Legislative Council. It is important to maintain the principle of equal membership and to give recognition to the importance of this House. The committee will have six Government members, six non-Government members and four crossbench members, two from the lower House and two from the upper House. I understand from the Leader of the Government that the two crossbench members from the upper House will be one from the Call to Australia group and one from the Australian Democrats. At this stage I am not sure who the two Independent members from the Legislative Assembly will be. It seems that so far as possible the committee will be fair and balanced and should be able to carry out its duty and report back to Parliament by 2nd September. For that reason the Call to Australia group is pleased to support the motion.

The Hon. E. P. PICKERING (Minister for Police and Emergency Services and Vice-President of the Executive Council) [11.50], in reply: I thank honourable members for their support of the legislation. I am very surprised at the comments which the Hon. Elisabeth Kirkby has made this evening.

The Hon. Elisabeth Kirkby: I have made them to you privately.

The Hon. E. P. PICKERING: The honourable member has certainly made those sorts of comments to me privately but I am surprised that she would make them publicly, now that the terms of the motion are before the House. I am surprised because all the concerns the honourable member has expressed to me privately have been dealt with in the terms of the motion before the House.

The Hon. Elisabeth Kirkby: They have not.

The Hon. E. P. PICKERING: They have been. This evening the honourable member rose in this House and suggested that the select committee was deficient because it really could only examine a bill that the honourable member believes has been improperly developed, through lack of consultation, by a Minister in another place. The truth is that the select committee is being appointed to consider and report upon the management of the Parliament. One does not have to be a bush lawyer to know that. That is a pretty broad objective. The terms of reference state:

... and, in particular,

(a) The Parliament Management Bill, 1992 and cognate Bill;

That is fair enough:

(b) Any alternative models to these bills which could achieve:

(i) greater involvement by members in the management of the Parliament.

That is the aim we are all seeking to achieve. The Government desires less autocratic management of the Parliament:

Page 3846

(ii) more accountability for the Parliament to its members and the community.

That is an absolute requirement and a general matter to be examined. Most importantly the Government wants to ensure:

(iii) greater separation of the management of the Parliament from the Executive.

What does the honourable member want? The matters covered by the motion were all the concerns she has expressed to me in the past.

The Hon. Elisabeth Kirkby: They are based on bills that are too broad.

The Hon. E. P. PICKERING: They are not. The honourable member has not read the terms of reference. If she were right, this legislation would be framed in an entirely different way. The point is that the Committee is to look at the total management of the Parliament. It can do anything it likes. It can look at any report, any bill, any system that operates in any other part of the world. It has an unfettered right to look at the general question of the management of the Parliament. It is to look at the bill that has been proposed. This committee could come back and say, "the Bills are a hopeless pile of rubbish. Do not bother to look at them again".

The Hon. Elisabeth Kirkby: The Government has control of the committee. That is my reply.

The Hon. E. P. PICKERING: I am almost appalled. We have not created a committee which is run by the Government. The Minister for the Environment and I, both very reasonable men, sat down and worked out the membership of this committee. It took about three seconds flat, because I can count. What I said was, "we will have a committee comprising first of all, the same numbers in both Houses", otherwise we would never have got it through this Chamber. Honourable members will all agree with that. "Second, we will have even numbers of Government and Opposition members and two members from the crossbenches". I had to have two - one from the Call to Australia group and one from the Australian Democrats. I said to Tim, "You can work out how you sort that out in the lower House. That is your worry". Then I said, "There will be a chairman". There has to be a chairman and, logically, it should be a chairman from the Government because we are the Government. But that chairman has only one vote; he does not have a casting vote. That is a committee not run by the Government; it is a committee run by the Parliament and the Parliament is to decide its own future through

that committee. I can only conclude it is late and it has been a rough week. I suspect the Hon. Elisabeth Kirkby, when she reads her comments tomorrow, will say, "Well, this was not my finest hour". With those few comments, I commend the motion to the House.

Motion agreed to.

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

PARKING SPACE LEVY BILL

Suspension of certain standing orders, by leave, as a matter of necessity and without previous notice, agreed to.

Formal stages and first reading agreed to.

Page 3847

SWIMMING POOLS BILL

Second Reading

The Hon. R. J. WEBSTER (Minister for Planning and Minister for Energy)
[11.57]: I move:

That this bill be now read a second time.

In introducing the Swimming Pools Bill, the then Minister for Local Government said that "the provisions of the bill will provide greater protection for the most vulnerable and deserving members of our community - children under the age of five". The principal object of the Swimming Pools Bill is to introduce more flexible fencing requirements for private swimming pools, and various other matters. The Government is confident that the result will be an even safer environment for toddlers. Honourable members will be aware of the vigorous community debate that has preceded the introduction of this bill into the House. That debate has often focused on issues fundamental to government - the prime one being to what extent a government's responsibility to protect its citizens gives it a legitimate interest in the backyards of those citizens. The merits of isolation fencing - that is, fencing which separates the pool from any structure on the property - over other types of barriers has also been rigorously debated. The 1990 legislation was a courageous attempt to enhance pool safety and thus lower the incidence of unintended immersions. However, subsequent legislative developments in other States, technological advances and the valid concerns of individual interest groups caused my colleague's predecessor, the Hon. David Hay, M.P., to establish a review group to examine the operation and applications of the current legislation. The review group consisted of 12 members, representing the various interest groups and impartial experts, and was chaired by the eminent barrister, Mr Peter McClellan, Q.C. While the Government would have preferred the group to produce a single report, we recognise that the views expressed in both the majority and minority reports are representative of the divergent views held in the wider community and reflect the depth of controversy hitherto associated with this issue.

In reaching its conclusion, the Government was mindful of the conclusions of the majority report. Perhaps the most significant of the majority's conclusion is that there is no statistical evidence which conclusively supports the contention that isolation

fencing would reduce or eradicate toddler immersions in private swimming pools. The majority concluded also that there is clear evidence that pool owners either wittingly or unwittingly will defy the current legislation. Further, the so-called watchful eye of government is necessarily remote and is no substitute for the watchful eyes of parents. It is important that honourable members recognise that the provisions contained in this bill are only minimum requirements. There is nothing in the legislation that stops pool owners installing full isolation fencing or a barrier of a height greater than 1.2 metres, if that is what they desire. It is important to observe that this bill will result in all pools, except those entitled to exemption in accordance with the bill, complying with the legislation - that is, having an effective barrier between the interior of the dwelling and the pool - by the end of this year. By the end of this year, all pool owners unless exempted, will be required to comply with this new legislation.

The bill provides that, except where expressly exempted, different requirements depending upon the nature of the property on which the pool is installed, whether the pool is new - built after 1st August, 1990 - or existing - built or under construction on 1st August, 1990 - and whether the pool is indoor or outdoor or a spa. Unless erected on waterfront, large or very small properties or otherwise entitled to exemption under the bill, all new outdoor swimming pools will be required to be surrounded by a child-

Page 3848

resistant barrier. The barrier surrounding a new swimming pool within this category must separate the pool from any residential buildings on the premises, and separate the pool from all neighbouring premises, and be constructed, installed and maintained in accordance with the standards prescribed in the regulations. The standard currently applied is Australian Standard No. 1926 of 1986, and it is proposed that it will continue with such modifications as may prove necessary.

A child resistant fence shall be 1.2 metres high with no footholds or the like in it, and any gate openings through that barrier must be self-closing, self-latching. Before formally making any regulations prescribing standards required under the proposed Act, it is the Government's commitment to consult widely with interested groups. Existing outdoor swimming pools not situated on waterfront or large properties and all pools situated on very small properties must be enclosed by a barrier which separates the swimming pool from all neighbouring premises and which meets the Australian standard with such modifications as may prove necessary. If for pools in this category a barrier is not erected between the house and the pool, the means of access from the house must be restricted in accordance with standards to be prescribed by regulation. Very small properties are described as those with an area of less than 230 square metres, the smallest area on which a dwelling house may currently be erected.

Large properties will be required to either observe prescribed standards to restrict access to the pool from the interior of any residential building on the property or comply with barrier requirements applicable to new or existing outdoor pools, as the case may be. Waterfront properties, whether for new or existing swimming pools, are defined as those that have frontage to any large body of water, such as a permanently flowing creek, river, canal, pond, lake, reservoir, estuary, sea or other body of water, whether natural or artificial. These properties will be exempt from the barrier requirements provided that the means of access to the pool from the interior of any residential building on such property is restricted in accordance with prescribed standards. The bill retains unchanged the provisions of the current Act for indoor pools and pools in the premises of hotels and motels. Access, including door access, to such pools will be restricted generally in accordance with Australian Standard No. 1926 of 1986. However, window access points will be restricted in the same manner as for existing outdoor pools.

A local authority will be empowered to exempt a swimming pool from the proposed requirements if, having regard to the physical nature of the premises, the design or construction of the pool, or because of special circumstances recognised by regulation, it is satisfied in the particular case that it would be impracticable or unreasonable for the owner to comply, or where no less effective provision than that required by the provisions in the bill has been made to restrict access to the pool or the water contained in it - for example the use by the handicapped of a pool for therapeutic purposes. Doors and gates must be kept closed when not in use. Dividing fences, that is perimeter fences, may also continue to be used in any barrier and if so used, must similarly comply with the prescribed standard. Administration of the provisions will generally be by local councils as previously.

The Appeal Board, constituted under the current legislation, will be abolished. Instead, decisions of local authorities will be appealable to the Land and Environment Court with proceedings to be heard by assessors in the first instance. Local authorities will be precluded from imposing requirements higher than, or additional to those provided by this legislation. The deadline for compliance for existing pools will be altered by 1st

Page 3849

August, 1992, to 1st January, 1993. This is appropriate because many owners of existing pools have delayed compliance with the 1990 Act requirements awaiting the outcome of the review. A change in the requirements, as is now proposed, should allow reasonable time for compliance. Compulsory warning notices drawing attention to the danger of swimming pools to young children, for the first time, will have to be erected near all pools. Detail of the warning sign, including resuscitation techniques, will be set out in the regulations. In addition, the Government in the other place inserted a further provision in the bill for additional safety measures, particularly to prescribe by regulation the need for pool owners to display additional warning signs.

Not included in the bill, but to be dealt with administratively, is a pool safety campaign and the effective monitoring of statistics based upon reports on standard forms compiled by police and medical practitioners over the next five years. A further review of the legislation will be undertaken in five years time to determine whether it should be amended, and it is my hope that this review will have access to more reliable statistics than have been available previously. In this connection, the Government has warmly accepted an amendment for the establishment of a pool fencing advisory committee, consisting of five members expert in a number of relevant fields, including child safety, statistics, disease and injury control. This committee will consider and analyse data, and drownings and recommend to the Government the desirability of any amendments to the legislation in the light of past and future experience.

A further amendment now incorporated in the bill, moved by the Labor Party, will impose more stringent requirements on owners of both existing and new pools to maintain forever the erection of pool fences, even though they might exceed the fencing standards in this legislation and have been erected 10 or 20 years ago. In conclusion, as I noted earlier, the principal object of this bill is to minimise the tragedy of serious toddler immersions in private swimming pools, and as such it represents a fine-tuning of the current legislation. The Government is confident that members of the public who own pools or propose to install pools will appreciate the necessity for this legislation as a complement to their supervisory role in relation to young children. The bill represents the most sensible, black letter law option by recognising that although in some circumstances fencing can contribute towards greater pool safety, it is no substitute for unrelenting supervision by parents and all others responsible for the care of young children. I commend the bill.

The Hon. J. W. SHAW [12.8 a.m.]: The Opposition is critical of a number of aspects of this bill and regards it as an excessive weakening of the safety standards provided by the existing law in relation to swimming pools. In 1990 the Government passed the Swimming Pools Act 1990, being Act No. 31 of that year, which provided that access to private swimming pools be effectively restricted. That Act, which is now in force and has effect, created some controversy. Generally it prescribed a requirement for isolation pool fencing, both in respect of future pools and existing pools. The controversy that the Act gave rise to led the Government to announce the formation of the Swimming Pools Fencing Legislation Review Committee. Ultimately that review committee submitted to the Government a majority and a minority report. The irony is that this Government proposes to follow neither the majority nor the minority report. The minority report opposed the idea of a mandatory requirement for isolation pool fencing. The majority report favoured such a requirement, but acknowledged some practical difficulties in the enforceability of that requirement. The report suggested that it be introduced gradually, that is to say that over time there be required isolation pool fencing on all pools, whether new or existing.

Page 3850

The Government, despite spending public money and time on the review committee has in effect thrown the review report in the garbage bin. It has followed neither the majority nor the minority review but has gone its own way. The Government has come up with some sort of accommodation which no doubt it will regard as pragmatic but which in effect lacks any principle or any real credibility. There is a fundamental contradiction in the Government's stance. The Government will enforce on the owners of new pools the full and rigorous requirement of isolation fencing. By doing so the Government accepts that isolation fencing is a proper and reasonable safety requirement to protect young children from the obvious dangers of private swimming pools. But despite enforcing that requirement on people who build a new pool, this legislation will allow existing pool owners in perpetuity to maintain pools without that isolation fencing.

There is a profound ambivalence in that package. It is a package which as I said may be called pragmatic but I think should be more accurately called unprincipled. On the one hand, it accepts the validity and propriety of isolation fencing, yet on the other hand allows many pools in our community to remain without that fencing for ever, without any mechanism to require that fencing over time. On any analysis this Government package is unsatisfactory. It cannot really be sustained on rational grounds. Let me just reiterate those two points. First, the Government is ambivalent about whether isolation fencing is a good or a bad thing. On one view it suggests it is a good thing by enforcing it on new pools, and yet denies its validity or appropriateness in relation to existing pools. Second, it has the defect of simply ignoring the majority view of its own review committee. I would have thought it is beyond argument that this legislation is significantly unsatisfactory and needs amendment.

The Opposition has looked carefully at the case for and against isolation pool fencing. We have accepted the predominant expert view amongst medical practitioners and child safety experts that isolation fencing is an appropriate safety measure that Government should prescribe. I know there is a statistical and scientific debate, but the preponderance of opinion is clearly in favour of isolation fencing as being appropriate. We would say that if it is appropriate, the Parliament should prescribe that, over time, fencing should apply to all pools and not only to new pools. May I refer briefly to the majority view of the committee of review in relation to this legislation. The committee,

which was chaired by Mr Peter McLellan, and whose membership consisted of other eminent and responsible people in the community reviewed the data in relation to other States and other countries. It concluded:

that isolation fencing is the safest form of protective fencing provided that it is kept fully functional through proper maintenance and use.

The chairman concluded:

Common sense suggests that isolation fencing which is properly maintained and properly used will give the greatest protection for small children. This commonsense view is confirmed by the statistical material in three studies combined, that 85 per cent of immersions would have been avoided if isolation fencing had been properly maintained and used.

I do not understand the Government to really join issue on that basic point of the appropriateness of fencing as a safety measure. As I understand it, a member of the Government will move certain technical amendments to the bill. The Opposition supports the object of those amendments but sees them as somewhat technical and not facing up squarely and candidly to the real issue. They are an attempt by stealth, as it were, to introduce isolation fencing. We think the better approach is for this Parliament to

Page 3851

prescribe a method whereby over time fencing is required for more and more pools. There is common ground between the Government and the Opposition that in relation to new pools, isolation fencing ought to be a requirement, but the question is what should happen with existing pools. We say three things. First, existing pools should have a temporary exemption from the full and rigorous requirement of isolation fencing so long as there is some reasonably effective barrier between the dwelling and the pool which is certified to be appropriate by the local council or shire. That allows a temporary exemption subject to that requirement. Second, where there is a change of ownership of the property, the full and proper safety requirement of an isolation fence ought to be introduced. Three months, say, after the sale or other change of ownership the purchaser or new owner would have to introduce full isolation fencing. Third, where a building application is submitted to the local council or shire, isolation fencing ought to be required as part of that building application. That is associated with the renovation or extension of the premises. Those mechanisms were positively advocated as appropriate and reasonable by the majority view of the committee of review set up by the Government.

