**LEGISLATIVE COUNCIL**

Thursday, 19th November, 1992

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

**The President** offered the Prayers.

## CRIMES (APPLICATION OF CRIMINAL LAW) AMENDMENT BILL

## COAL MINING INDUSTRY LONG SERVICE LEAVE (REPEAL) BILL

**Formal stages and first readings agreed to.**

## MEAT INDUSTRY (GAME MEAT) AMENDMENT BILL

**Bill read a third time.**

## STANDING COMMITTEE ON SOCIAL ISSUES

### Report: Juvenile Justice

**Debate resumed from 29th October.**

**The Hon. Dr MARLENE GOLDSMITH** [10.38], in reply: When speaking some weeks ago, I had begun to address issues that honourable members had raised during the course of this debate. I spoke about the contribution of the deputy chairperson of the Standing Committee on Social Issues, the Hon. Ann Symonds, which I found very interesting. One of the issues the honourable member raised was the co-ordination of services. It is very important to avoid duplication across portfolios, and I thank the deputy chairperson for this valuable contribution. Another major issue she raised was, to quote her, "Who cares for kids beyond the institution?" I heartily endorse what she had to say; it is most important that there be support facilities for young people coming out of juvenile justice institutions. As all of us on the social issues committee heard during the course of the inquiry, many young people offend because it is their only recourse.

Young people who come out of institutions without a home to go to still need to eat to survive. The system is so structured that young people often are forced into criminal behaviour to avoid starvation; they have no alternative. A safety net must be constructed for them. I am delighted at the move by the Government to increase the number of community justice centres to meet these needs, and I look forward to far more developments in this area. As the Hon. Ann Symonds stated, money spent now will be money saved later on. Indeed, I concur with that statement. I have seen an estimate from the United States of America that every dollar spent up-front on early childhood intervention and prevention strategies will save society $8 down the line in all the costs incurred if parenting and social structures are not put right in the first place. Money must be spent in those areas now to avoid losing money later as a consequence of crime and in funding remedial education and various bandaid measures after all the human pain

and suffering. Such estimates do not even begin to consider human pain and suffering, for preventing which, although it cannot be measured in dollar terms, society needs to accept some responsibility.

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I thank the Hon. Helen Sham-Ho in particular for her contribution and for the special strength that she brings to the social issues committee, both as a former solicitor and a social worker involved extensively with Australians of non-English speaking background. The committee is strengthened by the particular expertise of members with a wide range of professional backgrounds and social concerns. The honourable member stated that the welfare of our children must be paramount, and in fact there is no better exponent of that principle than she. I am aware of her personal sacrifice in relation to the committee's inquiry. The honourable member forwent the opportunity of a trip to Taiwan, in order to take part in an important series of meetings. She sacrificed that opportunity so that she could be properly briefed as the inquiry proceeded. The honourable member's level of professional input to the committee is much appreciated. The Hon. Helen Sham-Ho said that the court and legal systems have failed us. Coming from a lawyer, that statement has particular value and weight. In relation to our children, the legal system has indeed failed us. The legal system is not amenable to children's needs; it wastes a lot of time; it is conducted in a strange, foreign language that children, and many adults, do not understand; and, being conducted by third parties, the system distances itself from children, who merely sit and watch. It is difficult to make young people accountable for their actions in such an alienating and alien environment. I thank the Hon. Helen Sham-Ho for her important comments.

I turn to the contributions of the Hon. Franca Arena, Reverend the Hon. F. J. Nile and the Hon. J. F. Ryan. I apologise to those three honourable members for being absent during all or part of their contributions. I put on record that the reason for my absence was that I was attending a juvenile justice conference in Adelaide, as I have a deep, ongoing concern for that cause. I trust that those honourable members will forgive my absence, but I assure them that I have read through their contributions with great care. The Hon. Franca Arena expressed great personal concern for the disadvantages confronting girls, youths of non-English speaking backgrounds and young Aboriginal people in the juvenile justice system. I am informed that in recent times counselling support and training for young people in institutions have been substantially improved. I look forward to further developments under Minister Merton as a result of the hard work of the social issues committee, the Juvenile Justice Advisory Council and all those involved in the preparation of the forthcoming green paper on juvenile justice.

The Hon. Franca Arena brings to the committee her special strength of commitment to people of non-English speaking background. In her contribution the honourable member referred to the human dimensions of the issues being examined, and that shone through strongly in her words. Reverend the Hon. F. J. Nile emphasised the importance of breaking the chain of events that can lead from a first offence, to incarceration and on to graduation to adult prisons. Many young people offend only once if, first, they are not contaminated by overexposure to other offenders and the justice process, and, second, if they have no major welfare needs that drive them to reoffend once they return to the community. Consequently, we must look at the diversion of young offenders by strategies which make them accountable for their actions and at the same time address the causes of their offending, whether those causes be family breakdown or lack of social, educational or moral support.

I thank Reverend the Hon. F. J. Nile for his comments on crime prevention and

the need for positive values and teaching of ethics in our society. I would expect no less Christian compassion and concern from a man with his strong commitment to the pursuit of moral issues. Indeed, he expressed a particular concern, as reported in *Hansard*: "Today we have an attitude in society that if something feels nice or sweet or feels right in the physical sense we should go ahead and do it. I do not believe that attitude helps

teenagers, especially if they have not received the help they should have received from their parents". I support Reverend the Hon. F. J. Nile in that view. In my personal discussions with child psychiatrists, in particular Dr Clarrie Gluskie, an eminent specialist in this field, I have repeatedly been told that young people need a sense of structure, of clear-cut expectations, of right and wrong, if you like. It is not discipline that damages children; it is a chaotic environment with no consistent expectations, where behaviour that may be applauded as cute one day will be greeted with a smack the next because it is annoying the adult involved.

How can children strive to do well when they do not know what is correct, because they are not given a consistent message? All of us, families in particular but society in general, have a responsibility in this regard. A society that cares about what matters and about the future must care for its children. Indeed, I recall when my husband was teaching pottery to a class of students in a school in Sydney, in the middle of a discussion as they were making pots a question arose about discipline. He confided to the class of young girls that he was very strict with our daughter, Georgina, that we had a very strict set of rules and that she had to abide by them. One of the students in the class looked up and said, "I wish my parents would be strict with me". Children need to know that their parents care enough about them to set rules and to stick by those rules. Those of us who are parents know that is not easy, and that rules need to be reasonable, but the committee found that not every young person in our society has a parent or parents who care enough to set standards and demand their observance.

I am loath to blame parents, because tragically in many cases the parents themselves came from a background which was not supportive, which caused people to be trapped in a cycle of replicating disadvantage. The point of the whole exercise is not to impute blame; it is to provide the sort of support that will enable the breaking of the cycle. I greatly appreciated the gentle wisdom and common sense of the Hon. J. F. Ryan, not least in this inquiry because of the particularly sensitive nature of the subject to the honourable member. He shared with this House in his speech his personal involvement in the system as a child. His personal achievement in becoming a member of this House provides a splendid role model and a hope for the future to many young people whose futures are dealt with in the report. I am particularly grateful for the comments of the Hon. J. F. Ryan on police cautioning and the need to treat children as special. The National Association for the Prevention of Child Abuse and Neglect reminds us that its theme is "Every child is special". We need to remember that.

The Hon. J. F. Ryan compared the honour accorded to Maori culture in New Zealand and the lack of knowledge and integration of Aboriginal culture into the cultural foundations and fabric of Australian society. I wholeheartedly endorse his view that all Australians need to become involved and take pride in Aboriginal culture. It is uniquely Australian, uniquely ours, and it identifies Australia in the eyes of the world. The Hon. Elisabeth Kirkby mentioned the valuable information and input the committee received in regard to the New Zealand system, and the sensitivities involved in setting appropriate penalties for young offenders. She referred also to the importance of post-release supervision. As I have mentioned, so many of our young offenders are victims before they are offenders and they clearly need the support that they may not be getting in their social and home environments. The honourable member also mentioned the issue of

offensive language and the recommendations of the social issues committee in regard to offensive language.

**The DEPUTY-PRESIDENT (The Hon. D. J. Gay):** Order! There is far too much audible conversation in the Chamber.

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**The Hon. Dr MARLENE GOLDSMITH:** Committee members felt very strongly that children are different from adults. They model their behaviour on their cultural surroundings, including the adults in their environment. Today children hear offensive language from many adults - often from their parents - in normal conversation, and on television and in films or movies. It has somehow become interwoven with the cultural fabric of society. I am sure that many youths and children see that sort of language as normal, and do not realise that it is an offence to use certain words to a policeman. It is valid to ask: how can we expect our children to know that certain words may constitute a criminal offence when they hear them all the time all around them? I thank the Hon. Elisabeth Kirkby for her hard work and dedication and her very valuable input to the committee.

I thank the Hon. D. F. Moppett for his very kind words about the report. He said that it was innovative, visionary, sensitive and challenging, but with an underlying optimism. If that is so, it is in no small way due to the significant contribution to the report by the Hon. D. F. Moppett, particularly in regard to issues impacting on rural people. The Hon. L. D. W. Coleman also has a particular concern in this area, and his contribution was also appreciated. The Hon. D. F. Moppett referred to the New Zealand system. It is fundamental to the resolution of juvenile justice issues that there be satisfaction to the victim, accountability of the young person, and the prevention of further offences. Those three aspects must be considered in response to juvenile crime. The Hon. D. F. Moppett said that children's panels are a new element of juvenile justice. He emphasised the importance of the family and the need to support and empower families, and to ensure that children are nurtured.

Sensitivity towards young adults is needed, and New South Wales has moved towards that. Young people of 18, who may technically be adults, may be retained in the juvenile justice system longer. The Government has now developed a separate correctional institution for young adults. It is most important to ensure that they are not put in with hardened, recidivist older adult offenders. I come now to the contribution of the shadow minister, the Hon. R. D. Dyer. He mentioned that he had a long wait before he had the opportunity to speak. Undoubtedly this is a consequence of the involvement and commitment of many committee members to the cause. They felt constrained to make a substantial contribution to this debate. This reflects the personal involvement of committee members. I am grateful for the contribution of the colleague of the Hon. R. D. Dyer and the Hon. K. J. Enderbury, though his obligations as Whip prevented him from speaking in the debate.

On behalf of the committee I thank the Hon. R. D. Dyer for his kind words about us all. Among other things, he mentioned the importance of prevention, of avoiding labelling, and of empathy for the young person whose offending often results from an intolerable social environment. Those are important issues. The Hon. R. D. Dyer referred also to the Wagga Wagga experiment, in which the New Zealand family group conference model was introduced into New South Wales. As a result of my recent attendance at the national conference on juvenile justice in Adelaide, which I mentioned earlier, I am able to say that the report of that experiment was certainly most interesting,

particularly in its harnessing of community support for the experiment and for tackling the problems of juvenile justice. The Hon. R. D. Dyer spoke also about the difficulties encountered by young people in the court process and the importance of shaming. I am particularly grateful to the Hon. Elisabeth Kirkby for providing to me, subsequent to the inquiry, a recent paper on this subject. That paper is interesting and fits in well with the recommendations contained in the report of the social issues committee.

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I am delighted that the Hon. R. D. Dyer endorses a bipartisan approach. I refer honourable members again to the conference I attended in Adelaide where His Honour, Judge Hal Jackson, spoke about the Western Australian experience of juvenile justice. That was a most harrowing presentation for all who attended the conference. The Western Australian experience is precisely what must be avoided in New South Wales. I am certain that all members of the social issues committee will agree with me, as indeed will all members on both sides of the Chamber, such as the Hon. R. D. Dyer, who are concerned about juvenile justice. Judge Jackson described an appalling campaign in the media to stigmatise juvenile offenders as thugs and monsters. "Back Comes the Bodgie Squad", "Western Australian Crime Rate Soars", and "Police to Hit Street Kids" were some of the headlines that appeared. In Western Australia community feeling was whipped up until a most draconian set of laws was introduced that really took Western Australia back to the dark ages of juvenile justice.

The laws ignore causal factors for juvenile offending. They ignore the fact that young people who are put into the justice system simply become contaminated and are much more likely to become adult criminals. The laws merely pandered to extremist newspaper headlines - headlines which were made possible because the two sides of politics squared off at each other and sought to turn the debate into a political issue. Our children are too important to become a political football to be tossed around, to be used as the subject of false and inflammatory headlines, and to ultimately become victims of the system. The Hon. R. D. Dyer stated that the committee and the inquiry chose not to persevere with community aid panels. He questioned the approach of the committee to that issue. The committee recommended that community aid panels be replaced with children's panels, but not immediately. The majority of the committee recommended that that step not be taken immediately, because immediate replacement is clearly not possible. Community aid panels cannot be replaced from one day to the next by children's panels.

That would result in a hiatus where there is nothing. The majority of the committee believes that would be a bad thing for young people in local areas. Community diversion options are important. During the implementation process of the children's panels, community aid panels must be retained and utilised. The committee recommended a trial period of children's panels, because it is important that they be evaluated. I do not know about the Hon. R. D. Dyer, but I have seen far too many examples, which abound in academic literature, of wonderful suggestions that do not work quite as well as anticipated when they are actually put into practice. Sometimes they do not work well at all. All members of the committee have a great deal of confidence in children's panels as the optimal solution. The majority of the committee firmly believes that children's panels need to be evaluated before the present system is scrapped and replaced.

Evaluation is needed, and a hiatus in the system must be avoided. There is a need to build on the community support and good will that the children's panels have generated. If community aid panels were simply wiped out by a stroke of the pen, that

would damage the morale of the many volunteers who have contributed to those panels in local communities. If community aid panels are replaced with children's panels while building on local community support - that is, in a gradualistic way - that will maximise community support and input. The Hon. R. D. Dyer may recall that a little while ago I mentioned the Wagga Wagga experiment and the importance of community support in making any of these sorts of programs work. If the community aid panels were scrapped, community support would be damaged in many areas where the panels presently exist and where local communities are supportive of them. The committee recognises that there are problems with community aid panels and wants to move to children's panels, but for the reasons I have given the committee proposes to move to them in the way recommended in the report.

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However, the ultimate goal is the universality of children's panels, depending upon the anticipated favourable outcome of their evaluation. The Hon. R. D. Dyer stated that this report was one of the most significant committee reports ever to come before this House. On behalf of the committee, I thank him for those generous words. Those of us involved with the committee certainly agree that the future of our children is one of the most important things to be dealt with when any issue in the political process is examined. The fact that the committee was dealing with our children and their future was, of course, the significant issue. Children need love and fair discipline as a part of that love. Sadly, the justice system gets to pick up the pieces when society fails to meet those needs. Given what the committee has learned, perhaps honourable members will be surprised to learn that more children are not coming into the juvenile system. That was one thing the committee learned. Although many children are enduring very difficult, sometimes intolerable, social environments, only a small proportion of those children end up in the justice system. Somehow the rest of them manage to survive without breaking the law.

That is a tremendous sign of hope for the future of the great resource we have in our children. However, that does not absolve governments or parliaments from responsibility for our children. That so many of our young people manage to cope so well with what are sometimes intolerable environments is, indeed, a sign of hope. In conclusion, I want to thank again all those who made submissions and gave testimony to the inquiry. I particularly want to thank the inquiry staff. The dedication of the committee director, Isobel Bothwell, and the incredibly long hours she worked in pursuit of the report were the only things that ultimately made the report possible within the set time frame. The report was detailed and extensive and, as I said in my previous contribution, the committee was anxious to complete it as soon as possible so that New South Wales could move towards reform. Isobel Bothwell certainly met those expectations with sometimes superhuman endurance. The senior project officer, Alexandra Shehadie, was similarly dedicated. The long hours she worked were of particular concern to me because, as the deputy chairperson stated, not long after the inquiry concluded Alexandra Shehadie became a mother. Therefore, it must have been a particularly challenging time for her, but her dedication to the committee and her long hours were, indeed, exemplary. The committee officer, Heather Crichton, with her unfailing enthusiasm, competence and organisational skills, is always a delight to work with. She made a major contribution to the report. The assistant committee officer, Annie Marshall, has a range of skills for which the committee is profoundly grateful. She was most helpful. I am very grateful to all those I have mentioned; this report would not have been possible without them.

I thank honourable members for their kind words. I want to pass on, through

you, Mr Deputy President, my particular thanks to the President, who was not only a formative force in the establishment and development of the committee system in this House - as I mentioned on 29th October - but also the chairman of the inquiry in its formative stages. I hope the committee has not disappointed the President and that it has lived up to the high standards that he set in the early stages of the inquiry. I thank also former members of the committee - such as yourself, Mr Deputy President, and also the Hon. Judy Jakins - who were part of the inquiry in its formative stages before the election in 1991. If there is one thing I learned from the juvenile justice conference in Adelaide, it is that New South Wales is ahead of the rest of Australia in the area of juvenile justice. This report is an instrumental part of that process, establishing New South Wales as the leader in the area of juvenile justice for the country, as we head towards the twenty-first century. I look forward to the release of the green paper and the continuation of this important process because, as I stated before, we are dealing with our children's futures.

**Motion agreed to.**

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## STANDING COMMITTEE ON STATE DEVELOPMENT

### Report: Coastal Planning and Management

**Debate resumed from 27th October.**

**The Hon. BERYL EVANS** [11.10]: On behalf of my colleague the Hon. Dr B. P. V. Pezzutti I have great pleasure this morning in continuing debate. The Standing Committee on State Development has now completed a 3½-year inquiry into coastal planning and management with the tabling of its volume II report entitled "The Process for the Future". The committee's volume I report, entitled "A Framework for the Future", was tabled in September 1991. The committee's inquiry has been a massive undertaking, in terms of both the sheer size of the task and the importance of the issues under scrutiny. The committee's original terms of reference for the inquiry were to inquire into and report on:

(a) the environmental and or other implications of development in the coastal region of New South Wales; and or

(b) any other matter incidental or arising out of the above term of reference.

The breadth of the terms of reference allowed the committee considerable scope for examining the major issues confronting the New South Wales people in relation to the management of the coastal zone. The inquiry has involved an enormous amount of research, the receipt of more than 400 written submissions, numerous public hearings and seminars, a study tour of the United States coastal zone management systems, and 15 site inspections along the New South Wales coast. The inquiry also included the publication of a discussion paper entitled "Coastal development in New South Wales: Public Concerns and Government Processes", released in 1989. The committee's inquiry has taken place at a time of great public interest in coastal development issues. It has also coincided with a number of other important initiatives, reviews and agreements which impact in important ways on the issues examined by the committee.

Those developments have taken place at State, national and international level, and they include reviews of the New South Wales planning system and heritage system;

the Government's "New South Wales Facing the World" statement, released in March of this year; the Government's package of natural resources legislation, released on 17th June, 1972, and currently under review by a legislation committee of the Parliament; the release in May 1991 of the Commonwealth parliamentary committee report entitled "The Injured Coastline", which mirrored many of the standing committee's volume I findings and conclusions, and the Commonwealth Government's response to that report; the activities of the ecologically sustainable development working groups, in particular the publication by the working group chairpersons of the intersectional issues report; the very important current inquiry by the Resource Assessment Commission into coastal zoning, which is due for completion in late 1993; the Commonwealth's intergovernmental agreement on the environment, formalised with State and Territory governments in May this year; the coastal zone program of the Commonwealth Scientific and Industrial Research Organization; and, internationally, Australia's participation in the June 1992 Earth Summit in Rio, and its agreement there to a number of principles and conventions.

All those developments, catalogued in detail in the committee's volume II report, will have an impact on the way Australia's coastal areas are perceived, managed and developed. Many of the developments are welcomed. For example, the CSIRO program, the New South Wales Government proposed five-year $100 million


environmental audit, the proposed establishment of a natural resource management council, and the Commonwealth's acceptance of recommendations contained in "The Injured Coastline" report relating to the establishment of a coastal zone management program are consistent with the recommendations of the standing committee's report. They would also increase dramatically the baseline data available to those charged with managing our coastal assets. The committee's volume I report contains 70 recommendations relating to the broad principles of coastal planning and management. It was the committee's big picture report. The central goals of the committee overriding both reports were stated as follows: to increase certainty and reduce conflict; to increase pro-active planning; and to ensure ecologically sustainable coastal development. The committee concluded that the attainment of those goals will require considerable changes to the existing coastal planning and management systems, to institutions, procedures and attitudes.

Some of the key recommendations of the volume I report were as follows: the establishment of a comprehensive vision of the coast of New South Wales; the classification of coastal resources and natural assets according to their conservation value; the establishment of a coastal resources and natural asset database; more effective co-ordination between government departments and agencies; the use of river catchments as the base of future strategic planning and management instruments; an expansion of existing public participation processes; and greater use of alternative dispute resolution processes. Central to the volume I report was an enhanced role for the State Government in defining a vision for the coast and providing leadership and direction to the local government authorities which are at the coalface of the site specific development decision making. The need for substantial changes to coastal planning and management discovered by the committee reflected a widespread public perception that aspects of existing processes were inadequate and clear evidence of damage to native flora and fauna and degradation of land and waterways. The cumulative impact of developments on natural systems was found to be a particular problem. Thorough research of comparative coastal schemes, including those in the United States, revealed similar problems and a range of interesting solutions. The committee's inquiry and its volume I report were never intended to be detailed study specific development proposals, but rather the focus on general processes and the way in which the system as a whole could be

improved so that the obvious high level of conflict and uncertainty, typical of many coastal development proposals, could be reduced and better ways found to manage development on the coast in an ecologically sustainable way.

One of the report's strongest conclusions was the need for much better regional plans and greater emphasis on public participation in plan making. The committee remains firmly committed to the goals and principles outlined in its volume I report, and is heartened by the community's support for its recommendations, as witnessed at a number of public seminars held on the coast in late 1991 and early 1992. The committee's volume II report contains a further 52 recommendations concerning the processes required to give effect to the vision embraced in volume I. Four specific areas of fundamental importance to coastal planning and management were covered in the second report: the development approval process; environmental impact assessment; planning appeals process; and environment protection measures. The principal legislation governing current planning and development processes in New South Wales, which is the Environmental Planning and Assessment Act, was scrutinised carefully by the committee. Heralded at the time of its introduction in 1979 as innovative, and by some as revolutionary, the Act has always been the subject of considerable debate. To some it has transformed the planning system in positive ways, for example, by increasing public participation in the planning process and by allowing much greater scrutiny of the environmental effects of developments. For others, the Act has been a source of

complexity, delay, uncertainty and conflict. For still others, it is not the Act so much as the procedures of decision-making bodies and the attitudes of participants in the development process that are the cause of greatest concern in reforming the planning system.

The committee took on board all these views and acknowledged that they all have merit and deserve scrutiny. The committee believes that substantial positive changes can be achieved with some modifications to the Act but, more importantly, with a shift in thinking on the part of the key players in the development process. Culture, attitudes and, in some cases, institutional structures must be changed in order to achieve better outcomes in coastal planning and management. There is no doubt that legislative and procedural reform can help this process, but that is not the end of the story. The committee believes greater resources must be invested in the reform of approval processes in order to make them more efficient and effective, to help reduce conflict and uncertainty, to find better and more timely mechanisms for public participation, and to achieve ecologically sustainable coastal development. We are of the view that it is the State Government's role to drive the reform process while at the same time allow local councils the freedom and resources to improve their decision-making processes. Councils, after all, deal with about 95 per cent of all development applications.

The reform of local government is already well under way. The Office of Local Government in Canberra, with its local approval reform program, is one instrument for positive change. It is pleasing to see that many local councils, including some notable performers in New South Wales, in addition to the Department of Planning, are participating in the process. The committee endorses changes now taking place, such as the one-stop shop for development approvals, the reduction in delays, the encouragement of pre-application lodgment consultation, the process of getting together the parties with an interest in the development early in order to avoid conflict further down the track, and the greater delegation of decision making on minor developments from elected counsellors to officials. All this is happening already. It will free up councillors and planners to focus in a more pro-active way on the more important policy questions and on local and regional planning. It will also take public involvement away from site specific

disputes and channel it towards more participation in the development of plans. Better information from development proponents and an active encouragement of direct discussions with council staff are needed, and can only improve the quality of applications and developments.

The committee's major concern with the reform process is that it continue across the board, particularly in those local government areas - mainly on the coast - that are facing the greatest development pressures. In this context the committee looks forward to the position paper of the Department of Planning to be released shortly, following its review of the planning system. The committee believes that the department must take a bold reformist approach in order to ensure that the process of positive change already under way is continued and enhanced. The question of environmental impact assessment has been one area of considerable debate. The committee's report canvasses a number of criticisms that have been levelled at the existing environmental impact assessment system, and these criticisms relate to the carriage and context of environmental impact statements, including bias and accuracy; the orientation of an environmental impact statement, including its project specific nature, and its technical scientific orientation, feedback mechanisms and cumulative impact, and the important issue of public participation; the types of developments requiring environmental impact statements under parts 4 and 5 of the Environmental Planning and Assessment Act; approvals under part 5 of the Act; uncertainty in the process, including delay, complexity and duplication, absence of consistent standards and politicisation of the process and administrative inefficiency; and, of course, an absence of up-to-date guidelines.



The enactment of the Environmental Planning and Assessment Act brought it to the fore in the early 1980s. Though some groups have welcomed the disciplines the environmental impact assessment process has imposed on development proponents, others, including environmental groups, have questioned the quality, independence and utility of many environmental impact statements. Another important issue is the monitoring of environmental impact statements to determine whether the predicted impact of developments are found to be actual impacts over time. This was an area of considerable discussion within the committee. The committee accepted the view that the commissioning of an EIS consultant should remain the prerogative of the proponent, but that industry should develop a system of accreditation of EIS consultants to ensure the highest standard of environmental impact statements. It is my belief that it is the assessment of an EIS and its subsequent monitoring, more than the actual commissioning, that will determine the quality of environmental outcomes in developments where an EIS is required.

In recommending that the Department of Planning promote the benefits of establishing early baseline monitoring programs, the committee was aware that this practice is now widely followed by many of the larger mining companies. We believe that the testing of environmental impact statements will ensure that the critical question of actual impacts is addressed and that the quality of the EIA process will improve. This in turn will help to foster public confidence in the process. The committee also recommended that the Department of Planning update and revamp the 1985 manual for environmental impact assessment as a matter of urgency, after the department's review of the planning system is complete. In addition, the introduction of public environment reports to bridge the present gap under part 5 of the Act, that is the gap between the full EIS and internal departmental assessment, is important for the facilitation of sound development proposals.

The committee also advocates the greater use of scoping so that the public may have an opportunity to identify concerns and issues relevant to the proposed development before the EIS investigations are undertaken in earnest. Another important recommendation formulated by the committee relates to the preparation of guidelines by the Department of Planning to clarify the operation of part 5 of the Act with regard to the threshold tests for environmental impact statements. The question of the planning system's highly logistic nature, which is called a lawyer's delight according to some, and the role that the Land and Environment Court should play in the process was a vexing one for the committee. Though the number of development applications which end up in court remains a small minority, there is widespread concern that the mechanisms for solving disputes are too legalistic and that the court system may not be the most appropriate means of assessing the merits of development. Indeed, a more important question is whether the appeals system generally is the best way of involving the public in the development approval process.

The committee has been a consistent advocate of alternative dispute resolution in relation to coastal development. We still believe that, where possible, developments should be kept out of the courts. The early involvement by proponents, councils and potential objectors in a scoping process as a means of heading off time-consuming, costly and unpleasant court cases is strongly supported by the committee. The committee welcomed the Land and Environment Court's introduction of mediation hearings in May 1991. Every effort should be made to ensure that optimal, win-win solutions are achieved in those cases where it is possible. Of course, it will always be the case that a highly political process such as land development, where profits are to be made and where environmental impacts are bound to cause concern to community groups, will be

the subject of dispute. With its volume II report the committee has tried to ensure that the process is more timely, less costly and, where possible, conflict is reduced. This can be done both by reducing the number of cases which go to the court and ensuring that those developments which involve litigation are dealt with as effectively as possible. A number of the committee's specific recommendations go to the heart of these issues.

The final area of concern in the committee's latest report relates to environment protection measures. Perhaps the key issue in this regard, which indeed may be one of the major environmental concerns for the 1990s, is the cumulative impact of developments. It has already been recognised overseas, particularly in the United States, that the tyranny of small decisions can have a more harmful impact on the environment than some of the larger individual developments which normally attract the closest public scrutiny and a great deal of controversy. It is time that we in Australia took on board the lessons which have been learned elsewhere and enact measures to address this problem. Here the Environment Protection Authority has a critical role to play, but so do local councils, which, as I have indicated, are the coalface of the development approval process.

It is one thing to enact polluter pays type policies for developments in which the source of the pollution can easily be identified, but a far greater challenge, and one which the committee addressed, is to try to deal with non point source pollution. The committee recommended specifically that, in the context of its proposed regional environment protection programs, the EPA negotiate pollution abatement agreements with local councils for the reduction of non point source pollution. The committee believes that this recommendation, while placing increased responsibilities on councils, is absolutely essential if we are to take seriously the problem of cumulative impact. In addition, it is the committee's view that the importance of developing national ambient standards and guidelines cannot be overstated. These national standards would be

mandatory measures, setting quantifiable or precisely described characteristics against which environmental quality could be assessed. The committee recognises that any attempts to combat the problems of non point source pollution will be less than effective in the absence of such national ambient standards. Needless to say, an extensive monitoring system for environmental quality is also crucial for controlling non point source pollution.

Many other issues are addressed in the committee's volume II report. I urge all honourable members to read the report and note its recommendations. It sets out the path ahead for the different levels of government and other participants in the system, and that will ensure better processes for dealing with coastal development. Together with the first report, this report lays a firm foundation for future government policies relating to the coast. On behalf of the Hon. Dr B. P. V. Pezzutti and other members of the committee, I thank the secretariat for the many hours of work it dedicated to the report - it involved many hours, many trials and tribulations and lots of work. In particular, I thank the committee director, Michael Jerks; the senior project officer, Paul Collits; and committee officers, Heather Crichton and Annie Marshall, for their fine efforts. Committees could not function without the efficiency of these people, who work so hard behind the scenes. Compiling this report has been an interesting and rewarding task, which once again demonstrates the positive gains that bipartisan committees can achieve. The introduction of such committees has given members of this House the opportunity to become involved in matters it was not possible for them to be involved in previously. It is important that that opportunity continue to be available. On behalf of the Hon. Dr B. P. V. Pezzutti, I thank the committee members for their co-operation and the valuable input to the report of each and every one of them. In many ways it has been a fun

committee - there has been some repartee, good times, and at all times a relationship which made the committee worth while. The Hon. Dr B. P. V. Pezzutti would say the exact same thing if it were possible for him to be here today. I commend the report.

**The Hon. I. M. MACDONALD** [11.37]: As Deputy Chairman of the Standing Committee on State Development, I commence my remarks by extending best wishes to the committee chairman, the Hon. Dr B. P. V. Pezzutti, who is incapacitated at the moment. We wish him a speedy recovery. I look forward to having my old sparring partner back in the saddle in the new year so that we can continue the work of the committee, whose next reference deals with regional business development throughout New South Wales. The second report of the committee on this issue entitled "Coastal Planning and Management in New South Wales: The process for the Future: Volume II", was the comprehensive outcome of over three-and-a-half years of inquiry. I am proud to say that both the Hon. R. S. L. Jones and I have been involved in this from day one. The inquiry has dealt in depth with all issues pertaining to coastal management in the State. As honourable members would be aware, the previous report, volume I, which was a framework for planning and management in New South Wales, was comprehensive and tackled a number of difficult issues in the management of our coastline. The problems which have been encountered along the coastline of New South Wales - [*Time expired*.]

## MEDICALLY ACQUIRED AIDS VICTIMS COMPENSATION BILL

**Bill introduced and read a first time.**

### Second Reading

**The Hon. ELAINE NILE** [11.40]: Pursuant to sessional order, I move:

That this bill be now read a second time.

It gives me great pleasure to introduce again the Medically Acquired AIDS Victims Compensation Bill. It was previously introduced in December 1991. The bill will correct a great injustice in our State concerning the rights of the innocent victims of HIV-AIDS, who were unknowingly infected as a result of receiving AIDS-contaminated blood products or blood transfusions which were supplied by public health authorities in public hospitals. The first reported Australian case of what we now know to be HIV was in Sydney and came to the attention of medical authorities in 1982. Nine years later over 15,000 Australians are HIV positive and a further 2,500 have died as a consequence of contracting the virus. With the advantage of hindsight and advances in medical technology we are now aware that as many as 350 people in New South Wales and more than 500 Australia-wide contracted HIV through contaminated blood, blood products, organ transplants and artificial insemination by donors. In May 1985 effective universal testing of all blood products and human tissues for the HIV virus commenced throughout Australia. We are unaware of anyone in New South Wales or Australia who has acquired HIV as a result of a medical procedure after testing began.

In March 1989 the Haemophilia Foundation of Australia made a submission to the Commonwealth Government calling for the establishment of a Haemophilia Foundation Fund to cover additional costs arising from HIV infection on top of the provision of health and welfare services. Acknowledging that a broader cross-section of people had acquired HIV through other medical procedures such as blood transfusions, organ transplants and participation in the artificial insemination by donor fertility

program, the Commonwealth Government agreed to the establishment of the fund known as the Mark Fitzpatrick Trust and expanded it to allow this broader class of people access to it. Since the establishment of the Mark Fitzpatrick Trust, an increasing number of people with medically acquired HIV and their families have felt that the fund is inadequate and have called on various State and Commonwealth governments to pay them compensation or some form of financial assistance. At least four cases in three different States seeking damages for negligence from hospitals, the Red Cross or the Commonwealth Serum Laboratories have gone to court with varying results. Justice Wilcox of the Federal Court, in a judgment that rejected the application for compensatory damages, though it may be subject to appeal, called on government "to honour its moral obligation to these people and organise some form of financial assistance".

As at August 1991, there were a total of 224 identified cases of medically acquired HIV in New South Wales. That number is made up as follows: haemophiliacs, 95, 21 of whom have already died; transfusion related, 125, 60 of whom have already died; and artificial insemination, four, two of whom have already died. The National Centre of HIV Epidemiology and Research and the Red Cross blood transfusion service estimate that there may be as many as a further 100 as yet unidentified cases of medically acquired HIV in New South Wales. The current figure is approximately 350 persons. It is estimated that 10 children in New South Wales have HIV, which they acquired from a parent who medically acquired HIV. It is estimated that approximately six spouses have acquired HIV from partners who themselves medically acquired HIV. People with medically acquired HIV are infected with a permanent infectious and sexually transmissible disease that causes extraordinary suffering from multiple symptoms over a long period. These factors have a profound impact on the self-esteem of this group. Many people in this group have expressed a strong desire to keep their condition a secret, even from family members, because of the stigma associated with HIV. Others described problems with confidentiality and discrimination because of

being HIV positive. Some in this group expressed the need for greater education of health professionals and the general public. People with haemophilia and HIV described themselves as carrying a "double burden".

The Western Australian Government agreed to grant financial assistance to 22 people with medically acquired HIV, with an average payment of $280,000, at a total cost of $5.4 million. It seems that the decision to grant a settlement payment was based on a weighing up of the potential costs of litigation and the costs of settlement as well as consideration of the human costs involved in litigation. The Legislative Council Standing Committee on Social Issues in its report "Medically Acquired HIV", dated October 1991, said it supported financial assistance for the following reasons: first, the source of the infection was a government instrumentality; second, the extreme physical trauma that is the nature of HIV; third, the substantial costs involved in caring for someone with HIV; fourth, the urgency of the needs of the medically acquired HIV community in that those in that community have all been infected for a substantial amount of time and are in the latter stages of the illness; fifth, the double trauma for those who have haemophilia; sixth, the stigma that the medically acquired HIV community suffers as a result of incorrect assumptions about sexual orientation or drug use; seventh, the fact that many of the medically acquired HIV community have dependent children and or spouses; eighth, the adequate precedents for the granting of such financial assistance; and, ninth, the difficulties for people with medically acquired HIV in pursuing litigation. The dissenting opinion of Reverend the Hon. F. J. Nile in relation to financial assistance, which appears in chapter 3 of the report, is as follows:

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> I strongly supported the Western Australian Government's resolution of the Compensation issue for medically acquired AIDS/HIV persons, whereby an average amount of $280,000 was made available for each person on the basis of forgoing any further litigation in the Courts. (Total $5.4 million for 22 persons).
>
> I dissent from the Committee's decision not to adopt this Western Australian policy and reluctantly agreed to the much lower amount of $50,000 without any waiver concerning future litigation, so that these long suffering medically acquired AIDS/HIV persons, who I truly regard as a unique tragic innocent group in our society should at least receive some financial assistance for themselves and/or dependents.
>
> I believe the larger amount of compensation that is financial assistance could have been found by the NSW Government from its $14 billion dollar budget in cooperation with the Government Insurance Office (GIO). Such a compensation policy would have saved these persons going to court and suffering additional stress, heavy legal costs as well as disrupting the New South Wales Health Service with doctors etc., giving stressful evidence over a long period of time.

The social issues committee finally recommended:

> This financial assistance be restricted to a maximum figure of $50,000 (subject to recommendation No. 6) for a medically acquired HIV person with dependents, and $25,000 for a medically acquired HIV person with no dependents.

For that reason and because of the constant calls for justice we have received from those innocent HIV-AIDS victims we have introduced this important bill and trust this House and the other place will rapidly agree to the measure so that New South Wales will be able to hold its head up and provide fair and just payment similar to that provided by

other States of Australia such as Western Australia, South Australia and Victoria. The Western Australian Labor Government has agreed to pay out $5.4 million to 22 victims, an average of $280,000 for each person. The Victorian Government on 23rd December, 1991, agreed to pay compensation of $22.5 million for 110 innocent victims in Victoria. The South Australian ALP Government also settled, in October 1991, on an average for each innocent victim of over $200,000, with a total payment of $2.45 million for eight victims. Obviously, the Government is concerned about its 1992-93 Budget. There have been statements that it was possible for other States under Australian Labor Party governments to pay out amounts in the vicinity of $250,000 to $300,000 because the number of cases was small, whereas New South Wales has the largest number of cases, 350 or more. This is a very unfair argument to use to prevent a just payment of $300,000. It is not the fault of these innocent victims in New South Wales that so many were infected in New South Wales by contaminated blood.

The homosexual movement had established its base in Sydney and insisted on its right to donate blood to the Red Cross so as to receive free blood tests. In the early 1980s medical authorities in the United States of America became aware of a disease afflicting homosexuals which produced theretofore thought rare symptoms and consequences. In 1981 AIDS was first recognised as a medical entity. In July 1982 United States medical authorities recognised that AIDS was probably linked to blood and published this material. The link was made as a result of the infection by AIDS of a United States haemophiliac. In July the Centre for Disease Control in Atlanta, Georgia, publicly reported the first three cases of AIDS in haemophiliacs. The concern of the United States became known in Australia at about this time via the medical journals, to the medical and scientific community, and in the popular press. In December 1982 a case was reported of a 20-month-old San Francisco infant who developed AIDS after receiving several blood transfusions. In January 1983 some American blood banks began working on the assumption that the AIDS virus was transmitted through blood, and one


corporation that manufactured AHF in America began refusing blood from so-called high-risk donors such as homosexuals. The United States National Haemophilia Foundation asked blood and plasma collectors to adopt screening procedures to discourage donation from so-called high-risk groups. In January 1990, in a judgment in a claim for damages by a 16-year-old haemophiliac boy in New South Wales against the Red Cross, Commonwealth Serum Laboratories and the Royal Alexandra Hospital, a judge said:

> The first Australian case of AIDS was published in April 1983. I have no difficulty concluding that reasonably informed physicians, scientists and blood transfusion services in this country ought to have been well aware by at latest April 1983 that there was a real risk that the amount of unknown and unidentified sources of infection which blood and blood products had the capacity to carry must be numbered whatever agent was responsible for the production of AIDS.

In September 1984 Dr Gordon Archer, head of the New South Wales Red Cross Blood Services, was interviewed by Jana Wendt on the television program "Sixty Minutes". Dr Archer was shown a report that had been screened in May 1983 concerning the possibility of people becoming infected by using blood that had been donated by homosexual men. The interview went as follows:

> Jana Wendt: Could you not have - 12 months ago, 15 months ago, for instance, when that report was screened - could you not have said homosexuals are simply unacceptable as blood donors for the blood bank?

Dr Archer: I think we should have - now in retrospect. At the time we could have been accused of over reacting. I think the blood bank has always felt that it is a disease in America. They are the experts on it. We will follow their recommendations. And I think that is what we did initially, we followed the American Red Cross Blood Transfusion experts policies as far as asking homosexuals and other at risk people to voluntarily refrain from donating. A lot of the, I would say, gay community perhaps on the fringe, objected, in fact were picketed, I was called a bigot for taking the steps that we did take at the time. Now it is quite obvious that we weren't quite strict enough.

