

LEGISLATIVE COUNCIL

Wednesday, 19th May, 1993

The President (The Hon. Max Frederick Willis) took the chair at 2.30 p.m.

The President offered the Prayers.

ASSENT TO BILLS

Royal assent to the following bills reported:

Entertainment Industry (Interim Council) Amendment Bill
Trustee (Amendment) Bill

AUDIO AND TELEVISION BROADCASTING OF PROCEEDINGS

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

That:

(1) this House agrees in principle to the desirability of audio and television broadcasting of the proceedings of the Legislative Council; and

(2) the Standing Orders Committee inquire into and prepare guidelines for the implementation of the broadcasting of proceedings from the commencement of the Budget sitting.

WORKERS COMPENSATION LEGISLATION (FURTHER AMENDMENT) BILL

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

That the Workers Compensation Legislation (Further Amendment) Bill, forwarded to the Legislative Assembly during the previous Session of the present Parliament and not having been finally dealt with because of the prorogation of the Legislature, a Message be forwarded to the Legislative Assembly requesting that the Bill be proceeded with under the Assembly's Standing Orders.

PETITIONS

Homosexual Vilification Legislation

Petition praying that the House reject all homosexual vilification legislation, received from **Reverend the Hon. F. J. Nile**.

Forestry Commission

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

Brothels

Petition praying that the House oppose Government proposals to legalise brothels and that urgent action be taken to clean up vice, disease and exploitation, received from the **Hon. Elaine Nile**.

Steel-jawed Leg Hold Traps

Petition praying that the House legislate to ban totally the manufacture, sale and use of steel-jawed leg hold traps in all areas of the State as they cause great suffering to all animals and birds, both target and non-target, caught in them, received from the **Hon. R. S. L. Jones**.

Container Deposit Legislation

Petition praying that because of the detrimental effect of throw-away packaging on the environment, legislation be introduced imposing a mandatory deposit on all containers sold in New South Wales, received from the **Hon. R. S. L. Jones**.

INDEPENDENCE OF THE AUDITOR- GENERAL AND THE OMBUDSMAN

Adjournment (S.O. 13)

The PRESIDENT: I have received from the Hon. J. P. Hannaford a notice under Standing Order 13 of his desire to move the adjournment of the House to discuss a definite matter of urgent public importance, namely:

Recent challenges to the independence of the Auditor-General and the Ombudsman.

Question - That the subject is urgent - put.

The House divided.

Ayes, 22

Mr Bull	Mr Moppett
Mrs Chadwick	Mrs Nile
Mr Coleman	Revd F. J. Nile
Mrs Evans	Mr Pickering
Mrs Forsythe	Mr Ryan
Miss Gardiner	Mr Samios
Mr Gay	Mr Rowland Smith
Dr Goldsmith	Mr Webster
Mr Hannaford	
Mr Jobling	<i>Tellers,</i>
Mr Jones	Mr Mutch
Miss Kirkby	Mrs Sham-Ho

Noes, 17

Mrs Arena	Mr Manson
Ms Burnswoods	Mr Obeid
Mr Dyer	Mr O'Grady
Mr Egan	Mr Shaw
Mr Enderbury	Mr Vaughan
Mrs Isaksen	Mrs Walker
Mr Kaldis	<i>Tellers,</i>
Mrs Kite	Dr Burgmann
Mr Macdonald	Mrs Symonds

Pair

Dr Pezzutti	Mr Johnson
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Question so resolved in the affirmative.

Motion agreed to.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Industrial Relations, and Vice-President of the Executive Council) [2.50]: I move:

That this House do now adjourn.

In debating this matter it is appropriate to reflect on what was said by some of our colleagues during the debate on the Ombudsman Bill when that legislation was passed in 1974. First, the Hon. John Maddison in his reply on the bill said:

Certainly an ombudsman must be seen to be independent of political parties and in fact must be independent of them. The Government has decided that he or she should be equated with the Auditor-General, who is the auditor of the Government's financial affairs in this State. In the same way as the Auditor-General performs his function, the Government sees the Ombudsman performing an audit of administration.

Similar words were uttered by other members of the Parliament. I refer to comments made by the Hon. Ron Mulock who said:

That is a necessary provision if the office of ombudsman is to be non-political and is to be held in high esteem in the community. The Ombudsman will play a vital role, and the bill now before the House is designed to ensure that he will be free of trappings associated with the public service, and in particular will be excluded from the operation of the Public Service Act. That is an important provision to ensure that the Ombudsman has the necessary status in the community.

He stated further:

It saw the Ombudsman as a special officer and officers of the Ombudsman's office as persons who should be free of any shackles or any direction - apart from the necessary restraints imposed upon the Ombudsman by the fact that he is a creature of the Parliament.

Another person the Labor Opposition often referred to with credibility is the Hon. Frank Walker. He said in relation to the independence of the Ombudsman when speaking about the powers of the Ombudsman:

... the Ombudsman is clothed with sufficient powers. He must be given autonomy, which, to a considerable extent, he will be given by the bill. He should never be regarded as a vassal of the Government.

Later in the debate the Hon. Frank Walker stated:

Coming back to the Ombudsman's powers and what he should do and should not do, I submit that he should not be an officer of the Parliament but should be autonomous in every respect.

That is exactly the issue which has given rise to this debate. He must be seen as free of the shackles of the Parliament and of politics. The same comment should be made about the Auditor-General. I am concerned that challenges have been made to the independence of the Auditor-General and the Ombudsman. This House should strongly express its view about those attacks. I ask honourable members to join me in expressing concern about the way in which the work and operations of the select committee on the operations of HomeFund and FANMAC could threaten to undermine the independence of the Auditor-General and the Ombudsman of this State. It is outrageous and appalling of the Opposition to suggest that legislation as important as that which establishes the offices of the Ombudsman and the Auditor-General be amended on the run for no other purpose than to fit in with a short-term political agenda. Such attempts should be condemned by this House of review of the Parliament.