In essence, the Opposition has followed the majority recommendation as the safest and most satisfactory route to introduce appropriate measures for the safety of toddlers around domestic swimming pools. Those are the amendments we would be putting to this House and asking for their support. As the Minister introducing the bill has noted one Opposition amendment was adopted in the Legislative Assembly. That is the obviously sensible amendment to ensure that people who have already installed isolation fencing, whether it is required by this legislation or not, should be required to keep it in place and in good order and repair. A manifest deficiency of the Government's legislation allowed people who were exempted by this bill to simply dismantle the existing fence or to leave it in a state of disrepair. That has now been remedied and this House does not need to be troubled any further by that particular amendment. In short, we will not oppose the second reading of the bill but at the committee stages we will move the appropriate amendments.

The Hon. PATRICIA FORSYTHE [12.19 a.m.]: I support the Swimming Pools

Bill. It is a genuine attempt to find a balance in this extraordinarily complex debate. I reject however the philosophy of some honourable members, and I include the views of some of my colleagues, who regard this legislation as a victory for the anti pool fence lobby. The bill is the Government's response to the review of its legislation, which it promised when the Act was brought in in May 1990. The concern I have about the attitude of some of my colleagues is minor compared with my absolute contempt for the Opposition's stand on the bill. I shall not restate the background of the previous bill - I touched on it in my speech in the Address-in-Reply debate not so long ago. The Government brought in the 1990 bill after considerable consultation with and agitation from a number of councils - including Mosman Council - which had interpreted their responsibilities rigidly. There was considerable agitation also from the then Opposition spokesman on local government, the honourable member for Coogee. Indeed, on 27th February, 1990, the honourable member for Coogee gave notice that he was to bring in a bill on the fencing of swimming pools. The then Opposition supported the Government's bill. The Government was pleased to have that support. As I recall, in debate of that bill in this House the only opposition came from the Hon. Judith Jakins, who had some concerns about how the legislation would affect people in the country. Where has the Opposition been since then?

The Hon. J. F. Ryan: On the fence.

Page 3852

The Hon. PATRICIA FORSYTHE: There has been nothing but silence from the Opposition. As my colleague says, the Opposition has been sitting on the fence. I went through the newspapers today looking for some positive comments from, say, the honourable member for Coogee, who has been so vocal on swimming pool legislation. I could not find any consistent support for the Government and the stand it has taken since the legislation came in in 1990. Since the controversy began to rage, the Opposition has been silent. It has not supported the stand of the Government; it has not supported fencing. Had the Opposition been prepared to stand up in the last two years and indicate its position strongly, debate that has raged in the last year or so would not have reached the stage that it has. It would not have been a political issue; it would have been a dead debate.

In debate in the other House the honourable member for Coogee tried to score a few political points by describing this bill as the John Valder bill. The Opposition is condemned by its own silence. Since the Act came in in 1990 the Opposition has been the party playing politics. The Minister for Planning and Minister for Energy in his second reading speech tonight referred to the words of the Hon. David Hay, saying that the bill was about the greater protection of children. That is the issue of this whole debate, but it has been consistently lost. We have been distracted by such issues as the role of the Government in people's backyards. This topic has been dwelt upon time and time again. It is an appropriate issue for Parliament to consider. I analysed this matter for some time because, as a Liberal, I question how far laws should and can go. In my council area - the same council area in which many members of the Pool Fence Action Group live - I cannot burn off; I cannot cut down a tree; I certainly cannot do any structural alterations to my house without approval; my house is designed to meet a variety of standards and building codes set by governments; the chlorine I use in my swimming pool is produced to stringent standards for my safety and that of my family -

The Hon. Dr B. P. V. Pezzutti: People cannot play loud music.

The Hon. PATRICIA FORSYTHE: Indeed, I cannot play loud music. I cannot

even start the lawn mower too early on a Sunday morning. I suppose that those who argue that governments have no place in backyards think it is all right for parents to beat their children so long as they do so in their backyards. There is no logic in that, and there is no logic in the argument that governments have no place in backyards. Our society went far beyond that point a long time ago. It is an interesting issue, but it is a side issue. It is not the issue upon which we should focus. In analysing the philosophical approach to the role of government, I looked at some quotes of some eminent people. I noted the remarks of Mr Robert Menzies - as he was in 1942 when he gave a radio interview on the task of democracy. He said:

What, then, must democracy do if it is to be a real force in the new world? . . . It must recapture the vision of the good of man as the purpose of government . . . This means that in the new world we must seek to develop all the intelligence and strength and character in every child. Each one of them must have his chance.

That is what this debate is about. Of course we cannot legislate for good parents; of course there is no substitute for parental vigilance, which is the key to the safety of children. But even the most perfect parents are capable of momentary distraction. This legislation is not about good or bad parents, but safe children or, rather, safe pools. I will not dwell on statistics, but there is one statistic that no one has recorded, that is, how many times children have headed for a swimming pool without an adult noticing only to be blocked by a fence. I regret that there is no simple way of legislating to ensure that pools on properties where children under the age of five reside or visit, alone could be protected. Regrettably, the only way to ensure safety is by this catch-all legislation. I

Page 3853

support the bill's seeking to overcome some of the onerous provisions of the previous legislation. In particular, I support the proposal that the bill should give greater flexibility to pool owners in the choice of location of barriers around their pool.

Clause 18 of the bill should ensure that owners have an opportunity to locate barriers to best suit their circumstances. The provisions applying to new pools in the 1990 legislation were onerous and gave councils the opportunity to be too restrictive in their interpretation of the legislation. We may overcome some of the problems in that legislation. I am well aware of at least one council in Sydney where, as a result of the previous legislation, it was proposed that all fences on new pools be within only about a metre from the coping on a swimming pool. That was an over the top response. This legislation should do much to correct that sort of reaction from local government. It is a pity if local government is not prepared to strike an appropriate balance. This legislation varies from the previous bill in that it gives the Land and Environment Court the authority to deal with compliance. Under the previous legislation there was to be an appeals board. It was considered that the board was necessary because it was thought that there would be many appeals and that they would clog the courts. Perhaps, with the introduction of a more flexible approach, there will not be so many appeals and the Land and Environment Court will not be bogged down dealing with them.

I am particularly pleased that through this bill local councils will be given some flexibility in dealing with the situation where wheelchair access to a swimming pool may be needed. So long as other provisions come into force such as appropriate locks on doors, it is perfectly reasonable that in some circumstances a fence may not be appropriate. That should overcome some of the concerns of the people who wrote to the Minister after the previous legislation was brought in. Given the lateness of the hour, I shall refer to all aspects of the legislation - I know my colleague the Hon. Dr B. P. V. Pezzutti has much to say on the bill. In conclusion, I particularly welcome the Pool Fencing Advisory Committee, which will be established by clause 31 of the bill. No one

- not this Government, the Opposition, the Independents, the pool fence action group or the medical fraternity - will necessarily get this difficult issue right even now. I am sorry that various groups have sought to play politics with this most important issue. It is above politics; it involves the lives and the futures of our children. I support the bill.

The Hon. ELISABETH KIRKBY [12.31 a.m.]: When the Swimming Pools Bill was debated in 1990 it was wholeheartedly supported by the Australian Democrats. Nothing in the intervening years has made them change their position. The agitations of a selfish but vocal minority cannot shake the Democrats' belief that compulsory isolation pool fencing is a crucial component in the prevention of child drownings. That is why the Democrats oppose the Swimming Pool Bill now before the House. The 1990 Act had two basic provisions. The first provided that all new pools were to have isolation fencing to Australian Standard No. 1926 of 1986, which meant a child-resistant fence at least 1.2 metres high and an effective self-closing and automatic latching gate. The second provision provided that existing pools had to be fenced by 1st August, 1992; they had to be surrounded by complying fencing but did not need to be enclosed. The immediate surrounds of the pool did not need be enclosed, but the fence had to form a barrier between the pool and the house. That is the sort of fence that I put around my own pool 15 months ago.

The 1990 Act had no real exemptions. Local authorities could grant an exemption only if fencing was impracticable and an equally effective alternative was put in place. The point made by the review board is that only rarely will an alternative that is as effective as a fence be available. I supported the provisions in 1990, and I support

Page 3854

them still. This bill represents a watering down of the current legislation, no matter how many times the Minister wants to call it fine tuning. It contains exemptions based on the nature of the property - small properties, large properties, waterfront properties, exemptions for outdoor swimming pools, for motels, and so forth. Those exemptions are to be found in clause 13. The exemption for motels is extremely strange. As I have travelled round the State I do not think I have ever seen a motel swimming pool anywhere in New South Wales that has not been surrounded by an isolation fence. I cannot believe that it would be either proper or even necessary to have an exemption for outdoor swimming pools at motels.

The bill contains a lot of diagrams in schedule 1 showing how existing swimming pools and those on very small properties should be fenced. The diagrams are laid out in a reasonable manner. The barriers must consist of a combination of fences and walls, and owners of private pools will be able to decide on the exact location of any barriers subject to the requirements of the legislation. A new and very reasonable amendment in the 1992 bill provides that when local councils wish to inspect a pool they must now give residents 24 hour notice. One could not possibly have any objection to that. The 1992 bill boils down to the granting of exemptions that are likely to result in measures that are not equal to the sort of protection given by isolation pool fencing. It is a contentious issue. There are still people who do not believe that an unfenced pool is inherently dangerous. Therefore, it is proper that I put on the record the dangers of an unfenced pool. The *Medical Journal of Australia* of 4th February 1991 printed a study by Cass, Ross and Grattan-Smith based on data collected from Western Australia, Queensland, New Zealand and the United States of America. The article indicated that the absence of isolation fencing is associated with a 1.5 to 8.6 times increased risk of drowning. Honourable members have to remember that because it is what we are talking about - an increased risk of drowning.

Between 1987 and 1990, 29 toddlers died in swimming pools. Given that there

are six near drownings serious enough to warrant hospitalisation for every one drowning, I calculate that there were 203 drowning or near drowning incidents in New South Wales between 1987 and 1990 - that is in only three years. The New South Wales Department of Health safety fencing survey, published in May 1991, estimated that 30 per cent of pools were not fenced to Australian safety standards and that 48 per cent of drownings occurred in that 30 per cent of pools. Of the drownings in fenced pools, 73 occurred in pools that did not have fully functional fencing because the gate had been left open or the fence was broken. If all pools in New South Wales had been fenced and the fences were maintained in a fully functional state, almost 80 per cent of drownings and near drownings between 1987 and 1990 could have been prevented. That is what honourable members have to consider.

It is important for honourable members to realise that a horrible thing happens to children who fall into pools and almost drown. In almost all cases they are brain damaged. In many cases their lives are totally ruined because they become vegetative and are unable to live a normal life. It may seem an unusual thing to say, but many people might say that it might have been better if a two-year-old or three-year-old toddler who has to face the rest of his life in a brain damaged state had drowned. A document brought to my attention only two or three hours ago claims that parental supervision will prevent drowning; therefore, pool fencing is not necessary. That claim was brought to the attention of the Premier in a letter sent to him by the Australian Consumers Association, a copy of which was sent to me. The association stated in that letter:

Page 3855

... it has been suggested that the drownings or serious immersions are the result of inadequate parental supervision; that is, the parents of the victims are said to be at fault and the rest of the community should not be required to pay for their remiss behaviour. The Consumers' Association rejects this callous and outdated view absolutely. It is unrealistic to expect parents to *never* be distracted.

Surely, to blame parents for becoming distracted and allowing a child to drown would add a terrible burden of guilt to the remorse, distress and grief of those parents. Another myth is that rural pools do not need fences. But rural pools do need fences, as pointed out by Dr Robert Pitt, director of ambulatory services, Mater Children's Hospital, Brisbane and director of the Queensland injury surveillance and prevention project. Dr Pitt said in an article in the October-November edition of *Parents* magazine:

In major urban areas like Brisbane, toddlers are 10 times more likely to come to grief in a domestic pool compared to a natural body of water (river, creek, canal or the sea) or a dam/pond. Even in rural Queensland, the Government Statistician's figures show that domestic pools are a common cause of toddler death. The number of rural pool, dam and 'natural water' drownings are similar despite the fact that there are far fewer pools and exposure to creeks and dams is many times higher.

Dr Pitt was referring to rural Queensland. The article continued:

It is not practical to fence all water dangers and this has never been suggested by those attempting to reduce the high toddler drowning rate in pools. The object of injury prevention is to 'do what is do-able' and fencing domestic pools is 'do-able'. There is no logic to leaving one hazard unprotected simply because you can't do much about another. Country children are not second class citizens and they deserve the same protection afforded their city cousins.

Another myth, according to Dr Pitt, is that there are other methods of making a pool safe.

Dr Pitt commented:

Unfortunately, alarms and pool covers rely upon the 'human factor' and are far from fool-proof. The alarm must be turned off when the pool is in use and then someone has to remember to turn the alarm back on afterwards. Pool covers are too cumbersome to take on and off repeatedly. At some point on a hot summer's day a family pool is sure to go unprotected. Also of concern is the risk of a child being trapped under a pool cover and this happened twice in the Brisbane study.

Campaigns of misinformation have been put out by the Pool Fencing Action Group. I have received - as I am sure other members of this House - endless correspondence from that group. On occasions I have received from that group some extremely offensive letters. In fact, in the whole time I have been in this Parliament, since 1981, I have never received letters quite as offensive as those I have received from the Pool Fencing Action Group, and that in itself makes me feel unable to accept some of its arguments. That group's misinformation has been countered completely by material prepared by Dr Wal Grigor, who holds the chair of the Child Accident Prevention Foundation of Australia. Dr Grigor's message in his letter, which honourable members received the other day, is most sensational. Dr Grigor's letter has a cover sheet that reads, "If you can't find your toddler, look in the pool!" That statement is deliberately frightening to make people realise what they are up against. The media release by the Child Accident Prevention Foundation of Australia commences with the dramatic message that a child who falls into a pool will survive immersed for one minute, will suffer severe brain damage after two minutes immersion, and after three minutes will die. Dr Grigor said in a press release dated 4th May, 1992:

We have been joined in our campaign by a number of parents of drowned and severely brain damaged children . . .

Page 3856

These parents have a tragic personal interest in the issue of isolation fencing. Many of their children would not have gained access to pools if isolation fencing had been erected.

Supporters of the CAPFA campaign for isolation fencing include Professor Oates, Professor of Paediatrics at Sydney University; Dr Bernard Neil, President of the Australian College of Paediatrics; Dr John Yu, Chief Executive Officer, Children's Hospital Camperdown; Dr Peter Procopis, Executive Director, Children's Hospital, Camperdown; Dr Jonathon Gillis, head of the intensive care unit at the Camperdown Children's Hospital; Dr Graham Nunn, head of the department of child and family Psychiatry, Children's Hospital, Camperdown; Dr Arthur Day, head of the Child Safety Centre, Children's Hospital, Camperdown; Dr Wal Grigor, senior paediatric physician, Children's Hospital, Camperdown; Dr Bruce Storey, paediatric neonatologist, Children's Hospital, Camperdown; Dr Henry Kilhan, paediatrician and former head of intensive care, Children's Hospital, Camperdown; Professor Neil Buchanan, professor of paediatrics, Westmead Hospital; Dr Danny Cass, paediatric surgeon, Westmead Hospital; Professor Henry Bode, professor of paediatrics, Prince of Wales Children's Hospital, Randwick; and the list goes on. The leading paediatricians in this State all support pool fencing. How can opponents of pool fencing ignore the opinions of so many medical men whose whole lives have been devoted to the care of children, and who have seen the tragedies that have occurred when children have suffered brain damage after immersion? This material deserves careful study. Dr Wal Grigor's statement ought to be put on record, as follows:

The claims of the PFAG have no scientific support. The scientific evidence convincingly supports the effectiveness of isolation fencing in preventing toddler drownings.