Jana Wendt: Mr. Dexter (a member of the Gay Community) can I ask you, what do you think the blood bank should have done at the time?

Mr. Dexter: The blood bank should have extensively advertised in the newspapers to gay men not to go to the blood bank so that there could be no embarrassment if they did go.

The knowledge of the risks of AIDS, the need to protect the blood supply, the nature of the high-risk donors, screening procedures to prevent high-risk donors giving blood that could enter the blood supply, the need to warn haemophiliacs or persons about to receive blood transfusions of the risk of AIDS, and the option of haemophiliacs returning to the treatment by cryoprecipitate all grew quickly in 1983. By the middle of that year, it is contended there should have been no risk of anyone contracting AIDS from a blood product or blood transfusion. The blood supply could have been completely protected, and all persons at risk should have been warned. Regrettably, these things did not occur and 354 haemophiliacs across Australia contracted the HIV infection before heat treatment was implemented. This represents 33 per cent of all Australian haemophiliacs and 70 per cent of those who suffered from the severe form of the disease. Several hundred recipients of infected blood transfusions were infected with the virus.

Although heat treatment of blood products was commenced in late 1984-early 1985, there was a delay in the provision of heat-treated product to Western Australia such that Western Australian haemophiliacs received untreated product for a considerably



longer time than their eastern counterparts. It was only after complaint by the haemophiliacs themselves that heat-treated product was finally made available. In the years between 1984 and 1988, either as a result of testing for the virus, as a result of an incidental blood test, or as a result of contracting AIDS-related symptoms, individuals became aware that they were suffering from the infection, caused by the transfusion or injection of infected blood or blood products. Most were told in a casual way, and none were offered specialised treatment or counselling. Again, only after pressure from the victims themselves, after some years, did any form of specialised counselling take place. No form of specialised treatment has been offered in this State, although such treatment is offered in other States.

Notwithstanding the knowledge that many persons had been infected and the knowledge, in some cases, of the identity of the donor who had given infected blood, no attempt was made by health authorities to warn recipients of infected blood in transfusions or of infected blood products through which those recipients may be at risk of contracting HIV or may have already contracted HIV. Consequently, there was no warning to those people to cease activities which could place others at risk, or to take precautions when indulging in those activities which might place others at risk. Clearly,

those most at risk were the spouses of persons who had already been infected, but not warned, and as a consequence any children who were conceived. Inevitably such cases have occurred. Indeed, there may be some cases of persons in the community who are unaware that they are infected and are placing at risk their spouses, and future children, as a result of this continuing failure to warn. Early in 1989 several haemophiliacs approached Slater and Gordon, who had conducted litigation on behalf of the asbestos disease victims of Wittenoom mine, to determine whether they had any recourse to compensation for their infection. An application was made to the Legal Aid Commission of Western Australia to provide funding to investigate these cases, but that application was refused. Slater and Gordon agreed to continue investigation of the cases, and were instructed by haemophiliacs and blood transfusion victims throughout Australia.

The Victorian Legal Aid Commission eventually agreed to provide some funding to conduct a test case. In Western Australia writs were issued on behalf of the victims naming the Red Cross blood transfusion service, the Commonwealth Serum Laboratories and the hospital where the individual received treatment claiming damages in negligence. In mid-1990 submissions were made to the Commonwealth Government in the hope that an offer of compensation would be made to all victims to avoid litigation but the proposal was rejected. The victim in the Victorian test case, PQ, offered to settle his case for $250,000 but the defendants in that case, the Red Cross, Commonwealth Serum Laboratories and the Alfred Hospital, refused. Litigation commenced in the Victorian Supreme Court in 1990. Halfway through the trial of PQ the Victorian Legal Aid Commission withdrew funding for the case but the solicitor opted to continue with the action.

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

## QUESTIONS WITHOUT NOTICE

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### CALL TO AUSTRALIA SUPPORT OF GOVERNMENT LEGISLATION

**The Hon. ANN SYMONDS:** My question is addressed to the Attorney General and Minister for Industrial Relations. I ask: is it a fact that in order to secure Mr and Mrs Nile's vote on, and so ensure the passage of, the Industrial Relations Bill unamended last year, Mr Fahey gave written assurances to Mr Nile that the Government would

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seriously consider the Niles' Medical Practitioners (Conscientious Objection) Bill and the Nurses (Conscientious Objection) Bill? Will the Premier's written undertakings guarantee government support for the Public Hospitals (Conscientious Objection) Bill that is being introduced by Mr Nile today? Does the Minister support the trade-off that Fahey put in place or does the Minister regard the written undertakings as a cynical exercise undertaken by Fahey and the Niles as a means of mutual political benefit?

**The Hon. J. P. HANNAFORD:** Mr President, I could raise a point of order on the question on the basis that the legislation is before the House. However, I will not do that, because I think the issue of conscientious objection should be properly addressed. It is interesting that a member of the left-wing of the Labor Party rather than another member of the Opposition has raised the issue of conscientious objection in a health related area.

**The PRESIDENT:** Order! The question is out of order because it canvasses a

bill currently before the House. The matter would be more properly raised in the debate on that bill.

## OCEAN DISPOSAL OF SEWAGE SLUDGE

**The Hon. D. J. GAY:** Will the Minister for Planning and Minister for Housing explain what steps the Government has taken to cease the disposal of sewage sludge into the ocean off Sydney?

**The Hon. R. J. WEBSTER:** At North Head this morning I announced that the board will cease discharging sludge from Malabar sewage treatment plant, the largest ocean plant, by Christmas this year. Malabar is the last sewage treatment plant to cease sludge disposal. By January next year there will be no sewage sludge in our ocean. This major environmental achievement fulfils the New South Wales Government's commitment to cease ocean disposal of sludge and has been achieved well before the October 1993 deadline - nine months before. When the Government came to office 132 tonnes dry equivalent of sludge was discharged to the sea each day. That is the equivalent of 10 semitrailer loads. In five years we have reduced the sludge going to the sea to zero. It was this Government which heeded the community's call to cease sludge disposal to the ocean and we successfully met the challenge. The next challenge facing the board is to use the sludge in a way which positively benefits the environment. This can be achieved only by recycling the by-products of sewage treatment - sludge and effluent. Sewage treatment plants and sewerage systems therefore are being upgraded to a state of the art level to meet these goals.

**The Hon. Judith Walker:** I thought you sounded better on 2UE this morning.

**The Hon. R. J. WEBSTER:** I know you do not like to see the Government getting publicity. Cost-effective new technologies, some invented and developed by Australian companies, are on trial or being utilised at the sewage treatment plants to achieve the same level as traditional secondary sewage treatment achieves. These innovative new methods of sewage treatment are cost effective and cheaper than conventional technologies and will increase the volume of sludge recovered. It is therefore important that the board maintain the rigorous campaign to open up markets for the recyclable by-products of sludge and effluent. The $80 special environmental levy has provided funds to research and investigate how sludge may be used beneficially. The benefits of this research will be shared by the whole community, and not just through clean beaches.



**The Hon. Jan Burnswoods:** Tell us about the heavy metals.

**The Hon. R. J. WEBSTER:** Hang on and you might learn something. I thought you would have learned your lesson yesterday. It should be kept in mind that sewage from as far as Blacktown is treated at North Head. Sludge from North Head and other sewage treatment plants is being used as a fertiliser, soil conditioner and raw material for landscaping. Disused mine sites will be rehabilitated with sludge. Composted sludge has been marketed successfully by a private company and is also being composted with garden wastes at Bellambi sewage treatment plant. This project is so successful that demand for the product exceeds supply. Sewage sludge used as fertiliser at two Moss Vale Forestry Commission plantations has had startling results, producing pine tree growth at a rate 50 per cent faster than the rate of similar trees grown under normal conditions. Another joint Water Board-Forestry Commission sludge

research program promises to deliver many of the elements required for the growth of forests. Sludge in the form of N-viro soil is also used in the Hunter Valley vineyards. These projects prove that special environmental levy funded sludge research has the potential to be utilised all over New South Wales, and possibly overseas. The comment by the Hon. Jan Burnswoods is typical of the troglodyte comments of some members opposite. The honourable member for Bathurst made statements shooting from the hip without having a clue what he was talking about. He condemned the trialling of sludge out of hand and made the most ridiculous and alarmist comments in the western media to try to score a few cheap political points. Heavy metals in sludge is a real issue. I assure all honourable members that no sludge will be sold or used in agriculture or anywhere else that poses any danger whatsoever to health or to the environment.

**The Hon. Jan Burnswoods:** Are you going to release the testing results?

**The Hon. R. J. WEBSTER:** Just wait till I answer the question. One of the reasons we are conducting the trials, involving the Environment Protection Authority, the Department of Health and every other government body as well as private research, is to ensure that we do get it right and that we do not put heavy metals into the soil or anywhere else where they may endanger the environment or public health. That matter is being taken care of very thoroughly. Instead of members on other side constantly carping, knocking and being negative they should be getting behind and supporting such thinking. They have always had plenty to say about pollution of the beaches, even though they did nothing in their 12 years in government. We have now removed the 12 semitrailer loads of sludge which were going into the oceans every day. Twelve tonnes of grease per day was going into the ocean. That is a lot of grease balls, I am sure you will all agree.

**The Hon. Dorothy Isaksen:** What about your overflow drains that go into the harbour too?

**The Hon. R. J. WEBSTER:** The Water Board is responsible for 2 per cent of all drainage in the Sydney metropolitan area. The next step is for us to make sure that local government gets into the act and that the other 98 per cent of drains in the community that may be faulty or deficient are taken care of by local government. We are doing that in a co-operative way with the clean waterways program. We have had discussions with local government. Community groups are working -

**The Hon. Delcia Kite:** We have noticed algae in the rivers lately.

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**The Hon. R. J. WEBSTER:** That is right. Obviously the Hon. Delcia Kite was not listening to my answer yesterday when I said that the Camden sewage treatment works and, indeed, every other sewage treatment works in the Hornsby-Nepean area, will soon be tertiary treating sewage so that the phosphorous and nutrient levels will be massively reduced to less than 1 per cent. That will have an enormous effect on the blue-green algae. I hope I have answered the concerns of honourable members opposite. They should try to listen a little more attentively. I ask them to be positive, because it is terribly depressing to hear this constant carping from the other side of the Chamber. They should give the Government credit for its achievements instead of nagging all the time.

## TAFE FEES

**The Hon. ELISABETH KIRKBY:** My question is addressed to the Minister for Education and Youth Affairs and Minister for Employment and Training. Will the Minister confirm that the State Government is considering proposals to increase TAFE fees by more than 250 per cent under a plan that links payments to the number of hours spent in tuition? Will this mean that students undergoing full-time certificate courses, but attending only 24 hours a week over a year, will face a fee increase from $140 to the new maximum of $500? Is it also a fact that under the TAFE proposals, courses that will attract the $500 fee include graphic design, surveying, office administration, business catering, farm technology and higher school certificate matriculation? Why has the Government embarked on such a scheme, which is likely to come into effect when school- -leavers will find it imperative to attempt to find tertiary training if they are ever to gain employment?

**The Hon. VIRGINIA CHADWICK:** With the greatest respect, I must say to the Hon. Elisabeth Kirkby that this issue was publicly canvassed and, I would have thought, put to rest about two or three weeks ago. A few weeks ago an internal working document from the TAFE Commission mysteriously found its way into the hands of the Opposition, which released it and suggested that the document was endorsed, was government policy and was to be introduced in 1993. The answer to each part of the Hon. Elisabeth Kirkby's question is, no. Let me deal with each of the assertions in turn. It is true that consideration has been given in TAFE to the question of fees versus charges. The reason for that is clear. At present a number of inequities are inherent in the application and administration of the administration fee. Regardless of whether TAFE has charges or fees, I am keen - and the previous Minister, who is now the Premier, also was keen - to overcome those inequities. Perhaps one of the ways to do that is to move to fees. That is why work was done in TAFE on the implications of charges versus fees and what the potential levels of fees may be. That is precisely what the document to which I have referred was all about.

At the time I became the Minister responsible for TAFE it was drawn to my attention that that work had in fact been done and that if the Government was to make a move before 1993, a decision had to be made at that time so that the necessary work could be done. I took the view that TAFE should not move to any change other than a change to the administration fee being based largely on the consumer price index for 1993. All TAFE colleges have been made aware of this by their institute, and they have the list of administration charges for next year. The documents are printed. That is what is on the forms that will go out to all students and that is precisely what will happen in 1993. However, I would not like to suggest in any way to the honourable member or to this Chamber that I am not attracted to changing the system. Fees may well be the answer, although clearly no one has determined the level; certainly not me. It will not



be for 1993. I have become aware via the ministerial council of TAFE Ministers from across Australia, MOVEET, that work is being done nationally on the question of fees. I would welcome advice, counsel and guidance from other States in this regard. That is why it is now in the national forum.

However, I can give a number of assurances. TAFE has undergone a significant period of major restructuring, which is almost complete. We are now well into the latter part of 1992, and the implementation of significant change for 1993 would have involved a very tight timetable. I am aware of the matters referred to by the honourable member - school-leavers, tight university places, and tight employment and other training opportunities. I took the view that perhaps the time was not right, and my time frame was very tight. For those reasons I gave assurances several weeks ago that administration charges will remain. The level of those charges has been known

officially by all TAFE colleges for many weeks. Any move to fees for 1993, particularly fees involving significant variations, is absolutely not on.

## CALL TO AUSTRALIA SUPPORT OF GOVERNMENT LEGISLATION

**The Hon. ANN SYMONDS:** My question without notice is to the Attorney General and Minister for Industrial Relations. Noting that the debate and passage of the Industrial Relations Bill occurred in 1991, will the Government table the correspondence between Mr Fahey and Mr Nile during the passage of that bill?

**The Hon. J. P. HANNAFORD:** I have no knowledge of any such correspondence.

## VOCATIONAL EDUCATION AND TRAINING AGENCY

**The Hon. PATRICIA FORSYTHE:** I direct my question without notice to the Minister for Education and Youth Affairs and Minister for Employment and Training. Will the Minister inform the House about progress being made in the development of the New South Wales Vocational Education and Training Agency? How will this agency assist the progress of further education and training in New South Wales?

**The Hon. VIRGINIA CHADWICK:** It is encouraging to see such interest being shown in the vital area of vocational training and further education. Recently I announced the establishment of a central agency to co-ordinate the activities of vocational education and training institutions in New South Wales. The new body, called the New South Wales Vocational Education and Training Agency, or VETA - yet another acronym to add to our lexicon - will manage the State's training systems and provide a single voice for New South Wales at national discussions on vocational training. VETA will place New South Wales in a position to meet the objectives of the Australian National Training Authority, or ANTA, in order to create a truly national system of vocational education and training. VETA will act as a conduit between the national authority and the various State training bodies - either public, such as TAFE colleges, or private, such as business colleges or industry-based training.

At this stage I have established an interim board for VETA headed by Sir Nicholas Shehadie to ensure that the agency is effective and has the endorsement of all concerned. The board has now met twice and is preparing to enter into wide public consultation regarding its functions. Broadly speaking, its advisory functions cover two areas: management of the State's training systems, and policy and planning to meet the ANTA requirements. The consultation process will include more detailed areas, such as



the structure and staffing arrangements, amendments to existing legislation, and relationships between the New South Wales VETA and other bodies. I must emphasise that this is not a management review of technical and further education, or of the Department of Industrial Relations, Employment, Training and Further Education - DIRETFE; nor am I interested in simply injecting another layer of bureaucracy into an already burdened system. Rather, we will be building on the excellent work which has made this State the leader in our nation in vocational education and training. I am sure honourable members will be interested to know the membership of VETA. As I said, the chairman is Sir Nicholas Shehadie, and other members include Dr Col Gellatly, Mr Warren Grimshaw, Dr Sandra Humphrey, Mr Brian Jones and Dr Gregor Ramsey.

## DEATH OF Mr JOHN BECKER

**The Hon. DOROTHY ISAKSEN:** I ask the Attorney General, Minister for Industrial Relations, and Vice-President of the Executive Council, representing the Minister for Police, a question without notice. On 22nd September I asked the former Minister for Police and Emergency Services a question concerning Mr John Becker, who died of a brain haemorrhage following his arrest at Manly. I asked what form of inquiry would be held and when we could expect a report. The Minister replied, "This is a question that the Commissioner of Police would really need to answer. It is well and truly his responsibility. I shall send a note to him and ask him". Can the Minister provide any information about the circumstances of John Becker's death, and what type of inquiry is being held?

**The Hon. J. P. HANNAFORD:** I will refer the question to the Minister.

## SEXUAL ASSAULT PROCEEDINGS AND SENTENCES

**The Hon. Dr MARLENE GOLDSMITH:** My question without notice is to the Attorney General, Minister for Industrial Relations, and Vice-President of the Executive Council. There is often much controversy regarding the conduct of sexual assault cases in the courts and the appropriateness of sentences meted out by judges to those convicted of sexual assault. Is anything being done to address this issue, or is it the case that, once appointed, judges are above any need for education?

**The Hon. J. P. HANNAFORD:** I thank the honourable member for her important question. As honourable members well know, she has a considerable interest in the issue of domestic violence and sexual assault, and she has provided considerable input into public debate on the issue. In relation to the last part of the question, I can say that in my view nobody is ever above the need for continuing education, not even judges. The Judicial Commission is the body responsible for the continuing education and training of judicial officers. In fact, the Judicial Officers Act provides for the Judicial Commission to organise and supervise an appropriate scheme for that. Judicial Commission staff, in conjunction with the head of jurisdiction and the extensive involvement of judges and magistrates, have developed a program of continuing judicial education activities to enhance and develop the professional skills and expertise of judicial officers in New South Wales.

A detailed education and training needs analysis has been completed and a draft policy of continuing judicial education was prepared for analysis. The draft policy was later formally adopted by the commission and that document covers the nature, scope and direction of the continuing education program. The program is focused on the delivery of services by way of content and by level of application. Education services have now



been extended to all of the State's six court jurisdictions and those services are delivered on the basis of a mixture of conference-seminar presentations, as well as producing relevant publications for them. The commission has provided assistance to a number of courts in convening annual conferences for their respective jurisdictions. With particular reference to sexual assault, at the annual magistrates conference in July, two topics were addressed - child abuse and domestic violence. In fact, today there is a workshop at the commission's office for magistrates, at which they will go through sentencing exercises, including some specific to sexual offences.

During the past two weeks every magistrate in the metropolitan area has attended similar workshops at the commission. Also recently, a very successful DNA profiling seminar was led by the Chief Justice of Victoria, Mr Justice Phillips. In the current issue of the *Judicial Review*, a journal that is sent to all magistrates and judges in

New South Wales, the leading article concerns DNA profiling and is written by Mr Justice Phillips. The aim of the article is for magistrates and judges to understand how DNA can be used as a tool of analysis in sexual offence cases. The commission continually reviews its publication program and, as a consequence, significant enhancements have been achieved. Those improvements are reflected in the quality of existing publications, together with an increase in the number of new titles published by the commission. The commission produces 11 issues of a judicial officers bulletin annually, addressing the issues most relevant to judges and magistrates. Articles appearing in the bulletin are furnished by eminent jurists from Australia and other parts of the world, as appropriate.

The commission has produced and continues to produce a range of bench book publications in response to research, which suggests a high level of use by judicial officers. The commission also conducts a comprehensive research program and regularly publishes its findings. As a result of that program the commission publishes documents, reports and bulletins on sentencing which are then furnished to the judges of the State. The commission's continuing education program, in conjunction with its research program, is an integral feature of achieving greater consistency in sentencing, as well as reduction in court delays. Specifically with regard to the issue of sexual assault raised by the honourable member, I indicate that in the past 12 months there have been two articles in the judicial officers bulletin. One was entitled "Sexual Assault - New Laws for a New Decade" and the other relates to the competency of children to give evidence, and particularly with respect to sexual assault. There is no doubt that there has been criticism of the sentences that have been imposed by judges in respect of sexual assault matters.

There has been criticism about whether or not judges are sufficiently sensitive to this particular area and are reflecting the current community mood, which is that there must be significant penalties; more regard to the needs of women giving evidence in respect of such matters, and children who give evidence; and a greater awareness that sexual assault causes not a temporary impact but a lifelong impact. These matters should be reflected in the way the cases are administered in court and in the way sentences are imposed. There has to be a real understanding of the victims of sexual assault in the handling of cases before the court. I believe that the Judicial Commission, particularly from the discussions I have had with the President of the Commission, has an understanding of that and that it will be imparted on an ongoing basis to the judges so they will exercise greater sensitivity in their handling of such cases and greater consistency in the type of penalties they impose.



## DEATH EDUCATION FOR SCHOOLCHILDREN

**The Hon. ELAINE NILE:** I direct my question without notice to the Minister for Education and Youth Affairs and Minister for Employment and Training. Is the Minister aware of an article in the *Sydney Morning Herald* today headed "Teaching children the meaning of death" about a staff member from White Lady Funerals going to a school in the Bankstown area with white balloons for the children to write messages on and release as the hearse drives past the school after the death of a child? I do not know whether it is a Catholic school or a State school. What is the Government's policy concerning that activity and concerning death education for children in our schools, particularly in view of disturbing reports about the harmful impact on impressionable children in Scandinavian countries such as Denmark where this so-called death education is taught, and where they teach children how to commit suicide without hurting their

parents?

**The Hon. VIRGINIA CHADWICK:** Though I did read the newspapers this morning, I confess that I have not seen the article to which the honourable member refers, and therefore I cannot comment.

**The Hon. Ann Symonds:** Be creative.

**The Hon. VIRGINIA CHADWICK:** No, it is an important question and it was asked in a serious vein, so I do not intend to be creative in answering the question. I will find out more about the issue. I have no idea whether the honourable member is referring to a Catholic school, a government school or an independent school. Despite the fact that I have responsibility for Catholic and independent schools, I do not have the day-to-day responsibility for them in the way that I have for government schools. I do not know what school it is and I do not know the details. However, I will most certainly make inquiries and advise the honourable member as soon as possible.

*Later,*

**The Hon. VIRGINIA CHADWICK:** Earlier the Hon. Elaine Nile asked a question about an article in this morning's *Sydney Morning Herald* about teaching children the meaning of death. My staff have spoken to the cluster director at Bankstown. I can advise the House that the cluster director has no knowledge of any such activity in government schools in the Bankstown cluster, but he is in fact now speaking to each school in the cluster to check. I will get back to the honourable member if there is further detail I should report. I am further advised that the usual procedure when a child dies or a death occurs within a school family is that the school counsellor conducts grief counselling at the school. It is not unusual at a number of schools for the principal, perhaps accompanied by the school captains, to visit bereaved parents and express sympathy on behalf of the school when a student at the school has died. That conduct or variations on it are regarded as normal procedure. To date I have no knowledge of children releasing balloons as a hearse passes a school.

## DARLING RIVER BLUE-GREEN ALGAL BLOOM

**The Hon. DELCIA KITE:** My question without notice is to the Minister for Planning and Minister for Housing, representing the Minister for the Environment. Because of the reappearance of the blue-green algal bloom in the Darling River, will the Minister advise the House what early action has been taken to prevent a repeat of what occurred last summer when communities living on the Darling River, and in particular Wilcannia and Menindee, were deprived of a supply of drinking water?

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**The Hon. R. J. WEBSTER:** I am happy to seek a detailed answer for the honourable member, but her question would be more appropriately addressed to the Minister for Natural Resources, who is responsible for the western river systems. Rain is the best thing that could happen to the Murray-Darling River system. I am pleased to inform honourable members, particularly those who have never been further than the Blue Mountains, that last night more than two inches of rain fell west of Wilcannia, in the Tilba area, which is one of the most drought-stricken areas. In fact, a good friend of some Government members, Murray McClure, advised that more than two inches of rain had fallen. This is the best rain the area has had in about three years. Unfortunately, there is no legislation or regulation available to legislate or regulate blue-green algae out

of existence. It is a climatic phenomenon and one which -

**The Hon. Dr Meredith Burgmann:** It is because the cotton farmers illegally take water from the rivers.

**The Hon. R. J. WEBSTER:** They have not had any water this year. The honourable member is so ignorant it is pathetic. She should visit the country and see what is going on. She does not know what she is talking about. The only Opposition member who ever asks a question about the country is the Hon. J. R. Johnson. The truth is that no Opposition member knows what is going on but they ask stupid questions.

## ROTHMANS FOUNDATION SPONSORSHIP

**The Hon. R. S. L. JONES:** I ask the Minister for Education and Youth Affairs and Minister for Employment and Training, representing the Minister for Health, a question without notice. Why did the Minister for Health grant yet another exemption from the provisions of sections 5 and 8 of the Tobacco Advertising Prohibition Act 1991 to the Rothmans Foundation for sponsorship for the junior development program being held by the New South Wales Ladies Golf Union at Bathurst, Yass and Werris Creek? Does not this show that the Government is not serious in trying to stop young people, and particularly young women, from smoking? Will the Government reconsider its opposition to setting up a health foundation to provide funds to replace sponsorship by these drug companies?

**The Hon. VIRGINIA CHADWICK:** I will refer the matter to my colleague the Minister for Health.

## BUILDING INDUSTRY CODE OF PRACTICE

**The Hon. Dr MEREDITH BURGMANN:** My question without notice is to the Attorney General and Minister for Industrial Relations. Is the building industry code of practice, recently released by the Minister, an attack on building workers' security of employment, superannuation and compensation rights? Is it true that the code prohibits any payment to the Construction Employees Redundancy Trust and discourages broad superannuation agreements and top-up workers' compensation insurance, which would reduce workers' overall wage package by $150 per week?

**The Hon. J. P. HANNAFORD:** I am pleased to note that the building industry code of practice adopted by the Government has been well received by industry. Naturally the unions are not willing to acknowledge any matter that may not suit their own aspirations in relation to the building industry. I was interested to note that the question was not asked by the Hon. A. B. Manson; he knows privately that the code of practice will have a greater impact on contractors than it will have on workers. The code



has been welcomed by the Building Owners and Managers Association, which is looking at the introduction of a similar code of practice for its industry. The code of practice is consistent with a code of practice that has been developed by the Commonwealth's agency. There will be inconsistencies between the two codes in only a few areas. The Government is intent on ensuring that it achieves a greater number of enterprise agreements within the building industry.

I note that the Building Workers Industrial Union has entered into two such enterprise agreements with Lend Lease and Concrete Constructions. The form of those agreements is consistent with the Government's code. One must wait and see whether

the Building Workers Industrial Union will seek to use some form of industrial muscle against those two organisations to take those agreements further. One must ask whether the Building Workers Industrial Union will pursue further industrial agreements with particular employers and whether it will maintain consistency in the pursuit of those agreements. There is no doubt that, in the past, the Building Workers Industrial Union has sought to use its position against weaker employers, which has resulted in a compounding of agreements that have not been in the best overall long-term interests of the industry. Underlying the code is a desire to achieve enterprise agreements that in the long term are in the best interests of the industry. The whole direction and aim of the code is to ensure that there is greater accountability and integrity in the negotiation and administration of contracts on the part of contractors. Our aim is to achieve a change of culture both on the part of employers and employees within the industry. I have little doubt that the steps that have been taken to date have set the foundations for that change. Only time will tell whether we have been successful.

## DEPARTMENT OF HOUSING TENANTS ADVICE LINE

**The Hon. L. D. W. COLEMAN:** My question without notice is directed to the Minister for Housing. Will the Minister inform the House whether the tenants advice line provided by the tenancy services branch of the Department of Housing has been a success? What is the Government doing to extend the service to people of non-English speaking backgrounds?

**The Hon. R. J. WEBSTER:** Honourable members will recall that in July I announced that the tenancy services branch of the Department of Housing had introduced the innovative tenants advice line. The advice line is an automated telephone service which provides a series of recorded messages on general residential tenancy topics so that tenants, landlords and agents are able to obtain information which is additional to the service already provided 24 hours a day, seven days a week. Briefly, clients can either choose to listen to recorded advice, leave a message to have an officer return their call or send information material, or break out of the system to speak to an officer. Information is currently available on topics such as beginning and ending a tenancy; repairs to rental properties; who has rights of access to properties, and under what circumstances; rental bonds; and increasing rent. The caller selects a topic by pressing a number on his or her telephone and is then presented with branches of subgroups of information and services, which are also accessed with a push of a button.

The innovation has proved to be a major success in the first three months of its operation. During the period August to October last year, a total of 17,800 telephone inquiries were answered by the tenancy services branch of the Department of Housing. The corresponding period this year saw a total of 32,313 telephone inquiries answered through the combination of existing staff and the new voice messaging system. This represents an 82 per cent increase in productivity. The benefits of this technology extend



to other aspects of the branch, for example, client interviews. I cannot emphasise too strongly that the advice line is a supplementary resource only; it is not intended to replace existing staff resources. One of its major assets is that a range of often repeated general information can be recorded and easily accessed by clients. If the caller requires more detail or, indeed, if he or she does not wish to listen to a machine, it is only a matter of pressing a number of the telephone to transfer to one of the inquiry staff.

The second stage of this important project is now ready for implementation. I am pleased to announce that the advice line has been extended to cater for people of non-English speaking backgrounds. This multilingual advice line will, in addition to

English, cater for clients of eight separate language groups. They will all receive the same advice as clients from English speaking backgrounds, and it is also available 24 hours a day, seven days a week. The facility is designed for those clients who are uncomfortable with the English language and, therefore, often have difficulty receiving advice and information suitable to their needs. I should mention for the information of members that the language selection was based on a survey of client groups by the tenancy service. The languages include Arabic, Cantonese and Mandarin, Greek, Italian, Spanish, Tagalog - Filipino - and Vietnamese. This is a major innovation for two reasons. First, based on inquiries made by my department, the multilingual advice line is a first in this State and, indeed, the country. This initiative breaks new ground in the area of service delivery and demonstrates the Government's commitment to improving service to clients by specifically including persons from non-English speaking backgrounds. Second, the multilingual advice line is a vehicle for the provision of consistent advice; persons from non-English speaking backgrounds will have exactly the same access as English speaking clients. Furthermore, the 24-hour a day facility extends the capability to obtain meaningful assistance at a time convenient to the client, who may, for some reason, not be able to seek advice during normal working hours.

Tenancy services branch already has a comprehensive multicultural program. The booklet entitled "Residential Tenancies Act - What It Means for Landlords and Tenants" is printed in 18 languages, including English. This booklet is distributed widely throughout the community. All residential tenancy agreements in New South Wales are required by the Residential Tenancies Act 1987 to contain a page with advice in 18 languages to contact the tenancy service if advice or assistance is required; promotional staff within the branch conduct a number of training sessions with either non-English speaking clients direct or community workers in the area of residential tenancies. With a view to extending its role, tenancy services branch is currently investigating the placement on an ongoing basis of relevant articles in the ethnic press. As I indicated earlier, the advice line is designed to supplement an existing service and not to replace it. Provision remains for callers to speak to one of the non-English speaking background officers in tenancy services if they desire or, if further information is required, to leave a message for a return call or booklets to be sent. Those who choose to speak to an officer will be able to access either a staff member who speaks their language or be put in contact with an interpreter through the Ethnic Affairs Commission.

Honourable members will be aware of, and sympathetic to, the needs of ethnic groups. These groups are sometimes placed at a disadvantage in a community which has become so diverse and so large that it can often be very difficult to access government services which are critical to their everyday lives. Renters in the private and public area, and indeed landlords who came from non-English speaking backgrounds, are especially vulnerable. It is therefore critical that they are able to obtain the advice and assistance to which they are entitled, and which will better equip them to deal with housing related issues as they arise. It is anticipated that the multilingual advice line and other initiatives



of the Department of Housing will greatly assist in achieving this goal. The tenancy service branch of the Department of Housing is to be congratulated for this most important initiative. I am sure that members on both sides of the House will support that.

## CONDOM VENDING MACHINES IN SCHOOLS

**The Hon. P. F. O'GRADY:** My question without notice is directed to the Minister for Education and Youth Affairs. Why did the Minister decide unilaterally and without consulting schools that condom vending machines would not be allowed in New

South Wales schools, against the advice of a Commonwealth intergovernment committee on AIDS? Does this conflict with the Minister's statement yesterday that in this day of empowerment of local schools and the devolution of responsibility she is opposed to decisions in Market Street on health related policies in schools? What advice did the Minister get from the Department of Health before making the decision not to allow condom vending machines in schools? Will the Minister allow individual schools to determine their own policies?

**The Hon. VIRGINIA CHADWICK:** The Hon. P. F. O'Grady has asked an interesting question. It is wrong on a number of points. For example, the honourable member referred to a Commonwealth report, which is reported to recommend that condom vending machines should be available in schools. At the time I heard about this - which was via a media report in the printed press - I had no recollection of the Commonwealth giving me the courtesy of sending me a copy of the report, corresponding with me on the issue or contacting me in this regard at all. I thought that it would not be so rude, so ill advised, as to release this report without perhaps talking to the department or my ministry. I asked my department and my ministry whether they had copies of the report and whether they had been corresponding with the Commonwealth department. They, like me, only knew as much as they had read in the newspaper. With respect to this Commonwealth group advising me, I still await that advice. That is the first point which needs to be made. The honourable member is wrong also in respect of the second part of his question. He is alleging that, rather than empower my school to make the decision, I, sitting in Market Street, unilaterally decided what should happen in relation to the availability of condom machines within schools. That is not the case. Even on the advice of someone as illustrious as the Hon. P. F. O'Grady, I still would not advise my schools to do something which is demonstrably illegal under the regulations of the Therapeutic Goods and Cosmetics Act, or some such Act, at the instigation of one of the Labor Party's own, Mr Mulock. If the honourable member thinks that I should live extraordinarily dangerously and advise my schools to do something which is absolutely illegal, I most certainly will not.

## HUME HIGHWAY, GUNDAGAI

**Reverend the Hon. F. J. NILE:** I wish to ask the Minister for Planning and Minister for Housing, representing the Minister for Transport and Minister for Tourism, a question without notice. Is it a fact that five persons were killed and two seriously injured in a tragic head-on collision on the Hume Highway four kilometres south of Jugiong, near Gundagai, where a twin highway converges into two lanes? What action has the Government taken to ensure that warning signs are sufficient to indicate to interstate drivers that they are entering and then travelling on a two-lane road and must now keep to the left lane to avoid head-on collisions? What action is the Government taking to speed up construction of a twin highway, or four-lane highway, in this section of the highway near Gundagai?



**The Hon. R. J. WEBSTER:** I too read with some dismay the article in this morning's newspaper about that very tragic collision. I know the road near Jugiong quite well. I shall seek details for the honourable member. For the information of honourable members, the Hume Highway is a national highway. It is funded totally by the Federal Government. When Prime Minister Hawke was first elected the Federal Government said that by 1988 the Hume Highway would be a dual carriageway running from Sydney to Melbourne. It is now almost 1993, and that has not occurred. That is symptomatic of the Federal Government's systematic winding back of road funding while it has been in

office.

**Reverend the Hon. F. J. Nile:** There are no jobs either.

**The Hon. R. J. WEBSTER:** As the honourable member points out, that costs jobs. I will seek information from my colleague the Minister for Roads and report back to the honourable member as soon as possible.

## PRINCE HENRY HOSPITAL ASBESTOS REMOVAL

**The Hon. A. B. MANSON:** I direct my question without notice to the Attorney General and Minister for Industrial Relations, representing the Minister for Health. I refer to a question I asked the Minister on 22nd September this year which has not yet been answered. Will the Department of Industrial Relations, the Department of Health or the building industry task force investigate the spending this year of approximately $400,000 on asbestos removal work at the Prince Henry Hospital by the Eastern Sydney Area Health Service, first, when no contract existed for the work; second, when the representative of the company engaged to perform the asbestos removal disappeared prior to completion of the work; and, third, when four workers were owed over $4,000 each in wages and entitlements at the time the company's representative vanished?

**The Hon. J. P. HANNAFORD:** The honourable member would be aware that the Minister for Education and Youth Affairs represents the Minister for Health, but part of the question at least relates to the non-payment of moneys, no doubt under an award, and therefore could be said to be relevant to my portfolio. I will take up that aspect of the question and see whether I can provide answers to the former part of the question as well.

## GREEN TRAIN PROJECT

**The Hon. R. T. M. BULL:** Will the Minister for Education and Youth Affairs and Minister for Employment and Training inform the House of the results of the green train project? Has the project been a success and, if so, will it be repeated?

**The Hon. VIRGINIA CHADWICK:** I am very glad that the honourable member and so many other people in New South Wales have followed the very worthy and highly successful green train project. For those who may not be familiar with this project, it is worth saying that the green train project is a joint venture by the Department of School Education and the State Rail Authority. It was a real train filled with exhibits aimed at environmental education, which toured much of New South Wales late last year - in fact, between August and October. The response from schoolchildren in every town and suburb the train visited was absolutely overwhelming. Contributors and sponsors included the Environment Protection Authority, the Australian Museum, the Royal Botanic Gardens, the Taronga Zoo, Greenpeace, Rotary International, radio 2MMM FM and IBM Australia. It had quite a significant mix of sponsors. The


exhibitions were interesting and meaningful to the children, and every school group received a tree as a gift from the Electricity Commission after its tour. In all, 31,000 seedlings were given away. More than 90,000 people visited the green train, the great majority of them being school students. There was an average daily attendance of 1,100 people. It was hugely successful. The tour covered an area from Albury in the south to Murwillumbah in the north, with inland stops as far as away as Griffith, Dubbo and

Moree, as well as extensive metropolitan exposure. Given the tremendous popularity of the green train, the highly supportive feedback we have had from teachers, parents and students and the willingness of sponsors to support the project again, I am very pleased to advise the Hon. R. T. M. Bull and colleagues that I have approved a further green train project for the benefit of environmental education in this State. As details are arranged in this regard, I will advise the House further.

## WATER BOARD ENVIRONMENT LEVY

**The Hon. JAN BURNSWOODS:** My question without notice is directed to the Minister for Planning and Minister for Housing. How does the Sydney Water Board propose to fund the clean waterways program, which is not yet fully funded? Did the Minister's predecessor say in November last year that the Government would obviously have to consider extending the lifetime of the $80 environment levy? Why has the Water Board based its business planning on the extension of the levy? Why did the Premier refuse to rule out the extension of the levy in the other place yesterday?

**The Hon. R. J. WEBSTER:** The Premier in fact made it very clear in the Legislative Assembly yesterday that the extension of the special environment levy was not part of the Government's submission to the Independent Pricing Tribunal. It was also made very clear that any decision to extend the special environment levy for a further period would be made by that tribunal. I want to make that very clear for the honourable member. We did our best to make it clear for the benefit of one reporter from the *Sydney Morning Herald* yesterday who seemed to be unable or unwilling to understand that the Government has not included in its submission to the Independent Pricing Tribunal a proposal to extend the period of the levy. As the honourable member would know, because she would have studied the legislation closely when it came through the House, the Independent Pricing Tribunal is responsible for regulating prices in our various monopolies, such as water, electricity and transport. I again emphasise to the honourable member, as well as for the benefit of other people including reporters from the *Sydney Morning Herald*, that the extension of the special environment levy was not part of the Government's submission to the Independent Pricing Tribunal.

**The Hon. Jan Burnswoods:** How will the Water Board fund its program?

**The Hon. R. J. WEBSTER:** The Water Board will fund most of its extensive capital works program from its revenue; it will also fund it from the special environment levy while it is in existence. I assure the honourable member that the clean waterways program is not in jeopardy.

## BUNCHY TOP WEED

**The Hon. J. R. JOHNSON:** I direct my question without notice to the Deputy Leader of the Government, representing the Minister for Agriculture and Rural Affairs. What program does the Government have in place for the eradication of bunchy top, which can have disastrous consequences, as the Minister knows, on one of our most important rural industries.

**The PRESIDENT:** Order! The honourable member has not finished his question. I cannot hear him.



**The Hon. J. R. JOHNSON:** Does the House have an assurance from the

Minister that everything possible is being done to undertake to completely eradicate bunchy top?

**The Hon. R. J. WEBSTER:** First it was red water fever, then it was Wren wheat, and now it is bunchy top. I congratulate the honourable member on his agricultural research and coming up with these amazing examples. Naturally I will closely research the question raised by the honourable member.

**The Hon. J. P. HANNAFORD**: In view of the hour I suggest that any further questions by honourable members be put on the notice paper.

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## SPECIAL ADJOURNMENT

**Motion by the Hon. J. P. Hannaford agreed to:**

That this House at its rising today do adjourn until Tuesday, 24th November, 1992, at 2.30 p.m.

[*The President left the chair at 1.4 p.m. The House resumed at 2.30 p.m.*]

## MEDICALLY ACQUIRED AIDS VICTIMS COMPENSATION BILL

### Second Reading

**Debate resumed from an earlier hour.**

**The Hon. ELAINE NILE** [2.30]: In December 1990, after 87 hearing days, the plaintiff received a damages award of $870,000 based on the evidence. That award was constituted by general damages of $550,000 for pain, suffering, loss of enjoyment of life, fear and anxiety; $200,000 for future loss of income; $100,000 for future medical expenses to obtain hospital and nursing care at an appropriate level; and $20,000 for interest on past loss and damage. Costs in the case of "PQ" were estimated by the hospital, which was ordered to pay the costs of all parties, to be in the vicinity of $10 million to $15 million. It is unlikely that any future case would involve significant savings in costs below those incurred in the case of "PQ", as every case would involve the same arguments and require the same evidence to be called. I would like to put to honourable members the response to arguments put by the New South Wales Government to justify its refusal to pay compensation of $300,000 for an innocent AIDS victim.

The Government's No. 1 response was: the Government has a responsibility to all persons afflicted by serious disease. Our response was: this responsibility is not denied. For instance, the haemophilia sufferers among the victims have never sought special favours, damages, or assistance for haemophilia. However, they have contracted a disease that will kill them all within a few years. The disease was not caused by any conduct or activity on their part, but the failure of the institutions on which they relied for their health to protect them from contracting the disease. It is that failure and its consequences that make these cases of serious illness unique. The fact that they have made claims for damages that have - on the basis of the recent Victorian experiences and the facts relating to the failure to protect the blood supply - a good chance of success, also renders them unique and require special attention. Other persons with serious diseases have not sued for damages in this way.

Additionally, if the argument is that the health budget will be strained to pay the compensation thereby disadvantaging other persons with serious illness, that argument has no substance because, even were the Government to win the litigation, the costs of litigating would exceed the cost of paying compensation. Therefore, the money will have to be found from some source to pay lawyers rather than the victims, and if the funds are to be taken from the health budget, the Government will still have the problem. The Government's second response was: the Government does not wish to create a precedent for people to sue for diseases contracted by the negligence of such institutions as the Red Cross and State hospitals. The AIDS victims response was: the victims are happy to settle the cases on a non-admission of liability basis. They have reduced and compromised their figure to take account of whatever risk exists of losing the litigation, so it cannot be argued that, by payment, there is a de facto admission of liability. It creates no legal precedent that can be used by other persons who contract illness through the fault of these institutions. However, were the cases to go to court and succeed, such precedent will be created and undoubtedly, in light of the "PQ" damages, large damages figures will be awarded.

It should also be said that no institution in this country, no matter how much good it does, is above the law, and rightly so. If these institutions, like any other institution or person in the community, fail to achieve reasonable standards of behaviour, and people suffer as a consequence, they should compensate those people injured by their negligent activities. In most cases, insurance companies will pay the damages. Here the Government has assumed the role of insurer, but that should not affect the decision to settle the cases if otherwise justified. The Government's response to No. 3 was: only two or three of the cases will succeed; the rest of the cases will lose and get nothing; therefore, the Government's offer is reasonable. The victims' response was: the Government has made it a condition of its offer, or any settlement, that all persons in the group must accept the offer, or no case will be settled. Effectively, therefore, the Government is asking those persons with very strong potential for success in litigation, and therefore large damages claims, to forgo that right for the benefit of the others in the group. That is a principle which can only be acceptable if the amount offered for each claimant is sufficiently high to be acceptable to those claimants. The Government's offer does not do that, but the claimants' position does.

The Government's fourth response was: the Government wrongly believes the claimants are scared to go to court. The claimants response was: the claimants will issue writs, and are in the last stages of preparation before seeking to list actions for trial. They are seeking answers to specific questions from the Red Cross, CSL, and State hospitals to be answered on oath, and are seeking access to all documentation held by those parties. When that process is complete, an application will be made to list the first cases for trial. The applicants are not scared to go to court, and are confident of success in most cases. Clearly, those cases considered the strongest by the applicants' solicitors will proceed first. The Government's response to no. 5 was: the New South Wales Government believes that the $50,000 provided by the Government is reasonable and the claimants are simply being greedy. The response to that was: the claimants have several years of fear and pain filled life in front of them. A large number of them have young families to support during those years and after they are gone. They will have large medical and nursing bills to contend with to achieve a level of care commensurate with the horrendous nature of disease associated with the breakdown of the body's immune system. Many of them, for fear of ostracism by friends and family, have told only their immediate family of their plight. They have had to suffer in fear and in silence. They are not seeking to become rich, but merely to be able to care properly for themselves and their families.

What the claimants are seeking is negligible in comparison with the award made to "PQ", and there is no doubt that many, if they pursued court action, would receive similar awards of damages. However, they would rather settle and avoid that trauma, and for that they are willing to pay a substantial price and reduce their claim to its present level of $300,000. It is an average figure and less than the sum which the Red Cross paid to the 10-year-old girl in the case of "BC". By any criterion, it is not an unreasonable amount. The Government's current payment of a maximum of $50,000 simply does not provide what these people and their families will need. I urge full support for this just bill.

**Debate adjourned on motion by Reverend the Hon. F. J. Nile until Thursday, 26th November, 1992.**

## PUBLIC HOSPITALS (CONSCIENTIOUS OBJECTION) BILL

**Bill introduced and read a first time.**

### Second Reading

**Reverend the Hon. F. J. NILE** [2.40]: Pursuant to sessional order, I move:

> That this bill be now read a second time.

I am pleased to have the opportunity to introduce the Public Hospitals (Conscientious Objection) Bill. The object of the bill is to allow a medical practitioner or nurse to decline to provide or take part in the provision of medical or nursing services at a public hospital if he or she has a conscientious objection on the grounds of moral or religious belief. This will not apply to emergency treatment or care. The bill defines the term "public hospitals", and in clause 4 provides that a medical practitioner or nurse who has a conscientious objection to the provision of a particular service has no duty to provide or take part in providing the service at a public hospital. However, the clause does not apply to emergency treatment and care. Clause 5 requires a medical practitioner or nurse who claims to have a conscientious objection to register that objection with each public hospital at which he or she might be called upon to provide the service involved. Registration is evidence that the person has a conscientious objection, but failure to register is not of itself evidence that the person does not have a conscientious objection.

Clause 5 is important in that it provides a forewarning, as it were, to administrators of the public hospital as to the concerns of the medical practitioner or nurse. As I have said, a Muslim nurse may have a particular objection based on his or her religious belief, and that could be taken on board through registration at the point of employment. When this bill becomes law, all staff of public hospitals will be advised that if they wish to register a conscientious objection, they will have the opportunity to do so. Once a hospital is aware of objection on the basis of moral or religious grounds potential problems would be reduced or even eliminated. In addition to the approach taken by the Government and the Opposition to anti-discrimination legislation, this bill will seek to reduce any element of discrimination on the basis of race or religion, thus affording further protection for the people concerned.

During question time reference was made to the introduction of this bill and to the correspondence associated with it. For the information of members who wish to

follow up this matter, I advise that the only correspondence that exists was read into *Hansard* by me on 29th October, 1991, and the reference is at pages 3459 and 3460. It

is on the record; there is no secret about it. The correspondence comprises a letter from the industrial relations Minister at that time, the present Premier, Mr Fahey, who indicated to me following an amendment moved by the Hon. J. R. Johnson which overlapped two other bills of which I had already given notice - the Nurses (Conscientious Objection) Bill and the Medical Practitioners (Conscientious Objection) Bill - that the matters of concern in those two bills would be better covered in a new bill, and that is how the matter has been resolved. It is simpler to have one bill - the Public Hospitals (Conscientious Objection) Bill. For that reason there was no need for any amendment to be made to the industrial relations legislation. As I stated on that occasion, the Call to Australia group was in full support of the industrial legislation. There were no strings attached to our support for the legislation. No deals were done. There were no trade-offs. In fact many people suggested that I should have taken advantage of the situation and made deals. I received advice from positions as high as Bishop that I should take the opportunity to force the Government to support something that I wanted done. But I said that I did not believe it was Christian to use what I would regard as blackmail -

[*Interruption*]

The tactic is not Christian. I could have used blackmail in the past, I could use it now, and I could use it in the future. It would be the easiest thing in the world to take that approach, but it is not an approach of integrity. Not only do I support Christian principles; I also believe that the Parliament must also respect those principles. I acknowledge that political deals are made between parties. They do not have to operate under the same principles that I have set for the Call to Australia group.

**The Hon. J. R. Johnson:** I certainly do.

**The Hon. J. F. Ryan:** And I certainly do.

**Reverend the Hon. F. J. NILE:** Political parties make deals with each other in regard to specific issues and they make certain agreements. That is par for the course in the political arena. I am not talking about individual members; but certainly parties do that. I believe it is something Call to Australia should not do, and we have not done it.

**The Hon. B. H. Vaughan:** So you do not do it.

**Reverend the Hon. F. J. NILE:** So we do not do it. In other words, if the Labor Party were elected to office and the Call to Australia group had the balance of power, we would not try to blackmail that government either. It is a principle that I would espouse with governments of all political persuasions.

**The Hon. J. F. Ryan:** Deals, covenants and testaments are all part and parcel of the Bible. There is nothing unchristian about making deals.

**Reverend the Hon. F. J. NILE:** I am discussing the element of blackmail - that you will not do something unless they do something.

**The Hon. J. F. Ryan:** Blackmail is not par for the course for political parties.

**Reverend the Hon. F. J. NILE:** I suggest that there would be records of that

sort of activity having occurred in parliaments in the past - though I am not suggesting that it has happened in this House. As I have just said, the letter from the then Minister

for Industrial Relations is in the *Hansard*. The Minister gave an assurance that he would give consideration to the matter, whether it would be the same two bills or a separate piece of legislation. The Call to Australia group has produced the Public Hospitals (Conscientious Objection) Bill, which is now before this House. We look forward to the support of the Government and the Opposition. This is a non-controversial bill which deals with certain principles. It can therefore be supported by both sides of the Parliament in a non-partisan way. Criticism has been made of the current Premier and Treasurer on the front page of the "Right to Life Journal". If the Government allows this bill to proceed, it will honour the commitment the Premier gave.

Call to Australia thanks the Government for its co-operation. As I have said, I am looking forward to the support and co-operation of the Australian Labor Party and the Australian Democrats in our attempt to strengthen the human rights and civil rights of medical staff in hospitals. There is no reference in the bill to any particular medical activity or religion or to any particular moral aspect; it simply refers to moral or religious belief. As I have said, that encompasses the concerns of Christians, Muslims, Buddhists and Hindus. All of those religious beliefs are represented in our society, including in the public hospital system in this State - for example, doctors have come from Pakistan and other places to work here. I am confident that this non-controversial legislation will rapidly pass through this House with the support of all honourable members. I hope the same co-operation will occur in the other place - although none of us know what may happen there. However, I hope the bill will receive a congenial response and gain the support of the other place, with the result that it will rapidly pass through that House as well.

We are dealing with the question of freedom of conscience and religious belief. Those concepts are not restricted to any particular religion - and they are not restricted to people with a religious belief: the bill used the term "moral or religious belief". A person who professes not to have a religious belief but who has a strong moral concern on the basis of his or her conscience may wish to register under the provisions of this legislation. For example, the International Covenant on Civil and Political Rights, to which Australia is a signatory, recognises two fundamental human rights - the right to freedom of thought and conscience - article 18 - and the right to have or adopt a religion or belief without coercion. I refer to the Australian Bill of Rights Bill 1985, originally introduced by the Hawke Labor Government, which was eventually withdrawn. Article 8 of that bill referred to freedom of thought and conscience. It stated:

> Every person has the right to freedom of thought and conscience, including the right to hold opinions without interference.

This bill simply puts article 8 of the original Australian Bill of Rights Bill into legislation. Some people have said - I think the Hon. Dr B. P. V. Pezzutti was one - that that was not necessary; it could be incorporated in a code of ethics or in regulations. I believe it is such an important principle that it is important that it be incorporated in a separate piece of legislation, even though it may be minor in the sense that it is a simple piece of legislation. It covers a very important principle - perhaps one of the most important principles which affect our lives. Article 9 of the Australian Bill of Rights Bill referred to the freedom to have or adopt a religion or belief. It stated:

> Every person has the right to have or adopt a religion or belief of that person's choice without coercion of any kind, and to manifest that religion or belief in worship, observance,

practice and teaching, whether individually or in community with others and whether in public or in private.


That same principle is embodied in this legislation. Article 19, which is also relevant in part to this debate, referred to slavery and servitude. It stated:

> No person shall be held in slavery or servitude or be required to perform forced or compulsory labour.

The amendment moved to the original legislation by the Hon. J. R. Johnson, which raised the question of religious and moral conviction and their conscientious observance, put stress on the question of a person being dismissed because he or she held religious or moral beliefs that were in conflict with the employer - or, in this case, with the hospital authorities. To force a person to take part in a medical or surgical procedure which offends their conscientious or religious beliefs breeches the spirit of everyone's right not to be subjected to a form of slavery or servitude. Conscientious objection is not a new concept; it has been recognised in legislation enacted by this Parliament, other State parliaments, the Federal Parliament and parliaments of other countries. Under section 129B(2) of the Industrial Arbitration Act 1940 a worker was entitled to be exempted from joining a union if he satisfied the Industrial Commission he had a conscientious objection to joining a union. Section 267 of the Commonwealth Industrial Relations Act, formerly section 144A of the Conciliation and Arbitration Act 1904, allows conscientious objection whether the grounds for belief are religious or not, but limits the objection to membership of any association registered under the Act. The Full Court of the Federal Court of Australia held in *Re: Application of Jaques Aper Under S 144A (1978)*, 35 Federal Law Reports at page 388 that:

> The conscientious belief . . . must be such that it does not allow (a person) to be a member of . . . an . . . employee association . . . not because of the mere existence of a liking or disliking of a union, but only if there is a genuine conscientious belief which prevents him joining an industrial organisation.

A broader approach has been taken by equal opportunity boards, allowing objections to be taken to joining a particular union. In *Hein* v. *Jaques Ltd*, 1987, Mr Hein refused to join a union because it was affiliated to a political party. By informal arrangement between the union and the employer, Mr Hein was dismissed. The employer sought to justify this dismissal before the Equal Opportunity Board of Victoria by arguing that the reason for the dismissal was the likelihood of industrial action. The board held that in effect the dismissal barred Mr Hein from engaging in political activities. It found that the dismissal was "by reason of Mr Hein's engaging in or refusing to engage in political activities". Thus, it drew a distinction between the attitude involved in simple membership of a union and general trade union activity and the attitude involved in acceptance or rejection of the political activities of trade unions. The board held that Mr Hein had been discriminated against on the ground of his private life.

Because of the controversy that occurred during the Vietnam war honourable members will be aware of the debate at that time about the then National Service Act 1951. Section 29 of the Act permitted a person who registered for national service who claimed a conscientious belief to apply for exemption from all duties under the Act or from combatant duties. Records of the existence of conscientious objection to compulsory military service date back to the times of the early Christian church. Members of a number of churches, including Quakers, Jehovah's Witnesses and

Christadelphians, by their refusal to answer the draft, have helped to entrench recognition of a right to conscientious objection to military service. Australia is one of a large group of countries which offer various exemptions from military service to persons holding particular classes of beliefs. Other countries which allow exemptions for conscientious objection include the United States, Germany, Holland, France, Belgium, New Zealand and, at various times, Great Britain.



Section 29A(5) of the National Service Act provided that a "conscientious belief is a conscientious belief whether the ground of the belief is or is not of a religious character and whether the belief is or is not part of the doctrines of a religion". Mr Norman Raeburn stated in an article entitled "Conscientious Objection and the Particular War" in 43 *Australian Law Journal* that the effect of this is to recognise that there need not be a necessary connection between a conscientious belief and a religion - that it is proper for a belief grounded on broad humanitarianism or on moral principles not derived from religion to lead to an exemption. That is one reason the bill I have introduced refers to grounds of moral or religious belief - not moral and religious belief. That obviously would include people who are non-religious. Such a person may be an atheist but have moral convictions in certain areas. Some atheists I have met have very strong moral beliefs in certain areas which are not based on any religious principle.

A significant proportion of applications under the National Service Act relied on this provision, indicating not that conscientious objectors are basically non-religious but the difficulties involved when a member of one of the larger churches seeks to establish a belief which is not generally held within his church. During the debate on the original legislation the question was raised in the House as to whether the Anti-Discrimination Act was sufficient to protect health professionals from being discriminated against because of their beliefs. Some members were under the impression that the Anti-Discrimination Act provided that protection, but it does not. Similar Acts in other States may do so but certainly not the legislation in this State. Only Victoria and Western Australia have provisions in their equal opportunity legislation that make it unlawful to discriminate on the ground of political and religious conviction. More precisely, in Victoria the prohibited ground of discrimination relates to the private life of the person. Private life is defined as meaning the holding or not holding of any lawful religious or political belief or engaging or refusing to engage in lawful religious or political activities.

In Western Australia the prohibited ground is religious or political conviction. In both cases, the definition of discrimination is similar to that for race and sex discrimination. This means that it is unlawful to discriminate directly, including on the basis of the characteristics pertaining or generally imputed to persons of the religious or political conviction of the aggrieved person. It is also unlawful to discriminate indirectly by requiring compliance with conditions with which fewer persons of a particular conviction can comply than those not having those convictions. Proposals for introducing a provision of the kind in New South Wales have been under consideration for over a decade. However, those involved in issues concerning the Anti-Discrimination Board and the Anti-Discrimination Act know that the Act does not cover political or religious convictions. Therefore, the Act does not provide the protection that some honourable members thought it did for members of the health profession.

Other nations have laws similar to those of Western Australia and Victoria. For example, in New Zealand it is unlawful for any employer to deny any employee or

prospective employee any employment, accommodation, goods, service, right, title, privilege or benefit merely because that employee or prospective employee objects on the grounds of conscience to do any act referred to in the relevant provision of the New Zealand legislation. It is also unlawful to make provision or grant to any employee or prospective employee of any employment, accommodation, goods, service, right, title, privilege or benefit conditional upon that other person doing or agreeing to do anything referred to in that subsection. The New Zealand law also provides that every person who suffers any loss by reason of any act or omission rendered unlawful by terms of the provision to which I have just referred shall be entitled to recover damages from the person responsible for the act or omission.



The bill under discussion is a fair and just bill. It protects a person with a conscientious objection to any medical procedure. One procedure attracting attention in the medical profession is in vitro fertilisation and experimentation on human embryos. A report issued by the Law Reform Commission in 1988 contained a powerful dissent by the Solicitor General, Mr Keith Mason, Q.C., and Ms Eva Learner in which experimentation on human embryos is opposed. Even though governments of other States, in particular Labor governments, have passed legislation to provide some degree of control over that experimentation on human embryos we do not have such a law in this State. It is quite possible for a person with certain beliefs to be asked to be involved in experimentation on human embryos when that person, because of either moral or religious beliefs, would feel he or she could not be involved in such medical experiments. Labor governments in both Victoria and South Australia passed legislation to limit such experimentation, but that is not the case in this State. That could result in some pressure being applied to health professionals. I use that as an example to show that this bill is not related to any particular medical procedure. Certainly it can apply to those procedures we know of, those that are in the process of being developed, and perhaps new procedures that could be devised.

Another area where a person may, on the basis of his or her moral or religious beliefs, feel compromised is in the treatment of the severely handicapped, particularly severely handicapped babies, in hospital. There has been some controversy in that area. Some hospitals in Australia have decided not to carry out on handicapped babies operations which would have been routinely carried out on a so-called normal baby. A health professional - a doctor or a nurse - may have a conscientious objection to being involved in an activity that might lead to the acceleration of the death of such a handicapped child. Another area of concern is the acceleration of death of the aged and infirm. I know that most compassionate people would not agree with that possibility, but it must be considered. The question has been raised in Great Britain whether, when a person reaches a sufficient age, that person should receive the same quality of care as younger people. One person visiting Australia from the United Kingdom and in hospital said that he did not know what the code on the end of his bed meant. The code meant that the person was not to be resuscitated. If that person had a heart attack or some other problem, the code informed the staff that the person was not to be resuscitated. It had been decided that that person was old enough to be allowed to depart this world. This would appear to be allowing nature to take its course. But if the procedure had been carried out on the person he or she may have recovered and lived for a number of years. Doctors or nurses could be put in the embarrassing position of feeling, rightly so, that they should do all they can to care for the aged and infirm and not be involved in the practice of not resuscitating the person.

We need to recognise the need for doctors and nurses - all persons involved in

health care - to have high moral and religious beliefs. It would be an advantage to our society to encourage the involvement of people with such a strong conscience, whether that person be a doctor or a nurse. The hippocratic oath was designed to put the care of the humans, males and females, at a very high level. This attracted - and I trust still does attract - people of high moral principles. We should do all we can to encourage those people to serve the community through the hospital system, both as doctors and nurses, and not to feel that at some point they might have to compromise their religious or moral beliefs. The bill would remove any fear of that. It gives individuals the right of conscientious objection on the grounds of moral or religious belief, irrespective of that person's religious background - or whether that person has a religious background.
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People may simply have moral principles affecting their attitude, and they should not be forced to compromise their principles. I am very pleased to introduce this bill and look forward to the wholehearted support of all members on a non-partisan basis.

**Debate adjourned on motion by the Hon. Elaine Nile until Thursday, 26th November, 1992.**

## BANKS AND BANK HOLIDAYS (AMENDMENT) BILL

**Bill received and read a first time.**

## BUSINESS OF THE HOUSE

### General Business Notice of Motion No. 6: Suspension of Standing and Sessional Orders

**The Hon. M. R. EGAN** (Leader of the Opposition) [3.15]: Pursuant to contingent notice, I move:

> That so much of the standing and sessional orders be suspended as would preclude a motion being moved forthwith that General Business Order of the Day No. 6 for today relating to the Anti-Discrimination (Amendment) Bill be called on forthwith.

**Question put.**

**The House divided.**

**Ayes, 13**

Mrs Arena
Mr Dyer
Mr Egan
Mr Enderbury
Mrs Isaksen

Mr Johnson
Mr Kaldis
Mrs Kite
Mr Macdonald
Mr Vaughan

Mrs Walker

*Tellers*,
Mr Obeid
Mr O'Grady

**Noes, 17**

Mr Bull
Mrs Chadwick
Mr Coleman
Mrs Evans
Mrs Forsythe
Miss Gardiner

Mr Gay
Mr Jobling
Miss Kirkby
Mrs Nile
Revd F. J. Nile
Mr Ryan

Mr Samios
Mr Rowland Smith
Mr Webster
*Tellers,*
Mr Mutch
Mrs Sham-Ho

**Pairs**

Dr Burgmann
Ms Burnswoods
Mr Manson
Mr Shaw
Mrs Symonds

Dr Goldsmith
Mr Hannaford
Mr Moppett
Dr Pezzutti
Mr Pickering

**Question so resolved in the negative.**

**Suspension of standing and sessional orders negatived.**

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## ENERGY SAVING INITIATIVES

**The Hon. R. T. M. BULL** [3.20]: I move:

That this House affirms its support for the Government's energy saving initiatives which will help reduce the greenhouse effect and cut costs for the people of New South Wales both as consumers and as taxpayers.

I initiated this debate because I believe that all members should be concerned about this matter. I know that the Hon. R. S. L. Jones is very concerned about the greenhouse effect, as are many other thinking members of this place. The Government has been instrumental in taking a number of initiatives which will assist in reducing the greenhouse effect. I refer to energy production and energy savings. As most people would be aware, most electrical energy in New South Wales is generated by coal fired power stations, and the emissions from those power stations impact upon the atmosphere and subsequently, as we are told, upon the greenhouse effect. The Government is committed to the encouragement and promotion of energy efficiency in all sectors of the community as an economically effective strategy to reduce greenhouse gas emissions. A wide range of programs aimed at improving the efficiency of energy use in New South Wales has been developed and is being implemented to achieve significant economic and community benefits.

The basic objectives of the Government's energy efficiency program are: to identify and encourage the adoption of more energy-efficient, cost-effective technologies and management practices; to achieve savings in energy costs for the consumer, both directly through reduced energy use and indirectly through reduced or deferred calls on public funds for energy supply and distribution infrastructure; and to ensure the effective management of environmental impacts resulting from energy production and use. The proposals being developed are the result of a report on energy conservation and management policies and programs in New South Wales completed in late 1990 by the Government's minerals and energy committee. The study identified areas where the Government could provide assistance to promote energy efficiency or to demonstrate efficiency measures. The areas which have been targeted include information services in the New South Wales government sector, household energy, non residential buildings, industrial energy, and research and development.

A large range of information services is being provided to promote energy efficiency in New South Wales. The energy information centre at the Earth Exchange in The Rocks provides information to the public about energy conservation. Pacific Power's electricity technology advisory centre at Silverwater provides services to the New South Wales rural, commercial and industrial sectors. Further centres will soon be established in Newcastle and Wollongong. A wide range of publications is available from the Office of Energy, such as the magazine "Energy Focus", which is targeted at industry and commerce and has a circulation of approximately 13,000. The Minister for Planning and Minister for Housing recently announced two new important publications of which the Government is very proud. They are "Energy Guidelines for Local Planning," produced jointly with the Department of Planning, to assist councils and developers to optimise the energy efficiency of new estates and other developments; and "Energy Efficient Housing for New South Wales", a book commissioned from the University of New South Wales solar architecture research unit to provide detailed information to home buyers, renovators, builders and architects on all aspects of housing design for energy efficiency.



For the past two years the Government has sponsored a major exhibition at Darling Harbour, most recently Energy 92 which has energy efficiency as its central theme. Energy 92 attracted some 80,000 visitors. It is important that the Government provide a lead by ensuring efficient use of energy in its departments and authorities and by its efforts to contain energy expenditure and reduce the cost of government services. The New South Wales Government sector uses about $400 million of energy annually.

The initiatives which have been announced include: the development of a State energy efficiency drive program to include monitoring of energy trends, and an investment pool to fund improvements is to be developed; new energy efficiency guidelines for New South Wales government commercial buildings to be developed by the Public Works Department; and a cost-benefit study of energy efficient lighting in government offices. Pacific Power, following review of its Electricity House headquarters, has reduced its light fittings as part of a refurbishment program, resulting in a capital outlay saving of $700,000 and an estimated annual saving of $92,000 from reduced power costs. Energy efficiency criteria will be developed for government fleet management, and guidelines will ensure that government departments purchase energy efficient appliances and equipment where applicable. These programs will be undertaken in co-operation with other groups, including the utilities, other State Governments and the Commonwealth, to ensure that appropriate and effective outcomes are achieved.

Residential use of energy accounts for 11 per cent of New South Wales energy consumption overall and 34 per cent of electricity use. The areas targeted as having significant potential to achieve energy savings are appliance labelling and energy efficient housing design. Domestic appliances are major consumers of energy. Some equivalent appliances have an energy consumption difference of two to one. Life cycle energy cost savings of more than $500 can be achieved. Refrigerators, freezers, air conditioners and dishwashers are already labelled in New South Wales to encourage manufacturers to produce more efficient appliances. The Australian Gas Association also administers an energy labelling scheme for gas water heaters and gas space heaters. The Government has already announced that electrical appliance labelling will be extended to clothes dryers and washing machines and coverage of other major electrical appliances such as electric water heaters will be investigated. The development of a consistent and co-ordinated national electrical appliance labelling program is being undertaken with other States and the Commonwealth through the Australian and New Zealand Minerals and Energy Council. As part of the latter arrangements, an examination is being undertaken of the introduction of a minimum electrical appliance energy efficiency standard to complement labelling.

With respect to energy efficient housing, I have already mentioned the book produced to provide detailed information to New South Wales home builders and renovators on energy efficient housing design and energy use in the home. Issues which effect energy use include: solar orientation of the building, design features such as eaves and shading, glass utilisation, use of insulation in walls and ceilings, and the mix of building materials. The book is one element of a package of initiatives which includes the development of an energy rating scheme to improve the level of information available to home purchasers, and the existing five star design rating scheme award certificates for houses which meet strict five star criteria. The new scheme will provide comparative information to new home buyers on the energy performance of any house design and will complement the five star award; and a cost benefit study of mandatory insulation requirements for new homes in New South Wales. Home insulation has the potential to reduce energy losses and gains in winter and summer by up to 50 per cent. The government-industry working party has been established to oversight the study and recommend appropriate courses of action. Guidelines for retrofitting existing houses with



insulation will also be developed. To demonstrate the advantages of energy efficient housing design, the program is being implemented through five electricity distribution authorities to conduct energy efficient display homes in various climatic regions of the State. Funds of up to $100,000 will be made available to construct each house.

The non-residential building sector accounts for about 6 per cent of energy use in New South Wales and for about 17 per cent of electricity demand. It covers energy use by a significant part of the economy from retail shops, finance and public administration through to community services and hotels. Energy use is associated substantially with building services such as heating and cooling systems, fans, lighting, lifts and hot water. I have already mentioned a number of initiatives being undertaken in the New South Wales government sector relating to energy efficiency guidelines for commercial buildings and lighting. I add that Pacific Power and Sydney Electricity are also investigating a range of energy efficiency and demand site management opportunities in the city and inner suburbs load area, which includes the central business district. Pilot programs have been designed for implementation this year. Work is also proceeding through the Australian and New Zealand Minerals and Energy Council towards the development of consistent Australian national energy efficiency codes for commercial buildings.

In 1990-91 funding was provided to the Warren Centre for Advanced Engineering at the University of Sydney for the advanced energy management in process industries project, which identified potential energy savings through the application of modern energy management techniques and new technologies. These reports have been widely disseminated. The Government has announced that further studies will be undertaken to examine ways to improve the availability and adoption of energy efficiency technologies for industry and commerce. Opportunities for use of cost-effective solar and other forms of renewable energy sources in industry, commerce and the public sector will be surveyed. It is vitally important that industry and commerce have access to new energy efficiency technologies and practices. New South Wales is participating in a national program to disseminate information on applications of new technologies from the Organisation for Economic Co-operation and Development International Energy Agency CADDET program. The New South Wales team with utility, commercial and industry representation has been established to ensure the effectiveness of the scheme.

Pacific Power and electricity distribution authorities are also undertaking a significant industrial program. The customer energy needs assessment project, or CENA is studying the energy use characteristics of 100 major industrial establishments and identifying energy saving opportunities. The co-generation program is under way involving a call for expressions of interest for customers interested in installing co-generation plant. Co-generation involves utilisation of waste heat as well as electricity production and can achieve thermal efficiencies of as much as 80 per cent, compared with 35 per cent for a conventional coal fired power station. The Government has approved the issue by the Electricity Council of revised pricing guidelines for private generation buyback, which includes favourable time of day energy rates in line with the 132 kV bulk supply tariff and an incentive premium of as much as 15 per cent for projects of particular environmental and or community benefit. Generation stand-by charges have been removed.

Energy efficiency research and development is also an important element of the Government's program. Currently research and development projects amounting to $700,000 are being funded from the State Energy Research and Development Fund, including development of a more efficient electric motor at the University of Wollongong, investigation of the potential for gas fired co-generation in New South Wales by



Energetics Pty Limited, investigation of efficient natural gas burners at the University of New South Wales by the Commonwealth Scientific and Industrial Research Organisation, and novel sunlighting systems for commercial and domestic use at the University of

Technology. Pacific Power is also funding an energy efficient research company established at the University of Wollongong. The centre will foster the development of a range of emerging new technologies. The program I have outlined is a comprehensive and appropriate response to this important issue. I emphasise that it will evolve further, and additional priorities will be identified. In particular they will emerge from the process currently under way to develop national ecologically sustainable development and greenhouse strategies.

Although the Government has done much to develop a number of electricity saving initiatives, there is the wider debate on the greenhouse effect and the economic viability of sustainable development in our country. In relation to all of these initiatives we have to consider: what price the future for sustainable development? Australia has reached a critical moment in determining its environmental and economic future. Our economy is sagging under the weight of investor uncertainty and pessimism. Development is not proceeding as it should, and an obvious economic and social penalty for the whole community results from that. At the same time Australia is facing the challenge of ensuring environmental protection both at home and globally. There is an urgency in community consciousness which has dramatically lifted environmental protection as a national priority. It seems that too often the two demands for development and environmental protection are irreconcilable.

In political terms, all parties and political groups in Australia claim a commitment to comprehensive environmental protection and conservation policies. Equally, all political parties are committed to reducing unemployment, abolishing poverty, and achieving worldwide arms reduction in nuclear non-proliferation. Our differences, and some would say our failures, lie in defining and agreeing how best to achieve these worthy ambitions. This failure is a failure of community consensus - "community" including politicians from all political parties. Despite the lip service paid to concepts of ecologically sustainable development, it seems that few can agree upon its meaning, especially when it comes to putting theory into practice. What is sustainable for one is frequently unsustainable for another. Thus, when it comes to determining particular development proposals, we are still bogged down in an either or conflict.

However, I suppose we would like to take as a starting point the fact that neither the environment nor development will go away; one will not win out over the other. It seems plain that we have no choice but to make the proponents of environmental issues and development talk to each other, to function together with sufficient success to allow development to proceed in an environmentally acceptable way. Our first objective as a community is to clearly define the real community benefit that is both possible and responsible. We need to cut a swathe through the exaggerated claims of extremists on both sides of the debate. We must decide what we can realistically achieve as long-term and short-term benefits for the community, both in terms of our natural heritage and our economic future.

We must find a unity of purpose in common and parallel objectives. We must resist the trend towards narrow and insular environmental protectionism. Equally, we must resist the short-sighted opportunism that has created so much community antagonism in the past. Development is not a sacrosanct right for any individual, industry or government to pursue, but it is necessary and can responsibly contribute to the economic and social well-being of the community. It is certainly not a case of all or nothing. I



should like to refer briefly to the Toronto conference, of which many honourable members will be aware. In 1988 the Toronto conference on the changing atmosphere set

a target that by the year 2005 global greenhouse emissions would be 20 per cent below their 1988 levels. The estimated cost to Australia is $6 billion a year, involving, on a rough estimate, the loss of 50,000 to 70,000 jobs as well as a real wage cut of several per cent. Notwithstanding the high cost to Australia, the impact of Australian reductions in carbon dioxide emissions would have no significant or even measurable impact on global carbon dioxide emissions. Australia's emissions account for only 1.4 per cent of the world's total. The United States of America, the Commonwealth of Independent States and China account for more than half the world's emissions. The potential for increased emissions from the CIS and China particularly is enormous.

It may well be that Australia's expenditure on $C0_2$ reduction might be better spent on developing higher efficiency technologies for other countries, rather than reducing our own emissions across the board; for example, assisting China - where there are now tens of millions of homes burning coal as their only fuel source - to build coal-fired power stations to supply electricity to the people. That would strike a greater blow against an increase in greenhouse gases than Australia being forced to obey international conventions which are ignored by the main offenders. A recent study by a London economics group showed that the policies to achieve the Toronto target in the next 13 years would destroy Australia's steel and aluminium industries, and cripple the steaming coal industry. Resource and resource-related industries, in which we currently have a competitive advantage, are identified as those most likely to be penalised by international moves to reduce emissions. The consequences of that for employment and for economic growth generally are dire. As Peter Colley from the United Mineworkers Federation of Australia has said:

> Australia should be careful not to act to penalise its economy unilaterally in ways that would not necessarily help solve the global problem.

Mr Colley commented further:

> Of critical concern to Australia is the implication for the international coal trade, the energy market in which Australia is the world leader, with over 25 per cent of world trade, and which is our largest export industry with about 12 per cent of total export earnings, twice the size of our next largest export industry.

A study undertaken for the Business Council of Australia and released last week states that the effect on Australia of stabilising emissions would be much worse than for other comparable OECD countries. Australia would lose proportionately 10 times more in gross domestic product than the United States, eight times more than the European community, almost three times more than Japan, and 40 times more than a economy similar to that of Canada. The response of the green movement would be, of course, that we are in the wrong business; that our resource based economy is no longer viable; that we have to create a clean, high-tech, cottage industry based economy. However, that rather begs the question of why we have not done so already, because there are certainly no insurmountable impediments to the establishment of such industries in Australia. One can only wonder that the greens are urging other people to undertake these ventures while they cheer from the sidelines.

Those alternative industries may well make a contribution to Australia's future. I believe all honourable members would welcome such a contribution. Australia can certainly profit from more economic diversity. However, resource based industries are big export earners. Coal, for example, is the largest, supplying 12 per cent of total

export earnings. To propose the abolition of that and other export earning, wage paying, tax paying, economically vital industries is naive or foolish, or both. Australia would be committing economic suicide. Far from attempting to come to terms with the concept of sustainable development, many in the green movement are still practising a no growth policy - that is, opposing all development, whatever it is, wherever it is. I would now like to briefly refer to some initiatives which have been undertaken in the United States of America. The United States and several other major countries are the main offenders in respect of $C0_2$ emissions throughout the world. During President Bush's term in office the United States did start to do something. It is interesting to note some of those initiatives.

In 1991 President Bush released a national energy strategy. That strategy has been developed since then and involves a number of very important components. The Department of Energy is responsible for United States energy policy and administration. It is an organisation undergoing tremendous reform. The scale of operations is enormous - 160,000 staff and an annual budget of approximate $US20 billion. Although its title does not imply it, the department is also the principal nuclear weapons agency - responsible for design, development and production. Although much of the $US20 billion has been channelled into nuclear development and, of course, the arms race as it existed in the past, most of that production has been wound down and the United States Department of Energy is now focusing a great portion of that money on energy conservation and energy alternatives. It is also interesting to consider some of the possibilities that are available in the United States. Part of the national energy strategy was energy efficiency. The United States national energy strategy reflects commitment to greater efficiency across every type of energy production and use. Greater energy efficiency can reduce energy costs to consumers, enhance environmental quality, maintain and enhance the standard of living, increase free choice and energy security and promote a strong economy. One of the common features of every new technology supported in the national energy strategy is the potential to more efficiently transform energy raw materials into the energy services needed. That is particularly true of electricity.

The United States is becoming increasingly electrified. The American Department of Energy predicts that by the year 2010, 41 per cent of primary energy will be consumed in electricity generation, up from 36 per cent today. Approximately 700,000 megawatts of electricity generating capacity is now installed in the United States and for most of this century United States electricity demand has increased at roughly the same rate as the GNP. Part of the energy strategy is to support programs to increase consumer - that is, individual and business - awareness and use of efficient energy appliances, vehicles, buildings, materials, equipment and technologies; to promote investment in energy conservation on a commercial basis; to provide management and recycling strategies to reduce energy consumption and provide opportunities for generating electricity as a by-product of other industrial processes; to support a diversity of fuel choices, including clean coal, natural gas, hydro, nuclear, geothermal and renewable alternatives; and to set a target increase of 16 per cent in renewable energy production over the next 20 years, increasing rapidly beyond that as technology becomes cost effective.

The American electricity industry is already responding to many of those policies. In some American states, regulatory reform has begun. Federal regulators are reviewing transmission access arrangements. There are new types of electricity generating plants. It is proposed that 94 electricity producing waste incinerators will add 4,000 megawatts to the system. New solar thermal, biomass, clean coal and wind

expansion is already planned, particularly in California. Existing large base load coal and

gas plants are being converted to incorporate efficient new combustion technologies. In Sterling, Connecticut, a plant opened last year which uses car tyres as its fuel. Producing 30 megawatts, the plant burns 10 million tyres per year. A new process for doing that extracts the energy equivalent of 2.5 gallons of oil per tyre, and burns them cleanly and efficiently. When one considers that the United States has approximately three billion used tyres stockpiled already, it represents a significant fuel base.

Utilities are investing in energy conservation to avoid building new plants. Bonneville Power has bought 200 megawatts of conservation so far. New England Electric spent $US70 million, or 4 per cent of revenue, in 1990 alone. Pacific Gas and Electric has an aggressive campaign to encourage efficient commercial buildings. In Southern California Edison has opened a specific technology centre to assist customers to convert to efficient manufacturing and industrial processes. I would also like to highlight a number of other initiatives which are occurring in America. Can honourable members imagine cooking two standard size hamburgers in less than 30 seconds with no smoke, no chef, and not preheating of the grill? The "Instant Burger-Direct Energy Transfer" invention does just that. The device was one of the successes of the energy related inventions program undertaken by the United States Department of Energy.