A recent survey commissioned by the New South Wales Department of Health, and published in *Injury Issues* in July 1991 by that department, showed that 88 per cent of adults approved compulsory isolation fencing for backyard swimming pools and 70 per cent of those who own pools had already complied with this legislation. If by July 1991, 12 months before isolation fencing had to be installed, 70 per cent of pool owners had already installed isolation fencing, why are attempts being made now to alter the legislation? It is possible that in the ensuing period another 10 to 15 per cent of pool owners have already installed isolation fencing. The Government does not really need to move the proposed legislation, nor is there a necessity for exemptions to be given to owners of existing pools for a further 3-month period, as has been suggested by the Opposition in one of its amendments. The existing legislation was perfectly satisfactory and should have been left in place untouched. I have made known to the Government and to the media that I intend to support the amendments moved by the Hon. Dr B. P. V. Pezzutti because I believe those amendments will gain some degree of all-party acceptance. However, even though I propose to support the amendments, quite frankly they should never have been made necessary. The legislation should remain as it was passed in 1990.

The Hon. Dr B. P. V. PEZZUTTI [12.50 a.m.]: I describe this bill as an exercise of monumental timewasting for this Parliament because I, as did the Hon. Elisabeth Kirkby, thought this had been sorted out in 1990. As the Hon. Patricia Forsythe stated, there are a number of advantages to the new bill, yet those matters could have been incorporated by way of amendment to the existing Act. However, some clamour arose in 1991 which reached its zenith as the election process neared. The Government said it would review the legislation and did so. As a result two reports were prepared, a majority report and a minority report. I wish to refer to a letter from Dr Danny Cass, a paediatric surgeon and a member of the review committee appointed by the Government. In his urgent letter to me when the reports were tabled he wrote:

Page 3857

There has been opposition. Some of it is understandable, particularly from elderly people with pools and on a diminished income. The other opposition was unreasonable, by a group of organised wealthy individuals who at every turn sought to misrepresent, distort and mislead. Their case lacks credibility.

That is precisely what Dr Cass said about those people on the pool fence action committee and those people who have been stirring up much of this dissent. I hold in my hand just a small selection of letters I have received from eminent medical practitioners, researchers in the field and other people. From Cooma hospital I received an urgent fax containing 75 signatures. It was a petition but it is not in a form that can be tabled in the House. It requested that I strike a blow to make sure that children were being protected. These letters have been pouring into my office and my poor research officer has been busily compiling a list so that he might reply to those letters once this matter is finalised. I wish to refer to a letter I received from Westmead hospital. Appended to that letter is a document with signatures from almost every senior specialist at that hospital in the western suburbs of Sydney, an area well known to my colleague the Hon. J. F. Ryan. This hospital provides child care to a vast range of people throughout New South Wales. These people are not politically active; they merely go about their business.

At first this legislation consisted of a number of contradictions and was inadequate in addressing the problems of child drownings. Statistics from 1987-90 indicate that drowning is the single greatest cause of deaths among toddlers in New South Wales. Perimeter fences do almost nothing to address the problem because the most recent extensive studies of child drownings and near drownings in domestic pools in Australia from 1984 to 1992 together with similar international studies have found that approximately 97 per cent of toddlers involved in drownings or near drownings gained access to the pool from the house. Therefore, perimeter fencing addresses only 3 per cent of the problem. It is totally inconsistent to require perimeter fencing, which implies that such a fence is an effective barrier to toddlers, and not to insist on the fourth side which separates the pool from the house. It is only with the fourth side that we can address which is the greatest problem of unintended access by toddlers to domestic pools. My amendment will relate specifically to that issue.

The scientific literature fully demonstrates the effectiveness of isolation fencing. The Western Australian Health Department report in 1991, in its review of the literature, found eight studies which examined the effectiveness of isolation fencing. All of these studies found an increase in the risk of drowning when the pool was not isolated from the house. In these studies the risk ranged from twofold to ninefold. Not one study has ever reported that there is an increased risk of drowning associated with isolation fencing. I shall come to that matter later. There is absolutely no evidence that the false sense of security argument has any validity whatsoever. New Zealand legislation has been put up to us by the pool fence inaction committee. Last week I changed its title, or perhaps it should be the no pool fence action committee. That committee tried to demonstrate that the introduction of isolation fencing legislation led to an increase in drownings in New Zealand. The latest literature I have received, and which has been validated from speaking to Dr Tom Grattan-Smith, shows a dramatic decline in the number of such deaths in New Zealand. In fact, there were only three deaths in 1991 and one death this year, falling from a peak of nine or 10 a few years ago. Yet the pool fence inaction committee has consistently put the New Zealand model up in front of Mr John Laws of Radio 2UE, who swallowed it hook, line and sinker because he wanted to.

The antipool fencing group does not have a single documented statistic to support any claim it makes about the lack of effectiveness of an isolation fence. However, it has been at pains to attempt to discredit the statistics. It has done that because it dislikes

Page 3858

what the statistics plainly and simply reveal. No one could produce a single scientific study to support counterarguments. This bears a striking resemblance to the tobacco industry of 15 years ago in its attempts to discredit evidence linking smoking with cancer and heart disease. The amendments I am proposing are almost precisely identical with the Queensland law. The responsible Minister, Tom Burns, pushed this matter forward and stood firm. The matter has been resolved in Queensland, though several people on the Gold Coast wearing white shoes and little else are again peddling the stuff we see down south here in Sydney. To ensure that pool owners install a perimeter fence, secure locks on doors and windows facing pools calls for the same, if not greater, efforts associated with checking on compliance. At the Committee stages I shall ask how the Minister will check on compliance. I have heard from the Minister in another place and in the second reading speech tonight that there is no substitute for parental supervision. That sounds like the ideal solution but in the real world it cannot be relied upon. The Minister is now not able to supervise a child because he is simply too tired. Our road safety experience indicates that we cannot rely on careful driving as the only solution to reducing the road toll.

The Minister for Police and Emergency Services has done a marvellous job in bringing forth regulations, legislation and enforcement. New South Wales now has the lowest road accident statistics since 1957. Large numbers of lives have been saved, not merely by good legislation but by policing. A growing number of poisonous household chemicals are packaged in childproof containers. We do not rely on the safe use and storage of those chemicals. Parents can be distracted from watching a child in many instances. The deaths to date confirm this. It is nothing more than blind ignorance to assume that education alone will increase supervision to the point at which toddler drowning would be eliminated. Installation of an isolation fence means that many young children will never gain unintended access to the pool and parents will be given a few extra vital minutes to search for those who try. The stark message is: if you cannot find your toddler, look in the pool. Mr McBride, making one of his first speeches in the other place, said that he looked everywhere and then looked in the pool. There was the child. The child is normal and well; he caught it just in time - an attentive parent. Fencing pools is feasible and addresses the major portion of the drowning problem.

It is startling that the vast majority of people support compulsory isolation fencing. This is meant to be a democracy. Five separate opinion surveys - two in New South Wales, one in Brisbane, one in Melbourne, and one in New Zealand - have indicated that between 70 per cent and 90 per cent of the public approve of isolation fencing. The anti-pool fencing group cannot produce any evidence - not one study or statistic - to support its arguments. Furthermore, every study that has been done shows that the vast majority of citizens support compulsory isolation fencing. The anti-pool fencing group has attempted to muddy the water by criticising methodology and other imagined infirmities in the existing studies. However, it cannot produce a single study to support its own view. Significantly, the majority of pool owners also favour compulsory isolation fencing. A study in Sydney conducted in May 1991 found that 70 per cent of pool owners who had not yet installed isolation fencing approved of the compulsion to do so. Therefore, by any measure, those opposed to it are in a very small minority. A survey conducted by the Department of Local Government, which was mentioned by my friend the Hon. Patricia Forsythe, indicated that 117 of 176 councils in New South Wales required isolation fencing for new pools and 90 - more than half - required isolation fencing for existing pools when the councils became aware of them. That is, 51 per cent of New South Wales councils had already required the provisions of the legislation as it exists today.

Page 3859

In a very interesting survey in May 1991, of 553 Sydney residences, the Department of Health found that more than 70 per cent of the 150 pool owners reported having isolation fencing around their pool. When the fencing status was examined by area of residence an interesting point was found. In the western suburbs isolation fencing existed around 78 per cent of pools. In south western Sydney the figures was 66 per cent; in the inner city and eastern suburbs, 71 per cent; and on the North Shore, 72 per cent. On the attitude of the people surveyed, 84 per cent of those in the western suburbs approved of isolation fencing; 86 per cent in the south and south west; 91 per cent in the inner city and eastern suburbs; and 85 per cent on the North Shore. This undermines the general political concern that certain suburbs - namely, those on the North Shore - are biased against the legislation that now exists. Obviously that is crazy. It also indicates that the assertion by John Valder and some of his friends that pool owners in this State are up for a bill of \$200 million is an absolute exaggeration. Some 30 per cent to 40 per cent of domestic pools - 51,000 to 76,000 - are still not isolation fenced. Some pools could be adequately fenced with an additional \$2,000 or \$3,000 of fencing - well under the figure given by Mr Valder.

The whole issue of pool fencing and pool safety has been well and truly addressed. However, I refer to a couple of speeches in the other place. There is one issue I really get annoyed about. The Pool Fence Action Group put out a statement which one of my colleagues, Dr Kernohan from Camden, repeated. She should have known better. I even heard this from the lips of the Minister in another place. I refer to the case of the child who drowned at Weston. Let it be clearly understood by all members that no child at Weston climbed a fence and was found in a pool. There was a perfectly good three-sided fence and a very good working gate. On the fourth side was a patio on which there was two foot of aluminium cladding above which was flyscreen. Some time before a dog had gone through the flyscreen, leaving a hole. The child simply clambered through the hole and drowned. Yet in a speech just last night a person who had been consulted on this matter extensively had the hide to report that the child must have climbed over the fence or gone through it.

I rang the *Daily Telegraph Mirror*, which carried the story. I spoke to the person who had the by-line. That part of the report was added by the sub-editors later; it was not part of the responsible journalist's report. I spoke to the young policeman who investigated that matter. He told me something very interesting; in the four years he has been stationed in the area he has had to attend three toddler post mortems. He telephoned to tell me that the story was incorrect. I had rung to check and the police were more than keen to speak on the matter. Superiors had given their approval. The policeman said: "You bring those fellows up there who do not think that these fences save lives and get them to look at these white bodies and to face the parents. You get them to come up and have a look at this. See if they can then feel smug in their North Shore homes". He was very distressed. For a young officer to have three such instances in four years is remarkable.

The problem exists in the country and in the city. Unfenced pools are all over this State. I investigated the two previous cases very closely. One was on the North Shore. There were damned great holes in the fence. The other was at Maitland, where there was no gate - a fence, but no gate. I ask you, Mr Deputy-President! I spoke to Dr Tom Grattan-Smith and we went through all the coroner's reports for the last two years. It was a litany. The case at Weston had been repeated barely 12 months before - the same problem of a dog putting a hole through screen wire and the child going through the hole. What do you have to do? Where was the collation of this information? To get that information was darned near the most difficult thing I have ever done. The Pool Fence Action Group, to its credit, had had the same problem. I spoke to Mr Peter

Page 3860

Collins, a man I have dealt with in very good stead. He had the same problem I had in getting this information. To some extent, the inability to get the information may excuse some of the misinterpretation of misdirection by members of the group.

The bill will set up a decent way of collating the information and making it quickly available. There is nothing surer than that when toddlers drown they drown slowly and quietly. When those three deaths in a three-week period were reported in the *Sydney Morning Herald* each report was one and a quarter column inches long, and that is all, on the inside of the paper near the binding on page 4, underneath another story. It did not pronounce "Child drowns". I can tell honourable members why we went through the agony of setting up the legislation in 1990. In 1989 in New South Wales 17 children drowned. The *Daily Telegraph* headlines screamed "Government do something about this". Members from the Labor Party, Liberal Party, Australian Democrats and Call to Australia spoke in that debate. All of those who contributed with the exception of the Hon. Judith Jakins who was concerned about country people, spoke positively in the most

warm and glowing terms. What has happened since 1990? I spoke in the debate on that bill. We were a bit short of time, as we are tonight. It is interesting that these types of bills come in late in the day and that the present bill took two days to pass through the other place. In 1990 I supported the legislation, and I still do. However, some welcome changes have been made, as the Hon. Patricia Forsythe said.

Times move on and changes have to be made. One of the important provisions of the bill is that it will give people options. But none of those options should be seen to be more safe or less safe than any other. The one thing I will not tolerate in any bill is a provision that would allow local councils the right to pick and choose. That is how the 1990 legislation was mucked about. Councils required a ridiculous closeness of the gate which was never the intention of the legislation. They picked and chose and monkeyed about. This time I am determined that we will have an Australian standard that will apply throughout New South Wales, and pity help the council that exceeds that standard or fails to meet it. There will be a standard that councils must stick to. I am the last person who would want to delay debate on the legislation, and I have not spoken for too long so far. I shall bring forward more evidence at the Committee stage. The New Zealand experience and eight other studies demonstrate that isolation fencing reduces the number of child drownings. Each year 10 to 12 toddlers drown and about the same number of children are left permanently brain damaged. That is horrific. What it says is that for every child who drowns another child is brain damaged; for every child who is drowned or brain damaged, in almost 85 per cent of cases the marriage of the parents will be split asunder. The most tragic thing about it is the effect it has on the rest of the family, the two parents as well as the children concerned.

The Hon. Patricia Forsythe: And the neighbours.

The Hon. Dr B. P. V. PEZZUTTI: Yes, the neighbours or the persons in whose pool the child drowns. Almost invariably they sell their houses and move and are never the same. That is a tragedy. The devastation caused to the lives of those families cannot be measured. Many people rely on their household insurance policies to cover them should a child almost drown or become brain damaged. But they should look at the fine print, because the AMP Society says that the householder's responsibility as part of the deal is to maintain the property in good order and comply with any regulations. All of those people on the North Shore, in the eastern suburbs or Sutherland who say they will not construct fences and therefore we will have civil disobedience should wait until a child is brain damaged and are sued and lose their houses. That would be poetic justice. I intend to move amendments in Committee that will insert into the legislation and make

Page 3861
it clear for the world to see the standards that I believe should apply to fences, doors and windows which are the barrier to a pool. I will move some other clarifying amendments as to what should happen on large rural properties where five or six houses are situated. The other amendment goes to the matter of water frontage. The Minister may have to look at a dictionary to find the definition of frontage. If he thinks a dam in the middle of a property is a frontage, he is wrong. I shall endeavour to clarify that matter. I have a dictionary of the meaning of the Australian standards now and in the future. I have a lot more evidence that I could give the House that I have collected from near and far. However, at this stage I can rest on the material I have provided.

The Hon. E. P. Pickering: Rest on your laurels.

The Hon. Dr B. P. V. PEZZUTTI: That is helpful. I hope the Minister will be helpful and support the amendments which will make the legislation better than or as good as the previous legislation.

The Hon. J. F. RYAN [1.16 a.m.]: I shall not delay the House for long but I want to put on the record an explanation of my position on this legislation in case the way I vote is misunderstood. No higher responsibility is placed on any community than that which we owe to our children. I place on record my view that children do not belong to just their parents; there is a sense in which children belong to the whole community, and that community has a responsibility towards their protection. In my view it would be better to err on the side of safety. I have been disappointed by the comments of those who have placed greater emphasis on landscaping or house pride than on children and the toddlers of our community. I could find nothing very much wrong with the 1990 Act except that it may have put unreasonable impositions on owners of existing pools, especially elderly people. The proposed legislation has the advantage that it explains adequately the issue of flexible pool fencing which gives people more options and does not unnecessarily undermine the safety that was intended by the standards set in the 1990 Act. In that regard the bill is an improvement. As a parent of two very young children I must say that one of the most annoying aspects of the debate has come from those who have been inclined to overstate the role of adult supervision. I defy any honourable member to believe that he or she has ever been able to maintain a perfect standard of supervision over any of their toddlers.

Adult supervision is important and a key factor in protecting children, but it cannot be forgotten that parents are human; they drop their guard and can be distracted. There are times when parents cannot protect their children, for example when I take my children to a friend's place and put them in the care of another adult, or when they go to someone else's place for a birthday party and the children want me to leave, not to hang around. I have to give them that opportunity to explore their world. I am not in a position to be able to supervise them on those occasions. In the course of this debate at least four members of Parliament have told this House or the other place that a child who has been in their care has fallen into a swimming pool when they have been in close proximity to that child. Few of us will disagree that members of Parliament are among the most responsible members of the community. They have a high sense of community responsibility. If people as well educated and attuned to community standards as members of Parliament can be in a position where a child under their supervision could slip into a pool - and no major survey has been carried out on this - it stands to reason that plenty of other people will have similar problems.

As politicians we should not be imposing standards on the community that we have clearly demonstrated we cannot live up to. Regardless of any statistics, it is plain

Page 3862

common sense that a suitable pool fence will at least minimise, if not absolutely prevent, child drownings. Finally I should like to place on the record my admiration for the efforts of the Hon. Dr B. P. V. Pezzutti. He has demonstrated a marvellous attitude and a great interest in protecting children. It would be true to say that this bill, which I will be supporting, is all the stronger because of his efforts in the party room. I place on the record also that it has been impossible to walk past the Hon. Dr B. P. V. Pezzutti's room during the last couple of months and not see him burning the midnight oil, consulting with large groups of people, undertaking research with his research officer, David Barnes, working in a completely responsible manner, and setting a high standard for any politician. As a new member of this House, I would like to believe that I might be able to attain that standard. The Hon. Dr B. P. V. Pezzutti intends the Committee to move amendments which will give him greater confidence in the bill. I have confidence in the commitments given by the Minister that Australian standards will be continued. I fully understand, because of his high level of commitment, the why the Hon. Dr B. P. V. Pezzutti will move those amendments. I understand fully what he is doing, and will

support him in spirit if not by my vote.

Reverend the Hon. F. J. NILE [1.21 a.m.]: As honourable members know, the Call to Australia group totally supported the Swimming Pools Bill 1990. Since that legislation was passed I have become concerned about claims and counterclaims being made about swimming pool fencing. All members of Parliament have been flooded with submissions from the Pool Fencing Action Group and the Child Accident Prevention Foundation of Australia. Respected members of the community participate in both of those organisations, which have made strong and inflammatory criticisms of each other. That is a tragedy when one is dealing with an issue relating directly to the saving of lives of small children, particularly those between the ages of one and three. In its submission the Child Accident Prevention Foundation of Australia, of which many doctors and specialists who have already been mentioned are members, said:

The document from the PFAG seeks to distort the truth by the blatant misuse and misrepresentation of data.

With the use of diagrams and other statements, the submission goes on to refute the claims of the Pool Fencing Action Group. Recently I received a submission from the Pool Fencing Action Group dated 5th May. I am sure other members of the House also received it. In that submission the Pool Fencing Action Group responds to the claims of the Child Accident Prevention Foundation of Australia. The submission reads:

In response to the recent media campaign in the name of the Child Accident Prevention Foundation of Australia (CAPFA) we submit for your consideration this reply. Apart from the issues principally discussed, the fundamental issue remains: Government intrusion into private backyards and interference with domestic arrangements should not occur in the absence of conclusive evidence of real benefit.

I emphasise "conclusive evidence of real benefit". The submission continues:

Whilst the welfare of young children is undoubtedly important, the welfare of older children and the interests of the entire Community cannot be totally ignored.

In its submission that group has listed a number of matters which I do not have sufficient time to deal with in detail. However, that group is savage, to put it mildly, in its criticism of the Child Accident Prevention Foundation of Australia. For example, the submission states:

The CAPFA document quite wrongly assumes that Dr Pitt's figures for the ages of
Page 3863
children who suffer an immersion in Brisbane apply to the ages of children who drown in New South Wales. They do not.

In their documents the two organisations state the exact opposite. The submission of the Pool Fencing Action Group states on page 2:

The CAPFA document is therefore false, either intentionally or from ignorance.

The submission contains strong criticism almost line by line. One such criticism is:

How did CAPFA arrive at their erroneous figure . . .

The penultimate paragraph of the submission reads:

So if it's isolation fencing meeting the Australian Standard and the gate is propped open, it's not isolation fencing. If it's 3-sided fencing and it works better than isolation fencing then Hey Presto it's isolation fencing. This Humpty Dumpty logic will save no children, but it makes the pro-fencing case seem stronger to anyone who doesn't know that they are misrepresenting the facts.

Those claims and counterclaims are similar to those made in relation to other emotional issues. I refer particularly to the debate that followed the endeavour to formulate acceptable firearms legislation and the timber protection legislation, with the timber industry on the one hand and the environmental groups on the other. It is tragic that the same thing is now occurring in relation to this issue as well. That is why I am pleased that in the other place, I understand as a result of the efforts of Dr Macdonald, an amendment was moved and, so far as I am aware, accepted by the Government. It is now part of the bill before this House. Clause 31 reads:

- (1) There is to be established a committee, to be known as the Pool Fencing Advisory Committee, consisting of 5 members, of whom:
 - (a) one is to be a member nominated for the time being by the Australian Bureau of Statistics . . .

That member is to be included on the committee in the hope of obtaining accurate information. Clause 31 continues:

- (b) one is to be member nominated for the time being by the Epidemiology and Health Services Evaluation Branch of the Department of Health . . .

That provides for a medical profession representative. Clause 31 continues:

- (c) one is to be a member nominated for the time being by the Child Accident Prevention Foundation of Australia . . .

That member will represent a group of medical specialists from the Camperdown Childrens Hospital, the Prince of Wales Hospital and so on. Clause 31 continues:

- (d) one is to be a member nominated for the time being by the Department of Psychology of the University of Sydney; and
 - (e) one is to be a member appointed by the Minister.

The clause does not state from where that member will come, but I hope he or she will be a representative from the Pool Fencing Action Group. That will force these people to work together in a team for the benefit of the children of our State. Clause 31 continues:

Page 3864

- (2) The Minister may appoint a person to any position in the Committee if a person is not duly nominated to that position under subsection (1).
- (3) The Committee is to meet from time to time for the purpose of:
 - (a) considering data on drownings and near drownings, both past and current; and

- (b) analysing the data and advising the Minister as to its findings; and
- (c) recommending to the Minister appropriate amendments to this Act in the light of its findings, with particular regard to isolation fencing.
- (4) The regulations may make provision with respect to the constitution and procedure of the Committee.

To bring people together who are deeply concerned about this subject and have them work in harmony is a promising development. A great deal of progress will be made. The media has attempted to indicate that the bill will repeal legislation requiring fences to be erected. I do not see that as the major thrust of this bill. It contains quite clear requirements concerning protection of small children in various ways. For example, clause 4 states:

This Act applies to swimming pools (both outdoor and indoor) that are situated, or proposed to be constructed or installed, on premises on which a residential building, a movable dwelling, a hotel or a motel is located . . .

It also involves local government authorities who play a major role in their local areas with other development applications. Clause 5 states:

Each local authority is required:

- (a) to take such steps as are appropriate to ensure that it is notified of the existence of all swimming pools to which this Act applies that are within its area; and
- (b) to promote awareness within its area of the requirements of this Act in relation to swimming pools.

Clause 7 states:

- (1) The owner of the premises on which a swimming is situated must ensure that the swimming pool is at all times surrounded by a child-resistant barrier:
 - (a) that separates the swimming pool from any residential building situated on the premises and from any place (whether public or private) adjoining the premises; and
 - (b) that is designed, constructed, installed and maintained in accordance with the standards prescribed by the regulation.

The Government cannot avoid facing up to its responsibilities. I have had discussions with the Minister responsible for this legislation, the Minister for Local Government and Minister for Cooperatives. He is anxious that the detail concerning construction should be prescribed by regulations. Construction detail will be dealt with by regulations and will not be part of this bill. That allows flexibility in updating those standards as a result of the deliberations of the review committee. Provisions exist which take care of some of the matters raised by the Hon. Dr B. P. V. Pezzutti. He has discussed his amendments with me and his concern about very large properties that have a swimming pool, where there might be more than one house et cetera. Clause 9 directly relates to those concerns:

Exemption for swimming pools on large properties

9. (1) This section applies to both new and existing swimming pools.

(3) A swimming pool that is situated on premises having an area of 2 hectares or more is not required to be surrounded by a child-resistant barrier so long as the means of access to the swimming pool from any residential building situated on the premises are at all times restricted in accordance with the standards prescribed by the regulations.

The bill provides exemptions for swimming pools on waterfront properties. That is only a practical matter. Clause 11 states:

This Division applies to outdoor swimming pools that are situated, or proposed to be constructed or installed, on premises on which a moveable dwelling, a hotel or a motel is located.

That clause covers the whole area of the tourist industry et cetera. Clause 12 spells out the general requirements for outdoor swimming pools. Clause 15, which was inserted by the Opposition in the other place is a positive one. It states:

Maintenance of child-resistant barrier in good repair.

15. (1) Despite any other provision of this Act, the occupier of any premises on which a child-resistant barrier:

- (a) is required by this Act to be installed in relation to a swimming pool; or
- (b) is, at the commencement of this Act or at any later time, installed in relation to a swimming pool, whether or not it is required by this Act to be installed,

must, so long as the swimming pool exists, maintain the barrier in existence and in a good state of repair as an effective and safe barrier.

The clause contains other related details. Amended clause 23 states:

(1) The local authority may, by order in writing served on the owner of any premises in or on which a swimming pool is situated, direct the owner to take, within such reasonable time as is specified in the direction, such measures as are so specified to ensure that the swimming pool or premises comply with the requirements of this Part or of a condition of an exemption granted under section 22.

The formation of the pool fencing advisory committee, the provisions in the bill and the bringing together of people on the committee with different points of view to work in harmony with experts who have no axe to grind will each be of considerable benefit. By facilitating a meeting of minds and co-operation by the Child Accident Prevention Foundation of Australia and the Pool Fencing Action Group the Parliament will do all it can to prevent the recurrence of unnecessary tragedies that have occurred in the past. I know these tragedies have deeply affected the medical profession as stated in very strong and emotive language in their submission. That language expresses their deep concerns, as stated by Dr Wal Grigor, the chairman of the CAPFA who said:

We have been joined in our campaign by a number of parents of drowned and severely brain damaged children. These parents have a tragic personal interest in the issue of isolation fencing. Many of their children would not have gained access to pools if isolation fencing had been erected. Children take only a very few minutes to drown - they don't scream or splash. They

simply slide in and go to the bottom of the pool. We need isolation pool fencing to protect them.

Honourable members know what the paediatric and intensive care specialists from Sydney's three major hospitals are saying. Their concerns cannot be ignored. The legislation, with the amendments to be incorporated in the bill will go a long way to meet
Page 3866

their concerns but will need updating by the review committee. The Call to Australia Group supports the bill.

The Hon. R. J. WEBSTER (Minister for Planning and Minister for Energy) [1.38 a.m.], in reply: I thank all honourable members for their contributions and for the sincerity with which they have spoken. I do not propose to say a great deal in reply because most of the matters raised in this debate were very ably covered in my second reading speech. I commend the bill.

Motion agreed to.

Bill read a second time.

In Committee

Clause 7

The Hon. Dr B. P. V. PEZZUTTI [1.40 a.m.]: I move:

Page 4, clause 7, line 5. Omit "the regulations", insert instead "AS 1926 and AS 2818".

The amendment is designed to ensure that the regulations will comply absolutely with the Australian Standard, as will be defined in a subsequent amendment issued in my name, amendment No. 9. This amendment will make the standard the reliable method for the regulations.

Reverend the Hon. F. J. NILE [1.41 a.m.]: In giving consideration to the amendment moved by Hon. Dr B. P. V. Pezzutti and others related to his presentation, our position would be that those matters should now be referred to the Pool Fencing Advisory Committee, given consideration there, and whatever action is deemed necessary could then be taken, rather than preempting that and putting these amendments into the bill. I am unsure as to what the affect would be if the bill were actually amended, in view of the lateness of the hour and the situation with regard to the other place, as to whether we could finish up without a bill at all. That is one of my concerns. It would leave us in a very difficult position.

The Hon. J. W. SHAW [1.42 a.m.]: The Opposition supports the amendment.

The Hon. R. J. WEBSTER (Minister for Planning and Minister for Energy) [1.42 a.m.]: I have listened to what the Hon. Dr B. P. V. Pezzutti has had to say and I have also taken note of the comments made by Reverend the Hon. F. J. Nile. At this time the Government does not propose to prescribe by regulation such onerous requirements as are outlined in the amendment. The Government will not insist that pool owners, who are entitled to restrict access from their houses in lieu of a fence between the house and pool, be obliged to reswing external doors. Pool owners can adopt these higher standards if they choose to do so. The Minister has publicly stated - and I state it again for the benefit of honourable members - that there will be wide consultation before the regulations are formally introduced. As Reverend the Hon. F. J. Nile quite correctly

pointed out, the advisory committee will of course have just that role, as an advisory committee on these matters. In any event, as honourable members know, Parliament may decide to disallow the regulations. For those reasons, the Government rejects the amendment.

Page 3867

The Hon. ELISABETH KIRKBY [1.44 a.m.]: In spite of what the Minister has just said, and in spite of the view put forward by Reverend the Hon. F. J. Nile, the Australian Democrats would like to support the amendments moved by the Hon. Dr B. P. V. Pezzutti, because we believe that they are very important. The Minister, when he spoke a few moments ago, put his finger on the issue. He spoke of the "advisory committee". That is what that Pool Fencing Advisory Committee will be. It will not be able to mandate anything; it will be an advisory committee and the Government will have every opportunity to ignore its advice. That is what happens all the time. Many advisory committees are set up which do a great deal of work and the Government of the day then decides whether will or will not - and it is usually that it will not - support the advice given to it by its own committees. For that reason I believe it is important that all honourable members consider the matter carefully and support the Hon. Dr B. P. V. Pezzutti.

Question - That the amendment be agreed to - put.

The Committee divided.

Ayes, 19

Dr Burgmann
Ms Burnswoods
Mr Dyer
Mr Egan
Mr Enderbury
Mrs Isaksen
Mr Johnson

Mr Jones
Mr Kaldis
Miss Kirkby
Mrs Kite
Mr Manson
Mr Obeid
Mr O'Grady

Dr Pezzutti
Mr Shaw
Mr Vaughan

Tellers,
Mr Macdonald
Mrs Walker

Page 3868

Noes, 18

Mr Bull
Mrs Forsythe
Miss Gardiner
Dr Goldsmith
Mr Hannaford
Mr Jobling
Mr Moppett

Mrs Nile
Revd F. J. Nile
Mr Pickering
Mr Ryan
Mr Samios
Mrs Sham-Ho
Mr Rowland Smith

Mr Webster
Mr Willis

Tellers,
Mr Coleman
Mr Mutch

Pairs

Mrs Arena
Mrs Symonds

Mrs Chadwick
Mrs Evans

Question so resolved in the affirmative.

Amendment agreed to.

Clause as amended agreed to.

Clause 8

The CHAIRMAN: Order! The Hon. J. W. Shaw and the Hon. Dr B. P. V. Pezzutti have circulated conflicting amendments to clause 8. With the indulgence of the Committee, I propose to allow the Hon. J. W. Shaw to move his amendment which occurs earlier in the bill than the amendment to be moved by the Hon. Dr B. P. V. Pezzutti, but I will put the question for the omission of words up to the point where the amendment sought to be moved by the Hon. Dr B. P. V. Pezzutti commences.

The Hon. J. W. SHAW [1.55 a.m.]: I move:

Pages 4 and 5, clause 8, line 24 on page 4 to line 2 on page 5. Omit clause 8, insert instead:

Temporary exemption for all existing swimming pools and exemption for new swimming

pools on very small properties

8.(1) This section applies to:

- (a) all existing swimming pools; and
- (b) new swimming pools that are situated, or proposed to be constructed or installed, on premises having an area of less than 230 square metres.

[NOTE: 230 square metres is the smallest area on which a dwelling-house may currently be erected.]