This unusual electrical device saves up to 80 per cent of energy required for cooking. It should come as no surprise that it was treated so seriously in America where more than 20 billion hamburgers are cooked annually. Meanwhile, at the Environmental Protection Agency, the 1991 grants for energy related research were being allocated. One of these was given to the University of Washington for a $70,000 greenhouse study. What would this study do? It was to measure methane emissions from cows. These animals would be monitored by backpacks, strategically placed, to measure emissions from belching and other sources. Among the many other interesting initiatives is the aim to reduce oil consumption. This will only be achieved by more efficient internal combustion engines and the introduction of non oil using vehicles, such as electric, gas turbines, ethynyl, natural gas, solar, and, ultimately, fuel cells. This initiative is most important to the electricity industry and its emerging role in the transportation market. In 1900, 40 per cent of American automobiles were battery powered. Next century a similar proportion is estimated.

California has already mandated that by 1998 two per cent of all new vehicles must have zero exhaust emissions - in other words, they must be electric cars. The proportion will increase to 10 per cent by 2003, which only a decade away. Detroit automobile manufacturers and the United States Government are putting more than US$300 million into new battery development. Japan and the United States will have commercial sales of electrical cars by 1995. America is not the only country that is developing these cars. Monaro Electricity, a New South Wales rural county council, has already developed an efficient electrical car which is on display at many of our energy initiatives around New South Wales. A number of members of the Government's advisory committee on energy have had the privilege of driving this car. It is certainly an extremely functionable automobile.

This issue has been neglected by the House for some time. It is an interesting subject and one which members should be constantly reminded of. There are serious problems in not recognising this issue and not doing something about it. This Government, through a number of initiatives, has shown the way by trying to improve emission standards in New South Wales. Whether New South Wales will ever meet the

Toronto agreement standards cannot be answered today but certainly we must all work towards efficient emission standards and also put pressure on countries such as China,

the Commonwealth of Independent States, the United States of America and many others which are prime offenders in relation to carbon dioxide emissions. I have much pleasure moving this motion and I hope that other members will seize upon the opportunity to discuss this important issue.

**The Hon. J. F. RYAN** [3.54]: I congratulate the Hon. R. T. M. Bull on bringing this matter to the attention of the House. When researching material for this debate I was impressed with the Government's response to this most important issue of reducing the greenhouse effect and greenhouse gases within this State. Many of the initiatives taken in New South Wales have been of national and worldwide significance, for which the Government is to be commended. Too frequently the image of the Government is seen to be uncaring about issues concerning the environment, and this is pointed to frequently by members of the Opposition. The Government demonstrates time and again that, like all members of the community, it has a concern for the environment and a concern to reduce greenhouse gases, not only because it is good for the world's environment but also because it is good for consumers and taxpayers - electricity bills and taxes required to build electricity generation plants are reduced. During my contribution I will refer to the ways in which the Government has responded to reduce greenhouse emissions and detail a couple of initiatives being promoted by Prospect Electricity for western Sydney.

The greenhouse effect is a natural phenomenon that keeps the earth's surface within a temperature range necessary to sustain the current diversity and distribution of life. This occurs through the existence of levels of certain gases in the atmosphere. In recent times, human activities have been increasing these levels, and this will result in an enhanced greenhouse, or warming, effect. Increasingly, the global community is being alerted to the potential for changes to the earth's climate as a result of rising levels of greenhouse gases in the atmosphere. The intergovernmental panel on climate change, established jointly in 1988 by the World Meteorological Organisation and the United Nations environment program, released its scientific assessment of the greenhouse effect in July 1990, and updated it in February 1992. In summary, the major findings of the IPCC scientific assessment working group were: emissions resulting from human activities are substantially increasing the atmospheric concentrations of the greenhouse gases, such as carbon dioxide, methane, chlorofluorocarbons and nitrous oxide; climate observations suggest that the global mean surface air temperature has increased by 0.3 degrees celsius to 0.6 per cent degrees celsius in the past 100 years; the size of observed warming is broadly consistent with climatic models of an enhanced greenhouse effect, but is also within the range of natural climate variability; if greenhouse gases were to increase so that equivalent carbon dioxide levels were doubled, the global average surface temperature may increase between 1.5 degrees celsius and 4.5 degrees celsius; should greenhouse gas emissions continue to increase at the currently projected rate, an average rate of global mean sea-level rise of between 3 centimetres and 10 centimetres per decade is predicted over the next century, resulting mainly from thermal expansion of the oceans. This would have a significant impact on the earth's environment.

The possible impacts on our natural, social and working environments, which may result from global warming, provide further reasons for action planning. In Australia, this is particularly so given the already wide variation in climate regimes, marked variability in annual weather patterns and susceptibility to extreme events. The need for a co-ordinated effort to respond to this issue has been recognised by the heads of Government in Australia, with a decision to establish a national greenhouse steering

committee. That committee has outlined a number of strategies, many of which are relevant to energy generation in New South Wales. The committee has recommended

that the Government continue to promote improved third-party access to the electricity grid by supporting current initiatives to provide non-discriminatory access to the national grid by generators. That was an issue which was very much promoted by former Premier Greiner. One of the most outstanding contributions that he made to this country was to make the various State governments consider themselves as part of a nation and to stop focusing on States' rights issues. If they do not work together on issues of national importance, many opportunities for achievements would be missed. A national electricity generation grid was one of the things he pushed and was successful in achieving.

Public energy utilities and energy agencies should be required to report annually on demand management, expenditures and outcomes. Governments should take positive steps towards requiring public electricity and gas utilities to achieve commercial rates of return. It is interesting that a body such as the National Greenhouse Steering Committee would suggest - something about which the Government is frequently criticised by honourable members opposite - that one of the best ways to enhance our environment is to manage our public utilities on a full cost recovery basis. It is important that the Government leads by ensuring efficient use of energy in its departments and authorities. The New South Wales government sector uses about $350 million of energy annually. A number of initiatives, many of which were outlined by the previous speaker, have been established by the Government. The Government has initiated the State energy efficiency drive program, which includes the monitoring of energy trends and an investment pool to fund improvements. A business plan is being developed. New energy efficiency guidelines for New South Wales commercial buildings are to be developed by the Public Works Department. It will update the 1981 energy manual for buildings. I believe that this task is almost complete and the updated publication will soon be available to both the government sector and the non-government sector. A cost benefits study of energy efficient lighting in government offices has been completed by Pacific Power. To emphasise that energy management begins at home, in a review of electricity use at Electricity House headquarters Pacific Power has discovered that it has reduced its use of electricity within that building by $92,000 over a year. Energy efficiency criteria for government vehicle fleet management and guidelines to ensure that government departments purchase energy efficient appliances and equipment, where applicable, are being implemented by the Government.

I refer briefly to contributions which have been made by the Government to research and development on energy conservation within New South Wales. Since 1978 the New South Wales Government has contributed almost $8.8 million to research work on energy conservation and development projects for studying the feasibility of renewable energy projects. These initiatives have provided support for important research projects such as the laser-grooved photovoltaic cell, a project carried out by the University of New South Wales; the low energy house design; the five-star rating project for electrical appliances; investigations of the use of ethanol and other alternative transport fuels; the recently completed study of the use of solar power at White Cliffs; and the Malabar wind-diesel power generator. After trials have been completed, it is planned to introduce 250 Sydney buses powered by compressed natural gas. Deliveries are due to start in 1994. Use of this clean-burning fuel will reduce harmful engine emissions and allow buses to use a fuel that is readily available in Australia. Studies have been funded which examined the feasibility of using fuels such as ethanol and methanol, either in mixtures with petrol or alone, to fuel motor vehicles and cut greenhouse gas emissions and air pollution.

The Government has also funded research into the use of coal. New South Wales is particularly fortunate in that it has massive resources of high quality black coal which have low standards of ash and sulphur content compared with reserves available in the rest of the world. With virtually all of Australia's best quality deposits of black coal concentrated in New South Wales and Queensland, it has been a particularly important issue for New South Wales. About 70 per cent of the coal produced within the State is used to generate electricity. Coal is used in large, modern and efficient thermal power stations which produce about 95 per cent of the State's electricity. They are situated near the source of the coal supply, in either the Hunter, Newcastle or western coalfield regions. Thermal coal is also used in industrial boilers and for cement manufacture, which together consume about 4 per cent of the State's production. Coking coal is used for steelmaking at the Port Kembla and Newcastle steelworks and is exported to Japan, Taiwan and South Korea. The main advantages of using coal are its low cost and long term reliability of supply. Known coal reserves in this State are sufficient to take us well into the twenty-first century.

Coal, as the major fuel used in electricity generation, contributes about 50 per cent of the carbon dioxide put into the atmosphere each year in New South Wales. Modern handling equipment and emission control systems have had to be developed to allow the more efficient burning of coal in power stations not only to reduce greenhouse gases but also to reduce the costs of the production of electricity. The low sulphur export coals produced in New South Wales provide a cheaper and better alternative for users who currently burn high sulphur fuels. Sulphur levels are typically between 0.3 per cent and 0.7 per cent. The coals are also low in many other potentially dangerous trace elements such as cadmium, lead, zinc and fluorine. New techniques are currently being examined to allow New South Wales power stations to burn coal, including inferior grades, more efficiently. Fluidised-bed combustion is one such process by which crushed coal is burned in a bed of ash which is kept agitated or fluidised by the upward passage of air. This technique can be applied not only to electricity generation but also to industrial process heating. It allows the productive burning of waste materials, such as tailings from coal washeries, down to about 40 per cent coal content.

Also under investigation is the integrated gasification combined cycle process. In this process coal is converted to a gas which is burned in a gas turbine. The exhaust gas then passes to a steam boiler. This process could potentially increase the efficiency of electricity generation by up to 20 per cent, yet with low levels of sulphur, nitrogen oxide and particulate emissions. Methane, a powerful greenhouse gas, is also present in coal seams. Generally this gas is quickly ventilated from coal mines to reduce the risk of explosion. While the gas content of seams varies widely with depth and other factors, it is thought that New South Wales has vast resources of methane gas within its coal reserves. There are a number of examples of this gas being investigated for use in power generation. A little closer to home, I refer to the ways in which various government departments and public authorities have been carrying out programs to reduce the amount of energy we use. A number projects have been initiated in Parliament House to reduce the level of electricity we use and to make sure it is produced efficiently. I am sure honourable members will have noticed that just about every light in the parliament building has been replaced with a special energy saving fluorescent lamp, produced by a company called Brightlight which operates at Wetherill Park. The installation of these lights has saved the Parliament approximately $42,000 in a year in energy costs. The special design to suit the light fittings of Parliament House enabled these lights to be fitted into the existing fittings of the Parliament easily and cheaply; many of them were

specially designed for the fittings that have been installed in Parliament House. That is a great credit to that western Sydney company.

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In the bowels of this building there is an emergency stand-by diesel generator. The Presiding Officers have investigated the possibility of using that generator to allow the Parliament to generate its own electricity, some of which is in fact being used by buildings adjacent to it - the hospital and the library. If this occurs, all of the hot water needed in Parliament House can be heated at no cost. It is likely that this measure will save the Parliament $100,000 per year. If this proposal is approved, it will be the first of its type in the central business district and it will be to the Parliament's credit both on efficiency and environmental grounds. Parliament House is currently one year into a two-year survey of its electricity use. This survey is being carried out by Sydney Electricity. Parliament House is being charged on a demand tariff basis, which is the most cost effective tariff in our case. During 1991-92, new software has been developed for the computer which controls the central energy plant. The primary function of the new software will be to conserve electricity by taking action to delay costly equipment start-ups without significantly affecting the monthly electricity account.

In the area where I live in western Sydney, we are served by Prospect Electricity. It is the largest business based entirely in western Sydney and it is the one hundred and fiftieth largest company in Australia, with an annual turnover of close to $1 billion. Prospect supplies electricity and related services to Australia's fastest growing area - western Sydney. It is the second largest electricity distribution authority in New South Wales. It employs 2,580 people and serves a population of 1.3 million. It supplies electricity to 433,000 residential customers and 43,500 business customers. It has a number of excellent programs and projects to assist households to conserve electricity and also to assist business. I would like to consider a couple of businesses assisted in a little detail. Prospect Electricity has a program called Prospect energy partners, in which it works with business to assist in the conservation of electricity. A couple of projects have helped customers in a very substantial way. One customer telephoned the council for assistance in reducing that company's energy cost. As a result of a visit to the premises of the company, it was identified that a seven-day timer ought to be used to control the air-conditioning. The building was air-conditioned on all public holidays and the five-day closure during Christmas. By making an adjustment to the timer the company was able to save on 15 per cent of its air-conditioning expenses.

Another customer visit helped the customer experience 400 per cent savings in energy costs. The administration building in which this company was based has had a substantial staff loss as a result of the recession. On some occasions only one employee was using the entire building, yet the whole building was being fully air-conditioned and in some cases fully lit. By advising the customer to restrict services to the office and the entry foyer, Prospect Electricity was able to reduce electricity costs by 400 per cent. Prospect Electricity also assisted Bardsley Hats, which makes a number of hats including the traditional Aussie digger hat for the Army - the military slouch hat. Prospect Electricity visited this company and discovered that the diesel boiler it used to generate steam for the shaping of hats was in poor repair. After a month of monitoring the boiler, Prospect recommended a number of procedures for cleaning and resetting the boiler in a new location and advised on new, fully lagged steam distribution lines. The rejuvenated boiler is now working with greater efficiency. Bardsley Hats also made changes to its drying process. At Leichhardt hats were placed on racks and dried slowly by a fan which directed hot air from the boiler across the shelves. Drying was very slow and not uniform. Prospect advisers convinced the company to install a dehumidifying heat pump

in the new drying room, using a technology which is new in Australia. The company has reported that the new technology exceeded all expectations and delivered terrific savings in electricity bills. I am proud of what Prospect Electricity is doing for the people of New South Wales, and I am equally proud of what the Government is doing to reduce the greenhouse effect in Australia generally.

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**The Hon. R. S. L. JONES** [4.14]: First, I congratulate the Hon. R. T. M. Bull on bringing this very important motion before the House. It is one of the most important topics we will discuss over the next few years, because the greenhouse effect is real. The Industry Commission report, which came out on 15th November, 1991, dealt with the cost and benefits of reducing greenhouse gas emissions. On page 85 of that report the impact -

**The DEPUTY-PRESIDENT (The Hon. D. J. Gay):** Order! It being 4.15 p.m., pursuant to sessional orders debate is interrupted to permit the Minister to move the adjournment of the House if she should so desire.

**The Hon. Virginia Chadwick:** No, I do not so desire.

## CONSTITUTION (FIXED TERM PARLIAMENTS) AMENDMENT BILL

## STATE REVENUE LEGISLATION (FURTHER AMENDMENT) BILL

## TRAFFIC (OFFENCES) AMENDMENT BILL

## STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (No. 3)

## STATUTE LAW (PENALTIES) BILL

**Formal stages and first readings agreed to.**

## TRAFFIC (OFFENCES) AMENDMENT BILL

### Second Reading

**The Hon. VIRGINIA CHADWICK** (Minister for Education and Youth Affairs, and Minister for Employment and Training), on behalf of the Hon. J. P. Hannaford [4.16]: 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.**

Honourable members, the bill before the House is machinery in nature to correct a deficiency in the Traffic Act 1909 in relation to the prosecution of camera detected speeding offences.

Section 18A(1) of the Traffic Act casts "Owner onus" upon the registered owner of a motor vehicle which is detected exceeding the speed limit by a radar speed camera.

This provision was included in the Traffic (Photographic Evidence) Amendment Act No. 53 of 1990 which was proclaimed to commence on 1 January 1991.

The amending Act was drafted to complement the then existing "owner onus" enforcement measures such as those for parking offences and camera detected traffic light offences. When the bill was put before this House, it received unanimous support from all members.

However, a technical difficulty has arisen in that section 18A(1) of the Traffic Act referred to "an offence under the regulation concerned" whereas the camera-recorded speeding offence is an offence against the Act and not the regulation.

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To confirm the intention of the Traffic (Photographic Evidence) Amendment Act 1990, which was debated in this House during September 1990, this legislation proposes the removal from section 18A(1) of the Traffic Act the word "Regulation" and the inclusion instead of the word "provision".

It is also proposed to apply this amendment retrospectively to 1 January 1991.

We are not aware of any action before the courts concerning this aspect of the Act. Therefore the amendment is not in response to any court challenge which may affect people's rights.

And the intention of the original bill has not been altered in any way.

I commend the bill to the House and look forward to the support of honourable members in ensuring the successful passage of this bill in the interests of the continuation of the use of effective technology in our endeavours to create a safer motoring environment.

**The Hon. JAN BURNSWOODS** [4.17]: The Opposition supports the Traffic (Offences) Amendment Bill, which has been introduced in such a great hurry today. I would like to make a couple of very brief comments on it. The need for the legislation to be changed is fairly obvious, given its drafting faults. I have a few concerns about the fact that some of the urgency arises as a result of speed cameras increasingly becoming an important revenue raising device rather than a safety device. For instance, I was interested to note that the Police Service plans this year to raise about $23 million by running cameras 24 hours a day, thereby catching 153,000 drivers. I certainly support the safety element of speed cameras, but the Opposition has some concern that sometimes the revenue raising aspect is more in the Government's mind, hence the haste with which this legislation is being dealt with this afternoon. The only other point I wish to make is to express my concern about any legislation of a retrospective nature. We have considered this aspect very carefully. However, it seems to be the case that although the legislation is retrospective in character there is no doubt that all of those who have paid fines since the beginning of last year have committed an offence and, by paying the fines, admitted an offence. Only a very small number of people using the owner onus provision could possibly get out of a fine. I repeat that the Opposition supports the legislation but it rather regrets that this example of sloppy law making has had to be fixed up quite so hastily.

**The Hon. ELISABETH KIRKBY** [4.20]: I am well aware why the proposed legislation has been brought before this House with such speed.

**The DEPUTY-PRESIDENT (The Hon. D. J. Gay):** Order! I am having trouble hearing the honourable member. Honourable members should keep the volume of their conversations at a lower level.

**The Hon. ELISABETH KIRKBY:** Honourable members have had an opportunity to examine the bill or to read the Minister's second reading speech. I wish to place on record concerns brought to my attention by constituents, which concerns I have subsequently forwarded to the Minister for Police, about the positioning of speed cameras. I do not object to speed camera being placed at traffic lights. Serious accidents caused by drivers light hopping and trying to beat the red are deplorable. It is perfectly proper that when traffic lights are installed a speed camera should also be positioned to pick up those drivers who do not obey the lights. However, police in New South Wales have a practice of placing speed cameras on major six-lane freeways and highways. Police revenue has been greatly boosted by the use of speed cameras just beyond the Hawkesbury bridge on the six-lane freeway between Sydney and Newcastle. The speed limit at that point has been lowered to 100 kilometres per hour from 110, which is a legitimate and reasonable freeway speed. One can still travel lawfully at 110 kilometres

per hour on many poor condition two-lane highways where to travel at 100 kilometres an hour is quite unsafe. I brought those concerns to the attention of the Minister for Police, which resulted in correspondence between me and the Minister. He pointed out to me that the places where cameras were being installed had been agreed upon by the traffic police, the NRMA and the Road Safety Council. Since that time the NRMA has suggested that the cameras are being placed in a way that could only be described as creating speed traps. The Budget Papers show that in 1991-92 the police raised about $6 million in speeding fines, and it is estimated that in 1992-93 $23 million will be raised from that source - a $17 million increase. No one objects to reasonable use of speed cameras to reduce the number of road accidents, but to suggest the cameras are not being used to raise revenue, given the figures in the Budget Papers, defies logical analysis.

**The Hon. Virginia Chadwick:** It is a lucky coincidence.

**The Hon. ELISABETH KIRKBY:** The Minister interjects that it is a lucky coincidence. It is far more than a lucky coincidence. The measure to introduce speed cameras was unanimously supported in the other place. I am not the only honourable member to be inundated with letters of complaint about the use of these cameras, and their siting should be further examined. The Deputy President and many honourable members are aware of many dangerous areas on the Pacific Highway and the fact that another most terrible accident recently occurred there. Placement of speed cameras at those danger spots - not on six-lane freeways - would be a legitimate use of the facility. Only 12 cameras are available in New South Wales. If the Minister had 100 cameras at his disposal he might be able to use them on freeways, but in the meantime they should be used in the most dangerous spots. When the proposed legislation has been passed by both Houses the Minister might consider the suggestion of siting the cameras at more dangerous road accident spots which are mentioned dramatically every day in the media, and in particular at the serious accident spots on the Hume Highway and Pacific Highway.

**Reverend the Hon. F. J. NILE** [4.26]: The Call to Australia group supports the Traffic (Offences) Amendment Bill. The object of the bill is to make a minor adjustment to the legislation to clarify certain provisions, as yet those provisions have not been the subject of any litigation. Clause 3 of the bill provides:

The Traffic Act 1909 is amended by omitting from section 18A(1) the word "regulation"

and by inserting the word "provision".

Other members who have been critical of the Government in relation to this measure should remember that its provisions by and large have been formulated by parliamentary draftsmen. I am not sure who is responsible, but the amendment is a minor detail to close the door to any possible court challenges on technicalities. I support the bill.

**The Hon. R. S. L. JONES** [4.27]: I received a briefing on the bill just before a quarter past four this afternoon. The bill seeks to remedy a technical difficulty that arose under section 18A of the Traffic Act which referred to an offence under a regulation when it should have referred to an offence under the Act. The Democrats will support the bill to enable that technical correction. When the Hon. Ted Pickering was debating the Traffic (Photographic Evidence) Amendment Bill in 1990 I remember he promised that speed cameras would not be used for revenue raising. I also have concerns about the use of cameras specifically for revenue raising. Those cameras are designed to prevent people speeding in particular at accident black spots, and that fact was mentioned in the previous debate. The cameras should not be used solely for revenue



raising but should be employed with the prime object of saving lives. Some drivers tend to accelerate where they deem it safe, but those who speed at or near black spots should be brought to heel. The police should be allowed some flexibility in the way in which these cameras are used. Speed limits on some roads may be too low. The speed limit on some roads has been increased and on others it has been decreased, but overall there should be greater flexibility in that regard. As the honourable member Ted Pickering said in this House, these cameras should be used to catch drivers who speed in dangerous areas, not to catch those speeding in relatively safe areas.

**The Hon. VIRGINIA CHADWICK** (Minister for Education and Youth Affairs, and Minister for Employment and Training) [4.30], in reply: I thank members for their contributions and for the support they have given to the bill, and I commend it to the House.

**Motion agreed to.**

**Bill read a second time and passed through remaining stages.**

## LEGAL PROFESSION (PRACTISING CERTIFICATES) AMENDMENT BILL

### Second Reading

**The Hon. VIRGINIA CHADWICK** (Minister for Education and Youth Affairs, and Minister for Employment and Training), on behalf of the Hon. J. P. Hannaford [4.31]: I move:

That this bill be now read a second time.

The purpose of this bill is to amend the Legal Profession Act in relation to barristers' practising certificates. The bill will grant the Bar Council power to issue a conditional practising certificate and vary the conditions on a practising certificate. It will also permit the council to refuse to issue a practising certificate to a barrister who has completed pupillage if he or she has not completed the reading program. At present, section 22 of the Legal Profession Act provides that a barrister who is admitted and who has satisfactorily completed an appropriate period as a pupil is entitled to an unrestricted practising certificate. It is suggested that although a barrister is out of pupillage the view

may be taken on proper grounds that the barrister's practice should be confined in some way. The types of conditions which it is proposed should be able to be imposed fall into two categories: first, a requirement to complete a course of study; and second, a requirement to practise for a period with a senior or a senior junior. Such conditions may be imposed in circumstances where there is insufficient evidence to sustain a complaint of unprofessional conduct or professional misconduct but where the council is nevertheless not completely satisfied with the service offered by the barrister. It should be noted that the bill amends the appeal provision in section 37 of the Act to give a barrister a right of appeal against the issue of a conditional practising certificate. At present, a variation to a practising certificate during its currency can only come about as a result of disciplinary proceedings. As previously noted, there may be circumstances where there is insufficient evidence to bring disciplinary proceedings but where the council is not completely satisfied with the service offered by the barrister, and would wish to impose conditions on practise.

It is inappropriate that the council would have to wait until the re-issue of the

barrister's practising certificate to take such action. It is therefore proposed to empower the Bar Council to vary or reduce the conditions on a practising certificate or to impose new or additional conditions during its currency. The appeal provisions in section 37 would also operate in these circumstances. The further change introduced by the bill relates to the requirement for pupils to attend the bar's reading program. The present position is that, pursuant to section 32 of the Act, upon the completion of pupillage a barrister is entitled to an unconditional practising certificate. While attendance at the reading program is compulsory for pupils, there is no requirement that the program be completed before an unconditional practising certificate is issued. The council has recently changed the reading program. It has introduced a three-week, full-time compulsory series of classes. Thereafter further lectures will be given on a part-time basis for the next three months. Attendance will be compulsory. This bill will ensure that no barrister shall be issued with a practising certificate until he or she has satisfactorily completed the initial three-week course and passed an ethics examination.

Honourable members will be aware that this bill was amended in the other place to insert a clause providing that certain provisions of the legislation are to be reviewed by the Law Reform Commission, and the proposed measure shall be repealed at the end of 12 months from assent to the Act. I have strong reservations about the reference to be brought before the commission as I do not believe it is an appropriate use of the resources of the Law Reform Commission. Nevertheless, the Government is prepared to allow that aspect of the bill to stand. However, I do not accept that it is appropriate for a 12 month sunset clause to be inserted in this legislation. The legislation will be properly reviewed by the Law Reform Commission, which will report to the Parliament. If the commission's report gives voice to concerns about the extent of operation of the legislation, the Houses will consider amendments at that time. However, if the Law Reform Commission reports that the legislation is operating properly, there should be no question of the provision needing to apply. Under the bill as it now stands Parliament may be faced with renaming the bill in identical terms in 12 months time. I believe that to be an extremely inappropriate use of parliamentary time. I therefore foreshadow an amendment to delete clause 5(3) from the bill. I advise also that I propose to move an amendment to section 29A to provide that the operative date be 1st January, 1993. This will avoid any aspect of retrospectivity. This bill is aimed at ensuring the maintenance of high standards of competence of members of the bar. That will help to provide for appropriate client protection against practitioners who do not meet the standards required. I commend the bill to the House.

**The Hon. B. H. VAUGHAN** (Deputy Leader of the Opposition) [4.36]: The alternative Government supports the Legal Profession (Practising Certificates) Amendment Bill 1992. As the Minister so ably pointed out, the bill seeks to amend the Legal Profession Act 1987. The principal Act was opposed by the Law Society and the Bar Council when it was introduced. I remind those who were not members of the House at the time that the present Government, when in opposition, opposed the very sorts of measures that we are debating this afternoon. The Act was novel at the time in so far as it sought to establish a body that would preside over professional misconduct. At the same time it introduced the requirement that barristers, in order to practice, had to possess a practising certificate. In 1987 when I spoke in support of the principal Act when it was before this House I stated:

> The Bar Association and the Law Society have to realise that it is no longer sufficient for the boundaries of professional misconduct to be determined solely by the less than objective yardstick of a select few who are said to represent the general body of practitioners. The public, the clients of the practitioners, do not accept this as good enough. The whole scheme of the bill is designed to ensure greater accountability by the legal profession to those to whom they provide.

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That measure was reformist in 1987 and it is reformist now. I cannot understand why the Government, when in Opposition, opposed the bill in 1987. It would seem that at that time those members cared little about the well-being of the legal profession; all they cared about was influencing people and winning a few friends. They sought to support the claims of the profession in order to gain the votes of that profession so that they might win political power. Now in government they are very keen to restrict the legal profession. The conveyancing issue, I would have to say, is a case in point. This bill seeks to import further reforms into the legal profession pertaining to barristers at law. One such reform focuses on updating the practitioners' legal education. The Law Society runs numerous courses for its members to update their knowledge of particular aspects of the law - a continuing legal education scheme. However, there are some notions in the bill which are of concern. I think any common lawyer must always complain about retrospectivity in legislation. I said yesterday on another matter that unfortunately retrospectivity seems to be here to stay, if that is not too confusing a concept. I refer specifically to clause 4, which seeks to impose new conditions on the issuing of practising certificates to barristers who have their certificates, who in many cases have been practising for a long time, and who indeed are highly respected practitioners.

Another aspect of the bill which causes the Opposition some concern is proposed new section 32, in particular subsection 4(c). That subsection provides that a person wishing to practice as a barrister must read with a practising barrister, and it is that practising barrister who will certify to the Bar Council that the pupil should be admitted. There is a worrying arbitrariness about that subsection. It is probably the sort of thing that the Law Reform Commission will consider. If the pupil, who is the person reading, and the master do not get along, there is a possibility that that might lead to a major falling out and the master could prevent the pupil from practising. It seems to me that a mechanism is required to prevent such an injustice occurring. I should like to import into the debate that under the Federal Opposition's industrial policy the Bar Council will be rendered illegal. I invite every honourable member to contemplate the ramifications of such a policy on the New South Wales legal process. In general the bill is a further reform of the legal profession, which the Opposition welcomes and supports. The Opposition will also support the amendments the Minister has adumbrated.

**The Hon. HELEN SHAM-HO** [4.41]: I support the Legal Profession (Practising Certificates) Amendment Bill. The object of the bill is to amend the Legal Profession Act 1987 to make more detailed provision as regards the issue of, the refusal to issue, and appeals relating to, practising certificates for barristers. The bill is designed to ensure that barristers who are intending to practise are properly qualified and that the standards of the legal profession are maintained. The bill provides to the Bar Council the power to refuse to issue a practising certificate to a barrister who has not satisfactorily completed an approved full-time reading program applicable to a pupil, and who has not passed an examination set by the Bar Council as part of that program. That is stated in proposed new section 29A(1). The amendment removes the anomaly which permits a barrister to gain a practising certificate, the barrister not having completed a reading program or satisfied the examination which has been set by the Bar Council. I am aware that for some time the Bar Association has sought an amendment to the Legal Profession Act 1987 to ensure that it has the power to issue a conditional practising certificate in those circumstances or to refuse to issue a certificate where the pupil has failed to complete a reading program.

These are important changes even though they are only of a machinery kind. The Bar Council is also given the power to impose conditions upon barristers in the course of their practice. That power is contained in proposed new section 32, and the
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Minister has elaborated on that. Those conditions may require the barrister to complete a course of study, not to practice in a particular area of law, or to practice for a period with a senior barrister or a senior junior. Apparently the need for this requirement arises from the fact that a complaint may be made against a barrister although a claim of unprofessional conduct or professional misconduct has not been made out. The purpose of this provision is to ensure that the people of New South Wales will be given a high standard of professional service. However, it is to be hoped that the Bar Association will exercise this particular power with great care. In any event, the Legal Practitioners Act provides for an appeal to the Supreme Court of New South Wales against the imposition of any condition. That is an important protection against unreasonableness on the part of the council of the Bar Association. One of the important requirements of the Bar Association is to protect the public. Protection of the public requires that an unskilled or ill-equipped legal practitioner should in some way meet the reasonable requirements of his or her peers to correct any particular problem. After all, it is members of the public who become the victims of unprofessional practice or practice that is not sufficiently skilled. The provisions of this amendment bill will only benefit the people of New South Wales. I support the bill.

**Reverend the Hon. F. J. NILE** [4.44]: The Call to Australia group supports the Legal Profession (Practising Certificates) Amendment Bill. The object of the bill is to amend the Legal Profession Act 1987 to make more detailed provision as regards the issue of and refusal to issue, and appeals relating to, practising certificates for barristers. Call to Australia wants to do all it can to maintain the integrity and high qualifications of barristers in this State. We believe this bill will continue to do that and therefore we support it. We support also the power of the Bar Council to issue a practising certificate to a barrister, and to assess those who are studying or have completed certain aspects of study to become barristers and thus will receive practising certificates. Without dealing with the present controversy about a certain person, Call to Australia would rather the Bar Council have the authority to maintain the high standards of barristers in this State.

**The Hon. ELISABETH KIRKBY** [4.46]: The Australian Democrats broadly support the Legal Profession (Practising Certificates) Amendment Bill 1992, which will give the Bar Association powers similar to those of the Law Society with regard to

practising certificates. Under the legislation the Bar Council will be given the power to issue a conditional practising certificate and also to vary the conditions of a practising certificate. The Bar Council is to be given the power to refuse to issue a practising certificate if a barrister has completed pupillage but has not completed the reading program. From now on no barrister will be issued with a practising certificate until he or she has satisfactorily completed a three-week, full-time compulsory series of classes and an ethics examination. Conditions on practising certificates will be imposed during the life of the current practising certificates where the council may not be satisfied with the service offered by a barrister and where there may be insufficient evidence to sustain a complaint of professional misconduct or unprofessional conduct. There is a right of appeal, but the conditions can include a requirement to complete a course of study and a requirement to practice with a senior or a senior junior. However, the Australian Democrats have one major criticism of this bill: it does not seem appropriate that barristers are not subject to the provisions of section 35(3) of the Legal Profession Act 1987. That section states:

> (3) The Law Society Council may refuse to issue, may cancel, or may by order suspend, a practising certificate applied for, or held by, a solicitor [(other than a solicitor corporation)] if the solicitor -
>
> (a) is bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; and



> (b) in the conduct of his or her affairs as a solicitor did anything that, in the opinion of the Law Society Council, contributed to the situation referred to in paragraph (a) and amounted to conduct unbecoming a solicitor.

I am sure honourable members will agree that the rationale for the provisions of section 35(3) is equally applicable to barristers and the Bar Association just as it is applicable to solicitors and the Law Society Council. In another place the shadow attorney general complained that the new power given to the Bar Council to place conditions on practising certificates would be retrospective. At that time that was true, and I suppose it could be said there was a good reason for it. The imposition of conditions is a new disciplinary measure applicable to almost all barristers. I would have thought it had to be retrospective if it were to come into effect immediately. Otherwise, it appeared to me that it would be necessary to wait until July 1993, when new practising certificates were to be issued. However, I see from the amendment that is to be moved in Committee by the Government that the date of operation of the legislation has been altered from 1st October, 1992, to 1st January, 1993. I believe the shadow attorney general's concerns about retrospectivity have been met. However, he also pointed out that an unrestricted practising certificate, as defined in the Legal Professional Act 1987, already requires barristers to undertake further study. It is my belief that this will only amount to doubling up in the two pieces of legislation. The shadow attorney general raised a very worthwhile query about new section 29A(1)(d). Certain classes of barristers will be exempt from section 29A(1) - that is, the refusal of an application by a barrister for a practising certificate. Of course, honourable members do not know at the moment what those classes are. That will become apparent when the regulations are published.

The shadow attorney general further complained that appeals against disciplinary decisions of the Bar Council would only go through the Supreme Court, but it is my understanding that the bill does not alter the current situation. The shadow

attorney general complained also about the mechanism per se and not about anything in the proposed legislation. Comments were made in another place by the honourable member for South Coast. His opposition was basically to the power that the Bar Association has to discipline barristers. He went so far as to liken the Bar Association to a trade union that was very busy maintaining an exclusive club. He claimed that the requirements to undertake a set course of study would be maliciously manipulated to prevent some people from ever becoming qualified as a barrister. Mr Hatton successfully moved an amendment which placed a sunset clause on the legislation to apply after 12 months. The effect of the sunset clause would be that the Law Reform Commission will be obliged to conduct an inquiry in respect of the policy objectives of the bill nine months after the date of assent of the bill. In the original debate, the amendment was rejected because the Law Reform Commission is currently considering the total regulation of the legal profession and its complaints system. Options have been canvassed, including having a legal professional ombudsman rather than self-regulation. It is my understanding that, in any event, the amendment moved by the honourable member for South Coast was passed in another place.

As I said at the commencement of my remarks, the Australian Democrats broadly support the aims of the bill. Although the current system of regulating the profession is in place, we believe it is appropriate that the Bar Council be given powers similar to those of the Law Society in relation to practising certificates. Most of the concern that has been expressed in relation to the bill deals with the current system of regulating the profession, rather than with any specific divisions within the legislation currently being debated. I look forward to the report of the Law Reform Commission on the scrutiny of the legal profession, and to the recommendations of the commission, but the Australian Democrats support the amendment which was successfully moved by

Mr Hatton in another place. We believe it enhances the accountability of the legislation and therefore we support the bill as introduced into this Chamber; and we propose to support the Government's amendment to be moved in Committee.

**The Hon. J. P. HANNAFORD** (Attorney General, Minister for Industrial Relations, and Vice-President of the Executive Council) [4.54], in reply: I thank honourable members for their support of the proposed legislation. It was the subject of some criticism when it was presented to the lower House. Some honourable members regarded the legislation as having been introduced in order to provide a tool which could be used against an individual. That was never the intention of the legislation; it was never the intention of the Government to do that. After discussions I have had with members of the bar, I have no doubt that they recognise that the legislation is important to enhance the professionalism of the bar. It is regrettable that at the present time the legal profession and, perhaps, the bar particularly, have been the subject of some attack in the media. That attack has been directed to the issue of professionalism and the accountability of the legal profession.

There is no doubt that both arms of the profession - solicitors and barristers - desire to change their image and be seen as more accountable. They wish to present a new appearance to the community. The fact that members on the crossbenches and of the Opposition have been prepared to support the bill indicates that the original suggestion as to why the legislation was introduced is without foundation. It has been recognised that there is a real need for this change. As has been foreshadowed, the Government proposes to move certain amendments in Committee, the purpose of which is to tidy up the legislation. I commend the bill to the House.

**Motion agreed to.**

**Bill read a second time.**

**In Committee**

**Clause 5**

**The Hon. J. P. HANNAFORD** (Attorney General, Minister for Industrial Relations, and Vice-President of the Executive Council) [4.58]: I move:

Page 2, Clause 5, lines 22 and 23. Omit all words on those lines.

As foreshadowed in the second reading speech, I do not accept that a sunset clause of 12 months for the provisions introduced by the bill is appropriate. The legislation is to be reviewed by the Law Reform Commission, and it is appropriate that Parliament reconsider the legislation in the light of the report of the commission. To provide a sunset clause in addition to the review is to some extent to predetermine the result of the review by creating an inference that the legislation will not be able to stand in the light of the report that may be brought forward by the Law Reform Commission. I do not accept that as a valid position. The amendments have been introduced by the Government after extensive consideration and discussion with the Bar Association. The original proposal by the Bar Association was put to the then Attorney General in 1990 and has undergone considerable revision. I can indicate that the Bar Association did not simply get what it wanted; the final proposal is much different from that originally put forward. The Government is satisfied that there are good reasons to include the provisions in this legislation, and it stands by the bill as originally introduced. That is not to say that amendments will not be contemplated when the review of the Law Reform Commission is complete. They will be discussed at that stage. However, it is not
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acceptable that the bill will terminate in 12 months. Should the Law Reform Commission find that the legislation has been operating fairly and properly, as the Government believes it will, we will be in the ludicrous position of having to reintroduce legislation in 12 months time in exactly the same terms as the present bill. I do not believe that that is a proper use of parliamentary time.

**Amendment agreed to.**

**Clause as amended agreed to.**

**Schedule 1**

**The Hon. J. P. HANNAFORD** (Attorney General, Minister for Industrial Relations, and Vice-President of the Executive Council) [5.1]: I move:

Page 2, Schedule 1, line 30. Omit "1 October 1992", insert instead "1 January 1993".

I note that the bill provides that the date of effect of the legislation is to commence on assent. Clause 29A provides that the power of the Bar Council to refuse a practising certificate is effective on or after 1st October, 1992. At the time that the bill was amended in the other place the effect of the clause was prospective. It may now be suggested that the clause would effectively validate a decision of the Bar Council made since 1st October, 1992, to refuse to issue a practising certificate to a person who had completed his or her pupillage at that time. It should be noted that clause 29A only applies to a barrister who, as a pupil, did not satisfactorily complete the reading program.

The 1st July date will therefore affect only the 28 students who have completed the mandatory portion of the reading and pupillage program since that date. A letter from Mr John Coombs, Q.C., President of the Bar Association, indicates that all 28 members of the program were told on the first day that the council may have the power provided by the bill by, or shortly after, the end of their program. Mr Coombs advises that no students sought to withdraw from the course as a result of being given that information. I understand Mr Coombs has written to the honourable member for Ashfield, the shadow attorney general, in similar terms. Nevertheless, to avoid any suggestion of retrospectivity, the Government moves to amend the bill to change the relevant date to 1st January, 1993.

**Amendment agreed to.**

**Schedule as amended agreed to.**

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

## BANK INTEGRATION BILL

### Second Reading

**The Hon. J. P. HANNAFORD** (Attorney General, Minister for Industrial Relations, and Vice-President of the Executive Council) [5.4]: 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.**

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The Bank Integration Bill is complementary to the Commonwealth Bank Integration Act 1991. The Commonwealth Act arises from the Commonwealth Government's decision to remove the distinction for regulatory purposes between trading banks and savings banks. The removal of this distinction was aimed at enabling banks within the same group to have better use and allocation of funds, simpler funding and accounting arrangements and greater flexibility in servicing customers. The prudential supervisory role of the Reserve Bank will also be simplified. Once the legislative distinction between trading and savings banks is removed there remain significant administrative costs and legal difficulties in the way of integrating savings banks and trading banks. The Commonwealth Bank Integration Act was intended to facilitate the transfer of assets and liabilities between savings banks subsidiaries and their parent trading banks.

The Commonwealth Act requires complementary State legislation to be in place in the State where a banking organisation is established before the Commonwealth Act can have effect in respect of that banking group. For New South Wales, the only relevant banks are the Westpac Banking Corporation and its subsidiary, the Westpac Savings Bank Limited. The New South Wales Government has been pleased to indicate its willingness to enact complementary legislation on the grounds that it will ultimately benefit bank customers to allow banks to operate within more efficient structures. The Victorian Government has also enacted a Bank Integration Act to apply to banks established in that State. The New South Wales bill is in very similar terms to the Victorian legislation. The Bank Integration Bill provides, in effect, that on the succession day fixed by the Commonwealth Treasurer the Westpac Savings Bank Limited is dissolved and the

Westpac Banking Corporation becomes its successor in law. The assets and liabilities of the Westpac Savings Bank Limited will transfer to the Westpac Banking Corporation.

The legislation makes it clear that the terms and conditions of employees of the Westpac Savings Bank Limited will be unaffected by the integration of the banks. The Bank Integration Bill further provides for exemption from State taxes and charges which might otherwise apply to the transfer of assets and liabilities involved in the integration. It also provides that interests in land under the Real Property Act 1900 held by the Westpac Savings Bank Limited transfer to the Westpac Banking Corporation. Although not explicitly stated in the bill, the enactment of this State legislation will, by the operation of the doctrine of universal succession, facilitate recognition of the integration elsewhere. The heads of agreement between the States and the Commonwealth in relation to the Corporations Law provides for consultation with the ministerial council in relation to State legislative proposals relating to the Corporations Law. Formal consultation with the ministerial council has, therefore, been initiated and it is anticipated that it will be completed prior to the passage of the bill through the Parliament. In any event, the bill will not be proclaimed until that consultation has been completed.

I commend the bill.

**The Hon. M. R. EGAN** (Leader of the Opposition) [5.5]: The Opposition supports the bill.

**The Hon. R. S. L. JONES** [5.5]: This fairly straightforward bill will facilitate the integration of Westpac Savings Bank Limited into Westpac Banking Corporation. This microeconomic reform will serve to assist customers and reduce duplication and will no doubt save the bank and its customers money. The Australian Democrats support the legislation.

**Reverend the Hon. F. J. NILE** [5.6]: Call to Australia supports the legislation. My interest in this bill - indirectly - is that I have an account with Westpac.

**The Hon. J. P. HANNAFORD** (Attorney General, Minister for Industrial Relations, and Vice-President of the Executive Council) [5.6], in reply: I thank honourable members for their support and I commend the bill to the House.

**Motion agreed to.**

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**Bill read a second time and passed through remaining stages.**

## LAND TAX MANAGEMENT (AMENDMENT) BILL

### Second Reading

**The Hon. J. P. HANNAFORD** (Attorney General, Minister for Industrial Relations, and Vice-President of the Executive Council) [5.7]: 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 main purpose of the bill is to implement the recommendations of the white paper on land tax. In introducing this bill I should like to restate the Government's commitment to ongoing analysis and reform of State taxation. The Government is also committed to broad community consultation in that process of reform. These commitments are clearly evidenced by this bill and the process which preceded it. The processes leading to this bill included a 1990 inquiry and report on land tax by the Government Treasury advisory committee, chaired by my colleague the honourable member for Pittwater. That inquiry was established following revelations of an unprecedented increase in land valuations resulting from the 1988 property boom. This first step in overhauling the land tax system was followed by a review of the New South Wales land tax base and valuation system, culminating in the publication of the white paper on land tax in February this year. As with the Longley review, extensive public consultation was undertaken before Government decisions on changes to the land tax system were made.

Before I explain the amendments contained in the bill I should like to review briefly the events which ultimately led to the preparation of the white paper. Prior to 1986 all land in New South Wales was revalued on a cyclical basis at intervals of between three and six years. This meant that the effective rate of tax paid by landowners varied according to how old the valuation of their property was and at what stage in the property cycle the last valuation of their land occurred. It also meant that when the cyclical valuation occurred at intervals of between three and six years an owner's land tax liability would increase dramatically and then remain static or fall as the tax threshold was increased until the next revaluation occurred. In order to smooth out the large increases in land tax liability and to ensure that all landowners were taxed on a similar basis the previous Labor Government introduced the equalisation factor system in 1986. Under this system factors determined by the Valuer-General were applied to all values to bring them to a common base date, 18 months prior to the commencement of the relevant tax year. This system was satisfactory in times when there was relative stability in land values. However, the system failed during the land price spiral of the late 1980s because of the lack of uniformity in changes in values within local government areas.

During the late 1980s property prices in New South Wales increased at an almost unprecedented rate. As a result substantial numbers of taxpayers were faced with sudden large increases in tax liability both in percentage and absolute terms. In the short term these increases in tax liability created capacity to pay problems for taxpayers or their tenants. These problems were exacerbated by the beginning of the worst recession in Australia since the Great Depression, with the accompanying problems for landowners of downward pressure on values and rents and rapidly increasing vacancy rates. At the same time the 18-month lag between the base date for land values and the relevant tax year meant that land values were



falling while land tax was rising. I should add that in most years values are either rising or relatively stable, which means that taxpayers are taxed on values which are less than, or at worst no more than, current values. The resulting substantial increase in land tax revenue peaked during a period when Commonwealth funding to the State was cut and stamp duty from real estate and share transactions was collapsing, also as a result of the recession. Hence the State was not in a strong fiscal position to grant concessions in land tax to offset the effects of the recession.

However, following widespread public concern regarding the large increases in land tax liability, the Government in April 1990 announced three land tax initiatives, which ultimately cost $263 million per annum in revenue forgone: an 18.5 per cent increase in the tax-free threshold from $135,000 to $160,000; a 25 per cent reduction in the tax rate from 2 per cent of site value to 1.5 per cent; and a review of land tax by the Government Treasury advisory committee. These changes to the land tax rate structure reflected the traditional approach of using both the tax rate and the tax-free threshold as mechanisms to manage the impact of large changes in values. In the post-war period the impact of increasing land values based on the taxpayer's ability to pay has

been offset by reductions in the highest marginal land tax rate from 3.3 per cent to 1.5 per cent and a 1,500 per cent increase in the tax-free threshold. As a result of the Longley inquiry the Government introduced a large number of reforms directed towards eliminating inconsistencies in the administration of land tax and extending the range of land tax exemptions. Following recent reforms average land tax rates in New South Wales are now below the rates of most other States. Despite these reforms the land tax system remains the subject of criticism, reflecting continuing landowner concern over large increases in tax liability and unrealistic valuations.

In line with the decision announced in the 1990-91 Budget, the white paper report constituted a review of the structure of the land tax system. The objective was to ameliorate capacity to pay problems by improving the timeliness of official land valuations and reducing the volatility of tax assessment while having due regard to the equity, efficiency and administrative costs of the land tax system. The bill before the House will implement the recommendations of the white paper. The key aspects of the changes introduced by the bill are: abolition of the equalisation factor system; provision for the use of annual valuations for all taxable properties, with values determined as at a base date six months prior to the commencement of each land tax year, which is a reduction from the current 18 months lag; enabling the Chief Commissioner of Land Tax to contract with either the Valuer-General or private valuers for the purpose of obtaining annual valuations; allowing taxpayers full rights of objection and appeal against annual valuations; providing for the chief commissioner to refer valuation objections to either the Valuer-General or private valuers; provision for land tax valuations to reflect the legal impact of interim orders made under the New South Wales Heritage Act on the same basis as permanent orders; provision for land tax valuations to reflect the legal impact of heritage classifications under local environment plans; provision for land tax valuations to reflect the impact of protected tenancies under the Landlord and Tenant (Amendment) Act 1956 on the rent that may be charged; and extension of the exemption for owner-occupied properties exceeding 2,100 square metres to the whole of the land where the chief commissioner is satisfied that planning provisions prevent subdivision.

As a result of these changes, coupled with the downturn in land values, there will be an average 30 per cent reduction in land tax assessment in 1993. Total land tax revenue on a tax year basis is expected to fall from $759 million in 1992 to $528 million in 1993. In many of the eastern and northern suburbs, which suffered the brunt of excessive values as a result of the equalisation factor system, the reduction in tax will be even higher, particularly for small landowners whose total property holdings are close to the tax-free threshold. Examples of where average taxable values will fall by more than 30 per cent, and in some cases by more than 50 per cent, include: residential properties in Randwick, Ku-ring-gai, South Sydney, Woollahra and Mosman; business properties in Sydney, Woollahra, South Sydney, Waverley, Randwick and Willoughby; and industrial properties in Willoughby, Randwick, Sydney, South Sydney and Botany. In individual cases where properties have been grossly overvalued by the use of equalisation factors values could fall by more than 60 per cent. In addition, more than 3,000 small taxpayers will cease to be liable for tax altogether because their land holdings will fall below the threshold of $160,000 at which tax becomes payable. The white paper recommendation that private valuers be allowed to tender for the annual valuation of specified local government areas could not be implemented for the 1993 tax year because of time constraints. Its implementation has therefore been deferred until 1994, even though this bill provides for it. The success of private valuers in tendering will, of course, very much depend on their ability to compete with the Valuer-General.

In regard to measures to reduce the cost of appeal, the Government has directed the Valuer-General to seek to mediate valuation disputes in the Land and Environment Court whenever possible. Mediation was first introduced to the Land and Environment Court in May 1991 and has



proved to be a success in terms of saving court sitting time as well as costs for the parties concerned, at least in

the majority of cases. Some other amendments to the Land Tax Management Act are designed to overcome minor anomalies which have been identified. The bill amends section 65A to allow the chief commissioner to redetermine the allocation of individual strata entitlements for land tax purposes if satisfied that the value determined in accordance with the relevant unit entitlement is not fair and reasonable. The bill extends a current exemption for land owned and used by non-profit clubs for athletic sports to all sports and games, such as pony clubs, motor bike racing and car racing. The bill provides an additional concession where a building is used partially as a nursing home or retirement home. The current provisions allow a complete exemption where land is used solely for a retirement village, nursing home or both. Where only part of the land is used for these purposes a partial reduction in the taxable value of the land is allowed. However, no concession applies where part of a building is used for non-exempt purposes. The bill will allow a proportionate reduction in the taxable value of land in such cases.

The bill clarifies provisions relating to the taxing of lessees of Crown land. As a result of a series of amendments to the Act since 1985, lessees of Crown land are liable for land tax where they entered into a new lease or renewed an existing lease on or after 1st January, 1987. These provisions were consolidated in a new section 21C of the Land Tax Management Act, which was introduced from 1st January. Though the new section successfully clarified the land tax position for the 1992 and future tax years, it is now proposed to backdate the application of the new section to Crown land in order to clarify the position for the 1989, 1990 and 1991 tax years. This will not change the liability of lessees, but will make it clear that the Crown is not liable for land tax. It will also result in exemptions for licences and short-term leases of less than 12 months' duration being backdated to the 1989 tax year. I should add that it will not affect lessees of land owned by a local or county council or a public authority.

The Government has held discussions with the honourable member for Bligh regarding the land tax concessions contained in her private member's bill which is currently before the House. The proposals in that bill include abolition of land tax on low income residential housing, an increase in the general exemption threshold - which is currently $160,000 to $320,000 - and the abolition of the grouping provisions to apply the threshold to each individual parcel of land. As noted by the Premier, and Treasurer in the Budget Speech the Government cannot afford further significant tax concessions in 1992-93, and those which are contained in the bill of the honourable member for Bligh simply cannot be afforded at this time. However, the Government is committed to a staged expansion of land tax concessions in future years, as budgetary conditions allow. In keeping with that commitment, the current exemption for low-cost boarding-houses will be extended to all forms of low-cost rental accommodation, with effect from the 1994 land tax year for land held at 31st December, 1993. The development will take place with full consultation with affected groups. The other two reform measures proposed by the honourable member for Bligh in her private member's bill, as well as additional measures, will be evaluated in the coming months, and the Government will implement them, if not in the next financial year, within the term of the Fiftieth Parliament if the budgetary situation permits. I thank the honourable member for Bligh for her co-operation in dealing with this sensitive issue. In summary, I believe that the implementation of the white paper recommendations will meet the concerns of land taxpayers and their tenants, and will result in a more equitable system for all concerned.

I commend the bill to the House.

**The Hon. M. R. EGAN** (Leader of the Opposition) [5.8]: The Opposition will support this bill, which implements a number of recommendations of the Government's recent white paper on land tax. Those aspects include: abolishing equalisation practices; using annual valuations as a base date six months prior to the commencement of each land tax year, enabling the land tax commissioner to contract with the Valuer-General or private valuers to provide annual valuations in 1994; allowing taxpayers full objection and appeal rights against annual valuations; providing for the

chief commissioner to refer


valuation objections to either the Valuer-General or private valuers, providing for land tax valuations to reflect the impact of interim orders made under the New South Wales Heritage Act and heritage classification under local government plans; protecting protected tenants under the Landlord and Tenant (Amendment) Act 1956 on the rent that might be charged; and, finally, extending the exemption granted on properties exceeding 1,200 square metres to the whole of the land where the planning provisions prohibit subdivision. Though these provisions are welcome, the Opposition points out that they are really no more than tinkering at the margin with existing land taxes which have had quite disastrous repercussions not only for those who pay land tax but also for the rental housing market and small business people who are being hit hard by the rapacious revenue raising of this Government as a result of its failure to adjust the land tax scales for inflation. It is quite incredible to see the massive increase in revenue from land tax over the last few years. Those increases have come about simply because the Government has been able to take advantage of the boom in property values during the late 1980s. The increase in revenue bears no relationship at all to the increase in general inflation over that period. As this bill indicates, the Government is not prepared to make any significant reforms; it is only tinkering at the margin.

**The Hon. R. S. L. JONES** [5.10]: The Australian Democrats support the Land Tax Management (Amendment) Bill, which will put into place recommendations from the white paper on land tax reform. Land tax impacts on many people including those who have little cash income but who have to pay land tax nonetheless. It is an iniquitous tax, hated by most. Nevertheless, revenue from land tax makes up a significant proportion of total government revenue and will continue to do so for many years. The Australian Democrats support the legislation.

**The Hon. JENNIFER GARDINER** [5.11]: I am pleased to support the Land Management (Amendment) Bill, which will implement major reforms to the land tax valuation system recommended by the white paper on land tax, entitled "Review of New South Wales Land Tax Base and Valuation System". Some minor amendments are also proposed to administrative and exemption provisions. This whole review arose out of a commitment given by the New South Wales Government, when bringing down the 1990-91 Budget, to review the structure of the land tax system. The amendments to the legislation relate to the abolition of the equalisation factor system; provision for the use of annual valuations for all taxable properties, with values determined as at a base date six months prior to the commencement of each land tax year; and empowering the chief commissioner to contract with either the Valuer-General or private valuers for the purpose of obtaining annual valuations. There are also a number of other significant amendments. As a result of the abolition of equalisation factors and the move to current values, coupled with the recent large falls in values of land, 1993 land tax assessments will be 30 per cent lower, on average, compared with 1992 assessments. Cheerfully, that means that more than 3,000 small taxpayers will cease to be liable for land tax altogether. I support the bill.

**Reverend the Hon. F. J. NILE** [5.13]: The Call to Australia group supports the Land Tax Management (Amendment) Bill. The amendments reflect the recommendations of the white paper on land tax. I have raised a number of land tax questions in the Parliament over the past two years, mainly because of complaints Call to Australia has received from many landowners in this State who found that as a result of the dramatic increase in property prices in the late 1980s land tax increased to too high a level. A substantial number of taxpayers were faced with a sudden large increase in tax

liability, both in percentage and absolute terms. In the short term, these increases in tax liability create problems for taxpayers or their tenants. As honourable members would

agree the effects have been exaggerated and increased as a result of the worst recession in Australia since the Great Depression, with accompanying problems for landowners of downward pressure on the values of rents and rapidly increasing vacancy rates. I am pleased that the Government has put forward these amendments, although they are only interim measures. The Government has indicated that it would be willing to go further but because of the tight budget situation and the economy it cannot; this is as far as the Government can go at this stage. I look forward to further amendments in due course.

**The Hon. J. P. HANNAFORD** (Attorney General, Minister for Industrial Relations, and Vice-President of the Executive Council) [5.16], in reply: I thank honourable members for their support. As Reverend the Hon. F. J. Nile indicated, the Government would - to address the issues raised by the Leader of the Opposition - go further if it could. It is not able to do so at present because of the state of the economy which - as the Leader of the Opposition knows - was generated by his parliamentary colleagues in Canberra. When the economic situation changes, the Government may be able to address other reforms. I commend the bill.

**Motion agreed to.**

**Bill read a second time and passed through remaining stages.**

## STATE REVENUE LEGISLATION (FURTHER AMENDMENT) BILL

### Second Reading

**The Hon. J. P. HANNAFORD** (Attorney General, Minister for Industrial Relations, and Vice-President of the Executive Council) [5.15]: 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 Government has an ongoing commitment to the improvement and simplification of the New South Wales tax system.

This of course benefits the people of New South Wales by reducing administrative costs for both the Government and the taxpaying public. The commitment to equity and simplicity is reflected in the consultation processes used to determine the most appropriate measures for reform.

In addition to the Government's role in the consultation process, the Office of State Revenue is involved in ongoing liaison with peak industry and professional groups.

Many of the changes proposed in the Bill are the outcome of these processes.

Let me now turn to the Bill itself.

This Bill deals with a number of amendments relating to stamp duties, debits tax, business franchise licences, health insurance levies and pay-roll tax. I will deal with these separately.

Since the inception of loan security duty, numerous requests have been made for uniform legislation between the various jurisdictions imposing this duty.

New South Wales produced a discussion paper outlining the proposed method of calculating duty which has been circulated to the other jurisdictions, the legal profession and other interested professional groups.

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Considerable discussion and negotiation has taken place between State and Territory tax offices which impose loan security duty and in principle agreement has been given to the proposed amendments by other jurisdictions, the New South Wales Law Society, the Victorian Law Institute and the Australian Bankers' Association.

The proposed method of calculating duty would provide certainty, simplicity, equity as well as reducing compliance and collection costs.

The First Home Purchase Scheme provides that purchasers meeting the requirements of the scheme may receive a 30% discount on the payment of duty or pay it by five equal instalments.

The Bill increases the income limit for single persons from $27,000 to $33,000 in line with an increase in the limit for low interest loans administered by the Department of Housing.

Representations have been received requesting an exemption from stamp duty on Grants Agreements between the Commonwealth and organisations providing aged care services under the Aged or Disabled Persons Care Act 1954.

As persons entering into these agreements provide accommodation for financially disabled and aged persons, a Variation to Statute was signed on 16 June, 1992 exempting the agreements from stamp duty.

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

Representations have been received from a number of Members of Parliament and the Secretary of the Rural Lands Protection Boards' Association of NSW seeking an exemption from stamp duty on Motor Vehicle Certificates of Registration issued to Rural Lands Protection Boards (the Boards).

Given the nature of the services provided by the Boards, it is appropriate that an exemption from stamp duty which is currently provided to local councils should also be provided to the Boards in respect of the issue of Motor Vehicle Certificates of Registration.

Following submissions from industry and the Australian Stock Exchange it is proposed to grant an exemption from marketable securities duty in respect of trading by futures brokers, where such trading is done as a hedge against a futures contract.

The Bill will also extend the current provisions which grant an exemption from marketable securities duty to registered options traders to Clearing Members who perform an informal market making role in the options market.

These proposals will have a negative effect on revenue to the extent of approximately $1m for the balance of this financial year. This loss of revenue will become less relevant as the phasing out of marketable securities duty commences.

For some time, the Office of State Revenue has been having discussions with the Australian

Merchant Bankers Association (AMBA) and the Australian Bankers Association (ABA) regarding the treatment of FID relating to Treasury Products.

The term Treasury Product is a generic description referring to products such as currency swaps, interest rate swaps, forward rate agreements or forward interest rate agreements.

These products will either provide an opportunity for corporations to hedge their financial arrangements or provide a market for speculation in currency or interest rate movements.

The advice of industry is that at present no FID is being paid on many of these transactions. Indeed if there was an attempt to impose FID through existing legislation or by amendment, it is most likely the transactions, which are international and extremely portable, would be moved out of the jurisdiction. This is because the financial institutions charged with the duty could not compete with other financial institutions that were not liable to FID on those transactions.

Obviously, it is undesirable to deter industry from carrying on its business in New South Wales and consequently, by press release of 2 June, 1992 the then Premier and Treasurer, Mr Greiner,



announced that receipts relating to Treasury Products transactions, such as currency and interest rate agreements, were to be exempted from FID.

For the sake of clarity and as a protection against abuse of the exemption the amendment nominates transactions to be afforded relief from FID.

The Stamp Duties Act presently contains an exemption from loan security duty for Offshore Banking Units (OBUs) in respect of loan securities which would not have been liable to duty if they had been executed outside New South Wales.

The Federal Government has recently introduced legislation into Parliament providing for the concessional treatment for OBUs.

Coinciding with the Federal Government's action, the Sydney Financial Centre Task Force has recently recommended an exemption from FID in relation to all qualifying OBU activities. This was necessary because of the highly competitive nature of the business.

There would be virtually no loss of revenue if this concession was given as it would primarily relate to business not currently undertaken in this country.

It is proposed that the receipts of money generated from pure OBU activities be exempted from FID.

For the purposes of the Stamp Duties Act, an OBU would be restricted to mean an OBU as defined in the Income Tax Assessment Act.

This amendment will commence on a date to be proclaimed as the Commonwealth legislation to which it will relate has not yet been passed.

The Bill makes other minor stamp duties amendments.

Debits Tax is payable on debits to accounts with banks or other financial institutions on which a cheque can be drawn.

Where a bank or financial institution debits a customer's account to pay or recover FID there is a liability to pay debits tax on that debit.

The result is that Debits Tax is paid on amounts deducted to pay or recover FID.

It is considered that this situation is inequitable and therefore, the Bill provides for debits to an account to pay or recover FID to be exempt from the payment of Debits Tax.

The other jurisdictions have indicated that they are in agreement with the exemption.

It is proposed that this amendment should commence at a date to be proclaimed so that other jurisdictions may also introduce similar amendments to their legislation.

As I indicated earlier, the Commonwealth Government has introduced legislation providing concessional treatment for offshore banking units (OBUs). Consistent with the concession provided in relation to FID, it is proposed that any debits to accounts from pure OBU activities be exempted from Debits Tax.

Again, an OBU would be restricted to mean an OBU within the meaning of the Income Tax Assessment Act.

These amendments are largely aimed at minimising avoidance and evasion, particularly in regard to the illicit sale of product imported from other jurisdictions which impose lower rates of licence fees.

This Bill will substantially increase the cost of breaching the New South Wales legislation by increasing some penalties by up to 1000 per cent, with higher penalties for corporations, and by providing for a licence to be cancelled if a licensee is convicted of an offence under the Acts.

As announced by the Premier and Treasurer in the Budget speech, the Bill provides for a modified diesel fuel exemption scheme to be introduced from 1 July 1993.

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The legislation currently provides an exemption from fees in respect of diesel sold for off-road use and is administered by means of exemption certificates.

The Bill makes provision for the modified scheme.

An anomaly has been identified with the health insurance levy formula which results in the average weekly levy per contributor varying between funds depending on the range of premiums and benefits offered.

To prevent this loss of revenue, and to restore equity between funds, the Bill will amend the method of calculating the monthly levy by applying a flat fee per contributor per week.

The change in the formula will take effect from 1 February 1993.

The current prescribed rate of 53 cents per single contributor per week will not change, except under the existing indexation provisions in the Act.

The current exemption in respect of various types of pensioners will also be retained by appropriate changes to the regulations.

Another potential avoidance issue has been identified as a result of having the calculation of the levy based on revenue received by a fund during the month occurring three months prior to the

period in which the fee is paid to the Government.

The Bill introduces a termination fee to overcome this.

The Bill modifies or extends some existing pay-roll tax exemptions in relation to:

* "exempt benefits" under the Commonwealth Fringe Benefits Tax Assessment Act;

* employer contributions to an eligible superannuation fund under section 267 of the Income Tax Assessment Act;

* the Community Development Employment Project, which is a scheme administered by the Commonwealth Aboriginal and Torres Strait Islander Commission;

* wages paid in New south Wales for services performed outside Australia beyond six months; and

* the value of "relevant" contracts at which they become automatically exempt, increased from $500,000 to $800,000.

There are uniform provisions in all State and Territory pay-roll tax Acts which ensure that pay-roll tax on any wages is paid only in one jurisdiction, thus avoiding double taxation.

The Bill seeks to make it clear that the relevant period in which services must be provided wholly outside New South Wales before the wages are exempt even if paid in New South Wales is one month.

Since the introduction of a single marginal pay-roll tax rate of 7 per cent on wages exceeding a threshold of $500,000 from 1 October 1990, some complaints have been received from grouped employers about difficulties in determining their tax liability.

This difficulty arises because the allocation of the exemption threshold to each group member depends on each member's proportion of total group wages.

In order to simplify administration, the Bill proposes to re-introduce the "designated group employer" system which applied prior to 1990.

It is also proposed to allow two or more members of a group to lodge a single return, with the approval of the Chief Commissioner.

A group's total liability for pay-roll tax is unaffected by these changes.

The Bill contains other minor pay-roll tax amendments which are in the nature of statute law revision.



Mr President, the reforms contained in this Bill will contribute to the Government's ongoing obligation to simplify the tax system and provide greater certainty for the taxpaying public of New South Wales.

I commend the bill.

**The Hon. M. R. EGAN** (Leader of the Opposition) [5.17]: This bill deals with

a number of amendments to stamp duties, debits tax, business franchise licences, health insurance levies and payroll tax. It is a package of relatively minor tax reforms, as part of an ongoing program to simplify the New South Wales tax system. The Opposition supports the bill.

**The Hon. R. S. L. JONES** [5.17]: I congratulate the Government on introducing these tax reforms. Two of the reforms and worthy of particular attention. The first is the proposal to exempt a conveyance of vacant land from stamp duty when it is between marriage or de facto partners and results in ownership in their joint names if the couple intend to build a house on the land and occupy it as their principal place of residence. The second is the proposal to extend the existing stamp duty exemption for conveyances of matrimonial property pursuant to court orders and other procedures under the Family Law Act of 1975 of the Commonwealth to include conveyances that result from an auction of the property. These are particularly welcome; they may be small reforms but they will affect many people.

**The Hon. JENNIFER GARDINER** [5.18]: I am pleased to support the amendments to various State revenue Acts administered by the New South Wales Treasury. The major proposals contained in the bill include the further enhancement of the reputation of New South Wales as the financial capital of the Asia-Pacific region. The bill will seek to provide an exemption from financial institutions duty, FID, for the receipt of money from certain Treasury products. The bill also proposes to provide an exemption from FID and debits tax for pure off-shore transactions of off-shore banking units. The stamp duty loan security provisions are to be amended to provide a more equitable method of stamping instruments which relate to property in more than one jurisdiction. The stamp duty loan security provisions are to be amended to ensure that transfers of mortgages that are instigated by mortgagees do not attract loan security duty on the amount transferred when further loans are made.

There is to be an increase in the first home purchase scheme single income eligibility limit to $33,000 per annum to allow a greater number of first home owners to participate in the scheme. It has increased from $27,000 to $33,000. An exemption from stamp duty is to be provided where the parties to a divorce are required to auction property and one of the parties acquires the property. This exemption will be consistent with existing concessions that apply to persons who transfer property in connection with a divorce otherwise than by way of auction. An exemption from payroll tax is to be given for wages paid in New South Wales where the relevant service have been provided outside Australia beyond six months. It is also proposed to strengthen the penalty provisions of the Business Franchise Licences (Tobacco) Act and the Business Franchise Licences (Petroleum Products) Act. I am pleased to support these amendments.

**Reverend the Hon. F. J. NILE** [5.19]: The Call to Australia group supports the State Revenue (Further Amendment) Bill. Obviously, it is far more efficient to have penalty units than actual cash amounts. One of the positive developments of the Keating Government is almost nil inflation, so cash amounts, if used, would not increase. But I am puzzled about the variation in the method of transferring cash amounts to units. Some penalties have been dramatically reduced. If we are simply transferring penalty units, why not have a consistent formula whereby $1,000 could be 100 penalty units; $2,000,



200 units; and $5,000, 500 units. I have checked a number of examples in the bill, and in some places $1,000 equals 100 units whereas in other places it equals 10 units. Almost all the $5,000 penalties have been reduced to 100 units, particularly with regard to tobacco-related penalty units. That appears at page 11 of the bill. If the change is said to be a machinery nature, why have penalties decreased?

**The Hon. J. P. HANNAFORD** (Attorney General, Minister for Industrial Relations, and Vice-President of the Executive Council) [5.20], in reply: I have taken advice on the issue raised by Reverend the Hon. F. J. Nile about reductions in penalties. I am informed that no penalties have been reduced by this legislation. Generally penalties have increased. A penalty unit equals $100 under the Interpretation Act. So wherever a penalty unit is described in the legislation that should be multiplied by 100 to provide the dollar figure. With those comments, I commend the bill to the House.

**Motion agreed to.**

**Bill read a second time and passed through remaining stages.**

## COAL AND OIL SHALE MINE WORKERS (SUPERANNUATION) AMENDMENT BILL

### Second Reading

**The Hon. J. P. HANNAFORD** (Attorney General, Minister for Industrial Relations, and Vice-President of the Executive Council) [5.22]: 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 introduces major changes to the coal and oil shale mineworkers superannuation scheme. The scheme is an industry scheme, and this legislation is the culmination of negotiations and discussions between the industry parties, that is, the unions and the employers, extending over more than two years and involving both the Commonwealth and State governments.

A major objective of the bill is to reduce the period presently required for funding the unfunded liability that has accumulated under the statutory superannuation scheme. New arrangements for contributions and restructured benefits will ensure that the unfunded liability will be fully funded by around the year 2001, rather than the present actuarial forecast of 2011 - a reduced funding period of ten year

The changes to the scheme are a result of earnest negotiations between the coalmining unions, the principal one being the United Mineworkers Union, and the New South Wales Coal Association, representing the coalmining employers. Those negotiations resulted in a formal agreement being struck between the unions and the employers, the parties, and that agreement is the basis of the amendments before the House today.

Mr President, I will outline the background to the perceived need for these amendments and then detail the changes included in the legislation.

The parties have been concerned for a number of years over the unfunded liability of the coal and oil shale mineworkers superannuation scheme, amounting to approximately $465.6 million as at 30 June, 1991. The latest actuarial prediction is that it will take until



the year 2011 to be fully funded under present funding arrangements. The parties put their concerns to the Commonwealth Government in mid-1990 and discussions followed between the

then Commonwealth Minister for Primary Industry, Mr Kerin, and my predecessor, the Premier, who was then Minister for Industrial Relations.

A working party was established, consisting of the parties and representatives of the Commonwealth and State governments. The major discussions took place, however, outside the working party forum and resulted in the agreement which encapsulates the method by which the funding of the scheme will be accelerated to 2001. The proposed changes have full worker support.

Mr President, I should remind honourable members of the background to the unfunded liability problem and the steps that have taken place to address it. There are two major characteristics which are unique to this scheme that have, together with a number of economic factors, had a major impact on the unfunded liability.

The first factor is the early funding arrangements. Under this particular superannuation scheme, employers do not pay specifically for the accruing benefits of their own employees. The liability of the employer extends only to the contributions required by the Act. This means that when a company ceases to operate, the benefits due to that company's employees are met by the fund. Any unfunded liability for benefits is then met from future contributions of remaining companies in the industry.

The second major factor was the introduction of lump sum benefits into the statutory fund in 1978. Under this arrangement existing members were entitled to a lump sum benefit instead of a pension. This meant that the benefits already accrued up to 1978 had to be paid out in the form of a lump sum immediately they crystallised, instead of being paid for in the form of a pension over a number of years. The impact on the scheme was an immediate increase to the unfunded liability. The future benefit accrual of lump sum benefits was, however, fully funded from that time.

You can see, Mr President, how the impact of the funding arrangement, together with the introduction of the lump sum scheme in 1978, combined as major contributory factors to the existence of the unfunded liability.

The first attempt to address this matter was in 1978. On that occasion arrangements were put in place for the future funding of benefits, and required employers to contribute 7.5 per cent with employees contributing 2.5 per cent, of the reference rate. The reference rate is an industry pay rate benchmark for superannuation, currently $505 per week. In addition, the employers contributed a further 5.5 per cent to deal with the past service liability, which was expected to be expunged in 20 years.

This additional employer contribution and the estimated period to expunge the unfunded liability were based on actuarial advisings of consultants Noble Lowndes, who were commissioned by the Colliery Proprietors Association prior to the 1978 revision of the scheme. Subsequent Government actuarial investigations have found that those contribution rates, and the assumptions of the consulting actuary on which they were based, to be inadequate to provide for the intended levels of benefit introduced at that time.

Since that time also, a number of factors caused growth in the liability, and consequent extension of the time over which it would be wiped off. There have been benefit including early retirement, CPI adjusted pensions, and also a downturn in the industry; but most importantly there has been continued wage inflation until very recently - and this has meant that although the unfunded liability grew little, if at all in real terms, it did not start to recede in dollar terms until recently, following further legislative intervention and the investment growth of the fund. These factors had a direct and major impact on the fund and put upward pressure on the unfunded

liability.

In 1988, further amendments directly addressing the unfunded liability, were made to the employees' rate of contribution. At that time the unfunded liability had grown to $531 million and it was desired that full funding be achieved by 2011. The measures taken to achieve this were the increase of employee contributions (then 2.5 per cent) by 1.75 per cent to 4.25 per cent, and the continued employer contributions of 5.5 per cent, in addition to



their normal contributions of 7.5 per cent. Other measures empowered the further adjustment of the contributions of both employers' and employees' contribution levels and the level of benefits, if required.

The changes being introduced today, Mr President, are the result of some patient and persistent negotiation which has taken place principally at the initiative of the parties concerned, an initiative which, I might add, is commended by this Government in the interest of industrial harmony, and a sensible approach in these difficult economic times. This is a volatile industry as we all know, Mr President, and one where the superannuation element of coalminers' conditions of service are vital for the assured security of the industry itself, and of the miners' families.

I will not detail the legislative changes being introduced by the bill. As I have already mentioned, a main purpose is to accelerate the funding of the scheme. This will be achieved by the combination of two approaches. The first is the closure of the existing scheme, together with the restructure of benefits for existing members. And the second is the introduction of new funding arrangements and provision for commutation, or cashing out, of existing pensions.

From 3 January, 1993 the existing coal and shale mineworkers superannuation scheme (the statutory scheme) will be closed to new members. The scheme will continue to provide accrued benefits for existing members, that is, in respect of services up to 2 January, 1993. Benefits from 3 January, 1993 will be provided from the Coal and Oil Shale Mining Industry (Superannuation) Accumulation Fund, COSAF, which has been operated privately by the industry for some four years now. Benefits for new employees will also be provided by COSAF or another industry accumulation scheme.

The benefits structure of the statutory scheme will be altered to fit in with the benefits to be offered by COSAF. I will detail the areas of change, firstly in respect of current members, and then in respect of new mineworkers from 3 January 1993.

From 3 January 1993 the benefits for an existing member of the statutory scheme will still be a lump sum on retirement, on or after reaching the age of 55 years. The benefit will be paid by the statutory scheme in respect of a member's service up to 2 January 1993. For service from 3 January 1993 the benefit will consist of the accumulated benefit in COSAF. There are special safety net provisions included in the changes to ensure that, with the combined benefit from the statutory scheme and COSAF, an existing member will not be any worse off than he would otherwise have been under the existing statutory scheme provisions.

Death and invalidity benefits will be provided by a COSAF insurance scheme, in conjunction with a pro-rate retirement benefit, and will include a prospective service element up to the age of 55 years. Again, special safety net provisions are included to ensure that the combined statutory scheme and COSAF benefit in respect of a member who ceases employment through incapacity or death, will not be any less than that provided under the existing statutory scheme provisions.

Retirement superannuation for new employees to the industry from 3 January 1993, will

consist of their accumulated benefit in COSAF. A death benefit will consist of the COSAF accumulated benefit plus an additional insured COSAF amount calculated from the date of death, to the date the deceased would have turned 55 years of age. This prospective service element will also form part of the benefit payable for new mineworkers who suffer incapacity to work in the industry.

Mr President, you will note that the new superannuation benefits from 3 January, 1993, will be an accumulation benefit. The current trend in superannuation benefit design is to move away from a defined benefit to an accumulation-style scheme. This reform is being forced upon defined benefit schemes such as the statutory coal mineworkers scheme by the poor economic climate of the early 1990s, the uncertain recovery from the recession, and lowered interest rates, which thus cast a greater burden on employers to meet the defined benefit liabilities. In addition, we have the intervention of the Commonwealth Government in introducing the superannuation guarantee charge at a time of economic difficulty despite the entreaties of all State governments and employers.

Honourable members will recall the recent response of this Government to the introduction of the charge in relation to its public sector schemes. The Government, as an employer, cannot afford to maintain its generous defined benefit schemes and, at the same time, accord with the Commonwealth Government's requirements with the superannuation guarantee charge. Hence the progressive closure of all of the present defined benefit public sector superannuation schemes to new members.

The coalmining industry in this State has taken the initiative in this arena and has, through this negotiated agreement, decided that an accumulation scheme is the only way that the industry can afford to pay for adequate superannuation for its employees.

The second aspect to the changes being introduced today, Mr President, is the altered funding arrangements which will address the statutory scheme's unfunded liability. The unfunded liability is to be attacked from two fronts. One will deal with the fortnightly pensioner liability, and the other will meet the lump sum liability.

The pension unfunded liability amounted to $87.3 million as at 30th June, 1991. Part of the negotiations undertaken by the industry included special negotiations with the Joint Coal Board. The Joint Coal Board, of course, is responsible for industrial relations and the health and welfare of mineworkers in this State. The workers' compensation insurance scheme, administered by the Joint Coal Board, has surplus funds which will be accessed to fund the pensioner unfunded liability of the statutory superannuation scheme. The Coal Industry Act provides access to the funds of this scheme with the joint approval of the State and Commonwealth governments and I am pleased to say that the Commonwealth Minister for Primary Industries and Energy, the Hon. Simon Crean, M.P., has given his full support to this funding arrangement.

The funding from the Joint Coal Board will be effected with an initial $10 million payment and subsequent top-up payments, from which the fortnightly pensions will be paid. Included in this arrangement is the possibility of allowing pensioners to commute their pensions to lump sums, on a voluntary basis. The availability of this option will be at the discretion of the Coal and Oil Shale Mineworkers' Superannuation Tribunal which will also be responsible for determining the basis of any commutation option.

The ongoing funding arrangements with the Joint Coal Board require the tribunal responsible for the statutory fund, to submit monthly statements to the Joint Coal Board on payments of pensions (and commutations, if applicable), made during the period. The Joint Coal Board will reimburse the statutory fund, thus restoring the $10 million balance.

The impact of this arrangement on the compensation insurance scheme will be fully disclosed in the Joint Coal Board's audit and reporting arrangements. This method of funding, rather than a once off payment of the total unfunded pension debt of $87.3 million, will ensure that the ability of the compensation scheme to meet its responsibilities would not be adversely affected. These arrangements will take effect from 1st July, 1992.

I turn now to the lump sum liability. This amounted to $378.3 million as at 30th June, 1991, as assessed by the Government Actuary in his triennial report in January 1992. It is proposed in the bill before us that the contribution arrangements with the employers and employees be altered in order to fully fund the liability by the year 2001.

I have already explained to honourable members that presently contributions to the existing statutory scheme are made by both employees and employers. Total employee

contributions amount of 4.25 per cent of the reference rate, and the employer contributions are 13 per cent of the reference rate.

The new arrangements will mean that employees will cease to make contributions and the equivalent amount of those contributions will be made by the employers under a salary sacrifice arrangement. This will entail the employer paying contributions from pre-tax dollars, allowing the 4.25 per cent currently paid from employees' post tax dollars, to be grossed up to 8 per cent (or 7 per cent for particular lower paid classifications).