(2) The child-resistant barrier surrounding the swimming pool is not required to separate the swimming pool from any residential building situated on the premises so long as:

- (a) the means of access to the swimming pool from the building are at all times restricted by a barrier which is certified by a local authority to be reasonably safe; and
- (b) a door, window or other opening (whether or not fitted with a child-proof lock) through which access may at any time be gained to the swimming pool does not constitute the barrier or any part of it; and
- (c) any other standards prescribed by the regulations in relation to such a barrier are complied with.

Page 3869

(3) This section ceases to apply to an existing swimming pool three months after:

- (a) the date of completion of a change of the ownership of the premises on which the pool is situated; or
- (b) the date of commencement of any work on the premises on which the pool is situated under a building approval granted by a local authority, whichever first occurs.

(4) The diagrams in Part 2 of Schedule 1 illustrate the provisions of this section.

I propose to speak only briefly to the amendment, given that it is entirely consistent with what the Opposition said in the second reading debate. The amendment seeks to extend and preserve the temporary exemption in relation to existing pool owners but places a condition on that exemption, namely, that there be some effective and safe barrier between the dwelling and the pool. It is true that the amendment gives to local government the role of certifying whether that barrier is safe in all the circumstances. There needs to be some authority to determine this and the Opposition believes that councils and shires can adequately do so, taking into account local circumstances. In substance the amendment reflects the majority view of the Government's committee of review in the sense that that view was that, because there was significant opposition to a requirement for a form of isolation fencing, some compromise ought to be made. I quote from the majority view, which states:

The Chairman has come to the view that a suitable compromise is to require a pool to be isolation fenced in accordance with the present section 10 when the property is sold or when any part of the building is being altered in accordance with a building approval granted by the council.

The amendment reflects that concept. I know it is said, amongst others by the Hon. Dr B. P. V. Pezzutti, that sale might occur infrequently and, therefore, this is a slow form of introducing fencing for existing pool owners. Nevertheless, it is a form of gradually doing so, compared with the Government's bill which allows existing pools to remain unfenced in perpetuity. That is the conflict; that is the choice. The Government's proposition allows existing pools to remain without this safety advantage for children. However, the Opposition's amendment provides reasonable mechanisms whereby, over time, the fencing is introduced. The amendment should be supported.

The Hon. Dr B. P. V. PEZZUTTI [2 a.m.]: I cannot support the amendment. It would take too long to implement, and more importantly, it would allow local authorities to put their sticky fingers in the pie and give value judgments. Honourable members should realise that because of the recession few properties are changing hands. Many properties are company title, and therefore there is no change in ownership. A stage would never be reached when all homes were securely locked.

The Hon. R. J. WEBSTER (Minister for Planning and Minister for Energy) [2.1 a.m.]: The Government opposes the amendment.

Question - That the words stand - put.

The Committee divided.

Ayes, 19

Mr Bull
Mr Coleman
Mrs Forsythe
Miss Gardiner
Dr Goldsmith
Mr Hannaford
Mr Jobling

Miss Kirkby
Mr Mutch
Mrs Nile
Revd F. J. Nile

Page 3870
Dr Pezzutti
Mr Pickering
Mr Samios

Mrs Sham-Ho
Mr Rowland Smith
Mr Webster

Tellers,
Mr Jones
Mr Ryan

Noes, 15

Ms Burnswoods

Mr Dyer
Mr Egan
Mr Enderbury
Mr Johnson
Mr Kaldis

Mrs Kite
Mr Macdonald
Mr Manson
Mr Obeid
Mr O'Grady
Mr Vaughan

Mrs Walker

Tellers,
Mrs Isaksen
Mr Shaw

Pairs

Mrs Chadwick
Mrs Evans
Mr Moppett

Mrs Arena
Dr Burgmann
Mrs Symonds

Question so resolved in the affirmative.

Amendment negatived.

The Hon. Dr B. P. V. PEZZUTTI [2.10 a.m.]: I move:

Page 4, clause 8, line 35. Omit "the regulations", insert instead "Clause 9.2.2 of AS 2818 for child-resistant doors and child-resistant windows".

The Hon. R. J. WEBSTER (Minister for Planning and Minister for Energy) [2.11 a.m.]: The Government opposes the amendment.

Question - That the amendment be agreed to - put.

The Committee divided.

Ayes, 18

Dr Burgmann
Mr Dyer
Mr Egan
Mr Enderbury
Mrs Isaksen
Mr Johnson

Mr Jones

Mr Kaldis
Miss Kirkby
Mr Macdonald
Mr Manson
Mr Obeid
Dr Pezzutti
Mr Shaw

Mr Vaughan
Mrs Walker

Tellers,
Ms Burnswoods
Mr O'Grady

Page 3871

Noes, 16

Mr Bull
Mr Coleman
Mrs Forsythe
Dr Goldsmith
Mr Hannaford
Mr Jobling

Mr Mutch
Mrs Nile
Revd F. J. Nile
Mr Pickering
Mr Ryan
Mr Samios

Mr Rowland Smith
Mr Webster

Tellers,
Miss Gardiner
Mrs Sham-Ho

Pairs

Mrs Arena
Mrs Kite
Mrs Symonds

Mrs Chadwick
Mrs Evans
Mr Moppett

Question so resolved in the affirmative.

Amendment agreed to.

Clause as amended agreed to.

Clauses 9 and 10

The Hon. Dr B. P. V. PEZZUTTI [2.16 a.m.], by leave: I move the following amendments in globo:

Page 5, clause 9, lines 5-9. Omit clause 9 (2), insert instead:

- (2) A swimming pool that is situated on the premises having an area of 2 hectares or more is not required to be surrounded by a child-resistant barrier so long as;
 - (a) this swimming pool is situated at least 500 metres from all residential buildings situated on the premises;
 - (b) if the swimming pool is situated less than 500 metres from a residential building situated on the premises, the means of access to the swimming pool are at all times restricted in accordance with the standards prescribed by Clause 9.2.2 of AS 2818 for child-resistant doors and child-resistant windows.

Page 5, clause 10, lines 18-24. Omit clause 10 (2), insert instead:

- (2) A swimming pool that is situated on premises having frontage to any large body of water (such as a permanently flowing creek, a river, a canal, a pond, a lake, a reservoir, an estuary, the sea or any other body of water, whether natural or artificial) is not required to be surrounded by a child-resistant barrier so long as;
 - (a) the body of water is situated less than 500 metres from a residential building situated on the premises; and
 - (b) the means of access to the swimming pool from any residential building situated on the premises are at all times restricted in accordance with the standards prescribed by Clause 9.2.2 of AS 2818 for child-resistant doors and child-resistant windows.

Page 5, clause 10, line 30. After clause 10 (4), insert:

Page 3872

- (5) For the purposes of this section, premises do not have frontage to a body of water unless the boundary of the premises abuts on to the body of water.

These three amendments refer to very large properties with water frontages. I have had discussions with the Minister and he has given me an assurance that these matters will be dealt with urgently in September. If the Minister assures me that that will occur I would be happy to withdraw my amendments.

The Hon. R. J. WEBSTER (Minister for Planning and Minister for Energy) [2.17 a.m.]: I discussed this matter with my colleague. He assured me that these matters will receive close attention between now and the next sitting of the House. He also assures me that he will make what amendments he deems necessary in the light of his discussions

with the Hon. Dr B. P. V. Pezzutti.

Amendments, by leave, withdrawn.

Clauses 12 to 18

The Hon. Dr B. P. V. PEZZUTTI [2.18 a.m.], by leave: I move the following amendments in globo:

Page 6, clause 12, line 14. Omit "the regulations", insert instead "AS 1926 and AS 2818".

Page 7, clause 14, lines 5 and 6. Omit "the regulations", insert instead "Clause 9.2.2 of AS 2818 for child-resistant doors and child-resistant windows".

Page 8, clause 18, line 6. Omit "the regulations", insert instead "AS 1926 and AS 2818"

Page 25, Dictionary of words and expressions, line 5. After the definition of "area", insert:

"AS 1926" means the standard published by Standards Australia numbered AS 1926-1986 and entitled "Fences and Gates for Private Swimming Pools" as in force from time to time.

"AS 2818" means the standard published by Standards Australia numbered AS 2818-1986 and entitled "Guide to swimming pool safety", as in force from time to time.

These amendments are similar in nature to the amendments I moved earlier except that amendment No. 9 gives a definition of Australian standards.

The Hon. R. J. WEBSTER (Minister for Planning and Minister for Energy) [2.19 a.m.]: The Government opposes the amendments.

Question - That the amendments be agreed to - put.

The Committee divided.

Ayes, 18

Ms Burnswoods
Mr Dyer
Mr Egan
Mr Enderbury
Mrs Isaksen
Mr Johnson
Mr Jones

Mr Kaldis
Miss Kirkby
Mr Macdonald
Mr Obeid
Mr O'Grady

Dr Pezzutti
Mr Shaw

Mr Vaughan
Mrs Walker

Tellers,
Dr Burgmann
Mr Manson

Noes, 16

Mr Bull
Mr Coleman
Mrs Forsythe
Miss Gardiner
Dr Goldsmith
Mr Hannaford

Mr Jobling
Revd F. J. Nile
Mr Pickering
Mr Ryan
Mr Samios
Mrs Sham-Ho

Mr Rowland Smith
Mr Webster

Tellers,
Mr Mutch
Mrs Nile

Pairs

Mrs Arena
Mrs Kite
Mrs Symonds

Mrs Chadwick
Mrs Evans
Mr Moppett

Question so resolved in the affirmative.

Amendments agreed to.

Clause 24

The Hon. J. W. SHAW [2.25 a.m.]: I recognise that this amendment is related to, and in a sense consequential upon, an earlier Opposition amendment which was not passed by the Committee, so I move the amendment pro forma:

Page 9, clause 24. After clause 24(2) insert:

(3) The owner of any premises on which a swimming pool to which section 8 applies is situated may apply to the local authority for a certificate that the barrier restricting the means of access to the swimming pool from the residential building situated on the premises is reasonably safe.

(4) If satisfied that the barrier is reasonably safe, the local authority must issue the certificate to the applicant.

The Hon. Dr B. P. V. PEZZUTTI [2.26 a.m.]: In the case of an existing outdoor swimming pool not having a barrier between the house and the pool and so having the "means of access from the house restricted in accordance with standards to be prescribed by legislation", recognising that any device on windows or on doors requiring them to be self-closing and self-locking - and so child resistant - will be on the inside and thus within a part of the building used for residential purposes, and as inspectors may not enter such a part of any building as is used for residential purposes other than with the occupier's consent or under a search warrant, how will an inspector ever be able to satisfy himself or herself that the Act is not being breached in this regard? What would constitute reasonable grounds for an inspector to go to the extreme lengths of obtaining a search warrant from an authorised justice? Does not this section restrict the means of
Page 3874

access from the home far less effectively and make it far more difficult to enforce the legislation - if not impossible - than if there were isolation pool fencing plus a gate? The Minister has stated that one of the reasons for altering the Act is that "pool owners either wittingly or unwittingly will defy the current legislation". What evidence leads the Minister to feel that pool owners would be less likely to defy the planned legislation as distinct from the current legislation?

The Hon. R. J. WEBSTER (Minister for Planning and Minister for Energy) [2.28 a.m.]: Observance of the majority of requirements in respect of window and door locks and window grilles should be possible by an inspector looking in from outside the private dwelling, in other words, from the garden. Only if the inspector decided, using his discretion, to seek internal access to the house to satisfy himself would the occupier's consent be necessary or, if denied, would a search warrant be sought. Council staff will be guided in the sensitive exercise of this discretion by guidelines issued to councils throughout the State by the Department of Local Government and Co-operatives. For example, consideration will be given to the use of a courtesy letter system. It will be emphasised that the decision to obtain a warrant should not be taken lightly, and a recommendation to do so by a building surveyor should be ratified by the chief administrative officer of the council, in other words, the town or shire clerk. In answer to the last question, the legislation will provide for flexible fencing requirements. Those most detrimentally affected by the 1990 Act, namely, existing pool owners, will find the 1992 bill more acceptable. The Government rejects the amendment of the Hon. J. W. Shaw.

Amendment negatived.

Clause as amended agreed to.

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

STAMP DUTIES (AMENDMENT) BILL

Message

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

PARKING SPACE LEVY BILL

Second Reading

The Hon. E. P. PICKERING (Minister for Police and Emergency Services and Vice-President of the Executive Council) [2.33 a.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

It is with great pleasure that I bring this bill before the House. It is a landmark in the necessary process of changing the community's attitude towards the effects on the environment of car usage in densely developed urban areas where public transport is readily available.

Page 3875

The Government's decision to introduce this levy flows directly from its concerns about the problems of pollution and traffic congestion in the central commercial areas of Sydney.

The concept of a parking space levy was outlined in the Premier's facing the world statement. It is a step towards improving Sydney's air quality by sending a price signal to those using cars to travel to high density commercial areas of central Sydney that their car usage imposes a cost on the community.

As the Premier outlined in his statement, the Government is committed to taking steps to address the effects of air pollution on the quality of life for the citizens of this growing metropolis.

The topography of the Sydney basin is such that it will always be at risk of serious pollution problems. This danger is greatly exacerbated by our increasingly dispersed urban structure which forces many people to travel long distances for both work and recreation.

By Australian standards, Sydney does not have a heavy reliance on cars. Yet cars are responsible for the vast majority of carbon dioxide, nitrogen oxides and non-methane hydrocarbons emissions.

In any solution to our pollution problems, public transport has an important role to play. Cars use 80 per cent more energy than rail to carry the same number of people and emit 40 per cent more carbon dioxide. Clearly if people are encouraged to reduce their use of cars to travel to our most densely developed urban areas and to make greater use of public transport, there will be direct benefits to our environment.

Road users need to be made aware of the external costs which they impose and are now being asked to contribute to the cost of providing transport systems. The parking space levy provided for in this proposed legislation is a modest step, but a significant one, in making costs more explicit.

Sydney is fortunate in that by international standards it has a very high proportion of commuters to central commercial areas already using public transport. It is advantage that should not be squandered and indeed should be positively encouraged.

However, despite an overall increase in patronage on rail and increases in the quality and frequency of services, events of the 1980s have contributed to an increase in the use of cars for access to the city of Sydney and the business areas of North Sydney and Milsons Point.

An important factor in this trend has been the exclusion of parking from the Commonwealth Government's fringe benefits tax. This makes access to a parking space relatively more valuable as an employee benefit which creates a bias in favour of parking spaces compared with other possible benefits. This bias has been complemented by significant growth in parking spaces particularly on the fringe of business areas, which in turn have acted as an encouragement for people to drive to the city.

The growth in parking and car use in central Sydney runs counter to the trend in many overseas countries, particularly in Europe. The international trend is for an increasing focus on public transport with many cities extending or building new commuter railway systems. At the same time, car use is being directly restricted, particularly in inner city areas.

Strasbourg for instance has recently excluded most motor vehicles from a significant part of its city centre, while the people of Amsterdam have voted in a referendum to introduce tight controls on car use in their CBD.

Around the world it has been recognised that public transport is a more environmentally sensitive form of transport and Governments are responding with strategies to encourage people out of their cars and onto trains and buses.

This legislation is a step in bringing this enlightened approach to Sydney. It balances, in an equitable way, the need to encourage the sensible use of motor vehicles, with the need to build on other measures already taken by the Government to enhance Sydney's public transport system.

Revenue from the levy, apart from administrative costs incurred in collecting the levy, will be fully directed to fund transport facilities. Initially this will be directed to improve commuter car parking at major suburban railway stations and to build bike storage facilities at stations.

Page 3876

This reflects the Government's belief that the creation of public transport services and facilities together clearly establish public transport as a viable alternative to car use. It also reflects a recognition that interchange is the greatest impediment to multi-modal journeys and that it is at the point of interchange that there is the greatest need for facilities to ensure that a commuters journey is smooth and convenient.

High priority stations initially earmarked for funding include Sutherland, Hornsby, East Richmond, Seven Hills and Glenfield. This will lead to the provision of about 2,000 parking spaces at stations which complement Cityrail's express rail services.

As existing parking facilities at these stations are already at capacity, these additional parking spaces will significantly reduce the spillover parking in surrounding streets which is affecting the social amenity of local residents.

The Government is keen to encourage jointly funded developments involving the private sector and local councils with partial funding from the parking levy in order to accelerate parking

development.

The provision of bicycle storage facilities is a particularly important initiative. Bike riding is a very popular pastime and its potential as a competitive travel mode has long been overlooked.

For cycling to become commonplace though requires better facilities, so that cyclists can feel confident that their journeys will be safe and hassle free. For a relatively small cost, secure bicycle storage at rail stations can be provided so that cyclists can travel by rail for the main leg of their journey assured in the knowledge that their bikes will be there when they return.

Before turning to specific aspects of the bill, I would make the point that it is important to the achievement of the strategic goals of affecting car usage and increasing public transport usage for the journey to work, that the levy be imposed in such a way that its cost ultimately met by those at whom it is targeted. The mechanisms for the collection of the levy need to be structured to ensure that the coverage of the levy is such that the effectiveness of the levy is not undermined and its potential benefits are not significantly diminished.

The \$200 levy is to apply to non-residential, off-street parking in the city of Sydney and to the high density commercial areas of North Sydney and Milsons Point. I draw honourable members' attention to clause 6 of the bill which makes mention only of the city of Sydney. It is considered more appropriate to use the regulatory provisions contained in the legislation to describe the North Sydney and Milson's Point boundaries by way of a map. However, broadly speaking, this covers the commercial area between Alfred Street and Sydney Harbour at Milsons Point and the main core of the commercial district of North Sydney within a radius of up to approximately 500 metres of North Sydney station.

There are a number of exemptions to the levy. Parking spaces which are necessary for the operations of commercial premises such as delivery and service vehicle space, and parking spaces used by residents and disabled persons are to be exempt. Non-commercial parking provided by churches and charities are also exempt, as are free limited stay parking provided by councils and parking spaces at community facilities such as libraries and baby health clinics.

The legislation will require payment of the levy for all car spaces owned by the crown. Where parking spaces are on leased premises, the levy will be recovered by lessors under existing lease arrangements or under specific provisions in the legislation. Parking station operators will be able to reflect the levy in their parking fees.

The bill also contains a number of provisions related to the procedures for the collection of the levy, including penalties in relation to avoidance. The regulation provisions allow for the adjustment of the boundaries of areas covered by the levy, exemptions and other matters related to the collection of the levy and its expenditure.

As I said at the outset, the Government in introducing this legislation is making an important step towards addressing the quality of Sydney's air and encouraging the greater use of public transport.

I commend the bill.

The Hon. JUDITH WALKER [2.34 a.m.]: The Opposition supports the bill. I hope the Minister for Police and Emergency Services has informed honourable members
Page 3877
that they will now be required to pay \$200 for their parking space downstairs.

The Hon. E. P. Pickering: That is one of the possible implications.

The Hon. JUDITH WALKER: I understand that it is one of the possible implications of the bill. Nevertheless, the Opposition supports it.

The Hon. R. S. L. JONES [2.35 a.m.]: The parking space levy arose as a result of the Premier's promise in his vision statement. I am happy to say that I had the same idea in 1972 when I stood for Parliament for the first time. I raised in my campaign the proposal that parking stations be built around the perimeter of the city so that people could travel on trains and private cars could be banned in the city. I am glad that after 20 years at least part of the vision I had in 1972 is coming true. I am pleased also that the money raised will be directed mainly towards commuter car parking improvements at major urban railway stations. Initially, that will involve Sutherland, Hornsby, East Richmond, Seven Hills and Glenfield. Some people will scream about the levy. No doubt even members of this House will scream because they also will be subject to the charge, if my reading of the bill is correct. I think this is the first move in the right direction to remove vehicle emissions, which cause terrible problems for the people of Sydney, particularly those who live in western Sydney, who choke on the fumes. The fumes blow out west and gather between the city and the Blue Mountains. They cause increases in ozone and carbon monoxide levels and birth defects.

The ozone levels in Campbelltown are so high that pregnant mothers are at risk of giving birth to babies with defects. Pollution will decrease even more when electric cars become feasible, as they inevitably will in the next 10 to 15 years. I was looking forward to the Government keeping its promise to introduce 300 compressed natural gas buses, but I have heard that the project has been put on hold and that the first 50 buses will be diesel buses. It is a pity that promise has been broken. Many overseas cities have removed private vehicles from their city centres. I have been to several cities where cars cannot go freely, and it is a great pleasure to be able to walk around. It is much more pleasant for people. I believe people will gradually adapt to leaving their cars on the perimeter of a city. I hope that by then public transport will be sufficiently advanced, with light rail as well as heavy rail and compressed natural gas and electric buses, that within a few years Sydney will become a much more pleasant city. I support the Government's initiative. I hope it will have many more environmental initiatives.

The Hon. J. R. JOHNSON [2.38 a.m.]: Though I support the bill and, like most honourable members, I am concerned about pollution in densely populated areas, I have been concerned for a considerable time and asked questions in the last session about brake linings. The majority of brake linings used in Australia are asbestos brake linings. The Government appears to be doing absolutely nothing about limiting their use. The second reading speech mentions pollution problems. In this city they are grave. Something must be done about asbestos brake linings. I was informed today that people who live at busy intersections are more susceptible to cancer than those who live removed from them. I urge the Government to consider the matter.

The Hon. E. P. PICKERING (Minister for Police and Emergency Services and Vice-President of the Executive Council) [2.40 a.m.], in reply: I thank honourable members for their support. The comments made by the Hon. J. R. Johnson, though far from the subject of the bill, were sincere. Technically the honourable member might not be correct. I thought that the use of asbestos in brake linings had been abandoned some time ago.

The Hon. J. R. Johnson: No. One or two manufacturers are in Sydney or Australia, and one of them set up a factory in Russia.

The Hon. E. P. PICKERING: I will check on that. I commend the bill.

Motion agreed to.

Bill read a second time and passed through remaining stages.

FINANCIAL INSTITUTIONS (NEW SOUTH WALES) BILL

FINANCIAL INSTITUTIONS COMMISSION BILL

Bills received and read a first time.

Suspension of certain standing orders agreed to.

Second Reading

The Hon. R. J. WEBSTER (Minister for Planning and Minister for Energy) [2.42 a.m.]: I move:

That these bills be now read a second time.

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

Leave granted.

In introducing these two Bills into the House, I must say at the outset that I do so to honour a commitment made by New South Wales.

I must also say that I, the Premier and Cabinet, and indeed quite a number of members of this Parliament on both sides of the House, have reservations in respect to the Queensland legislation which is being adopted by the Financial Institutions (New South Wales) Bill 1992, and accordingly we reserve the right to introduce amendments to that legislation later this year.

I will refer to these matters later but I indicate that the State of Victoria has similar reservations.

The Financial Institutions (New South Wales) Bill 1992 repeals all existing laws regulating and constituting building societies in New South Wales.

It applies in their place certain laws of Queensland adopted by the Parliament of that State as the template for a uniform national framework for the supervision of state based financial institutions or NBFIs as I will continue to refer to them.

The Second Bill, the Financial Institutions Commission Bill 1992 establishes the New South Wales Financial Institutions Commission (FINCOM) as the body that is to exercise the functions of the State Supervisory Authority for New South Wales under the uniform financial institutions legislation.

Honourable members need not be reminded of the detail of spectacular failures of some NBFIs in other states in 1990.

The enormous financial tragedies of individual depositors, the consequential cost to taxpayers and the political "fallout" from those failures can never be measured in adequate terms.

Fortunately, depositors in N.S.W. were protected from the effects of failures of N.B.F.I's in other States by the very high prudential standards in force in N.S.W.

Page 3879

I assure Honourable Members that this Government will not permit these standards to be diminished in any way.

One positive thing came out of those disasters. A new focus was established for the reform of the disparate systems of regulation of NBFIs in eight different jurisdictions around Australia.

What had hitherto been a desirable but unachievable goal for some, suddenly became an urgent necessity for all stakeholders.

At community, management, bureaucratic and political levels there was a commitment to reform of the financial system as never before.

Under the auspices of the Special Premiers' Conference a Working Party and Implementation Task Force comprised of representatives of all States and Territories, Commonwealth Government Agencies and the Reserve Bank of Australia have developed proposals for an effective and efficient Financial Institutions System focussed on the protection of depositors and the integrity of the non-bank financial systems.

The Working Group and Implementation Task Force claims to have consulted directly with industry sectors in formulating these proposals.

The Government is not by any means satisfied that such consultation was either satisfactory or widespread.

The Minister for Co-operatives has received a great many complaints from individual N.B.F.I's about the Works Group and Task Force's failure to consult.

Indeed, there was no direct consultation the Minister and, I suspect, Ministers from other States.

The Government expects much wider consultation the future, otherwise the scheme will fail.

The proposals were formally adopted in an historic Financial Institutions Agreement subscribed to by Heads of Government of all states and territories in Adelaide on 22 November 1991.

The legislative framework established by these two Bills is timed to commence on 1 July 1992.

The Scheme as outlined in the Financial Institutions Agreement is designed to protect and promote the financial integrity and efficiency of the state based financial institutions system.

Above all else, Mr President, it is designed to protect the interests of depositors.

Initially the Scheme is to cover the building society and credit union sectors.

There is over twenty-five billion dollars on deposit with these institutions in Australia of which, over half is with New South based societies.

The regulations provide for the admission of other institutions by unanimous agreement of the states.

The Scheme is to be industry funded.

The legislative framework established by the Agreement comprises:

- * the AFIC Code;
- * the Financial Institutions Code;
- * regulations made pursuant to those two Codes; and
- * prudential and other standards.

This legislative framework provides for the establishment of:

- * a Ministerial Council;
- * an Australian Financial Institutions Commission (AFIC);
- * a State Supervisory Authority (SSA) in each state and territory; and
- * an Interstate Consultative Committee.

Page 3880

The Ministerial Council for Financial Institutions consists of one member representing each participating state and territory who is the Minister for the time being responsible for administering the law relating to supervision of financial institutions in that state or territory.

The functions of the Council include approval of legislation and any amendments, appointment of the Board of AFIC, approval of the AFIC budget and general oversight of the Scheme.

AFIC is established under the Queensland legislation as an independent body corporate.

That is to say, independent of direction by or on behalf of the Ministerial Council or any government and the members of the Board of AFIC may not hold an office or appointment with a financial institution.

AFIC plays a pivotal role in ensuring that the principal objects of the financial institutions scheme are achieved.

It has enormous power and total independence from Government.

There have been attempts by the Working Group and Task Force's of States with about 10% of N.B.F.I's located in those States to dominate the appointments to the A.F.I.C. Board.

Let me assure them that this will not happen.

It is vital that the membership of A.F.I.C. reflect the preponderance of N.S.W. and Victoria in the national N.B.F.I. sector.

The vast majority of credit unions and building societies are in these two States and we have both developed strong positions on their regulations.

New South Wales and Victoria will co-operate to ensure that the appointments to A.F.I.C. give proper representation to N.S.W. and Victoria.

The roles of AFIC and SSAs are complementary but have been carefully designed to ensure that there is no uncertainty through overlap or gaps in responsibility between the two organisations.

AFIC has been given wide ranging powers to make prudential and other standards to be observed

by financial institutions.

The standards are an important part of the supervisory framework and I will come back to them later.

To ensure that the legislation, supervisory practices and enforcement of the financial institutions scheme is applied consistently in all states and territories AFIC may make standards to apply to SSAs.

To give some "teeth" to AFIC in relation to such matters, Part 8 of the AFIC Code sets out a procedure for AFIC to take in relation to matters in dispute between it and a SSA.

After consultation with the SSA and taking into account any views of the SSA on its apparent failure to do its duty, AFIC may, until it is satisfied, take the matter:

- * firstly to the State Minister;
- * then to the Ministerial Council;
- * then to the State Premier.

Under the Bill the Premier must provide a response which is satisfactory to AFIC within 14 days or the Premier must table the AFIC report in each House of Parliament.

Although AFIC does not exercise direct supervision of credit unions or building societies it is responsible for supervision of Special Services Providers.

Special Services Providers are industry owned financial bodies which are to be incorporated under the AFIC Code.

Page 3881

It is essential that such Special Service Providers should be subject to the closest possible supervision and scrutiny.

These industry bodies hold over seven hundred million dollars of the liquid assets of component credit unions and it is vital that they be effectively supervised.

The other major function of AFIC is to authorise emergency liquidity support within the two industry sectors.

Under Part 6 of the AFIC Code, AFIC will have the power to cause:

- (a) building societies to provide liquidity support on a pro rata basis to a building society in an emergency situation; and
- (b) credit unions to provide liquidity support on a pro rata basis to a credit union in an emergency situation.

Before AFIC may make a determination that liquidity support is necessary AFIC must satisfy itself that the borrowing society is solvent and that the borrowing society has a reasonable prospect of repaying any loan made for the purpose of liquidity support.

To ensure that such arrangements can be made at any time every building society and credit union will be required to have available to AFIC half of its required prime liquid assets to lend and to identify assets which are to be retained unencumbered for the purpose of providing security for a

loan if liquidity support needs to be provided to that society.

AFIC has a general brief to encourage Special Services Providers to assist it in delivering liquidity support to societies.

AFIC is required to have its annual budget approved by the Ministerial Council. It must consult widely with the industry in formulating that budget.

Mr President, the Financial Institutions Scheme is a state based scheme. Hands on supervision of societies is to be done at the state level by a State Supervisory Authority.

I will be speaking later about FINCOM - a new body being established to carry out the role of SSA in this state.

FINCOM's principal role is to carry out day-to-day supervision and enforcement of the uniform system.

It will have jurisdiction over building societies, credit unions, industry associations and will have certain powers in relation to declared service corporations which are of economic significance to societies.

Under the AFIC Code and the Financial Institutions Code the SSA has powers of enforcement and intervention to direct societies to comply with applicable standards or make an orderly exit from the industry by transferring engagements, conversion or winding-up.

The theme of the legislative programmes I am outlining here is the prevention of problems through effective supervision, reliable monitoring of practices and procedures of the financial institutions using external auditors, regular reviews of overall policy and performance with Boards of Directors of financial institutions and on-site inspections.

Mr President, you can not legislate for good management.

The level of supervision will not shift responsibility from boards and management of financial institutions.

In addition to supervision, the AFIC Code provides for the SSA to have administrative responsibility for the financial institutions scheme including maintenance of the public registers.

I will comment later on how FINCOM will be established and organised to perform that role.

Page 3882

An Interstate Consultative Committee comprised of representatives of the SSA of each state is established to ensure that there is effective liaison between state supervisors.

Mr President, the Financial Institutions (New South Wales) Bill 1992 and the uniform legislation which it adopts as New South Wales law establishes a legal framework for state based supervision of financial institutions.

While being a state owned system it contains "checks and balances" to ensure that the same high prudential standards of operation and supervision are observed by all societies irrespective of the place in which they are registered.

As I have already mentioned a keystone of that system is the prudential and other standards.

The standards are part of subordinate legislation. They are made by resolution of the Board of AFIC and take effect after they are published in the Queensland Government Gazette or at such later date as is specified in the resolution.

AFIC may make standards with respect to a wide range of matters that the Board considers necessary or desirable for the achievement of the principal objects of the financial institutions scheme.

Guidelines to AFIC on expected minimum standards were included in the Financial Institutions Agreement endorsed by Heads of Government. AFIC is not confined only to those guidelines.

Before making a standard or altering an existing standard AFIC must itself observe procedures designed to ensure that there is proper exposure and opportunity to debate the proposal.

A minimum of 60 days notice of any proposed standard is to be given to each SSA and to the public through Gazette and newspaper advertisements.

The notices must explain succinctly the purpose and intended operation of the proposal.

The notices must invite comments and suggestions. These comments and suggestions are to be made available to the public via AFIC and SSA offices.

Any person or interested party may make a submission. A member, a society, a SSA, the Interstate Consultative Committee, the Minister, the Ministerial Council or any government may do so.