Employees, Mr President, will end up with the same take home net salary but the total contributions to superannuation will be increased by 3.75 per cent, from the current combined employee and employer contributions of 17.25 per cent, to 21 per cent. Half the contributions will be deposited with the statutory scheme, to fund the lump sum liability, and the other half will be paid



to COSAF or another industry fund, forming the basis of the benefit accumulation for all employees in the industry who join that scheme.

The final impact of the arrangements of the Joint Coal Board funding the pension liability, together with the salary sacrifice arrangements for the funding of the lump sum liability and the closure of the statutory scheme to new members from 3rd January, 1993, should see the total unfunded liability fully funded by the year 2001. This has been independently assessed by privately retained actuarial consultants to the parties, Coopers and Lybrand, advising the Coal Association, and Mr Don Steel, advising the United Mineworkers Federation of Australia. The earlier discharge of the liability is an improved time scale of around 10 years, compared with the previous forecasts based on the full existing funding arrangements of the scheme.

One further matter requiring legislative amendment is the inclusion of a provision to enhance the administrative cost-effectiveness of the statutory scheme. The legislation will give the tribunal power to determine its own administrative arrangements. This comes about as a result of the concern felt by the parties over the cost of administration of the statutory fund over the past three years. As honourable members would be aware, the administration of the statutory scheme is conducted by the Government. It is entirely appropriate that this essentially private sector scheme be freed up in a way that will permit it to be conducted by private enterprise.

Finally, Mr President, in view of the topical nature of superannuation, and due to the major impact on the superannuation industry by the Commonwealth Government at regular intervals, there is provision in the bill for the agreement between the parties to be renegotiated in certain stipulated circumstances. Occurrences which would require a renegotiation of the agreement include actions by the Commonwealth Government, including the Taxation Office, or this Government, or decisions of bodies such as a court, which would make the terms of the parties' agreement significantly less effective, or if there was a reduction in employment in the New South Wales coalmining industry to less than 12,000 employees.

Further to this end, the legislation, apart from regulations of a transitional nature, will also include a regulation-making power should it become necessary to renegotiate the agreement and consequently amend the Act.

Mr President, you can see that the amendments to be made to the Coal and Oil Shale Mine Workers (Superannuation) Act 1941 are substantial and quite complex. As this is putting into place an agreement settled by the parties, I have taken the liberty of allowing those parties to view the proposed bill. It was essential that it met their needs as this is an industry scheme and the changes have been negotiated, by the industry, for the industry. That exercise was a fruitful one and we thus have a bill that all parties are satisfied appropriately reflects their enterprise

agreement and the industry's needs.

There are no direct costs to the Government in relation to the introduction of these changes. However, in their support for this initiative, the governments of the Commonwealth and this State have forgone income tax and payroll tax respectively, to enable the salary sacrifice arrangements. The amount of lost payroll tax for the current financial year is $1.2 million, and the Commonwealth's loss I believe to be in the order of $7 million in the current financial year.

Both the State and Commonwealth Governments believe this revenue loss is a worthwhile sacrifice. In return, Mr President, we will achieve earlier full funding of the coal industry's statutory scheme and protect jobs in one of Australia's vital export industries. The changes proposed are also entirely consisting with the Government's overall policy initiative to tackle the State's public sector unfunded superannuation liability.

**The Hon. JUDITH WALKER** [5.23]: The Opposition supports the Coal and Oil Shale Mine Workers (Superannuation) Amendment Bill. Having read the majority of the second reading speech of the Attorney General and Minister for Industrial Relations, I understand that the final arrangements were arrived at after lengthy discussions between the United Mineworkers Federation of Australia, the relevant coal



mine associations through their authority, and the State and Federal governments. I understand that Mr Simon Crean, the Minister responsible in the Federal Government, has fully approved of the scheme. The mineworkers represented by their respective unions have also been fully consulted and have agreed that it is a sensible way to approach the problems of continuing funding and cutting back liabilities unfunded by the current scheme. The current scheme will cease its operation on 3rd January, 1993, and any new employees after that date will be transferred to another fund, which guarantees set benefits, et cetera. On the basis of one arrangement some people who are receiving fortnightly pensions will be able, with the agreement of the tribunal responsible, to apply for commutation of their pension, which seems to me to be a very good idea. I am sure that in a lot of circumstances a lump sum commutation would be most helpful to families. Having said that, I commend the bill and suggest that people read the *Hansard* because the Minister's second reading speech encompasses the whole agreement. It is a very good second reading speech.

**The Hon. ELISABETH KIRKBY** [5.25]: The Australian Democrats support the Coal and Oil Shale Mine Workers (Superannuation) Amendment Bill, which will substantially amend the Coal and Oil Shale Mine Workers (Superannuation) Act 1941. Basically, the bill paves the way for the transition of superannuation schemes for coal and oil shale mineworkers from a defined benefits scheme to an accumulation scheme. I understand that the bill is the outcome of lengthy negotiations between coalmining unions and the New South Wales Coal Association. Essentially, it gives effect to an agreement between the unions and the employers. I am assured that both parties are satisfied with the bill. I am pleased too with the processes of negotiation that went into the making of this bill. Quite frankly, I do not see why the Government could not have followed a similar process when negotiating with the Public Service Association before attempting to shut down the State superannuation scheme unilaterally, taking away the legally enshrined rights of public servants. In fact, this bill is hard evidence that unions and employers can work together to achieve an outcome acceptable to both, particularly in regard to superannuation. The bill will eliminate within 10 years the unfunded liabilities in the Coal and Oil Shale Mineworkers Superannuation Fund, which happens to be 10 years earlier than predicted under present arrangements.

At 30th June, 1991, the unfunded liabilities of the scheme were $465.6 million. As the Minister said in his second reading speech, these unfunded liabilities were the outcome of unique characteristics of the scheme. Earlier funding arrangements provided that employers do not pay specifically for the accruing benefits of their own employees but are liable only for contributions as required by the Act. Any unfunded liability for payments is then left for future contributions of companies in the industry when those benefits accrue. Furthermore, from 1987 onwards, benefits could be taken as a lump sum benefit rather than as a pension, thereby placing immediately greater demands on funds accrued up to 1978. Other factors impinging on the scheme include the current state of the economy. In order to eliminate unfunded liabilities in 10 years, the existing scheme will be closed to new employees from 3rd January, 1993. Existing benefits as at 2nd January, 1993, will be paid to existing members in the form of a lump sum. As the Hon. Judith Walker has just said, I cannot imagine what better present they would get for the beginning of 1993.

From 3rd January, 1993, onwards, benefits will be provided to the Coal and Oil Shale Mining Industry (Superannuation) Accumulation Fund, which is known as COSAF. This is an accumulation scheme which has been operated privately by the industry for the past four years. Provisions are in place to ensure that existing members will not be worse off because of combined benefits in the statutory scheme and COSAF.



Furthermore, the unfunded liability for pensioners will be addressed through surplus funds from the workers' compensation insurance scheme administered by the Joint Coal Board. This has been agreed to by the Joint Coal Board and also by the Commonwealth Minister for Primary Industries and Energy. For this purpose there will be an initial $10 million payment and subsequent topping up to minimise any effect on the compensation insurance scheme.

The Minister might explain in reply why it is necessary that these arrangements should take effect from 1st July, 1992. It does not seem appropriate that these funding arrangements should be retrospective. Lump sum liability will be addressed through an arrangement under which mine workers cease contributing to the fund and all contributions to the fund for lump sum benefits will be paid for by the owners. Under a salary sacrifice arrangement employers will pay contributions from pre-tax salaries, increasing the total existing employer-employee contributions from 17.25 per cent to 21 per cent. Employees, however, will retain the same take-home pay. Half of these contributions will go to the existing statutory scheme and the other half will go to COSAF. I applaud the parties involved in negotiations which have resulted in this measure. I also note the provision for agreement between the parties to be renegotiated in special circumstances such as court decisions, reduction in the number of employees and a changing taxation environment. This will certainly add a necessary degree of flexibility. We support the bill before the House.

**The Hon. JENNIFER GARDINER** [5.32]: I have pleasure in supporting the Coal and Oil Shale Mine Workers (Superannuation) Amendment Bill, which arises out of the industry parties - comprising the New South Wales Coal Association and the coal mining unions, principally the United Mineworkers Federation of Australia - having reached agreement with regard to superannuation for coalminers in New South Wales. The focus of agreement is the closure of the statutory superannuation scheme for coalminers, which was an industry scheme. The purpose for the closure is to fully fund the unfunded liability of the scheme in approximately 10 years instead of the actuarily estimated time of 20 years, that is, by the year 2011. The bill contains amendments which will close the statutory scheme for new employees from 1st January, 1993. The bill alters the accrued benefits to be paid to current members of the statutory scheme for

service up to 31st December, 1992; included in these changes is the option for existing pensioners to commute their pension to a lump sum. The bill also reduces the lump sum unfunded liability of approximately $378.3 million by salary sacrifice arrangements and reduces the pensioner unfunded liability by $87.3, with cash contributions in lots of $10 million from surplus funds in the compensation scheme of the Joint Coal Board. It also meets the future accruing benefit from the industry's accumulation superannuation scheme - the New South Wales Coal and Oil Shale Mining Industry (Superannuation) Accumulation Fund, COSAF - or another fund operated by a coalmining company. This is an industry superannuation scheme and the legislation puts in place the agreement of the parties. I have pleasure in supporting the bill.

**Reverend the Hon. F. J. NILE** [5.34]: The Call to Australia group supports the Coal and Oil Shale Mine Workers (Superannuation) Amendment Bill 1992. The object of the bill is to amend the Coal and Oil Shale Mine Workers (Superannuation) Act 1941 in order to give effect to an agreement between representatives of coalmine owners and representatives of mine workers. The purpose of the bill is to eliminate within 10 years the unfunded liabilities of the Coal and Oil Shale Mine Workers Superannuation Fund. An important part of the legislation is that under the agreement mine workers would cease contributing to the fund and all contributions to the fund for lump sum benefits would be made by the owners. The measure is the result of the employers, mine



workers and the Federal and State governments working in harmony. It is heartening that such an agreement has been made in the mining industry, which has been subject to tension and strife, though not between miners themselves. I note also that the owners will be paying lump sum benefits and must be compensated in some manner.

Both the Federal and State governments, to achieve that object, have forgone income tax and payroll tax respectively to facilitate the salary sacrifice arrangement. The loss to the State Government in payroll tax in the current financial year will be $1.2 million, while the loss to the Commonwealth in the same period will be about $7 million. The Government will have no direct costs in relation to those changes, which are entirely consistent with the Government's overall policy of tackling the State's unfunded superannuation liability. The State and Federal governments therefore believe the revenue losses are worth enduring. The Federal Government and, in particular, the State Government hope that greater protection will be afforded volatile jobs in the mining industry, which provides one of Australia's vital exports, by achieving accelerated full funding of the coal industry superannuation scheme. I may be reading into the measure something that other members have not seen, but the bill appears to incorporate a fightback principle in regard to the abolition of payroll tax. One could also say that the Federal Labor Government and State coalition Government have agreed on a jobsback policy.

**The Hon. J. P. HANNAFORD** (Attorney General, Minister for Industrial Relations, and Vice-President of the Executive Council) [5.36], in reply: I thank honourable members for supporting the legislation. The bill is an important step forward in ensuring that unfunded superannuation schemes will be funded within an identifiable period. The Hon. Elisabeth Kirkby asked about retrospectivity of the legislation. The bill is a result of agreement between the employers and the unions. It was intended that this agreement would be operating from 1st July, but unfortunately the parties were not able to achieve that. As a result, the Joint Coal Board has agreed that it will pick up funding responsibilities from 1st July. The total unfunded liability of the statutory scheme is $465.6 million, and a portion of that figure, the pension liability, amounts to $87.3 million. That amount will be the subject of funding arrangements separate to those proposed for a lump sum liability. Funding arrangements for the pension liability will

consist of using surplus funds of the Joint Coal Board and the Coal Industry Compensation Fund, together with offering pensioners the option of commuting their pensions to a lump sum. The date of effect is 1st July, 1992. It is anticipated liability could be expunged within a couple of years once these arrangements are fully operational.

The Joint Coal Board will undertake its own actuarial valuation and will institute a deed of indemnity in favour of the statutory fund in respect of future pension payments. The Joint Coal Board will make an initial $10 million up-front cash payment to the statutory fund and this will be treated as an imprest amount in the books of the statutory fund. The statutory fund will submit a monthly statement to the Joint Coal Board certifying the total amount of pensions and redemptions paid during the period. The Joint Coal Board, on the basis of that statement, will reimburse the statutory fund for an amount sufficient to bring the imprest amount to $10 million. It is a top-up arrangement. This funding arrangement has been selected, in lieu of alternatives such as a once-off lump sum payment, in order to ensure the Joint Coal Board can continue to meet its liabilities under the compensation fund. The impact on the Joint Coal Board's profit and loss account and balance sheet will be fully disclosed. These arrangements will be reviewed 12 months after their commencement. In conjunction with the direct funding arrangements just described, pensioners, at the discretion of the Coal and Oil Shale Mine Workers Superannuation Tribunal, will be offered commutation on a voluntary basis.
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This will be paid from the pensioner account and will allow the pension liability to be expunged more quickly. That funding arrangement will be picked up by the Joint Coal Board through its accounts. I commend the bill to the House.

**Motion agreed to.**

**Bill read a second time and passed through remaining stages.**

## CRIMES (APPLICATION OF CRIMINAL LAW) AMENDMENT BILL

### Second Reading

**The Hon. J. P. HANNAFORD** (Attorney General, Minister for Industrial Relations, and Vice-President of the Executive Council) [5.41]: 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 Crimes (Application of Criminal Law) Amendment Bill 1992 seeks to resolve the issue of jurisdiction which arises in certain criminal cases where there is no evidence to indicate the place of commission of all the elements of the crime or where different elements occur in different jurisdictions.
>
> Examples of such cases in which the question of jurisdiction would arise are where a bullet is fired over the State border hitting a person in the neighbouring State or where in the course of committing fraud, the actual process of planning and executing the fraudulent actions takes place within one or more State boundaries. This is particularly relevant when dealing with computer fraud.

At common law it is necessary to allege and prove the place of commission of the offence to found a proper indictment.

This issue has been addressed by the Standing Committee of Attorneys General, and the legislation before you has been settled by the Parliamentary Counsels' Committee and the Special Committee of Solicitors General.

The problem of establishing jurisdiction was highlighted in the High Court decision of *Thompson* v. *The Queen* (1989) CAR 1.

In this case the applicant Thompson was convicted of murdering two sisters whose bodies were found in a car in the Australian Capital Territory, close to the border with New South Wales.

At the trial, Thompson challenged the jurisdiction of the Supreme Court of the Territory to try him on the ground that the Crown had not shown beyond a reasonable doubt that the sisters' deaths or the cause of their deaths had occurred in the A.C.T.

On appeal the High Court held that proof of the locality of the elements of an offence was necessary to establish jurisdiction, but that generally, proof on the balance of probabilities would suffice.

The ruling did not, however, resolve what standard of proof may be required where the elements of the offence or relevant defences in State A differ from the elements or defences in State B, or where the maximum punishment is significantly different in State A to State B.

Quite apart from the issue of the standard of proof, the High Court decision in Thompson is of no assistance in cases in which there is complete uncertainty as to the locality of the elements of the offence.

Furthermore, the High Court decision appears to proceed on the premise that the law of



a State will usually apply only if all elements of the offence occurred within the State.

The problem has been solved at least to some extent by the common law which is basically that the common law courts exercise jurisdiction over all persons who commit criminal acts within the territorial limits of the State.

An offence may be committed against the criminal law of the State even though some of the essential elements of the offence are committed out of the State. Each case depends on the nature of the criminal, the definition of the offence, the provisions of the statute creating it or any geographical limitation (*Treaty* v. *Director of Public Prosecutions* (1971) AC537).

However, the problem becomes more difficult in cases which are factually complex. For example, in fraud offences which may occur across more than one State boundary with elements allegedly arising in a number of States.

It is also more complex where there is more than one party to the crime such as where there is a common purpose or conspiracy or where an agent is used to commit an offence.

The bill before this House today addresses the issue by providing that the occurrence of one element of the offence in the State will suffice to establish jurisdiction.

Section 3A provides that an offence against the law of New South Wales is committed if

all elements necessary to constitute the offence exist and a "territorial nexus" exists between the State and at least one element of the offence.

Such a "territorial nexus" exists if the element is (or includes) an event occurring in the State or the element occurs outside the State but while the person alleged to have committed the offence is in the State.

The existence of the "necessary territorial nexus" between the State and an element of an offence is presumed and is conclusive unless the person charged with the offence disputes the existence of the territorial nexus and the court or jury is satisfied, on the balance of probabilities, that the nexus does not exist.

The bill also repeals section 25 of the Crimes Act 1900 that allows a case of homicide (where the cause of death occurs outside the State but the death occurs inside the State, or vice versa) to be dealt with as if the offence had been wholly committed within the State. This section is superseded by section 3A which applies to all offences against the criminal law of the State.

I commend the bill to the House.

**The Hon. R. D. DYER** [5.42]: The Opposition does not oppose the Crimes (Application of Criminal Law) Amendment Bill but I must say that the Opposition has considerable misgivings regarding the provisions of the bill and the fact that the Government sees fit to rush the matter into law having regard to comments made in another place by the shadow attorney general, Mr Whelan, and the reliance Mr Whelan placed on a letter he received dated 19th October from Mr Michael Adams, Q. C. Mr Adams is well and favourably known to me. Anyone with a connection with the law of this State would be aware that Mr Adams is a most eminent Queen's Counsel practising in criminal law in particular. Any opinion he expresses is certainly entitled to respect and a degree of mature consideration. The bill seeks to resolve an issue of jurisdiction arising in certain criminal cases in which there is no evidence to indicate the place of commission of all the elements of the crime or in which different elements occur in different jurisdictions. The Minister gave examples in that regard in the second reading speech. For example, a question of jurisdiction could well arise when a bullet is fired over a State border hitting a person in a neighbouring State. That might sound somewhat improbable but events such as that can happen. I might be on one side of the Murray River and discharge a firearm in the direction of the Hon. J. H. Jobling, who is on the other side of the river.

**The Hon. J. H. Jobling:** You would not do that. That is totally out of keeping.



**The Hon. R. D. DYER:** It is out of keeping.

**The Hon. Patricia Forsythe:** But it is a significant target.

**The Hon. J. H. Jobling:** But he is a rotten shot.

**The Hon. R. D. DYER:** Whether I am a rotten shot or not, I would not attempt to do such a thing. Assuming for the sake of argument that I did attempt to commit such a crime and I hit the Hon. J. H. Jobling on the other side of the river, jurisdictional questions could arise as to where I should be tried for that offence.

**The Hon. J. H. Jobling:** Your biggest problem would be when I came over the other side of the Murray River.

**The Hon. R. D. DYER:** No, you would be dead.

**The Hon. J. H. Jobling:** I said you were a crook shot.

**The Hon. R. D. DYER:** Leaving the Hon. J. H. Jobling and me to one side, such an event could happen involving other participants, and such a jurisdictional question could certainly arise. The jurisdictional problem was highlighted in the High Court of Australia decision of *Thompson* v. *The Queen*, as reported in 1989 in 169 Commonwealth Law Reports, page 1. In that case the applicant Thompson was convicted of murdering two sisters whose bodies were found in a car in the Australian Capital Territory close to the border with New South Wales. Thompson, at his trial, challenged the jurisdiction of the Supreme Court of the Australian Capital Territory to try him on the ground that the Crown has not shown beyond a reasonable doubt that the sisters' deaths or the cause of their deaths occurred in the Australian Capital Territory. On appeal the High Court held that proof of the locality of the elements of an offence was necessary to establish jurisdiction but generally proof on the balance of probabilities would suffice. The Minister indicated in his second reading speech that the High Court's ruling did not resolve what standard of proof may be required where the elements of the offence or relevant defences in one State differ from the elements or defences in another State or where the maximum punishment is significantly different in one State from another State. Another unfortunate and quite important aspect of this matter is that, quite apart from the issue of the standard of proof that should be applied, the High Court's decision in Thompson's case is of no assistance in cases in which there is complete uncertainty as to the locality of the offence. The Minister stated that the High Court decision appears to proceed on the premise that the law of a State will usually apply only if all elements of the offence occurred within the State. The bill provides in proposed section 3A of the Crimes Act:

> (1) An offence against the law of the State is committed if:
>
> (a) all elements necessary to constitute the offence (disregarding territorial considerations) exist; and
>
> (b) a territorial nexus exists between the State and at least one element of the offence
>
> (2) A territorial nexus exists between the State and an element of an offence if:
>
> (a) the element is or includes an event occurring in the State; or
>
> (b) the element is or includes an event that occurs outside the State but while the person



alleged to have committed the offence is in the State

The Opposition has difficulty with the bill - I am joined in this by Mr Adams - in that proposed section 3A(3) provides:

> The existence of the territorial nexus required by subsection (1)(b) (the **"necessary territorial nexus"**) is to be presumed and the presumption is conclusive unless rebutted under subsection (4)

I emphasise the aspect of presumption. Proposed section 3A(4) provides:

> If a person charged with an offence disputes the existence of the necessary territorial nexus, the court is to proceed with the trial of the offence in the usual way and if at the conclusion of the trial the court, or, in the case of jury trial, the jury, is satisfied on the balance of probabilities that the necessary territorial nexus does not exist, it must, subject to subsection (5), make or return a finding to that effect and the charge is to be dismissed.

It seems to me that to say the very least it is putting the cart before the horse. There is first a presumption that a territorial nexus exists; then we proceed with the trial; then at the end of the trial the jury, if satisfied on the balance of probabilities that the necessary territorial nexus does not exist, must, subject to subsection (5), make or return a finding to that effect and the charge is dismissed. The letter from Mr Adams was placed on the record in another place but it is of sufficient importance to be repeated. The letter to Mr Whelan of 19th October states:

> I should state at the outset that I agree with the purpose of the Bill. I am sceptical, nevertheless, of a scheme that, in effect, presumes jurisdiction unless the contrary is proved. The Parliament of New South Wales, in substance, has power only to make laws for the government of NSW. Whilst one can readily see that the existence of any element or part of an element of a crime within NSW should enable prosecution for that crime in this State, and that it is perfectly reasonable to determine whether this is so on the balance of probabilities (as was allowed by the High Court in *Thompson* v. *The Queen* 169 CLR 1), it is quite another thing to assert jurisdiction upon a presumption which a party is required to negate. Convenient fictions are all very well, but I do not know that they should intrude into the criminal law and I am not confident about their efficacy as a matter of Constitutional law. I notice that the legislation was settled by experts - but I confess that my doubts are not completely overcome by this fact.

The law and the legal profession are full of experts, and the interesting thing is that the experts differ from each other. Mr Adams' letter continued:

> Is it not a real matter of principle, rather than convenience, that relevant facts should be proved rather than presumed, in the administration of the criminal law? This is no merely technical quibble, because it might easily occur that the State or Territory of trial will have differing modes of procedure and punishment.
>
> It must be admitted that cases where the question is seriously at issue (that is whether an event comprising an element or part of an element of a crime occurred in NSW) will be extremely rare. Is it right to make fundamental changes to our criminal law to deal with such cases?
>
> There are two questions of procedure. First, Cl 3A(6) requires the question of territorial nexus, when raised before trial, to be "reserved for consideration at the trial". There may be cases, such as complex fraud matters, where the trial may take many weeks or, possibly, months. It would be an enormous waste of resources (both of the State and the defence) if, at the end of the day, it appeared that there was no sufficient territorial nexus. Why could not there be a convenient procedure devised whereby, where appropriate, the question could be determined prior to trial? Secondly, the bill is silent as to committal proceedings, referring only to "trials". Is this an oversight? I cannot see a reason for not extending the same rule to committals.
>
> Yours faithfully,
> Michael Adams



A number of significant difficulties arise from Mr Adams' correspondence. An answer is

required from the Attorney General. Why is it that there is this presumption? Why is it that jurisdiction is to be determined, in effect, at the end of a trial? Why is this issue reserved for consideration at the trial? Why is this not a threshold matter to be considered before a trial is embarked upon? After all, the House is considering and dealing with the expenditure of considerable financial and other resources by the State during a criminal trial. Why does the bill not provide for this issue to be raised as a threshold matter before any trial occurs? Why is it that the trial is at its end before a decision is made in relation to this issue? Why is it that the bill refers only to trials for indictable offences? Why is it that the bill makes no reference to committals? If jurisdiction is a relevant issue in a trial, why is it not a relevant issue in a committal? So far as I am concerned the failure of the Government to answer all of these questions is totally unsatisfactory. They do not seem to have been satisfactorily answered in another place. No explanation has been given. These matters have not been dealt with in anything other than a most cursory fashion. The Minister for State Development and Minister for Arts in another place, the Hon. Peter Collins, said:

> I also acknowledge the opinion he sought -

That is Mr Whelan:

> - to contribute to this debate from Michael Adams, Q.C., an eminent practitioner known to me. I think that the points that have been made should be considered carefully by Crown law officers after -

I emphasise the word "after":

> - the legislation has been dealt with in this place. I say at the outset that the Government has approached this issue on the basis of discussions which have occurred in and through the Standing Committee of Attorneys-General. It is felt that at this stage the appropriate course of action which can most easily be taken to overcome the anomaly which has been identified is through this particular form of legislation now before the House, which is quite limited in its intent and is designed to overcome the jurisdictional problems identified in Thompson's case.

It is all very well to say that the bill is quite limited in its intent and is designed to overcome the jurisdictional problems identified in Thompson's case. That is doing no more than stating the obvious. It is obvious that the purpose of the legislation is to overcome the jurisdictional problems identified in Thompson's case. However, Mr Collins had nothing to say about the points raised in Mr Adams' correspondence. He had nothing to say about why jurisdiction should not be dealt with as a threshold matter rather than at the conclusion of the trial procedure. He had nothing to say about why the bill deals only with committals and not trials. He said the points made should be considered carefully by Crown law officers after the legislation has been dealt with in this place. Proper government and proper law making should be embarked upon only after taking into account all relevant submissions at the time the legislation is passing through the Legislature. It is simply not good enough to say that these matters will be considered in due course by Crown law officers or by the Standing Committee of Attorneys-General. The legislation is being considered here and now.

The Opposition is transmitting the cogent criticisms that have been made by Mr Adams to the Minister and the Legislature. We want a response - not the sort of response given by Mr Collins, which was that these matters will be considered at some future time. The Opposition wants answers now. Why can these matters not be resolved? Why can the Legislature not be given some reasonable explanation as to why the mischief referred to in Mr Adams's letter cannot be dealt with? It is simply not good enough to

postpone consideration of these matters or to shrug them off and say that they will be considered at some future time. That is not the way law should be enacted. In particular, it is not the way criminal law should be enacted. I am astounded and disgusted by the Government's apparent attitude to this bill. Law should be enacted properly, not in the indecent and hasty fashion in which this bill has been put before the House. I have said the Opposition does not oppose the legislation. However, I am tempted to say that it does. In the 13 years I have been a member of this House, I have never seen such a slipshod approach to the enacting of criminal law.

**The Hon. ELISABETH KIRKBY** [5.58]: The Australian Democrats support the Crimes (Application of Criminal Law) Amendment Bill, which introduces a means of resolving the issue of jurisdiction which arises in certain criminal cases where there is no evidence to indicate where all the elements of an offence were committed, or where different elements of the offence occur in different jurisdictions. In the decision in *Thompson* v. *The Queen* in 1989 the High Court ruled that only the civil standard of proof - that is, proof on the balance of probabilities - rather than the criminal standard of proof - that is, proof beyond reasonable doubt - is necessary to prove the locality of the commission of elements of an offence for the purpose of establishing jurisdiction. Prior to that there had been no decisive statement of principle in Australian law. Thompson's case, which I mentioned earlier, is an example. In 1989 he was convicted of murdering two sisters whose bodies were found in a car in the Australian Capital Territory but close to the border of New South Wales. The accused challenged the jurisdiction of the Supreme Court of the Australian Capital Territory to try him, on the ground that the Crown had not shown beyond reasonable doubt that the sisters' deaths or the cause of their deaths had occurred in the Territory. The High Court pointed to the distinction between the issue of locality for the purposes of establishing jurisdiction of the court to enter judgment, and the issue of locality in determining guilt. The principle of proof beyond reasonable exists to eliminate or minimise any chance that an innocent person may be found guilty. Chief Justice Mason and Justice Dawson ruled as follows:

> The fundamental principle is not offended if the facts essential to the existence of jurisdiction in the court to enter judgment are required to be established according to the civil standard of proof.

Their Honours argued that it suffices for the criminal standard of proof to be applied "to all the facts relied upon to make out the elements of the offence". However, if the facts establishing the jurisdiction of the trial court needed to be proved beyond reasonable doubt, this would "... extend the protection beyond the interests which the law seeks to safeguard in imposing the criminal standard of proof and at the same time adversely affect the public interest in the administration of justice." Jurisdiction and the locality of crime become an issue in such cases, perhaps, where a body is found close to a border; another case may be where explosives had been planted on an aeroplane. The civil standard of proof in relation to locality according to the judgment of the High Court comes into operation in the case of crimes where "... it could not be intended that the competing rights of the different jurisdictions combine to prevent any of their laws being enforced." That is a quote from page 13 of the judgment of Chief Justice Mason and Justice Dawson. One would believe that these would be crimes under common law. Justice Devlin, in Martin's case in 1991 argued:

> ... crimes conceived by the common law - which are mostly offences against the moral law, such as murder and theft - are not thought of as having territorial limits.

At page 29 of his judgment, Justice Brennan stated in *Thompson* v. *The Queen*:

> It is one thing to require proof beyond reasonable doubt of every element of conduct



> which exposes a person to criminal punishment but, when the conduct charges exposes the offender to punishment of the same order whether it has been committed on one side or another of a border, there is not reason why the liability to punishment by one State or Territory rather than another should be proved to the same standard.

Justice Deane referred to the common law as "the law of the Australian Nation which speaks with a single voice and not as a babble of nine different Commonwealth, State or Territory voices all speaking at the same time but saying different things". That forms the basis of the proposed amendment. Proposed section 3A provides that an offence against the law of the State is committed if all elements necessary to constitute the offence exist, and a territorial nexus exists between the State and at least one element of the offence. The existence of the necessary territorial nexus is presumed and conclusive unless the person charged with the offence disputes the existence of the territorial nexus and the court or jury is satisfied, on the balance of probabilities, that the nexus does not exist. The new provisions will be most helpful in cases where there is uncertainty as to the locality of the offence, where there are complications when offences occur across more than one State boundary, or where there is more than one party to a crime. Section 25 of the existing Crimes Act will be repealed.

Under that section, homicide - where the cause of death occurs outside the State but the death occurs inside the State - is dealt with as if the offence had been wholly committed within the State. In other words, such principles will apply to a broader range of crimes than before. New section 3A will apply to all offences against the criminal law of the State. Proposed sections 3A(8)(a) provides that the section does not apply if "the law under which the offence is created makes the place of commission (explicitly or by necessary implication) an element of the offence". It is that clause which specifically recognises that a different standard of proof, that is proof beyond reasonable doubt, of the locality of an offence is needed where "locality is a fact on which liability to punishment depends". That is a quotation from a judgment of Justice Brennan at page 30, which was recognised by all the High Court judges in *Thompson* v. *The Queen*. In handing down his decision, Justice Deane noted that:

> It would seem appropriate to draw attention to the desirability of joint Commonwealth and State legislative action to deal with the difficulties involved in the area of the common law of this country.

I note that this legislation has been settled on by the Parliamentary Counsels' committee and the Special Committee of Solicitors General. I do not know whether the Hon. R. D. Dyer was aware of that fact when he raised his objections to the legislation. It seems to me, having read the various judgments and also having been made aware that the Parliamentary Counsels' committee and the Special Committee of Solicitors General support the legislation, their combined wisdom is sufficient to allow me to say with confidence that the legislation is supported by the Australian Democrats.

**Reverend the Hon. F. J. NILE** [6.6]: Call to Australia supports the Crimes (Application of Criminal Law) Amendment Bill. As other speakers have said, in the case of *Thompson* v. *The Queen* (1989) the High Court held that proof of the locality of the elements of an offence is not necessary to establish jurisdiction and that, generally, proof on the balance of probabilities is sufficient. The object of the bill is to amend the Crimes Act 1900 to conform with the decision of the High Court in Thompson's case and to clarify the territorial application of the criminal law of New South Wales.

Thompson's case has very practical consequences for New South Wales, with the Australian Capital Territory being a Territory, with its own courts and laws, within New South Wales. Thompson was convicted of murdering two sisters whose bodies were found in a car in the Australian Capital Territory but close to the New South Wales border. Thompson



challenged the jurisdiction of the Supreme Court of the Australian Capital Territory to try him, on the grounds that the Crown had not shown beyond a reasonable doubt that the sisters' deaths or the cause of their deaths had occurred in the Territory. Being close to the border of New South Wales, he could have murdered them in New South Wales and then moved their bodies by car into the Australian Capital Territory.

That case highlighted the practical problem that has arisen. Obviously, no one wants a loophole in the law. Thompson was convicted of the murders and it would be a tragedy if some criminal with a clever lawyer could use the territorial aspect to evade the full impact of the law. We support the bill. It also raised in my mind the recent recommendation of the Australian Law Commission which through Justice Evatt, put forward a proposition that people who committed crimes in the Philippines could be tried in Australia. That would perhaps raise some questions, as to whether it is possible to try a person in New South Wales for an offence committed, not in another State but in another country. I believe they should be tried, but how to do that is a practical problem. Call to Australia supports the bill.

**The Hon. J. P. HANNAFORD** (Attorney General, Minister for Industrial Relations, and Vice-President of the Executive Council) [6.10], in reply: I thank honourable members for their support of this proposal. I note the comments made by the Hon. R. D. Dyer, who suggested that this legislation was being rushed through and not given appropriate consideration. I draw the attention of the House to the comments I made in my second reading speech, that this issue had been addressed by the Standing Committee of Attorneys-General. The matter had been agreed upon by all Attorneys General and this legislation has not been settled merely by the New South Wales Parliamentary Counsel; it has been settled by the Parliamentary Counsels' Committee, which comprises Parliamentary Counsel from all around Australia. They agreed upon the form of the bill and, in addition, it was referred to a special committee of all Solicitors General. I note that the honourable member has drawn upon the advice of Mr Adams, Q.C. He may be an eminent counsel but I think one must reasonably be guided by the advice of all Parliamentary Counsel in Australia, all Solicitors General in Australia, and all the departments of Attorney General in Australia, all of whose advices were considered. One would hope that there is some security in the advice that has been given and that the problems that have been adverted to have been overcome and addressed in the legislation. I commend the bill.

**Question - That this bill be now read a second time - put.**

**The House divided.**

**Ayes,19**

Mr Bull
Mrs Chadwick
Mr Coleman
Mrs Evans
Mrs Forsythe
Miss Gardiner

Dr Goldsmith

Mr Hannaford
Mr Jobling
Mr Jones
Miss Kirkby
Mrs Nile
Revd F. J. Nile
Mr Ryan

Mr Samios
Mr Rowland Smith
Mr Webster

*Tellers*,
Mr Mutch
Mrs Sham-Ho

**Noes,14**

Mrs Arena
Ms Burnswoods
Mr Dyer
Mr Enderbury
Mrs Isaksen

Mr Johnson
Mr Kaldis
Mrs Kite


Mr O'Grady
Mrs Symonds

Mr Vaughan
Mrs Walker
*Tellers*,
Dr Burgmann
Mr Obeid

**Pairs**

Mr Moppett
Dr Pezzutti
Mr Pickering
Mr Willis

Mr Egan
Mr Macdonald
Mr Manson
Mr Shaw

**Question so resolved in the affirmative.**

**Motion agreed to.**

**Bill read a second time and passed through remaining stages.**

## COAL MINING INDUSTRY LONG SERVICE LEAVE (REPEAL) BILL

### Second Reading

**The Hon. J. P. HANNAFORD** (Attorney General, Minister for Industrial Relations, and Vice-President of the Executive Council) [6.20]: 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 bill before the House will aid reorganisation of administrative arrangements for long service leave in the coalmining industry. Currently this benefit is administered through a combination of Commonwealth and State legislation. This bill will repeal existing New South Wales legislation and so return full control of administration to the Commonwealth Government. The Commonwealth has had overall responsibility for coalmining industry long service leave since this entitlement was introduced in 1949. Administration of the benefit, however, was devolved to the State governments, with the Commonwealth retaining control of funding and broad administrative matters. This proposed legislation is to be enacted at the request of the Commonwealth Government. The repeal of the New South Wales Coal Mining Industry Long Service Leave Act 1950 will support establishment of a new national, industry-run scheme under Commonwealth legislative authority. This scheme aims to ensure funding and administration of long service leave for the industry is carried out with equity and efficiency. Industry control of the scheme will support achievement of these aims by providing a management more sensitive to the concerns and constraints of the workplace. The Commonwealth's move to minimise government involvement in this area is supported by the New South Wales Government.

The proposed bill will achieve two purposes. First, it will repeal the New South Wales Act from a date to be proclaimed. A package of Commonwealth legislation will then take over to establish the new national scheme arrangements. Second, the bill will provide transitional provisions to authorise the current New South Wales administration to effect the transfer of administrative operations back to the Commonwealth. Currently, the process for long service leave payments requires employers to seek reimbursement from the State administration for amounts paid to employees. The State administration is then reimbursed by the Commonwealth for both leave payments and for administration costs associated with the operation of the scheme. To date, funding for leave payments has been collected by the Commonwealth from employers by means of a levy



on coal produced. All administrative costs of the scheme have been met by the Commonwealth Government. These same arrangements also operate in the black coalmining industries in Queensland, Western Australia and Tasmania.

A review of these funding and administrative arrangements was commissioned by the Commonwealth Minister for Industrial Relations, Senator Peter Cook, in August 1990. Known as the Willett inquiry, this review found that funding arrangements were sufficient for current long service leave liabilities but two longer term problems were identified. First, funding derived from an excise on coal produced was inequitable. Highly mechanised mining operations, able to produce large yields, subsidised the low-yielding labour-intensive operations. For an

employment-related benefit this situation was clearly not acceptable. The second problem was a net accrued unfunded liability for untaken long service leave estimated as at 30th June, 1990, at $250.2 million Australia-wide. The new scheme for administration and funding of coalmining industry long service leave is contained in four pieces of Commonwealth legislation which received royal assent on 26th June. These Acts are: the Coal Mining Industry (Long Service Leave Funding) Act 1992; the Coal Mining Industry (Long Service Leave) Payroll Levy Act 1992; the Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992; and the States Grants (Coal Mining Industry Long Service Leave) Amendment Act 1992.

This package of legislation will establish a national industry scheme to fully fund, on an accrual basis, long service leave entitlements. The principal changes to current arrangements will be that a single national scheme under Commonwealth legislation will be established and the management of the scheme will be the responsibility of a board of directors, made up of employer and employee representatives. Funding for long service leave will be from a payroll levy rather than an excise on coal produced. Funding rates will be set with the twofold purpose of achieving full funding of future liabilities and of extinguishing the unfunded liability within 10 years if possible. It was originally intended that the new scheme arrangements would commence on or soon after 1st January, 1993. The Commonwealth now advises 1st March, 1993, is the anticipated commencement date. A sunset provision in the Commonwealth legislation means the new arrangements must commence by 26th June, 1993. The repeal of the New South Wales legislation, along with similar action in Queensland, Western Australia and Tasmania, will enable the new Commonwealth arrangements to take full effect.

The New South Wales Act to be repealed by this bill contains provisions which give administrative effect to the operation of the scheme. The Act provides for the establishment of an account in the New South Wales Treasury to hold funds, and details the scheme administrator's functions and the procedures to be followed to provide reimbursement to employers. After repeal of the New South Wales Act these matters will be carried out under the new arrangements by the Commonwealth Statutory Corporation, the Coal Mining Industry (Long Service Leave Funding) Corporation, established under section 6 of the Coal Mining Industry (Long Service Leave Funding) Act 1992. I would emphasise here that neither the existing State Act nor the new Commonwealth legislative arrangements create any entitlement to long service leave. The legislative framework provides only the funding and administrative arrangements for entitlements contained in agreements and awards covering coalmining employment. The proposed changes therefore simply effect a reorganisation of the funding and administration of these benefits.

The second purpose of the bill is to enact transitional provisions to allow the current New South Wales scheme administrator to finalise existing New South Wales operations once the repeal is effected These provisions are necessary to authorise functions such as the transfer of data to the new Commonwealth scheme and the return of Commonwealth advance funds. Once the scheme is fully transferred these transitional provisions will cease to have effect. As I stated earlier, administration costs incurred by the New South Wales Government in the operation of the scheme have at all times been met by the Commonwealth Government. The reimbursement of costs associated with the transfer of arrangements back to the Commonwealth is currently being negotiated. The Commonwealth has indicated that the new statutory corporation may either administer the new arrangements itself, or contract out the operation to an agency. It is not yet determined whether the current New South Wales administrators will be involved in the ongoing operation of the scheme.

The possibility of tendering for an ongoing role will depend on the terms to be put forward by the Commonwealth statutory corporation. However, any such arrangement would be on a purely private contractual basis, rather than on a legislative basis. These matters will be addressed at an administrative level over the next few months. The proposed bill supports the Commonwealth Government's moves to return the administration of long service leave to the

industry itself. The New South Wales Government joins with the coalmining industry in giving general support for the



new arrangements and welcomes these reforms as a move towards greater efficiency and equity.

I commend the bill to the House.

**The Hon. JUDITH WALKER** [6.21]: The Opposition supports the Coal Mining Industry Long Service Leave (Repeal) Bill. In effect, the Commonwealth Government has had responsibility for long service leave in the black coal mining industry since 1949, but the day-to-day administration of the benefit to workers was administered by individual States. This repeal bill seeks to reverse that decision. The Commonwealth Government produced four pieces of legislation which were proclaimed in June 1992 for industry to take over the administration of long service leave in the coalmining industry. I do not know whether the agency that is currently handling this on behalf of the State Government will choose to make an arrangement with the new industry owners or the new board. That will be a matter for that agency. This legislation is really just an administrative arrangement; there are no hidden pitfalls in it. So, the Opposition is happy to support it.

**The Hon. J. M. SAMIOS** [6.22]: I support the Coal Mining Industry Long Service Leave (Repeal) Bill. The bill will remove New South Wales statutory involvement in long service leave for coalminers employed in the black coal industry. New Commonwealth arrangements will lead to more direct control by representatives, which will result in a more economical and efficient operation. Mine workers' entitlements will still be contained in awards or agreements. The effect of the administrative re-organisation will surely be a positive one. Proposed changes to the current arrangements include a single national scheme under Commonwealth legislation. The management of the scheme will be the responsibility of the board of directors of a statutory corporation. Funding will be provided from a payroll levy rather than from a levy on coal produced. Those are all commendable initiatives. This bill is good legislation and I support it.

**The Hon. ELISABETH KIRKBY** [6.23]: The Australian Democrats support the Coal Mining Industry Long Service Leave (Repeal) Bill. The objects of the bill are clearly spelt out in the explanatory note. As has already been mentioned by other honourable members, this repeal bill will complement recently enacted Commonwealth legislation which now provides for the establishment of a newly compulsory national industry scheme to fund the long service leave entitlements of workers employed in the black coalmining industry. It is quite obvious that, apart from resolving outstanding transitional issues, there will be no direct State legislative involvement in this new scheme. I think all honourable members will be happy to know that clause 4 makes it very clear that the transitional provisions are designed to facilitate the termination of the State's involvement in the existing scheme and to reimburse the employers who paid those entitlements. Of course, it also means that the long service leave entitlements of workers will be protected by the new Commonwealth scheme. This is a sensible piece of legislation, and we support it.

**Reverend the Hon. F. J. NILE** [6.24]: The Call to Australia Group supports the Coal Mining Industry Long Service Leave (Repeal) Bill, which is a practical bill. It is simply a legislative way of restoring the situation that existed in 1949. Since this entitlement was introduced in 1949 the Commonwealth Government has had overall responsibility for long service leave in the coalmining industry. But the administration of the benefit was devolved to the State Governments, with the Commonwealth retaining

control of funding and broad administrative matters. This proposed legislation is to be enacted at the request of the Commonwealth Government. The repeal of the New South Wales Coal Mining Industry Long Service Leave Act 1950 will support the establishment of a new national industry-run scheme under Commonwealth legislative authority. This

scheme aims to ensure that the funding and administration of long service leave for the industry is achieved with equity and efficiency. Industry control of the scheme will achieve this aim by providing a management which is more sensitive to the concerns and constraints of the workplace. We therefore fully support the bill.

**The Hon. J. P. HANNAFORD** (Attorney General, Minister for Industrial Relations, and Vice-President of the Executive Council) [6.26], in reply: I thank all honourable members for their support of this important piece of legislation, and I commend it to the House.

**Motion agreed to.**

**Bill read a second time and passed through remaining stages.**

## STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (No. 3)

## STATUTE LAW (PENALTIES) BILL

### Second Reading

**The Hon. J. P. HANNAFORD** (Attorney General, Minister for Industrial Relations, and Vice-President of the Executive Council) [6.27]: I move:

That these bills be now read a second time.

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

**Leave granted.**

The Statute Law (Miscellaneous Provisions) Bill continues the well-established statute law revision program which commenced in 1984. The principal bill is the nineteenth bill to be introduced in the program and the third such bill to be introduced this year. The statute law revision program is recognised by all members as a cost-effective and efficient method of dealing with amendments of the kind included in the principal bill. The form of the principal bill is similar to that of previous bills in the statute law revision program. 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. These amendments include: amendments to the Community Justice Centres Act 1983, dealing with a range of issues relating to the internal administration of community justice centres and the accreditation of mediators; amendments to the Mining Act 1992, which also deal with a variety of machinery matters and minor clarifications, and include provisions dealing with orders, warrants and procedures of wardens' courts; and amendments to the University of Western Sydney Act 1988, replacing the requirement that four of the appointed members of the university's board of governors be nominees of the Senate of the University of Sydney, with the requirement that four appointees be persons who have, in the Minister's opinion, expertise in an academic discipline taught by the university or who practise, or have practised, a profession or who have, in the Minister's view, other appropriate applications or experience.

Schedule 2 deals with matters of pure statute law revision consisting of minor technical

changes to legislation that the Parliamentary Counsel considers appropriate for inclusion in the bill. Some amendments in schedule 2 update references to Acts and the titles of positions, some omit obsolete or unnecessary material, and some make changes for consistency with modern style or in consequence of amendments made by other Acts. Schedule 3 contains repeals of amending Acts that are no longer necessary because the amendments have been incorporated in reprints of the relevant principal Acts, and repeals of obsolete Acts. As well, more than 300 Acts have been repealed by the first two Statute Law (Miscellaneous Provisions) Acts passed this year. Only a small number of Acts are proposed for repeal on this occasion. Among the Acts repealed are the Australian amending that Act. These Acts are unnecessary as the Australian Red Cross Society has been incorporated by royal charter.



Schedule 4 to the bill contains provisions dealing with the effect of amendments on amending Acts, saving clauses for the repealed Acts, transitional provisions as regards approved forms and the repeal of legislation relating to the incorporation of the New South Wales division of the Australian Red Cross Society, and a power to make regulations for transitional matters, if necessary. The various amendments are explained in detail in explanatory notes set out beneath the amendments to each of the Acts concerned. Rather than repeat the information contained in these notes, I invite honourable members to examine the various amendments and accompanying explanatory material and, if any concern or need for clarification arises, to approach me regarding the matter. If necessary, I will arrange for government officers to provide additional information on the matters raised. If any particular matter of concern cannot be resolved and is likely to delay the passage of the principal bill, the Government is prepared to consider, as has previously been the case, withdrawing the matter from the bill.

The Statute Law (Penalties) Bill is cognate with the principal Statute Law (Miscellaneous Provisions) Bill. The object of the penalties bill is to facilitate the adoption of the penalty unit system by amending references to penalties of actual amounts in various principal Acts that were generally enacted before the penalty unit system was introduced. A few words on the history of the penalty unit system may be of assistance. The system was introduced in this State with the commencement of the Interpretation Act 1987. Section 56 of that Act provides that a reference in an Act or statutory rule to a number of penalty units is to be read as a reference to an amount of money equal to the amount obtained by multiplying $100 by that number of penalty units. The use of penalty units is of assistance in ensuring that the relative values of penalties as between various offences remain constant. The levels of all penalties for all offences for which penalty units are specified can be changed by an amendment to section 56 of the Interpretation Act that alters the value of a penalty unit. Alternatively, if an individual penalty only is to be varied, the number of penalty units for the offence can be amended.

Acts enacted since the commencement of the Interpretation Act, and statutory rules made under those Acts, have generally expressed a pecuniary penalty for an offence in penalty units in accordance with section 56 of that Act. The penalties bill deals with more than 200 Acts, generally enacted before the commencement of the Interpretation Act, in which pecuniary penalties for offences are expressed in monetary amounts. It is envisaged that any remaining Acts in which penalties of actual amounts appear may be amended on a progressive basis as part of the regular statute law revision program. The penalties bill does not provide for any significant penalty increases, but merely converts existing penalties to the nearest equivalent level of penalty units. To promote consistency, the range of penalty units proposed is limited, as far as possible, to avoid unnecessary diversity. A table of the penalty unit levels proposed is set out in the explanatory note to the penalties bill. Generally speaking, if a current maximum penalty falls between levels on the proposed penalty unit table, the provision is proposed to be amended by fixing the maximum penalty at the next higher penalty unit level on the table.

> An exception to this practice is proposed in the cases of pecuniary penalties currently set above $100,000 - the top level shown on the penalty unit table - and of other substantial monetary penalties that have no equivalent on the table and where a rounding up would involve a significant penalty increase. In these cases a straight conversion of the money amount to the equivalent in penalty units calculated at $100 per unit in accordance with section 56 of the Interpretation Act has been adopted. The penalties set out in the Acts are the maximum that may be imposed. Courts are therefore able to tailor the penalty to the particular offence. The opportunity has been taken also in the penalties bill to remove any minimum pecuniary penalty when expressing the maximum penalty in terms of penalty units.

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> In recent years only maximum penalties have been imposed for offences. The discretion of courts as to the appropriate level of penalty is not now limited by an obligation to impose a specific minimum penalty irrespective of the circumstances of the case.

I commend the bills.

**The Hon. B. H. VAUGHAN** (Deputy Leader of the Opposition) [6.28]: Each year since the late Paul Landa introduced statute law legislation I have regarded it as reformist legislation. But the whole idea of statute law miscellaneous legislation is to implement housekeeping measures; it is all a matter of tidying up bills. This present legislation does that. However, there are at least two or three rather critical items in it. I warn the Attorney General that in relation to one of them the Opposition proposes to divide the Chamber. I refer the Attorney General first to the Health Services Act 1986, which is dealt with on page 2 of the Statute Law (Miscellaneous Provisions) Bill (No. 3). I refer to a proposition in relation to members of area health boards which states:

> An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

I put it to the Attorney General that that is not the sort of thing that properly belongs in this sort of legislation. This is a far-reaching and most substantial alteration of the terms and conditions of membership of an area health board. I was a member of such a board for a long time. I can see that there may be in certain circumstances an argument for payment as set out. I would rather like to think, however, that people do this as a civic duty, as did all members of the board in my time and as they are still doing. Membership is in a voluntary capacity. This sort of proposal ought be in the Area Health Services Act 1986. That in my view is what the Attorney should amend. The second matter I wish to speak on is of very great concern. I raised with the Attorney a short time ago the section of the bill to do with the Director of Public Prosecutions Act 1986 No. 207, which is dealt with on page 17 of the bill.

**The Hon. J. R. Johnson:** It is page 16.

**The Hon. B. H. VAUGHAN:** I have the first print. We only received the second print this afternoon, as other members of the House would know. I for one would like more time to look at the proposition on page 16 of the second print. The legislation proposes to amend section 20 of the Director of Public Prosecutions Act 1986 No. 207 as follows:

> From section 20(2), omit "in respect of the conduct of criminal proceedings", insert instead "in relation to the investigation of criminal activity, the conduct of criminal proceedings and any associated matters".

I do not have to remind the House that we have no system of district attorneys in this country. Whether we ought to have a system of district attorneys is something that can be considered at another time. But what we are about to do here is to give an officer of that body the role of investigator as well as prosecutor; the Minister is attempting to give the role of investigator and prosecutor to one person. Mr Justice Lee had some adverse remarks to make about that sort of notion in his report on the Blackburn inquiry. On page 367 of his report, he had this to say on the role of the Director of Public Prosecutions:

> It would not be appropriate for me to express a view as to whether Mr Blanch, QC, construction of the Act is correct or not for I have not been given the benefit of full argument on the matter and in any event it may well be that it could arise in curial proceedings in which I may be involved later. But it is appropriate that I point out that there

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> is a reasonable contrary argument which can be advanced and that accordingly a proper view may be that the legislation is doubtful on the point and that if the Government wishes to give the DPP this sort of power -

And he is referring to investigative power as well as the power of prosecuting.

> - it ought to be amended or be the subject of judicial decision before the DPP exposes itself to a liability which may arise if it involves itself in giving advice during investigative stages.

It is the sort of system that is inherent in the Office of District Attorney in any one of the States of the United States; it is the sort of system that is inherent in the Roman law system in, for example, the Republic of France, where the investigator and prosecutor are wrapped up into one. I remind the Attorney that it would be very contrary to have that in our legal system. It is not a good idea and, above all, it should not be introduced by stealth. I am not blaming the Attorney for this, but someone ought to be blamed. What has happened with this legislation? On page 16 of the first print there is an amendment to the Crown Prosecutors Act 1986 No. 208, which should stand alone in a bill. Quite properly, the Attorney General has removed it from the legislation. A most substantial attempt to amend the Crown Prosecutors Act is tucked away in a Statute Law (Miscellaneous Provisions) bill, a housekeeping bill.

The first print of the bill was all we had until a short while ago. An amendment on page 34 of the first print makes substantial changes to the Public Defenders Act 1969 No. 60, and it is tucked away on pages 34 and 35 of the first print. I congratulate the Attorney because again he has had it removed from the legislation. He told me that he would do this, and he did it. I hope that the Attorney has merely overlooked the serious matter to which I refer this afternoon. I shall move an amendment to remove it. Let us do something about it. Honourable members may find it hard to believe, but I have been told that the DPP office, individual members of the staff of the DPP, did not know about this until Tuesday. There would have to be adequate consultation on this sort of change. I do not know what the Bar Council has said about it yet. I am sure it must have said something if it knows about it. One could be excused after dredging through a Statute Law (Miscellaneous Provisions) Bill such as this for feeling completely ambushed. We have been ambushed; this is dangerous law and something has to be done about it. I put the principle that an investigator and prosecutor cannot be wrapped up in the same person. That is absolutely opposed to common law principles. I ask the Attorney to take that provision out.

In the course of debate I shall be moving in Committee stage that the DPP provision be omitted from the Statute Law (Miscellaneous Provisions) Bill (No. 3). I ask the Attorney to give second thought to that and to decide whether he could whip it out. Perhaps he could think about it and we could consider it again. It ought not be there; I am sure it is a mistake that it is there. It is far too important a matter. It is changing a time-honoured legal system in this country in a Statute Law (Miscellaneous Provisions) Bill, which deals with traffic and all sorts of inconsequential things. They do not deal with something that strikes at the criminal legal system. That was never the intention when the Wran Government introduced this form of legislation. Each year we have been able to congratulate the government of the day on this sort of legislation; but all bets are off, this is a very bad piece of legislation creating a very disquieting mood. It must have just crept into the legislation. Apart from that, the Opposition will be supporting the legislation. I have one more gripe about the amendment to the Area Health Services Act. It does not properly belong in this type of bill.

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**The Hon. J. M. SAMIOS** [6.39]: I think all honourable members would realise that the Statute Law (Miscellaneous Provisions) Bill (No. 3) is part of the statute law revision program, which commenced in 1984. As honourable members would know, the procedure is a most cost-effective and efficient way of dealing with amendments of the kind included in the bill. The amendments to various Acts made by this bill fall into two major categories of minor policy changes. Into the first category fall amendments considered by the Minister responsible for the legislation to be amended to be too inconsequential to warrant the introduction of a separate amending bill. The second category is pure statute law revision. Amendments in this category comprise minor technical changes to legislation identified as appropriate by the Parliamentary Counsel. The bill also continues the program of repeals of amending Acts which are spent because the amendments have commenced and have been incorporated in reprinted Acts, and it repeals other Acts which are no longer of practical utility. I note the comments of the Deputy Leader of the Opposition in relation to the Director of Public Prosecutions Act, the section 20 amendment. I understand that the Attorney General will be giving a detailed response to that. The purpose of the amendment is spelt out in page 16 of the bill. There is nothing to indicate that this is an attempt to legislate by stealth. Page 16 indicates what is being proposed in subsection (2) of section 20, which states:

> The Director may advise and assist any Crown Prosecutor, any member of the Police Force or, if so directed by the Attorney General, any other person . . .

In addition it is proposed to replace the words, "in respect of the conduct of the criminal proceedings" with, "in relation to the investigation of criminal activity, the conduct of criminal proceedings and any associated matters". The second bill is the Statute Law (Penalties) Bill, which is cognate with the principal Statute Law (Miscellaneous Provisions) Bill. The object of the penalties bill is to facilitate the adoption of the penalty unit system by amending references to penalties of actual amounts in various principal Acts that were generally enacted before the penalty unit system was introduced into Parliament. The bill is good legislation and will provide for a more efficacious resolution of necessary amendments to various statutes and will provide for speedier justice to the benefit of the people of this State. I congratulate the Government and the Attorney General, who is continuing the tradition of previous Attorneys General led by John Dowd and subsequently followed by Mr Collins. I note, as the Deputy Leader of the Opposition has said, the important role that the Hon. Paul Landa played in statute reform providing for speedier dispensation of justice. I support the legislation and commend the Government for its initiatives.

**The Hon. ELISABETH KIRKBY** [6.43]: I, too, am very concerned about some of the provisions of the Statute Law (Miscellaneous Provisions) Bill No. 3. I find it of great concern that some very important changes, particularly in the area of the administration of the Public Defenders Office and the Director of Public Prosecutions, have been included in this legislation and not put into a separate package of legislation so that it can be fully debated on its own merits. As was stated in another place by the honourable member for South Coast last night, the intention of the Statute Law (Miscellaneous Provisions) Bills was to introduce changes of a minor or technical nature. It was never intended to introduce sweeping changes to existing legislation and, therefore, to create confusion with certain pieces of technical change. At the same time it was never intended - and I have to say this - to introduce by ambush major changes, which the House deserves the opportunity to debate in full. In another place in the early hours of this morning the most offensive sections of the Statute Law (Miscellaneous Provisions) Bill No. 3 were removed by way of Opposition amendment, which was supported by the Independents. That was the section relating to the Public Defenders Act 1969.

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As honourable members will be aware, there was great concern about that provision of the original bill. This was well aired in the media earlier this week and many members of the bar attended on Parliament House to brief members about their concerns with that provision. However, it was not withdrawn voluntarily by the Government; it was withdrawn because the Opposition has the numbers in another place. Now, by way of an amendment, the Deputy Leader of the Opposition is trying to have another provision of this bill withdrawn. This is the provision referring to the problems he has been discussing, and the amendments to the Director of Public Prosecutions Act 1986. I am advised by the Leader of the Government, the Attorney General, that he is providing advisings to the members of the crossbench on what the Deputy Leader of the Opposition has been discussing. I would like time to study those advisings. It seems to be ridiculous that in the course of a debate on a piece of legislation the Attorney General's advisers have to provide photostated material for distribution among members of the House so they can reach an informed decision. This is far too late. We should have been supplied with that information earlier so we could inform ourselves in far greater detail.

I have concerns about other provisions of this legislation. I was particularly concerned about the sections dealing with the legislation governing community justice centres - the changes to the Community Justice Centres Act 1983 - in view of the work that has been carried out into juvenile justice by the Standing Committee on Social Issues. In view of the large number of amendments to the Community Justice Centres Act that have been presented in this legislation as a result of the unanimous recommendations of the committee, I would have thought the Minister for Justice would have taken on board the findings in the report of that committee. However, I am assured by the chairperson of the committee, Hon. Dr Marlene Goldsmith, that she has studied the amendments proposed in the miscellaneous provisions bill before the House and that they are of a purely technical nature. She finds nothing to alarm her in these amendments.

I accept the assurance by the Hon. Dr Marlene Goldsmith about community justice. However, I am concerned about the amendment to the Mental Health Act proposed in item (1) on page 23 of the second print of the bill. That amendment seeks to omit "the prescribed form" wherever occurring in sections 55, 59(6), 211(2)(a), 212(2)(c) and 214(a) of that Act and insert instead "a form approved by the Minister". The Government proposes by that amendment to omit the need for prescribed forms which are

of a minor and machinery nature. The wording of the amendment is interesting. The Minister will be able to approve forms which may be necessary or convenient in the administration of the Act but will not be limited to the prescribed forms now required by the Act. I hope that the forms to be approved by the Minister will include the following requirements, for they are essential if the Mental Health Act is to operate effectively without undue pressure being placed on people unfortunate enough to suffer a psychiatric illness: a notice to indicate to a temporary patient his or her right of appeal; a determination by the Mental Health Review Tribunal that a temporarily detained patient is or is not mentally ill; a licence application by a hospital for the admission, care and treatment of patients; a hospital licence, and the hospital licensee's annual statement to the Director-General about the conduct of the hospital, the admission of patients and their care and treatment on those premises.

Those requirements are essential in view of what happened at Chelmsford years ago. The Chelmsford tragedy would never have occurred if those requirements had been in place at that time. A provision specifying a prescribed form and including those requirements would allow for standardisation and accountability because they would need to be gazetted. That would be an advantage, not a disadvantage. These prescribed forms

are most significant. I ask the Minister to give reasons for seeking to amend the Mental Health Act by omitting the words "the prescribed form" from various sections and inserting instead "a form approved by the Minister". Can the Minister explain what was wrong with the original wording, "prescribed form"? If that wording has proved to be deficient in some manner, could it not be amended specifically rather than being omitted and replaced by the blanket provision "a form approved by the Minister"? I am also seriously concerned about the provision in the bill to allow the chief health officer to delegate his or her power to order the transfer of a person to a mental hospital. It is not known to whom the Chief Medical Officer is going to delegate that authority. An explanatory note on page 25 of the second print of the bill, under the heading "Functions of Chief Health Officer (item (2))", states:

> At present, the Chief Health Officer is empowered (on the certification of 2 medical practitioners, one of whom is a psychiatrist, that a person is mentally ill or suffering from a mental condition for which treatment is available at a hospital) to order the transfer of the person to a hospital. The proposed amendments to Sections 97 and 98 permit that power to be delegated.

The most senior health officer in this State is responsible for the committal of a mentally ill person to a mental institution. The proposed amendments will permit that power to be delegated. However, it is incumbent on the Minister to tell the House to whom that authority may be delegated. At Chelmsford several psychiatrists were involved in the treatment of patients. The explanatory note I have just read indicates that at present two medical practitioners, only one of whom need be a psychiatrist, must certify that a person is mentally ill. A delegated officer, unnamed, will countersign that form, which will order the transfer of a person to a mental hospital, perhaps unwillingly and against the wishes of relatives. Delays will certainly occur if that function remains solely with the Chief Health Officer, but at least responsibility can be sheeted home at the highest level and - though I do not like to mention it - there will be no possibility of collusion. Collusion obviously occurred at Chelmsford, where reprehensible medical practices were ignored and covered up. I am more concerned about this proposed amendment than I am about the other matters raised by my colleague the Deputy Leader of the Opposition. The proposed amendment is too loose. We must know to whom and how that power will be delegated.

Finally, I turn to consider Supreme Court Act 1970 No. 52. Currently only

judges of the Industrial Court and barristers and solicitors of a certain number of years standing may be appointed judges of the Supreme Court of New South Wales. The proposed amendment will allow judges and former judges of the Federal Court of Australia or of the Supreme Court of another State or Territory to be appointed as acting judges. That provision is reasonable and I have no objection to it. However, I place on record my concern at the element of age discrimination in the amendment, which proposes that judges may not be reappointed once they have reached the age of 75. The amendment is unnecessary. We are moving, I hope, to introduce legislation which will prevent age discrimination. At the moment judges retire at age 72 but may be reappointed annually until reaching 75 years of age. Could not the amendment be altered to allow appointment of judges until age 75, followed by a three-year period of annual reappointment if in good health and in full command of their faculties? I do not intend to call a division on that particular amendment but I wish to have my views placed on the record.

Unless I get a satisfactory answer from the Minister about the delegation of power from the chief health officer to another medical practitioner regarding the committal of people to a mental hospital, I feel it will possibly be necessary to vote against the bill in toto. That would be a great pity because obviously many of the

provisions of the bill and the amendments it will make to the legislation should be applauded. They deal with groups of people who have been concerned to have strengthening provisions included in the legislation that affect their professions. I refer particularly to chiropractors, osteopaths, physiotherapists and podiatrists. They have long been calling for changes to the legislation. I hope it will be possible to allow honourable members further time to consider the matter raised by the Deputy Leader of the Opposition regarding the Director of Public Prosecutions and to study the advisings that are to be provided to us by the Leader of the House.

**Reverend the Hon. F. J. NILE** [7.0]: I speak on behalf of Call to Australia in regard to the Statute Law (Miscellaneous Provisions) Bill (No. 3). In principle we agree with the criticisms made by the Deputy Leader of the Opposition and also with some of the remarks made by the Hon. Elisabeth Kirkby. The substantial amendments that were made to the first print of the bill involved the deletion of large sections following complaints by the public defenders. They have lobbied us, and I imagine other honourable members. Not only did they lobby us; those who spoke to me were angry about what was happening. I know that amendments were moved in the other place. Apparently those amendments were not initiated by the Government but by the Opposition. The Minister might make that clear. We received a letter from Martin L. Sides, Q.C., the Acting Senior Public Defender, on behalf of the Public Defenders. That long submission on the letterhead of the Public Defenders was dated 17th November. Mr Sides concluded:

> We are extremely disappointed that these amendments have been introduced into Parliament without our being given an opportunity to comment upon them and at a time when the review of the delivery of legal aid services in New South Wales has not been completed.

The Minister's second reading speech repeats the policy on statute law, miscellaneous provisions, bills and the reason for their existence. The Minister said:

> 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.

He proceeded to say that the bill included amendments to the Community Justice Centres Act and other matters. That raises the question of whether there has been a shift in the purpose of the statute law revision bills from the original intention in 1984 when the first of them was introduced. Clearly initially they related to almost technical matters. It now seems that the Minister responsible for the legislation considers some amendments to be too inconsequential to warrant introducing separate legislation. The Government will have a lot of problems with this bill and any similar bills in the future because of what has happened in this instance. In the past the House had a tendency to virtually rubber-stamp the bills. Now all honourable members will examine the bills thoroughly. The Government should establish a clear policy about these bills. The initiating Minister will determine what he regards as minor matters, but there needs to be a procedure whereby those so-called minor matters can be vetted by someone else in the Government, perhaps the Attorney General or the Leader of the House, before the bills are introduced. In that way a decision can be made as to whether an amendment constitutes an important matter. I do not suggest there has been improper activity by Ministers, but a Minister could be tempted to think this was a good way to get something through the House that might cause problems.

**The Hon. B. H. Vaughan:** It could cross their minds.

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**Reverend the Hon. F. J. NILE:** That is right. There is that temptation. It may have happened on this occasion. I have noticed a few matters in the present bill but when one does not have a great deal of time and is not a lawyer, one is not sure of the implications of proposed amendments. It will be of interest to the Hon. R. S. L. Jones that amendments are made to the Tobacco Advertising Prohibition Act.

**The Hon. R. S. L. Jones:** Was the honourable member not consulted about that?

**Reverend the Hon. F. J. NILE:** No. This is the first time I have seen it. They may be truly inconsequential amendments, but they will omit definitions, which to me would mean that those matters no longer have any relevance to the Act. They include omitting the definitions of banned contract, banned sponsorship and benefit. The question that comes to mind is what are the implications when those definitions are removed from the Act? What significance do they have? They might have been made as a result of an initiative from the Tobacco Institute of Australia Limited. It might be easier for them to work with the legislation if those definitions are not included in the Act. I do not know where the amendments have come from or why they have been made, but all the provisions of that Act were carefully worked out by some of the most skilled lawyers in Australia. I find it hard to understand why it has been considered so quickly after the legislation was introduced and why it contains unnecessary material. It would be better if the bill were adjourned at the Committee stage to enable further discussions and consideration to occur. The Government might be able to state its policy on the future of this type of legislation and ensure that future bills contain only genuine minor matters that do not encroach on policy issues. It would seem that has happened. The evidence to support it is contained in the submission from the Public Defenders.

The other point that the Deputy Leader of the Opposition made about including payments and other financial benefits for members of the area health boards involves a similar principle. A huge amount of money might not be involved but there is a principle involved. What does the term subsistence allowances mean? The amendment gives no indication of how the allowances are estimated. In some areas so-called

allowances can quickly mushroom and become overnight accommodation or other benefits almost equivalent to a salary. For those reasons we accept the Government's sincerity in introducing the bill, but there seem to be some major problems with the proposed legislation. I do not want similar problems to occur in the future. The Government must introduce tight administrative procedures to prevent a similar situation from developing. If the Public Defenders had not become aware of the proposed amendments, we would not have been made aware of their significance. Honourable members who are lawyers might have picked it up, but those of us who are not lawyers are dependent upon specialised groups. If they do not know, because matters have been kept from them, that could lead to serious consequences. Call to Australia has strong reservations about this procedure.

**Debate adjourned on motion by the Hon. R. S. L. Jones.**

## ADJOURNMENT

**The Hon. J. P. HANNAFORD** (Attorney General, Minister for Industrial Relations, and Vice-President of the Executive Council) [7.10]: I move:

That this House do now adjourn.

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## ROMAN CATHOLIC CHURCH CATECHISM

**Reverend the Hon. F. J. NILE** [7.10]: In 1985 the Hon. Elaine Nile and I had the privilege of being introduced to His Holiness Pope John Paul II in Rome. In fact, we were introduced to him twice. We took the opportunity in a brief conversation to indicate our support and commend him for the moral leadership he was giving to the Catholic Church and, through his strong stand on various issues, the worldwide community. His statements were sometimes stronger than those coming from some of the Protestant churches. In the past they would have made statements as strong as those of the Catholic Church but in recent years there has been an effort to compromise to avoid controversy. In the few moments available I wish to indicate the support of Call to Australia of the principles of the new catechism which has just been issued by the Roman Catholic Church. Important principles have been stated in a number of areas.

Abortion is forbidden. Human life is protected from the moment of conception, and from that moment "the human being should have the rights of a person". Euthanasia is morally unacceptable. Homosexual acts are contrary to natural law. But homosexuals should be treated with respect and compassion and not be discriminated against. Stealing is the most updated section. It has been expanded to include fiscal fraud, speculation, paying low wages, carrying out poor quality work and violating a just contract. Non-therapeutic drug use is a "grave fault". Clandestine production of drugs and drug trafficking are "scandalous practices and gravely contrary to moral law". I am sure members of the House would agree. In the area of bioethics, the catechism condemns genetic manipulation to select a baby's "sex or other pre-determined qualities . . .as contrary to the personal dignity, integrity and unique identity of the human being". Producing human embryos for use as biological material is "immoral". On procreation, the use of a third party as sperm donor, surrogate mother, et cetera is "inherently dishonest" because it violates a child's right to feel links between his parents. Artificial insemination within a married couple is morally unacceptable because it separates the sexual act from procreation. Sterile couples are urged to adopt.

Kidnapping and hostage taking are "morally illegitimate". Terrorism is "seriously contrary to justice and charity". "Public authorities have the right and duty to regulate" the production and sale of arms. In science, transplanting of organs is acceptable only when the donor consents. Scientific research must not be used simply to advance techniques or bolster ideology. It must be at the service of man and his inalienable rights and conform with the will of God. Christians from other churches and communions would also support the new Catholic catechism. Under the heading of sex, seeing we have had Madonna's sex book, we might say the Pope has put out a book of his own. The Catholic Church says in regard to sex that masturbation, fornication, pornography, homosexual acts, adultery, polygamy and unwed sexual union are grave offences.

**The Hon. Ann Symonds:** But are they mortal sins?

**Reverend the Hon. F. J. NILE:** I would have to leave that to the expert - a convent-trained member of this House. Someone alleged I was born in a convent but I was not and I do not have such knowledge. Divorce is forbidden. Between baptised Catholics, "consummated marriage cannot be dissolved by any human power, nor for any reason except death". The right to non-violent striking is guaranteed. Richer nations are urged to welcome immigrants from poorer nations. Many parts of the new catechism have been updated, which I am sure many members of this House would agree with. [*Time expired*.]

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## WOMEN OF NON-ENGLISH SPEAKING BACKGROUND

**The Hon. HELEN SHAM-HO** [7.15]: In the adjournment debate on 17th November the Hon. Franca Arena criticised me and my report on consultations with non-English speaking background women. I would like to put the facts on record. The honourable member once again has demonstrated that she knows not of what she speaks. Again and again in this House we have seen her trivialise and downgrade issues that are important. Given the fact that she is also a member of non-English speaking background, one would have thought that she would have been more constructive about this report. But no, instead she wants to score cheap political points and criticise without any substance or justification. As recently as last month the Hon. Franca Arena made a sad spectacle of herself when she refused to attend the celebration dinner for the Fiftieth Parliament on the basis that having an English member of Parliament as guest speaker was an affront to Australian nationalism. I believe that she even wrote to the press to complain about it. To the honourable member's acute embarrassment, it was revealed that the guest was indeed the well-known Australian comic imposter Campbell McComas. The Hon. Franca Arena did not know what was going on and did not even care to check the facts. She did that also in regard to my report.

I draw the attention of the House to the fact that the report was the outcome of six months of consultation, including a forum at Parliament House, local consultation with grass roots non-English speaking background women by committee members, consultations with groups that work with non-English speaking background women, distribution of questionnaires and submissions from interested persons or groups. The consultation process was therefore not "only six written submissions" as the Hon. Franca Arena claimed. It is obvious to me that she has not read the report carefully. The consultations highlighted three areas of particular concern to non-English speaking background women - social issues for young women, working career options and legal protection for women. Arising from the discussions of these issues, the committee

identified some priorities for action such as access to English classes for non-English speaking background women.

**The Hon. Ann Symonds:** On a point of order. I draw attention to the provisions of Standing Order 81. We are witnessing a reflection upon a member of this House, which is an improper use of the adjournment debate. Mr Deputy-President, I ask you to ask the honourable member to withdraw.

**The Hon. Helen Sham-Ho:** On the point of order. I would like to know what the reflection was.

**The Hon. Ann Symonds:** I think it is quite plain that the entire subject-matter of the speech has been nothing more nor less than personal reflections upon the character and reputation of the Hon. Franca Arena.

**The Hon. J. H. Jobling:** On the point of order. If the Hon. Ann Symonds wishes to make the point that it is a specific reflection, she should use the specific words to explain the reason she has raised a point of order. Otherwise, I put it to you, Mr Deputy-President, no point of order is involved.

**The Hon. Ann Symonds:** Further to the point of order. I do have a capacity for recall but unfortunately there was quite an amount of verbiage in the remarks of the Hon. Helen Sham-Ho. I am afraid that without the use of *Hansard* I cannot ascribe particular phrases, but she began by saying that the whole purpose of her speech was in order to take up the issues and that the Hon. Franca Arena "knows not of what she speaks". I think that is enough in itself.

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**The DEPUTY-PRESIDENT (The Hon. D. J. Gay):** Order! I am not clear what words are regarded as being a problem. Unless someone can identify the words that present a problem, I may have to ask the honourable member to repeat her speech so I can make a ruling.

**The Hon. Ann Symonds:** Perhaps that is the way to settle the matter. The Hon. Helen Sham-Ho should just repeat the accusation.

**The Hon. Helen Sham-Ho:** I do not think it is any reflection on the honourable member at all.

**The DEPUTY-PRESIDENT:** Order! Perhaps the Hon. Helen Sham-Ho could repeat the later part of her speech.

[*Time expired*.]

**Reverend the Hon. F. J. Nile:** On the point of order. Traditionally if a member objects to words as being offensive, that member is obliged to identify the words. It is against custom and practice to require members to repeat speeches in order to have identified alleged offensive remarks.

**The Hon. Helen Sham-Ho:** Further to the point of order. My comments do not reflect on any member. I was referring to the facts of my report.

**The DEPUTY-PRESIDENT:** Order! If the Hon. Ann Symonds is unable to

identify the words she found offensive under Standing Order 81, there can no point of order.

**The Hon. Ann Symonds:** I accept your ruling but I think *Hansard* will reveal that I was justified in taking a point of order, and that it would have been more appropriate for the Hon. Helen Sham-Ho to have made a personal explanation about the matter.

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

## CASINO MUNICIPAL COUNCIL

**The Hon. ANN SYMONDS** [7.21]: Five decisions of Casino council, made between 1987 and 1991, which seem to flout the pecuniary interest requirements of the Local Government Act, have been brought to my attention. I refer first to the air show held between the years 1987 and 1991, which cost the ratepayers of Casino $30,000. Alderman Frisken, who has the sole contract to supply fuel to planes at Casino airport, chaired a Casino council committee which looked at the feasibility of the project. The committee produced figures on projected attendances and income brought to the town. The alderman never declared a pecuniary interest and the figures produced are believed to be his work. The second incident relates to the classic example of local government corruption - aldermen making decisions relating to land they own. The subdivision of land known as Gay's Hill is believed to be owned in part by former aldermen of the council, Gerald Kelly and Michael Harper, who failed to declare an interest whenever the matter was before council. It would seem that multiple breaches of section 46C have been committed.



The third matter involves the sealing of the car park and footpath in front of the Hotel Cecil at less than cost. When determining costs the engineer did not take into account time spent by staff drawing up the plans and setting out the job for speed bumps or the new gutter crossing. A partner in the hotel is the former mayor, Michael Kelly. The fourth matter involves the statutory approval by a council officer of his own building work. The deputy engineer, Mr Radnidge, recommended his own development application and building application. He subsequently occupied the dwelling before the necessary inspections were undertaken. In this matter there was the failure to notify council of his interest and a further failure not to comply with the provisions. The fifth matter shows a great discrepancy in the application of standards. A DA and BA 44-89 were approved under delegated authority for land which is flood prone, to 1.8 metres. DA 90-19 was refused where access - not in relation to the land to be built on - was 0.6 metres below flood level. The difference, it is alleged, is that the first applicant is an associate of the shire engineer and so received favourable treatment.

Local Government is the level of government that people would have most personal experience of, so it is not surprising there are many complaints of impropriety. In the first two years of the ICAC's operation, approximately one-third of complaints related to local government. On closer examination one quarter of these complaints did not involve any possible corrupt conduct and a number were quite trivial. Two-thirds of these related to rural councils. This is interesting because an overwhelming number of New South Welshmen live in metropolitan local government areas. Does this discrepancy in the number of complaints arise because of more awareness in the community of council business or more lax enforcement of procedures? It is not just the elected officials that cause concern; 37 per cent of complaints involved council staff. In

his "Report on Investigation into Local Government, Public Duties and Conflicting Interests" the commissioner found that the pecuniary interest provisions of the Local Government Act should remain pretty well as they are. He was concerned at the practice of enforcement. At present it is an offence to breach the pecuniary interest provisions of the Local Government Act. It is left to councils to police those provisions, and prosecutions are taken before magistrates. The provisions are not enforced either frequently or consistently. A great deal of politics often comes into decisions whether to prosecute, to appeal, to pursue cost orders and so on. The report recommended that an independent local government tribunal be established. In the meantime I ask the Minister to investigate these matters. [*Time expired.*]

**Motion agreed to.**

**House adjourned at 7.25 p.m. until Tuesday, 24th November, 1992, at 2.30 p.m.**

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## QUESTIONS UPON NOTICE

The following questions upon notice and answers were circulated in *Questions and Answers*:

### CAMDEN HOUSING DEVELOPMENTS

Dr Burgmann asked the Minister for Health and Community Services representing the Minister for Housing -

(1) Does the Minister intend to go ahead with new housing developments in the Camden area, such as those planned for Elderslie, Cawdor and South Creek?

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(2) If so:
   (a) can the Minister provide details of any environmental impact studies conducted, particularly with respect to air and water pollution;
   (b) can the Minister provide details of transport, health services and other infrastructure developments planned to cope with the increased population in the area;
   (c) are there plans to institute employment programs to ensure that there will be jobs available for the increased population?

Answer -

The Government is committed to ensuring that environmentally sensitive development proceeds in areas such as Camden so as to meet Sydney's housing needs. This commitment was demonstrated in June 1992, when, in conjunction with the release of the revised South-Western Sydney Strategy, it was announced that decisions about future urban development in Sydney's south west would be deferred until more planning and environmental information is available.

The revised South-Western Sydney Strategy included a deferral of rezoning proposals for Elderslie, Cawdor, Mt Gilead, Spring Farm and extensions to Harrington Park.