However, I must stress that AFIC can, if it chooses, ignore such submissions and suggestions.

AFIC may, if it determines that it is necessary because of urgent reasons, publish a standard without following the normal 60 day exposure process but such urgent orders may only have effect for up to 120 days.

Standards may include transitional provisions but must not discriminate between financial institutions on the grounds of their connection with particular States.

A Steering Committee has been working on compiling a draft set of standards for exposure as the initial standards to apply under the Scheme.

The Committee was chosen to bring together a wide range of academic and "hands-on" expertise in finance, law, audit, supervision, building societies, credit unions and risk management.

The Committee is compiling, in consultation with the Implementation Task Force, societies and industry groups, guidelines and standards appropriate to each tier of the financial institutions system. Namely;

- * the AFIC Board;
- * State Supervisory Authorities;
- * Building Societies;
- * Credit Unions; and
- * Special Services Providers and Service Corporations.

The volumes which are directed at building societies and credit unions have been made available to those organisations and have received wide general endorsement.

Other volumes are apparently not yet available and the Minister for Co-operatives has received complaints that there has been insufficient time for individual N.B.F.I's to enable proper discussion.

Many further refinements will be necessary as a result of that exposure and the further exposure envisaged by the legislation.

It is worth quoting from the introduction to those volumes to set the scene for those draft standards.

"The cornerstones of (the Committee's) approach to supervision are high prudential standards for risk management, capital adequacy and disclosure . . .

Of central importance to this framework is the philosophy that the primary responsibility for prudent management of each (financial institution) rests with the management of the (financial institution) itself.

AFIC's role, and the role of the supervisory authorities generally, is to ensure that risks are not taken unwittingly and that, when risks are taken, depositors are protected to the greatest extent possible from loss.

It must be made clear, however, that while AFIC is concerned with the protection of depositors, neither AFIC nor any state or territory government guarantees deposits with (financial institutions)."

The draft standards cover:

- * prime liquid asset requirements;
- * operational liquidity risk;
- * market risk;
- * credit risk (including large exposures);
- * data risk;
- * operations risk;
- * capital adequacy (a risk weighted approach);
- * accounting and disclosure;
- * audit;
- * reporting to supervisors;
- * reporting to the public;
- * provisions for doubtful debts and other contingencies;
- * subsidiaries;
- * guarantees;
- * managed funds;
- * management contracts; and
- * emergency liquidity support.

The draft standards also deal with the important issue of transition to the new regime.

The draft standards envisage that a transitional period of up to two years will be allowed to adjust to the new arrangements.

Within that period new standards will be met relatively quickly while others may take up to the

full two years.

Progress towards particular standards will need to meet a minimum adjustment path that will be set by the SSA and monitored constantly.

AFIC will consult with the SSA over these adjustment paths in order to assure consistency across the nation.

In dealing with this issue the draft standards documents provide:

"As a starting point, SSAs will set a timetable within which the Board of each credit union or building society will be required to provide a statement detailing the extent to which the (institution) complies with all the prudential standards set out in this book.

N.S.W. will require that all societies which participate in the National Liquidity support arrangements and/or trade in N.S.W. will have to present a clean bill of health to the N.S.W. Supervisor.

This proposal is supported by Victoria. In particular for interstate societies which wish to trade in N.S.W. and for societies in other States seeking liquidity support from N.S.W. Societies they will have to undergo a due diligence to the satisfaction of the N.S.W. commission.

The Minister for Co-operatives asked his officers to develop this proposal in conjunction with Victoria.

Credit unions (or building societies) which fail to meet the standards will be required to provide details of their plans to comply.

Failure to meet the set targets on progression will be viewed as failure to meet the prudential standards themselves and will be grounds for placing an (institution) under direction.

Transition does not imply concessions with respect to risk taking.

On the contrary, until the SSA is satisfied that (an institution) is in full compliance with all prudential standards, its lending activities will be restricted to business defined under primary objectives.

Exceptions to this rule should be rare, but may be considered on a case-by-case basis."

Mr President, the Financial Institutions (New South Wales) Bill and the Queensland Codes contain a number of other important machinery matters which are outlined in the explanatory notes tabled with the Bill.

I turn now to the provisions of the Financial Institution Commission Bill 1992 which establishes FINCOM.

As a key player in the Financial Institutions Scheme much of FINCOM's role and powers, in relation to supervision of financial institutions, is fixed in the uniform legislation.

How the SSA is to be organised and structured to perform those functions is a matter for each state.

Some smaller states and territories may well contract with a larger state to perform the supervisory

role on their behalf. That too is a matter for each state and territory to determine.

The Bill constitutes the Commission as a body corporate with the name of New South Wales Financial Institutions Commission and recognises the abbreviation FINCOM.

As FINCOM will have responsibility for supervision of friendly societies and co-operative housing societies it will have functions conferred on it by or under the Friendly Societies Act 1989 and the Co-operation Act 1923.

FINCOM will have all the powers of a natural person in the exercise of its functions.

It is expressly independent of government and the Ministerial Council and must comply with the Financial Institutions Agreement.

A Board is to be appointed to determine its policies and strategic plans and to oversee the effective, efficient and commercial management of the Commission.

There will be four members of the Board. Three of those will serve part-time and one of those part-time members will be the Chairman of the Board.

The fourth member is to be a full-time Chief Executive.

All members are appointed by the Governor. The Chief Executive's terms of employment are subject to Part 2A of the Public Sector Management Act.

Page 3885

In keeping with the requirement of independence from industry a person who currently holds office or appointment with a financial institution is not eligible to be appointed as a member of the Board.

The Commission may employ such staff as it considers necessary for the exercise of its functions.

It will have power to fix salaries, wages and other conditions of its staff in so far as they are not fixed by or under any law.

FINCOM, by arrangement with the Commonwealth or state authorities, may make use of the staff of those authorities or make its own staff available to those authorities.

The Commission may engage consultants.

The Bill includes some necessary provisions relating to duties and liabilities of the Board and staff to underwrite the integrity of the Commission.

There is to be adequate disclosure of certain interests of the Board and staff and an open public register is to be kept of such interests.

The State of New South Wales and depositors in our NBFIs have been well served in the past by our financial co-operatives.

This has been the result of a combination of factors over a long period, including a bipartisan political approach to good legislation, good supervision and a responsible co-operative financial sector.

There has been a balance of healthy innovation with prudent caution which has paid off during the financial excesses of 1989/90.

The staff of the Credit Union Reserve Board and Registry of Co-operative Societies have played an important part in that successful record.

Accordingly, there has been transitional provision made in the Bill to transfer to FINCOM existing staff of the Credit Union Savings Reserve Board and certain officers of the Registry of Co-operatives.

These transitional provisions deal with the preservation of entitlements accrued up to the date of transfer. Accrued entitlements of public servants are to be funded by the state.

It is envisaged that the Reserve Board staff will be able to continue superannuation arrangements under the scheme established for employees of FINCOM and that transferred public servants may elect:

- (a) to transfer their superannuation coverage from the relevant state fund to the FINCOM scheme; or
- (b) to preserve their superannuation benefits in the relevant state fund and become a contributor to the FINCOM scheme; or
- (c) to continue to contribute to the relevant state fund.

Mr President, as I have previously mentioned the ongoing costs of supervision are to be primarily borne by the financial institutions and not by the government.

Funding should be on an equitable basis, both between types of financial institutions and between individual financial institutions. Funding arrangements are to be determined in consultation with industry bodies.

FINCOM must, to the extent that it is appropriate and practical to do so, consult with industry bodies and societies in compiling its draft budget each financial year.

It must submit to the Minister a report of those consultations with the draft budget and particulars of the amount of the proposed supervision levy.

Page 3886

The Minister must determine the budget for the financial years within sixty days after the budget is submitted by FINCOM.

The Commission is to appoint a registered company auditor to be the sole auditor.

Under the Public Finance and Audit Act the Minister may arrange for the Auditor General to conduct a special audit on any matter specified by the Minister.

Supervision of co-operative housing societies and friendly societies is to be undertaken by FINCOM.

Until decisions are made in conjunction with other states upon the extent to which these two kinds of financial institutions are included in the Financial Institutions Scheme, transitional arrangements are made in the Bill for certain functions of the Registrar to be exercised by

FINCOM.

During this period costs of supervision of those kinds of societies would continue to be met by the State.

Those organisations have already been made aware of the intention to transfer the responsibility for funding supervision costs to them, in due course.

In the event that they are not brought into the national scheme further consultations will be held with those industries on the matter of industry levies.

Mr President, the review which I have outlined in speaking of these two cognate Bills has been the most far reaching reform of NBFIs undertaken in Australia.

The proposals have inevitably involved compromise. Some of those compromises include matters about which the Minister is not entirely satisfied and he will be watching carefully as they are implemented.

Concern has been expressed at the apparent haste with which the proposals have been developed and there have been calls for more consultation.

For the most part these reforms and the new prudential standards will apply across Australia standards of operations and supervision already being observed in New South Wales.

The Government, past governments of all persuasions, together with the societies and industry bodies, the Credit Union Savings Reserve Board and the Registry of Co-operatives can be justifiably proud of the record of legislation, standard of operations and supervision which have prevailed in this State.

It has been the highest in Australia and we have a better record than most other countries.

However, we have yesterday's system and if we are not to be exposed to the contagion effect of crises in other jurisdictions, we need a uniform financial institutions system.

It is worth remembering that it is already two years since the failure of the Farrow Group of building societies and these reforms are long overdue.

I commend both Bills to honourable members.

The Hon. M. R. EGAN (Leader of the Opposition) [2.43 a.m.]: I move:

That the question be amended by the omission of the words "now read a second time" with a view to inserting instead:

- (1) Referred to a Select Committee for investigation and report.
- (2) (a) That such Committee consist of seven Members comprising:
 - (i) 4 Government Members;
 - (ii) 1 Opposition Member;

- (iii) 1 Australian Democrat Member; and
- (iv) 1 Call to Australia Member; and
- (b) That the Members of the Committee are to be nominated in writing to the president by the Leader of their respective parties.
- (3) That the Committee have leave to sit during the sittings or any adjournment of the House; to adjourn from place to place; to make visits of inspection within New South Wales and other States and Territories of Australia; and have power to take evidence and to send for persons, papers, records and things; and to report from time to time.
- (4) That should the House stand adjourned and the Committee agree to any report before the House resumes sitting:
 - (a) the Committee have leave to send any such report, minutes of proceedings and evidence taken before it to the Clerk of the House;
 - (b) the documents shall be printed and published and the Clerk shall forthwith take such action as is necessary to give effect to the order of the House; and
 - (c) the documents shall be laid upon the table of the House at its next sitting.
- (5) That the Committee report by Tuesday 19 May 1992.
- (6) That, upon receipt of a request from the Committee for funding, the Government immediately provide the Legislative Council with such additional funds that the Committee considers necessary for the conduct of its inquiry.

The Opposition wishes to make perfectly clear that it supports the concept of national regulation of non-bank financial institutions. Though this important and complex bill affects every credit union and building society in New South Wales and assets with about \$2,000 million, it was lobbed into this House only this morning. The Government expects the Parliament to rush the bill through in less than 24 hours.

The Hon. B. H. Vaughan: The accountancy profession is deeply troubled about it.

The Hon. M. R. EGAN: The Deputy Leader of the Opposition points out that the accountancy profession has grave concern about the procedure adopted by the Government. Many credit unions such as the Gosford Credit Union and the Bananacoast Community Credit Union are also deeply concerned about what has happened. It is the responsibility of the Parliament and every honourable member to ensure that such significant and complex legislation is not rushed through without the Parliament first having an opportunity to learn about its content and for community groups to know what it entails. The template Queensland legislation, which these bills are introducing in New South Wales, has not been seen by me or any member of this House. For that reason, the Opposition has moved the amendment to establish a select committee to give members of Parliament and the community an opportunity to become acquainted with the terms of the proposed legislation. I point out that the select committee, by the terms of the motion, would be expected to complete its report within 12 days, by 19th May, the reserve sitting date scheduled for this House. By that date a select committee of this House will be able to furnish an informed opinion. The seven member committee will have a majority of four Government members, with one Opposition member and one member from each of

the parties on the crossbenches. If the House adopts my proposed amendment to the motion for the second reading, members will be behaving as they should and will be doing the community of New South Wales a great service.

Page 3888

The Hon. R. S. L. JONES [2.47 a.m.]: It is 13 minutes to 3 o'clock on Friday morning. The House has been sitting since 10.30 yesterday morning. In that time members have debated numerous motions, passed 12 pieces of legislation, and are now considering a bill that is called the most important reform in the history of the credit union movement. I have not had a chance to read through the bills, though I have glanced at them. The attempt by the Government to ram through a bill in this way is an abuse of the parliamentary process. The Government should not allow this to happen. The Government says it believes in good management. This process is not good management by any stretch of the imagination. There is no reason why the bill could not be considered in two or three weeks time rather than being rushed through at 3 o'clock in the morning. It is an abuse of this House and the parliamentary process to expect members to have read these bills today when we have had hardly a moment even to eat. I support the Opposition's motion. Members should have an opportunity to read proposed legislation before debating it. I am aware that the legislation must be in place by 1st July. There is plenty of time between now and 1st July, and members should have a chance at least to read the legislation before voting on it.

Reverend the Hon. F. J. NILE [2.49 a.m.]: I have received submissions expressing concern about the Financial Institutions Commission Bill and the Financial Institutions (New South Wales) Bill. A submission from Murray Backhouse Turner, Solicitors, representing credit unions in the northern area of the State, states:

We act for Bananacoast Community Credit Union Limited which is one of a number of New South Wales credit unions that are gravely concerned over this proposed legislation which we understand could be introduced into the New South Wales Parliament within the next few days.

This letter is dated 27th April. It continues:

Our client credit union is all for National Prudential Standards for Credit Unions and other Co-operative Societies but is vigorously opposed to the handing over of responsibility for credit unions to a body which is independent of either State or Federal Government. As you will be aware this proposed legislation would see the creation of the Australian Financial Institutions Commission (AFIC) which for all practical purposes will be independent of Government, unsupervised itself and indeed unsupervisable.

This is but one of the critical concerns of our client and the other credit unions of whom we speak. Another fundamental concern, for example, is what will happen to the New South Wales Credit Unions Savings Reserve Board Funds of 45.3 million dollars which are in fact the property of the New South Wales Credit Union members presently totalling about 1,123,000; other States and Territories have either no contingency fund or any such fund of any significance.

The proposed legislation as now framed would not allow for our client credit union and many others in New South Wales particularly those operating in country regions to continue. How is this justified to the 23,000 members of our client credit union who represent more than 25% of the population of the region over which the credit union operates (Macksville, Dorrigo, Woolgoolga).

We also received a statement from the Association of New South Wales Credit Unions

Limited. It is not clear whether it opposes the legislation. It appears that it does not but they have stated that there could be some problems. Their letter states:

The non-bank financial institutions legislation now before the Parliament is the most important reform in the history of the credit union movement.

It is essential for the long-term viability of the industry that the legislation pass all stages and be operational by July 1.

I ask the Minister to comment on whether that is a fact.

Page 3889

The Hon. E. P. Pickering: That is correct, in compliance with all the other States.

Reverend the Hon. F. J. NILE: The letter continues:

The legislation/standards are a product of the most researched investigation ever made of non-bank financial institutions in Australia -

- * three years credit union consultation.
- * independent government inquiries in each of Victoria, Queensland and N.S.W..
- * Federal Martin inquiry.
- * State Government officials - 2 years.
- * Expert prudential standards committee six months.

The scheme substantially increases the future viable growth of N.S.W. credit unions.

The standards are stronger than currently exist in N.S.W.

Steering committee agreed this past week-end on a new standards definition to provide for commercial lending by country credit unions to current N.S.W. standards plus discretion for expansion if the State Supervisory Authority concurs.

The scheme segregates the solvency/contingency fund of N.S.W. from other State risk in a very effective and rigorous fashion.

The scheme strengthens the current N.S.W. approved liquidity scheme with other States and further reduces the risk to N.S.W. credit unions.