The revised strategy also included:

-the continued development of lands already zoned and serviced, including the Narellan area;

-the carrying out of an Environmental Impact Assessment for Menangle Park before a decision is made to rezone any land;

-and an examination of the potential to accelerate development at Hoxton Park.

Based on current anticipated demand this strategy will provide sufficient land stocks for housing in Sydney's south west for the next five years.

Whilst the Government sees these release areas as being required to accommodate Sydney's growth, it has taken a wide range of initiatives to investigate the environmental capacity of the South West Sector and to find solutions for urbanisation within that capacity.

In this context, it is inappropriate for the Government to make any decisions regarding future urban development in Sydney's south west. At this stage, neither the Urban Development Program areas nor the South Creek Valley Sector have been cancelled. Decisions about these proposed land releases have been deferred pending the outcome of the various environmental studies being undertaken (see (2) (a) below).

(2) (a) As an integral part of the Government's revision of the South Western Sydney Strategy, a comprehensive program of environmental and planning studies is currently underway to obtain relevant information and resolve a range of air and water quality issues. Critical outcomes from these studies will not be available before mid 1993.

With respect to air quality, a comprehensive Pilot Study has been undertaken by the Government on the evaluation of air quality issues for the entire Sydney Region including development of Macarthur South and South Creek Valley.

As stated in the South Creek Valley Region Environmental Study, `the Government's decision to limit commitments to further major sector development in South Western Sydney is an explicit recognition of the air quality issue.' Consequently, the South Creek Valley Draft Region Environmental Plan (SCVDREP) has clear objectives to achieve a high level of air quality and to minimise the effects of air pollution from the South Creek Valley Sector.



The Environment Protection Authority (EPA) has established a network of meteorological measuring equipment in the South West Sector, including three stations within the South Creek Valley region, to provide data on the path of air parcels and measurement of pollutant emissions. The EPA is using this network to continue its air quality monitoring program.

With respect to water quality, rigorous environmental assessment of proposed new urban developments will be required. It is intended that a total water cycle management study for the proposed South Creek Valley development will be undertaken as part of this assessment. This would consider the water supply, sewerage and urban run-off components development in South Creek Valley and their environmental impacts.

An Environmental Impact Statement (EIS) for amplification of the West Camden Sewage Treatment Plant is also scheduled for preparation during 1992-93 and will focus on both the next stage of amplification and the ultimate capacity of the plant. Possible dual water supply and recycled water use for new urban development in the south west are among the range of options which the EIS is expected to consider.

As well as the environmental impact assessment work that is being carried out, the Water Board is developing a state-of-the-art computer model of the Hawkesbury-Nepean River and its major tributaries, including South and Eastern Creeks. This will be used to help predict the effects on the river of different scenarios of urban development, land use, treated sewage effluent and run-off controls.

All of the above studies and actions are being undertaken in association with

the following region/state planning initiatives:

- a revision of Hawkesbury-Nepean Regional Environmental Plan No. 20 by the Department of Planning;
- a review of the State's waterway classification system by EPA;
- long term strategic sewerage planning for Sydney by the Water Board; and
- an update of Sydney's Metropolitan Strategy by an interdepartmental Task Force.

(b) The Government recognises the importance of a good transport network, which is a combination of a hierarchy of roads and efficient public transport systems in the proposed new release areas on the urban fringe of Sydney. This recognition is being demonstrated both in the Metropolitan Strategy update, which is addressing public transport planning, and the proposed Integrated Transport Strategy for Sydney.

To date there has been considerable investment in major roads in Sydney's south west and the development of the road hierarchy will continue as development proceeds. The road network will be planned to provide optimum accessibility between centres, residential areas and employment areas.

A study has been undertaken by the State Rail Authority to examine the feasibility of a proposed rail link extension from Glenfield to the proposed second Sydney Airport at Badgerys Creek. This proposal will need to be evaluated against other options available, including the alternatives of a range of bus services.

Regional planning to date has identified that hospital health services will be provided by Camden Hospital and Campbelltown Hospital (Stage 3). The Department of Health participates in the Human Services Subcommittee of the Urban Development Committee and undertakes its own planning and budgeting in the knowledge of the progress of new release areas.

Regional Environmental Studies for south western Sydney included



investigations into human services and community facilities including schools, child care facilities etc. The importance of the availability of baseline community infrastructure is recognised.

(c) The Department of Consumer Affairs, formerly Business and Consumer Affairs (BACA), has had an active campaign for many years to attract industry to the south west. It is continuing to provide land for industry in Narellan and Campbelltown. BACA's past activity in the Campbelltown area has reinforced Campbelltown's role as the regional centre for the south west.

Another of the Government's employment initiatives is the Department of Planning's Employment Lands Program, which operates similarly to the Urban Development Program to identify employment opportunities and to co-ordinate the provision of employment lands throughout Sydney.

In addition, the Department of State Development has established the Western Sydney Economic Development Committee which is investigating strategies to boost employment in western and south-western Sydney.

The situation in South Creek Valley with regard to employment programs is that the SCV DREP has clear objectives that must be included in the preparation of Draft Local Environmental Plans. These objectives include developing the potential for new employment opportunities, promoting early economic development and exploiting the potential to supply high quality, large scale employment land currently unavailable elsewhere in the Sydney Region.

It has been universally recognised that the development of a major airport at Badgerys Creek will provide an opportunity for establishing related industries

and a significant employment base.

**MASTER BUILDERS APPRENTICESHIP**

Ms Kirkby asked the Minister for Housing -

(1) Can the Minister indicate in relation to the Master Builders Apprenticeship Scheme (M.B.A.S.) for the last 3 years:

(a) how many builders have had "on costs" waived;

(b) what proportion does this constitute of master builders employing apprentices;

(c) what reasons or criteria were used to justify such waivers?

(2) Is one of the purposes, to which these on costs are used, the payment of severance pay in the event that apprentices are retrenched?

(3) If so, have all apprentices under the M.B.A.S. received these payments and all other entitlements as required by the agreement with the Building unions?

(4) Has the waiver and non-payment of such oncosts led to the M.B.A.S. making up the shortfall from other sources like the State or Federal grants which were intended to maximise the number of apprentices employed in New South Wales building industry?

(5) Will the Minister indicate in each of the last 5 years in relation to this apprenticeship scheme the:

(a) number of persons applying to the M.B.A.S. for apprenticeships;

(b) average length of time each applicant waited before being successful in securing an apprenticeship;

(c) number of persons unsuccessful in securing an apprenticeship;

(d) average number of persons on the waiting lists for an apprenticeship?

(6) Can the Minister detail the monies paid to the M.B.A.S. over each of the last 5 years:

(a) by the State Government's Building Services Corporation;

(b) by the Federal Government through DEET?

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(7) Has the M.B.A.S., in the case of the Building Services Corporation (B.S.C), operated the scheme so as to satisfactorily reach the targets and standards expected in relation to the number of apprentices employed?

(8) Has there been any inability of the M.B.A.S. to meet its targets for the number of apprenticeships?

(9) Has the balance of any grant monies, paid in advance from the B.S.C., been accounted for and has any surplus been returned to the B.S.C.?

(10) Have grant monies from the B.S.C. and the accounts of the apprenticeship scheme been kept entirely separate from other accounts within the M.B.A.S.?

(11) If so, will the Minister table documentation to this effect for each of the last 5 years?

(12) In relation to this apprenticeship scheme, will he table documentation from the B.S.C. and the M.B.A.S. detailing:

(a) their respective general policy, accounting arrangements and administrative guidelines;

(b) any documentation specifically related to the waiver of "on costs" for apprentices;

(c) the dates these policies, accounting arrangements, administrative guidelines and waiver provisions were initiated and on whose authority;

(d) whether the B.S.C. or the State Government requested or received any information about items (a-c) or undertook any audit of the apprenticeship accounts of operation which identified this practice?

(13 Did Assistant Commissioner Holland, Q.C., question an M.B.A.S. executive during

Royal Commission hearings in the week of 15 July this year as reported in Australian Financial Review, 16 July, regarding the:

(a) possibility of funds from the apprenticeship scheme being used for purposes other than that for which they were intended;

(b) doubling of the M.B.A.S.'s Citibank overdraft of $2.7 million and the assertion that this overdraft was used to buy commercial property for investment purposes;

(c) inability of that executive to identify the source of $383, 810 invested in property or explain the $1.5 million under the heading "rental and other income" given that the M.B.A.S. earned $55,000 rent;

(d) possibility that the M.B.A.S. needed to increase its own income from secret commissions from its own builder-members and from apprenticeship scheme funds in order to pay off its purchase of commercial investment properties made using a $2.7 million overdraft?

(14) In view of these matters and the fact that the apprenticeship scheme is supported by grants from both State and Federal Governments, will he report to Parliament, as soon as possible, detailing the results of a joint investigation by State and Federal Public Accounts Committees focusing on:

(a) any operational and policy changes needed to improve the quality and quantity of building apprenticeships in New South Wales;

(b) the adequacy and timeliness of the Royal Commission's efforts on these matters since it received advice of them approximately 8 months ago;

(c) the need to have the administration of this apprenticeship oversighted by a joint State/Federal Government taskforce until the review is completed and necessary operational and policy changes implemented?

Answer -

Many of the issues raised fall outside the ambit of my portfolio as Minister for Housing. They relate directly to the day to day operations of the Group Apprenticeship Scheme which is administered by the Master Builders Association.

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(1) No.

(2) Not known.

(3) Not known.

(4) Not known.

(5) Not known.

(6) (a) The following grants have been made by the Building Services Corporation to the Master Builders Association over the past 5 years:

| | | |
|---|---|---|
| 1991 | Reimbursement of administration costs for 10 months to 31 October 1991 | $463,404 |
| 1990 | Reimbursement of administration costs for year ended 31 December 1990 | $535,239 |
| | Wages for apprentices involved in reconstruction work following the Nyngan flood | $54.761 |
| | | $590,000 |
| 1989 | Reimbursement of administration costs for year ended 31 December 1989 | $531,000 |
| | Subsidy payments to encourage the employment of additional apprentices. | $72,050 |
| | | $603,050 |
| 1988 | Reimbursement of administration costs for year ended 31 December 1988 | $431,050 |

| | | |
|---|---|---|
| | Subsidy payments for additional apprentices | $147.950 |
| | | $579.000 |
| 1987 | Reimbursement of administrative costs for year ended 31 December 1987 | $210,000 |

(6) b) No.

(7) The Building Services Corporation was not involved in the setting of targets or standards to be met by the Group Apprenticeship Scheme. However, the funding which was provided by the Building Services Corporation did bear relationship to the number of staff employed by the Master Builders Association to administer the Group Apprenticeship Scheme. The funding provided by the Building Services Corporation was intended to reimburse the Master Builders Association for the administration costs actually and necessarily incurred in administration of the Group Apprenticeship Scheme.
In 1988/89 Building Services Corporation also paid subsidies totalling $220,000 to encourage the employment of additional apprentices. These subsidies were passed onto the individual training employers to minimise the number of apprentices employed in the scheme. The number of apprentices in the scheme is reported to have increased from 630 in 1987 to 930 in 1989, partly as a result of this initiative.

(8) Not known. The Building Services Corporation holds no record of any employer being unable to obtain an apprentice.

(9) The Building Services Corporation do not pay grant monies for the Group Apprenticeship Scheme, in advance. The costs of administration of the Group Apprenticeship Scheme were reimbursed after the expenditure had been actually and necessarily incurred. However, in view of the Royal Commission's allegations of surpluses the BSC is investigating whether surpluses were made in any particular year and methods of recovery if surpluses are confirmed.

(10) No. However, the payments by the Building Services Corporation were for reimbursement of expenses already incurred and identified at the time. See also (9) above.

(11) See (10) above.

(12) (a) The original Building Services Corporation files covering this scheme are currently held by the Royal Commission Task Force. Those files in dealing with the general policy and Accounting arrangements date back to 1977 when the initial proposal was put forth to the then Minister for Housing and the Premier/Treasurer of the day.

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Subsequent funding, generally on four year programmes, was also dealt with through the relevant Minister and the Premier/Treasurer.

Accounting arrangements were such that the MBA sought, by periodical claims, the reimbursement of administration costs under identified heads of expenditure. When verified, these claims were paid from funds provided against the approval given to the allocation of the funds by the relevant Premier/Treasurer.

The last four-yearly programme, approved in 1988, was approved by the then Premier and Treasurer, upon the submission of the then Minister for Business and Consumer Affairs.

(b) No such documentation is held by the Building Services Corporation.

The Building Services Corporation is not involved in the arrangements between the individual training employers and the Master Builders Association. The question of "on costs" and their waiver is a matter entirely between the training employer and the Master Builders Association. The Building Services Corporation is not involved and never has been involved in the day to day operations of the Scheme.

(c) The approval for funding the four year period which ended on 31 December

1991 was communicated to the Master Builders Association by letter dated 17 March 1988. Waiver conditions were not a matter for the Building Services Corporation. The Scheme in fact commenced in 1977 and has continued to operate since then.

(d) The funding approved by the Building Services Corporation has been monitored in three separate ways:

-The Master Builders Association's Auditors, Touche Ross and, more recently, KPMG Peat Marwick provided an annual audit certificate covering the funding provided by the Building Services Corporation.

-Independent audits by Price Waterhouse engaged by the Building Services Corporation in October 1990 to validate the expenditure incurred by the Master Builders Association for reimbursement by the Building Services Corporation.

-Random checks by the Corporation's Financial Controller.

(13) The transcript of proceedings before the Royal Commission for 15 July 1991 commences at page 3443 and concludes at page 3520. Executives of the Master Builders Association, it will be noted, were questioned on many issues.

An article in the Financial Review of 16 July 1991 headed "Plasterboard collusion alleged" dealt, in part, with hearings which had been conducted by Royal Commissioner Holland on 15 July 1991. The press article made no reference whatever to the MBA Group Apprenticeship Scheme or apprenticeship funds but did made reference to the other matters raised in questions 13 (b), (c) and (d).

(14) I am not aware of any such joint investigation.

## OYSTER BAY SCHOOL SITE USE

Mr Jones asked the Minister for Planning, Minister for Energy, Minister for State Development, and Minister for Tourism -

(1) Has the Government contracted a consultant, Ms Jill Bonney, to prepare a range of residential development options for the former Oyster Bay school site?

(2) Did the Member for Sutherland at the 1988 election state that "No housing of any kind will ever be built on this site as far as the Liberal Party is concerned"?

(3) Will the Government honour this promise to this residents of Oyster Bay?

(4) If not, will existing water and sewage infrastructure in this area cope with any additional demands placed upon it by any development of this site?

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Answer -

(1) The Property Services Group on behalf of the Government contracted a consultant, Ms J Bonney to review the range of residential options for the former Oyster Bay school site.

(2) Yes.

(3) The recent decision by the Minister for Education and Youth Affairs that the former school site should be preserved for its environmental value is consistent with the Member for Sutherland's undertaking. I understand that the site is to be converted to crown land, reserved for community purposes and the Sutherland Shire Council appointed trustee.

(4) In view of the answer to question (3) this is no longer an issue.

## CASTLEREAGH EXPRESSWAY CONSULTANCIES

Ms Burnswoods asked the Minister for Planning and Minister for Energy representing the

Deputy Premier, Minister for Public Works and Minister for Roads -

(1) How much has the Government spent on consultants overall in relation to the proposed North Ryde to Pennant Hills section of the proposed tollway/expressway since the Commission of Inquiry reported in 1990 that the road was not feasible?
(2) In particular, how much did the following consultancy areas each receive:
(a) Road engineering and design;
(b) Air quality;
(c) Flora and fauna;
(d) Noise;
(e) Transport and traffic;
(f) Visual quality/landscape design?
(3) Were private consultants hired instead of using Public Service staff from, for example, the Environmental Protection Agency/State Pollution Control Commission (air quality, noise); National Parks and Wildlife Service (flora and fauna); road engineering (RTA)?
(4) If so, why?

Answer -

(1) $l.l million. This sum includes some minor expenditure common to both the eastern and western EISs.
(2) The Authority's consultant, Maunsell Pty Ltd, has advised that the total costs associated with (2) (a-f) amount to about $573,000. Individual costs are not available.
(4) The engagement of Maunsell Pty Ltd was based on the need for an independent examination of the various environmental and socio-economic issues, and the presentation of a considered professional solution for the transport needs of Sydney's north western region.
Maunsells hired specialist consultants as needed and sought advice where necessary from the Government bodies mentioned by the Hon Member. The Department of Transport was also consulted.

**ICAC FINDINGS ON CONSTABLES ABEL, BROWN, WILLIAMS AND HALL**

Mr Egan asked the Minister for Police and Emergency Services and Vice-President of the Executive Council -

(1) Did the Independent Commission Against Corruption (ICAC) find that police officers had made harassing telephone calls to the home of Mr Eddie Azzopardi and had perjured themselves in evidence given to ICAC?

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(2) In respect of each officer against whom ICAC made an adverse finding;
(a) what departmental or other charges have been laid;
(b) are they still members of the Police Force;
(c) if so, are they on active duty;
(d) if not, are they receiving any salary?

Answer -

(1) Yes.
(2) (a) Constable G S Abel
Convicted of one offence under s.80(c) of the ICAC Act - making a false statement to a Commission officer. A fine of $5,000 was imposed, together

with a community service order of 200 hours.

Also convicted of the offence of making harassing telephone calls under s.85ZE of the Commonwealth Crimes Act. Given a sentence of four months periodic detention commencing on 19 June 1992. Following appeal to the District Court this sentence was overturned on 17 September 1992 and replaced with a suspended four month sentence and a three year good behaviour bond.

Probationary Constable P N Brown

Departmental charges preferred:

One count of "Neglect of Duty", fail to perform duty and report misconduct of an officer.

Two counts of "Misconduct", fail to exercise strictest honesty and truthfulness in records of interview.

Three departmental charges denied and subsequently determined before the New South Wales Police Tribunal on 14 April 1992. All charges proved with a recommendation of dismissal by Tribunal.

Also summonsed in respect to two offences under s.87 of the ICAC Act. Pleas of "not guilty" entered and the matter has been set down for hearing during 1993.

Constable K M Williams

Departmental charges preferred:

One count of "Neglect of Duty", fail to perform duty and report misconduct of an officer.

One count of "Misconduct", fail to exercise strictest honesty and truthfulness in a record of interview.

Departmental charges discontinued due to resignation from Police Service on 4 February 1992.

In respect to an offence under s.7A of the Commonwealth Crimes Act (inciting an offence under s.85ZA of the Crimes Act - harassing telephone calls) a sentence of four months imprisonment imposed but released on undertaking to enter into recognisance of $1000 to be of good behaviour for three years. A fine of $4,500 was also imposed with six months to pay.

In respect to six offences under s.87 of the ICAC Act, in substitution of imprisonment, given 80 hours of community service orders, a total of 480 hours. In respect to all matters ordered to pay court costs of $45 per matter.

Constable C D Hall

Departmental charges preferred:

One count of "Misconduct", fail to exercise strictest honesty and truthfulness in a record of interview.

On count of "Neglect of Duty", fail to perform duty and report misconduct of an officer.

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Constable Hall, who gave a false statement to the Commission but later gave evidence identifying who had made the telephone calls was suspended from duty on 16 November 1990 but was restored to duty on 1 August 1992, with two years loss of seniority and to be subject to a performance watch and inspection for a period of twelve months, dating from 1 August 1992.

(b) Constable Abel resigned from the Police Service on 15 December 1991.

Probationary Constable Brown was dismissed from the Police Service on 29 April 1992. An appeal has been lodged and is yet to be heard before GREAT.

Constable Williams resigned from the Police Service on 4 February 1992.

Constable Hall is still a member of the Police Service.

(c) Constable Hall is on normal duty but his performance of service, attention to

duty and attitude is to be monitored for a period of twelve months from 1 August 1992.

(d) Not applicable.

## CAMPBELLTOWN CHILDREN'S COURT

Mr O'Grady asked the Attorney-General and Minister for Industrial Relations representing the Minister for Justice and Emergency Services -

(1) Is the Government aware of concerns over the Children's Court at Campbelltown being in the same complex as the adult courts?
(2) When did these concerns first come to the Government's attention?
(3) What action did the Government take to address these concerns?
(4) Has the Minister for Justice inspected the holding cells at Campbelltown? If so, when?
(5) Is this area small and cramped and unsuitable for the holding of children in custody?
If so, what action has been or will be taken to fix this situation?
(6) Does the Minister agree that it is unsuitable to refuse parents of children in custody access to their children before court hearings?
(7) Is the Government planning to refurbish the old Campbelltown Court to make it suitable for a Children's Court?
(8) Will this refurbishment include both a criminal court and a care court?
(9) Will a holding area for children in custody he built, totally separate from the adults in custody?
(10) Will this area contain single holding cells, or will it be a combined area for all children in custody?
(11) Will interviewing facilities allowing for privacy be provided?
(12) Will parents of children in custody be permitted access to their children in a new holding area before court cases?
(13) Will the new Campbelltown Children's Court be opened in December 1992, as stated by the Government last December?
(14) If not, why not?
(15) When will the new Campbelltown Children's Court be opened?
(16) Has the Minister said that it is detrimental to children to continue to have their cases heard at the Campbelltown Complex?
(17) If so, why has the situation been allowed to continue?
(18) What is the difference between the Burwood and Campbelltown situations?

Answer -

(1) Yes.
(2) December 1991.

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(3) Planning was commenced to provide a separate Juvenile Court Complex.
(4) No. The Hon Mr Pickering inspected the holding cells on 28 September 1992, while the Hon Mr Griffiths inspected the area on 31 July 1992.
(5) While the holding of Juveniles in custody in cells adjacent to adults is undesirable the area is not small or cramped.
(6) Yes, parents should be given access to juveniles in custody whenever the facilities permit.
(7) Yes.
(8) A criminal court and a separate care court are included in the refurbishment

proposals.
(9) Yes.
(10) In addition to a combined holding area one security room for recalcitrant juveniles will be provided.
(11) Interview facilities of a private nature will be incorporated.
(12) Parents will have access to their children in the holding area.
(13) No.
(14) Planning associated with the Campbelltown Juvenile Complex was suspended until the Campsie and Lidcombe Juvenile courts were completed so as to ensure that appropriate facilities and needs of the users are provided at Campbelltown.
(15) The Campbelltown Juvenile Complex is not expected to be completed until March 1993.
(16) No.
(17) See answer to 16.
(18) The difference between Burwood and Campbelltown is that at the latter location the facilities will be accommodated in a separate building. While the two (2) buildings are linked, unlike Burwood, persons attending the Juvenile Court will have a separate entry to that area and will not have to use the main public entry.

**BURWOOD, CAMPSIE, AND LIDCOMBE CHILDREN'S COURTS**

Mr O'Grady asked the Attorney-General and Minister for Industrial Relations representing the Minister for Justice and Emergency Services -

(1) What was the total cost of moving the Children's Courts from Roylston and Minda to Burwood?
(2) What was the total cost of alterations to the Burwood Court complex to accommodate the Children's Courts?
(3) What will it cost to restore the two children's courtrooms at Burwood so as to accommodate adult court cases?
(4) What is the total cost of refurbishing Campsie Court to accommodate children's cases?
(5) What is the total cost of refurbishing Lidcombe Court to accommodate children's cases?
(6) What benefit was there in moving children's cases from Roylston and Minda?
(7) On what date will Lidcombe Court begin operating as a children's court?
(8) On what date will Campsie Court begin operating as a children's court?
(9) What will happen to the buildings which housed the Minda and Roylston Children's Courts?
(10) Was the merging of the adult's and children's courts a failure as well as detrimental to the well-being of young people in court?

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Answer -

(1) $2,865.00.
(2) $302,753.00.
(3) An estimate of $89,000 has been received from the Public Works Department.
(4) $220,726.00.
(5) $385,000.00.
(6) The accommodation was improved. Royleston and Minda had many shortcomings, including lack of air-conditioning, interview facilities and office space, and were regarded as unsatisfactory facilities for the Children's Court.

(7) The new complex opened for business on Monday, 26th September 1992.

## POLICE ACTION AT WOOLGOOLGA RACE MEETING

Mrs Walker asked the Attorney-General and Minister for Industrial Relations representing the Minister for Police -

(1) Did a police person holding a static display at a Woolgoolga race meeting on Sunday, 13 September, 1992, where various arrests were made for illegal bookmaking, question the rights of a Department of Racing official to be at the meeting?
(2) Did the same police person try to stop police at that meeting from taking any action against people committing breaches of law and expressed his displeasure at their attendance at the meeting?
(3) Will the Commissioner of Police conduct a full inquiry into this matter?

Answer -

(1) An official of the Department of Sport, Recreation and Racing was requested by police to provide his credentials.
(2) The day after the race meeting a Sergeant expressed his concern over the impact of the Gaming and Betting Squad's activities on community relations.
(3) The Commissioner of Police, Mr A Lauer, has advised that an investigation has been initiated.

## ANTI-DISCRIMINATION BOARD REPORT ON HIV-AIDS

Mr O'Grady asked the Minister for Police and Emergency Services and Vice-President of the Executive Council, representing the Premier, Treasurer and Minister for Industrial Relations, Minister for Further Education, Training and Employment, and Minister for Ethnic Affairs -

(1) When will the Premier make a "clear and public policy statement" against HIV/AIDS-related discrimination, as recommended by the Anti-Discrimination Report "Discrimination - the Other Epidemic"?
(2) Does the Premier support the recommendation that discriminatory activities by New South Wales government departments and authorities should become subject to disciplinary action?
(3) Will the Premier implement recommendations:
66;
67?
(4) If not, why not?
(5) If so, when?

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Answer -

(1) The former Premier has already made a clear and public policy statement against HIV/AIDS-related discrimination both at the time of the launch of the Anti Discrimination Board Report "Discrimination - The Other Epidemic" and also in response to a question from the Member for Bligh, Ms Moore, in the Legislative Assembly on 5 May 1992. The statements made by the former Premier, Mr Greiner, are supported.
(2) The recommendation that discriminatory activities by New South Wales government departments and authorities should become subject to disciplinary action is

supported in principle.

(3) (a) The Government supports recommendation 66 in principle. Action is currently being taken to assess the implications of this recommendation across the public sector.

(b) The Government supports recommendation 67 in principle. Action is currently being taken to assess the implications of this recommendation across the public sector.

(4) Not applicable.

(5) A Ministerial Committee on HIV/AIDS Discrimination has been established to report to Mr Hannaford on the implementation of the response of all Government Departments to the recommendations contained in the Report.

**FORMER POLICE SERVICE EMPLOYEE Mr STEVE BRIEN**

Mr O'Grady asked the Minister for Justice, Minister for Emergency Services, Minister Assisting the Premier and Vice-President of the Executive Council representing the Premier and Treasurer -

(1) What position does Steve Brien hold in the Police Department?

(2) Was Steve Brien departmentally charged or disciplined for his involvement in the Blackburn affair?

(3) If so, what was the result of those charges or disciplinary procedures?

(4) What was Steve Brien's annual salary before that disciplinary action?

(5) Is this the same Steve Brien who is referred to in Addendum IV (LC Hansard, 22.9.92, p.25)?

(6) What is Steve Brien's annual salary now?

(7) Will Steve Brien be removed from the Police Media Department?

Answer -

(1) Mr Steve Brien does not hold a position in New South Wales Police Service. His resignation was effective from 20 September 1991.

(2) Yes.

(3) Mr Brien was found guilty of having committed a breach of discipline. He was formally removed from the position of Director, Media and his salary was reduced to Clerk, maximum Grade 12. He was appointed to another position and directed to report to the Director, Marketing and Media.

The responsibility for all media matters was transferred to the Director, Marketing and Media.

(4) $59,632 per annum.

(5) Yes.

(6) Mr Brien does not receive any salary from the New South Wales Police Service.

(7) Mr Brien is not employed by the Police Media Branch.

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**POLICE ADMINISTRATION**

Mr O'Grady asked the Minister for Justice, Minister for Emergency Services, Minister Assisting the Premier and Vice-President of the Executive Council, representing the Premier and Treasurer -

(1) Is it the role of the Commissioner for Police to tell the Minister for Police what he is to say to Parliament?

(2) Does the Premier accept the Commissioner of Police's view that his department did not have time to properly brief the former Minister for Police when that Minister demanded to know what was going on?
(3) Does the Premier have confidence in the Police Commissioner following recent events?
(4) If so, for what reasons?
(5) What action has the Premier taken to ensure proper communication between the Police Commissioner and the new Police Minister?

Answer -

(1) On 14 October 1992 Parliament established a Joint Select Committee Upon Police Administration. This Committee will, among other things, examine the respective roles of the Minister for Police and Commissioner of Police. As this Committee has not yet reported, I do not wish to comment at this stage on the roles of the Minister and the Commissioner.
(2) The Joint Select Committee referred to above will also examine the circumstances which resulted in the resignation of the former Minister for Police and Emergency Services. As this Committee has not yet reported, I do not wish to comment at this stage on those circumstances.
(3) As I stated in Parliament on 22 September 1992 and 23 September 1992, I have confidence in the Commissioner of Police. I am awaiting the forthcoming report of the Ombudsman on the "Angus Rigg Affair" and the report of the Joint Select Committee Upon Police Administration before forming any firm view on the actions of any person involved in that matter.
(4) See answer to (3).
(5) The Joint Select Committee Upon Police Administration will also examine the reporting relationships between the Minister for Police and the Commissioner of Police. As this Committee has not yet reported, I do not wish to comment at this stage on communications between the Minister and the Commissioner.

**POLICE ADMINISTRATION**

Mr O'Grady asked the Minister for Justice, Minister for Emergency Services, Minister Assisting the Premier and Vice-President of the Executive Council, representing the Premier and Treasurer -

(1) Who told Lance Stirton on September 16 that a briefing had been sent that day at noon to the former Minister for Police?
(2) Why was this said when it clearly was not true?
(3) Why was Jeff Jarratt never informed that the former Police Minister had demanded a briefing on the matter, when it was Jeff Jarratt who was to write any such briefing?

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Answer -

(1) On 14 October 1992 Parliament established a Joint Select Committee Upon Police Administration. This Committee will, among other things, examine the circumstances which resulted in the resignation of the former Minister for Police and Emergency Services. As this Committee has not yet reported, I do not wish to comment at this stage on those circumstances.
(2) See answer to (1).
(3) See answer to (1).

## POLICE ADMINISTRATION

Mr O'Grady asked the Minister for Justice, Minister for Emergency Services and Minister Assisting the Premier and Vice-President of the Executive Council representing the Premier and Treasurer -

(1) What does the Premier mean by his statement to the Assembly referring to the Opposition on 23 September 1992:
"They should think about what occurred in the Milton Police Station".
(2) In the chronology of the events which the former Minister for Police tabled on 22 September 1992, it states "12 January 1992, To AC Professional Responsibility": Does the Premier believe, given the serious nature of what occurred, that the Assistant Commissioner (Professional Responsibility) should have been notified of the incident immediately?
(3) In the Tabled Paper dated 17 September 1992 from Terry O'Sullivan, it is stated that "the issue" relates to "self-inflicted injury to Angus Alexander Rigg".
Does the Premier agree that the statement that the injury was "self-inflicted" pre-empts the finding of the investigation into the claim by Mrs Rigg that her son was murdered?
(4) If not, why not?
(5) If so, will the Premier ensure that police are never in future permitted to investigate complaints against police?
(6) If not, why not?

Answer -

(1) The statement reflected my view that the Opposition should have shown more concern for Angus Rigg and his family than it appeared to show when the matter was raised in the Legislative Assembly on 23 September 1992.
(2) On 14 October 1992 Parliament established a Joint Select Committee Upon Police Administration. This Committee will, among other things, examine the circumstances which resulted in the resignation of the former Minister for Police and Emergency Services. As this Committee has not yet reported, I do not wish to comment at this stage on those circumstances.
(3) Conclusions reached by either the Joint Select Committee or the Ombudsman, who is examining the police investigation of the complaint made by Mrs C Rigg into the arrest and detention of her son Angus Rigg at Milton Police Station, are matters for the Committee and the Ombudsman.
(4) See answer to (3).
(5) The Ombudsman is currently examining the police investigation of the complaint made by Mrs C Rigg into the arrest and detention of her son Angus Rigg at Milton Police Station. As the Ombudsman has not yet reported, I do not wish at this stage to comment on the investigation by police of complaints against police.
(6) See answer to (5).

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## HURSTVILLE OLD BAKERY MUSEUM

Mr O'Grady asked the Minister for Justice, Minister for Emergency Services, Minister Assisting the Premier, and Vice-President of the Executive Council representing the Premier and Treasurer -

In respect of the Bicentennial Grant in May 1989 to Hurstville Council for restoration of

the Old Bakery in Forest Road, Hurstville for use as a Museum:

(1) Has work yet started on restoring the interior of the Museum and, if so, when will the work be completed?
(2) When does Hurstville Council intend to lease the premises to the Hurstville Historical Society?
(3) How many hours per week and weeks per year is it intended that the Museum will be open?
(4) Will the premises be used for any other purposes than a Museum?
(5) What is the reason for the three year delay in completion of the project?
(6) Will the Government seek a re-imbursement of its $150,000 grant if further delays occur?

Answer -

The Hurstville City Council has advised the following:

(1) Interior restoration/reconstruction works have not commenced. Tenders and quotations for this work have been received and as resolved by Council, will be considered in conjunction with Council's consideration of 1993 Estimates in December 1992. A report on receipt of tenders may be considered on 4 November 1992.
(2) A draft lease has been negotiated between Council and the Hurstville Historical Society. Council is awaiting advice from the Hurstville Historical Society that the draft lease is acceptable. If so, the lease could be executed as soon as the interior of the Centennial Bakery has been restored/reconstructed and is available for occupation.
(3) This is a matter for the Hurstville Historical Society to determine as the proposed lessee.
(4) The permitted use under the proposed lease is for a museum and associated tea rooms.
(5) The restoration/reconstruction of the Centennial Bakery has been a contentious issue within Council. Restoration/reconstruction works have been carried out as funds have been made available. The amount expended to date is approximately $270,000. Interior restoration/reconstruction is estimated to cost a further $217,000 (minimum). Grant funds received were $150,000 from the New South Wales Bicentennial Council and a contribution from an adjoining property developer was $120,000. Balance of funds is yet to be allocated (refer to (1) above).
(6) No, this would not be appropriate or practical as the funds have been used for the purpose they were granted.

## BICENTENNIAL GRANTS TO LOCAL GOVERNMENT

Mr O'Grady asked the Minister for Justice, Minister for Emergency Services, Minister Assisting the Premier, and Vice-President of the Executive Council representing the Premier and Treasurer -

(1) Has the Government monitored the use of Bicentennial Grants to Local Government and other organisations throughout New South Wales?
(2) Are any grants still unspent?
(3) How many projects, for which grants were made, remain incomplete and what was the purpose and amount of grant in each case?

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Answer -

(1-3) The New South Wales Bicentennial Council was involved with more than 30,000

events and projects during 1988 either through direct funding, official endorsement or in some other way.
This included 300 community projects, 21 sports projects, 1500 projects funded under the Local Government Initiative Grants scheme and 58 under the special community grants scheme.
On the basis that the Bicentennial Council was satisfied that certain criteria were met under each of these sections prior to the allocation of funds, further monitoring was not seen as being necessary or practicable.

**JUNEE PRISON**

Mr O'Grady asked the Attorney-General and Minister for Industrial Relations representing the Minister for Justice -

In relation to the new privately run prison at Junee:
(1) When will the prison open?
(2) From where will the prisoners be drawn?
(3) How many prison officers will be employed, and who will train them?
(4) How many cells are there at present in NSW modified for prisoners with disabilities?
(5) How many prisoners are there at present who are confined to wheel chairs?
(6) Do the public prisons have fresh food stored to last a period of two weeks?
(7) Does Junee prison have fridge space for storage of fresh food to last two weeks?
(8) If so, are prisoners to be denied fresh produce replaced weekly?
(9) Where is the food to come from?
(10) Is there a contract for the supply of
    (a) Dry food
    (b) Meat
    (c) Fruit and vegetables
(11) What industries will operate at the Junee prison?
(12) Will all men be employed?
(13) How many teachers will be employed, both full-time and part-time, at the Junee prison?
(14) How many computers will the jail have for use by prisoners?
(15) What are the visiting rights for prisoners at Junee?
(16) How do the visiting rights differ from State-run prisons?
(17) Will the Minister permit interested members to inspect the contract with the operators of the prison?
(18) Is the land on which the jail is built flood-prone and if so, what is grading of the land: 1:100, 1:50, 1:25?
(19) If so, what effect will this have on outdoor recreation areas?
(20) Is the distribution of condoms a condition of the contract? If not, why not?
(21) How will the department monitor human rights issues at the prison?
(22) How many official visitors will be assigned to Junee prison?
(23) Given that many visitors will have to travel long distances to Junee and that the jail is out of town, how long will inmates be permitted for each visitor?
(24) What plans have been put in place for increased public transport to transport visitors to Junee to see inmates?

Answer -

(1) Junee Correctional Centre is scheduled to open on 1 May 1993. However, construction is currently ahead of schedule, so it is possible that it will open as early as April 1993.

(2) Accommodation will be available for 500 medium and 100 minimum security inmates. These inmates will be drawn from the general population of inmates with these security classifications.
(3) This is a matter for the contractor. However, training provided for officers to work in the privately run correctional centre must be accredited by the Commissioner for Corrective Services, in accordance with legislative requirements.
(4) Eleven.
(5) None.
(6) No. Most correctional centres have meat, fruit and vegetable deliveries 2 to 3 times per week. Milk and bread are delivered 5 days per week.
(7) This is a matter for the contractor. However, Junee Correctional Centre has refrigerator space for storage of food for approximately 7 days.
(8) The contractor is responsible for the provision of all food services and is required to at least meet the minimum standards that form part of the contract which has previously been tabled in Parliament.
(9) This is a matter for the contractor who under the terms of the contract is encouraged to use local suppliers.
(10) This is a matter for the contractor.
(11) The contractor is responsible for ensuring that all inmates are meaningfully employed in work. There will be a variety of industries which will operate at the Junee Correctional Centre as determined by the contractor to comply with minimum standards and other contractual requirements.
(12) This is a matter for the contractor. The contractor is bound by all legislation relating to the provision of equal employment opportunity in regard to the employment of staff. Employment of inmates will be related to industry and educational programs, see response to (11) and (13). Experience in the Department of Corrective Services is that it is rarely possible to have all inmates employed.
(13) This is a matter for the contractor. However, all educational programs must meet the minimum standards and be approved by the Department.
(14) This is a matter for the contractor. However, use of computers will form an integral part of the educational program.
(15) Visiting rights for inmates at Junee Correctional Centre will be the same as for inmates in Department of Corrective Services correctional centres.
(16) See (15) above.
(17) The Management Agreement and Amendments have been tabled in Parliament. The contract is a confidential document for commercial reasons and contains a confidentiality clause, so as a general rule, inspection of the documents would not be permitted.
(18) No, the correctional centre is built on a hill. One end of the property has a gradient of 1:100 and the other end has a gradient of 1:25. There is a small creek at one end of the property which becomes a water course during periods of heavy rain.
(19) There should be no effect on outdoor recreation areas.
(20) No. It is not Departmental policy to issue condoms in correctional centres.
(21) In accordance with the Prisons (Contract Management) Amendment Act a "monitor" and a Community Advisory Council will be appointed to Junee Correctional Centre to monitor management of that centre. A monitor is a person employed under the Public Sector Management Act 1988, who is responsible to the Commissioner of Corrective Services for the assessment and review of the management by the management company of the correctional centre concerned.
(22) It is proposed to appoint two official visitors.
(23) This is a matter for the contractor in accordance with legislative requirements.
(24) None at this stage. The Department of Corrective Services is investigating

transport options in conjunction with the contractor and local authorities.

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**PROCLAIMED PLACES FOR INTOXICATED PEOPLE**

Mr O'Grady asked the Minister for Police and Emergency Services, Minister assisting the Premier and Vice-president of the Executive Council -

(1) How many proclaimed places for intoxicated people are there in NSW?
(2) In relation to each such proclaimed place:
    (a) Where is it located?
    (b) By whom is it operated?
    (c) Is it staffed by the Department of Community Services?
    (d) How many full-time and part-time staff does it have?
    (e) How many Aboriginal staff does each have?
(3) What has the Government done to expand the number of facilities as an aid to keeping intoxicated people out of jails?

Answer -

(1-3) Although I have administrative responsibility for the Intoxicated Persons Act 1979, the Minister for Community Services and Assistant Minister for Health is responsible for proclaimed places.
Accordingly, questions concerning details of locations and staffing should be addressed to him.
However, I would advise that a review of the Intoxicated Persons Act is currently being undertaken, with specific attention being paid to proclaimed places under that Act.