That is not exactly the point the other credit unions were making. The letter continues:

N.S.W. legislation needs synchronisation with other jurisdictions by July 1, otherwise 75% of N.S.W. credit unions trading interstate (with interstate asset exposure \$300 million) will be forced to halt these operations causing massive disruption and damage to credit union and public confidence.

There will be similar problems for building societies.

It will be difficult to maintain N.S.W. credibility as leading State financial manager and capital if

- * it adopts the ill-fated Victorian and W.A. experience of taking prudential standards into the political arena.
- * thereby reaccepting the moral recourse risk.

Those are the comments from that association. As other honourable members have said, it is difficult to give a thoughtful, reasonable response to the legislation, except to rely on the views of the Association of New South Wales Credit Unions Limited. The Government might indicate the deadline date.

The Hon. R. S. L. Jones: Have you read the bills yet, Fred? You could not possibly have.

Reverend the Hon. F. J. NILE: No, I am saying that no one has. I am asking whether delaying the bills will actually endanger credit unions in this State. They say they want the legislation "urgently passed by the Parliament".

Page 3890

The Hon. M. R. Egan: Is the Reverend the Hon. F. J. Nile not supporting my amendment? They have left you out on a limb. They are going to support it.

The Hon. R. J. WEBSTER (Minister for Planning and Minister for Energy) [2.55 a.m.], in reply: Notwithstanding the remarks of the Leader of the Opposition which I thought were somewhat self-righteous and pious in this regard, earlier tonight he and I consulted with my colleague the Minister for Local Government and Minister for Cooperatives. It was agreed that the Leader of the Opposition's expression of very strong support for this legislation, which he expressed in this Chamber, was based on his acknowledging that New South Wales should keep faith with the other States, Territories and the Commonwealth and have this legislation passed by 1st July. The Leader of the Opposition well recognised that when we spoke with the Minister for Local Government and Minister for Cooperatives. The Minister then instructed me that he found the amendment of the Leader of the Opposition acceptable and that the committee report by Tuesday, 19th May, to ensure that the matter be is given the fullest possible airing. On the basis of that instruction from my colleague I accept the amendment by the Leader of the Opposition.

Amendment agreed to.

Motion as amended agreed to.

SPECIAL ADJOURNMENT

The Hon. E. P. PICKERING (Minister for Police and Emergency Services and Vice-President of the Executive Council) [2.57 a.m.]: I move:

That this House at its rising today do adjourn until Wednesday, 2nd September, 1992 at 2.30 p.m., unless the President, or if the President be unable to act on account of illness or other cause, the Chairman of Committees shall, prior to that date, by communication addressed to each member of the House, fix an alternative day and/or hour of meeting.

ADJOURNMENT

The Hon. E. P. PICKERING (Minister for Police and Emergency Services and Vice-President of the Executive Council) [3.1 a.m.]: I move:

That this House do now adjourn.

POLICE LEGAL COSTS

Reverend the Hon. F. J. NILE [3.1 a.m.]: In spite of the late hour I rise on the adjournment to keep faith with the New South Wales Police Association. I speak in support of the submission by association to the Minister for Police and Emergency Services concerning the reimbursement of legal costs for police officers facing serious allegations, which are often dismissed by the court as evidence is carefully considered and weighed in the respective jurisdictions - before a judge, a jury or a tribunal. The Police Association submission made the following recommendations in its summary:

1. The Police Association of New South Wales requests that consideration be given to the entering of an agreement between the Association and Government whereby a system of reimbursement of the cost of providing proper legal representation to Police Officers can be established.

Page 3891

2. The Association would be pleased to confer with your Officers in formulating the details of such an agreement.

3. A draft form of agreement is enclosed (ATTACHMENT 10) for your consideration. You will note that Clause 5 provides for a majority of the members of the Legal Fees and Costs Reimbursement Committee to be from the Office of the Minister for Police.

I await your reply in this matter and urge your support.

The submission is signed by A.L. Day, the president of the association. The association is still waiting for a reply. The provision of legal assistance to members has become an ever-increasing cost to the Police Association and therefore to all non-commissioned members of the police force who comprise the membership. The escalation in costs can be directly attributed to an increase in the use of disciplinary and criminal actions by both the Police Department and members of the public. Over the past few years an atmosphere has developed in which more and more police officers have been charged with criminal and departmental offences. The annual report of the Ombudsman of New South Wales for the year ended 30th June, 1989, noted that while the number of complaints against police had increased by only 4 per cent over the previous year the number of complaints sustained had almost doubled. The report goes on to note that the annual report of the police internal affairs branch shows that the number of police charged with criminal and departmental offences had increased by 1.9 per cent.

Predictably, an increase in the number of complaints being found to be sustained and a corresponding increase in the number of police being charged has brought with it the need for more legal representation and greater costs for the members of the police force or Police Association who pay for it. A whole industry has grown up in the past few years based on investigating complaints against police. The number of police attached to the police internal affairs branch and the internal police security unit has increased. Police conduct is subject to scrutiny by various agencies such as the National

Crime Authority, the State Ombudsman, the Australian Federal Police, the Independent Commission Against Corruption and the State Drug Crime Commission. The likelihood of charges being preferred and pursued against police when the evidence is not sufficient to justify such a course can be seen as a result of government or public policy as espoused by persons such as Her Honour Justice Mary Gaudron, former Solicitor General for New South Wales, and Mr Ian Temby, former Director of Public Prosecutions for the Commonwealth. The clearly expressed view of these persons is that persons in public life, such as police, should be treated differently from other members of the public as regards their treatment within the criminal justice system. Mr Temby, in an address to the Institute of Criminology held in Canberra from 7th to 9th November, 1984, made very clear his view that an allegation made against a police officer may well result in the preferment of a charge even if not supported by as much evidence as normally required.

Costs have increased. In 1989 legal costs paid by the Police Association totalled \$1,267,866. In 1991 the figure jumped to \$1.4 million. The Police Association says that it is sure that there is no agreement that police officers appearing in the various jurisdictions should have proper legal representation. That legal representation is presently available only because of the financial support of the Police Association. Total legal costs incurred with Operation Raindrop are approximately \$662,000. Of that amount, the association paid \$585,000 and members themselves paid \$77,000. We know that the police in that case were cleared. The Police Association asserts that a result of the whole approach to the assessment of complaints against police and their charging, where other than a police officer may not have been charged, is reflected in the large number of charges dismissed in the criminal jurisdiction and also the number of matters

Page 3892

found to be not proved in the Police Tribunal. The association wants a legal fees and costs committee formed to handle these matters. [*Time expired.*]

AUSTRALIAN LABOR PARTY PRESELECTION

The Hon. HELEN SHAM-HO [3.6 a.m.]: I wish to bring to the attention of this House a farce and a deceit that the right faction of the Australian Labor Party is attempting to impose upon the people of New South Wales and in particular the Chinese and Indo-Chinese communities. This farce concerns the next State election and the desperate lengths to which the Australian Labor Party will go to ensure that it retains some credibility in the Chinese community. I understand from one of my honourable colleagues opposite that the Australian Labor Party has conducted one of the shortest pre-selections ever in order to secure a Chinese candidate for the next State election for the upper House. All honourable members know that there is no preselection for the upper House in the Australian Labor Party yet for the next election. This is a cheap political trick by the New South Wales Australian Labor Party right-wing mafia. The blatant misrepresentation of this so-called endorsed candidate is an attempt to fool the Chinese community.

The Hon. P. F. O'Grady: Name the person.

The Hon. HELEN SHAM-HO: I will. This will backfire on the Australian Labor Party in both moral and political terms. This so-called endorsed candidate held a campaign function on 28th February at a Sydney Chinatown restaurant and raised \$50,000. The Chinese people who attended did so believing that they were helping one of their own Chinese community to achieve a personal goal within the Labor Party. Not a cent of this money was either used or needed specifically by that Chinese candidate for his election campaign, as there is no election. I believe that the funds raised went

directly to help the Australian Labor Party. The members of the Chinese community who attended this function were unfairly cheated. They had no idea that they were helping the Australian Labor Party. Some have complained to me about it. This so-called endorsed candidate of the right faction of the Australian Labor Party is Mr Hatton Kwok, who tries to lie to the Chinese community and makes misrepresentations. The sad fact about him is not only that he cannot tell the truth when it comes to fund raising, but that he has tried to cover up his professional status and misled the Chinese community about his community background.

Mr Kwok is a male psychiatric nurse at the Rozelle psychiatric hospital but describes himself to journalists as a director of a Sydney western suburbs hospital. I was informed also that at one time he acted as an immigration agent, but he has never mentioned that. I wonder why he has not revealed his true professional identity. So far as I know he may be active in the Australian Labor Party, but he has not been active in the Chinese community for the last 10 years. In an article in the *Australian Chinese Weekly* in March he euphemistically described his lack of achievement as cultivating in silence. Indeed he is unknown in the Chinese community. The Liberal Party endorsed me as its first Chinese candidate six years ago. It has taken the Australian Labor Party all of this time to even think of having a Chinese candidate. But imagine its stupidity in choosing one who cannot even regard his own profession with pride and represent it with integrity. I can only put that down to the lack of good people wanting to join the Australian Labor Party and the lack of a true commitment by the Australian Labor Party to put talent and merit ahead of the old job for the boys syndrome.

FORMER MEMBER FOR DAVIDSON

Page 3893

The Hon. Dr MEREDITH BURGMANN [3.9 a.m.]: I bring to the attention of the House a number of aspects of the so-called Metherell affair that have only recently come to light. First, the most up-to-date estimate of the amount of money wasted so far because of the Premier's foolish appointment of Dr Metherell to the public service is a massive \$2.3 million. Second, there has been interesting comment in the corridors of power recently about the derivation of the Premier's speech in reply to the censure motion. The Premier's personal staff have been so preoccupied with the Metherell affair that the Premier left the task of writing his censure reply speech to none other than radio personality Alan Jones. It is all the talk in the Balmain dressing rooms. I come from nearby Glebe and the word is out. It is now common knowledge that the top-rating 2UE personality, the former speech writer for Malcolm Fraser, once again has come to the rescue of his beloved Liberal Party. There is no doubt that in his darkest hour of need the Premier sought the expertise of Mr Jones. Although the Premier was in the position of seeking to defend himself against the indefensible, he did so with a good deal more polish than has characterised his other speeches. The only explanation for such a turn around has to be a new speech writer. The new speech writer is trying to do for the Premier what he has failed to do for the Balmain football team: produce a phoenix rising from the dead.

JONATHAN GRADY

The Hon. J. F. RYAN [3.10 a.m.]: I wish to congratulate a young man from Campbelltown named Jonathan Grady who attends St Peters Anglican Primary School. Jonathan, who is 10 years old, has given a hint of his big future in swimming by winning one gold, three silver and two bronze medals while representing New South Wales at the recent Pan-Pacific Games in Darwin. Jonathan won a gold medal in the 100 metres

freestyle for the up to 10 years age group as well as winning silver medals in the 200 metres individual medley, the medley relay and the freestyle relay, and bronze medals in the 50 metre backstroke and butterfly. Jonathan's achievement is the more significant in light of the fact that his mother is seriously ill. The funds he needed to go to Darwin were raised by his school mates at a lunchtime cake stall, and he received a further grant from Campbelltown council. I am sure we will be hearing more from this young achiever in the near future. I am looking forward to the opportunity of presenting him in the near future with a certificate from the Premier to mark his achievement.

ROADS AND TRAFFIC AUTHORITY STAFF REDUCTION

The Hon. P. F. O'GRADY [3.11 a.m.]: The Greiner Government has slashed 2,500 public sector jobs since 1988. Despite promising that no jobs would be axed during the recession, the Government has let an average rate of 50 jobs a week disappear. The Government shows nothing but contempt for working people. According to the Australian Bureau of Statistics, New South Wales residents are the most heavily taxed in the country. Each resident of New South Wales pays an average of \$1,691 in State and local taxes every year. The Government is capable of creating jobs for people such as Bob Graham and Terry Metherell but is unable to protect the people on the South Coast who are forced to watch as the Greiner Government slashes its work force. Terry Metherell's job, a job that was specially created for him, pays so much that it could keep 10 to 15 public servants in work and providing real service for three years. Yet the Deputy Premier, Minister for Public Works and Minister for Roads, Mr Murray, told us earlier this month that the Roads and Traffic Authority needs to lose another 2,000 jobs as part of a management review.

Mr Murray says with pride that the total Roads and Traffic Authority staff has
Page 3894
been reduced by 1,325 persons already. He is now happy to announce that more jobs will have to go. No where does Mr Murray consider the effect these job losses will have on Roads and Traffic Authority workers, their families and the towns in which they live and work. the Government cares nothing about people. The Roads and Traffic Authority review means that 26 RTA jobs will be lost in the south of the State. Bega will lose 11 jobs, Cooma will lose five and East Lynne gets cut by 10. These latest cuts are in addition to 15 jobs already lost since 1991. They will reduce the Roads and Traffic Authority work force from 198 employees in June 1991 to 157 by the end of the year, a massive cut of 20 per cent. In effect, RTA offices will be downgraded and closed, and this comes just after the southeast area experienced a 33 per cent increase in road deaths between 1990 and 1991.

Mr Murray says that the RTA would retain a strong presence in the form of zone offices in both Wollongong and Newcastle. We have seen the same problem in the Department of Community Services, where Ministers have overseen the closing or downgrading of local offices. People in smaller towns need government services as much as anyone. We are now told that Bega is serviced to by a regional zone office in Wollongong. In his statement Mr Murray says that this will give the RTA a strong presence on the far South Coast. Who is he kidding? Certainly not the people of Bega. One would have thought that Mr Murray would know that it is a long way from Wollongong to Bega. I should like to place on the records the concerns of the group which calls itself Concerned RTA Employees about the community effects in Bega of slashing more jobs in the area.

Eleven affected families had two possible options: first, accept redundancy, stay in the local area and compete with other unemployed people for local jobs or, second,

accept redeployment and leave the area. Either alternative results in a loss to the local area. Local professional input into securing road improvement funds for the local area will be lost. Twenty-seven students will possibly be removed from Bega schools. The local unemployment rate and subsequent social pressure will increase. An amount of approximately \$350,000 in wages in Bega alone and \$780,000 on the far South Coast will be lost. The result will be to force more people into major urban areas for employment, which is against the stated Government policy of decentralisation.

DARLING HARBOUR SHIPPING

The Hon. ELISABETH KIRKBY [3.14 a.m.]: I should like to complete my remarks about the change of course in the city west strategy that I was unable to complete last night. Swapping the 20-hectare waterfront precinct in Pyrmont for 25 hectares along the Darling Harbour shoreline of the central business district makes sound economic sense. Land would be so valuable there would be no need for a Government kick start. Investor interest in the Walsh Bay redevelopment would be reviewed and only the city west plans for the absolute waterfront would have to be altered. The CSR sugar refinery in Pyrmont will be closing, as will the wheat silos, the White Bay and Pyrmont power stations and the Balmain coal loaders. Land will be available. Most of the facings for the suggested wharves are already constructed to modern standards and the demolition of the wheat silos will provide fill for the new wharves. There is no real prospect of the extra large fifth generation of super container vessels coming to Australia. If they did, Port Botany could take them. Wharf development would be staged.

If Glebe Island-White Bay was developed first, Darling Harbour berths 3, 8, 9 and 10 would be free for redevelopment. When the Pyrmont wharves were completed, the remaining Darling Harbour berths could be closed and the entire area could be
Page 3895

developed. In rebuilding Pyrmont wharves a new basin would be provided for the Water Police base adjoining the National Maritime Museum. Concerns of harbour heritage should be satisfied if the entire group of Walsh Bay wharves was retained. Furthermore, Black Wattle and Rozelle Bays, which is more like a lake system than a pair of bays, offer the opportunity for passive water uses by future residents of the city west plan. I ask the Minister for Planning to give his serious consideration to a scheme from which the whole community and the Government can only benefit.

House adjourned at 3.16 a.m., Friday until Wednesday, 2nd September, 1992, at 2.30 p.m.