The Government has acknowledged that it is appropriate to have a form of inquiry into the operations of HomeFund and FANMAC, so long as the inquiry is manageable and does not further interrupt the obligations under the existing scheme. The Premier is on the record in another place as having confirmed that this is the position. On 20th April the Premier, in another place, proposed that the Public Accounts Committee, with its wide-ranging powers, is the appropriate forum in which to investigate the matters concerning HomeFund and FANMAC. That is a sensible way for this Parliament to deal with the issues that have presented themselves for investigation. The Public Accounts Committee is a statutory body established by this Parliament, under the Public Finance and Audit Act, to have a specific role in overseeing the work of the Auditor-General and the expenditures of government. Therefore, it is a sensible way for the Parliament to deal with issues that have presented themselves, in the case of HomeFund, for investigation.

However, it is unacceptable to require the Government, as the resolution of the Legislative Assembly did in establishing its special committee, to sponsor legislation within two weeks to amend such important institutions as the offices of the Ombudsman and the Auditor-General. I have said before, and I repeat today, that as Attorney General, I would be loath to recommend to the Government that the independence of those two institutions should be undermined in any way. I would certainly oppose the undermining of the independence of these institutions in the way that has been proposed by the motion of the Legislative Assembly establishing the select committee upon HomeFund and FANMAC. If honourable members in another place wish to establish a committee to inquire into HomeFund and FANMAC, they should be prepared to do the work associated with that task and not shirk their responsibilities by attempting to have the Ombudsman and the Auditor-General undertake the work of the parliamentary members.

Is the select committee not prepared to undertake and complete the task with which it has been presented by its own Chamber? I have already informed this House of advice I have received from the Crown Solicitor. I remind honourable members that the Crown Solicitor has advised me that the Ombudsman and the Auditor-General "have no functions of reporting to or advising a parliamentary committee such as the select committee". The Crown Solicitor in his advice also said:

It is equally uncertain as to what the Auditor-General might be able to do by way of making inquiries and it would be no part of his official role to report to the select committee.

Further, he stated:

The Act does not include provision for him to make reports to or advise a committee of the Parliament, though he

has a discretion to make a special report to the Minister for presentation to Parliament on any matter arising in connection with discharge of his functions.

The Crown Solicitor has also advised that the Auditor-General and the Ombudsman "have no statutory role of acting together to conduct an inquiry or make a report to a select committee". Speaking of the Ombudsman, in particular, the Crown Solicitor stated:

He has no jurisdiction to make an investigation and report jointly or in co-operation with another person, such as the Auditor-General.

If that is the case, and the legislation has established these offices in this way, alarm bells should ring when honourable members suggest that the roles and legislation be changed on the run, without proper consultation or time for proper consideration. It is just not on for these fundamentally important institutions of the structure of government in New South Wales to be tampered with in this way. To make these changes in this way and for these reasons would be a disaster. I am sure all members of the House appreciate that the Ombudsman and the Auditor-General have distinct roles to perform and structures have been put in place by this Parliament to ensure that there are controls over their appointment and the way in which they operate. All of these mechanisms are designed to ensure that these offices are entirely independent.

I again remind members of the words I quoted from Frank Walker, Ron Mulock and John Maddison in 1974 - when the legislation to establish the Ombudsman was introduced - about the importance of maintaining that independence. At that time those members directly equated the role of the Ombudsman with that of the Auditor-General whose independence was to be assured. Pursuant to section 28 of that Act 1983, the Auditor-General is appointed by the Governor for a term of seven years and is not eligible for reappointment. Further, pursuant to section 28A of the Public Finance and Audit Act, a person cannot be appointed as Auditor-General until a proposal for the appointment has been referred to the Public Accounts Committee and either the committee does not veto the proposed appointment within the specified time or notifies the Treasurer that it has decided not to veto the proposed appointment.

Pursuant to section 29 of the Public Finance and Audit Act, the Auditor-General, on being appointed, must make and subscribe a declaration of office before one of the judges of the Supreme Court. I think these legislative requirements which relate to the appointment of the Auditor-General show the importance of that office being kept entirely independent of the political process and the political process is reflected in the behaviour and the roles of the members of the Parliament. I am sure honourable members will agree that, as a consequence of these mechanisms and by virtue of the high standard of those appointed to this position over the years, the office of the Auditor-General is held in high regard for the strength of its independence, integrity and professionalism. These are all virtues we must preserve and this House should have a fundamental role in ensuring that they are preserved.

Similarly, the appointment of the Ombudsman under the Ombudsman Act 1974 is designed to ensure the independence of that office. The office of the Ombudsman of New South Wales was established under the Ombudsman Act in 1974. Pursuant to the Act the Ombudsman was able to investigate complaints about the conduct of public authorities. From 1st December, 1976, the Ombudsman was empowered to investigate complaints against local government authorities and in December 1986 that power was extended to enable him to investigate the conduct of members and employees of local government authorities.

In 1978 the Ombudsman was given a role in the investigation of complaints against police. A significant expansion of that role occurred in February 1984, when the office of the Ombudsman was given the power of direct re-investigation of complaints of the conduct of police officers. The effective performance of the functions demands complete separation from the political processes of this House. The issue before the House this afternoon is the independence of the offices of the Ombudsman and the Auditor-General. In this regard I note that at the time the office of the Ombudsman was established the then Government said:

There is a need for an independent official who will approach in a consistent way, having regard to the justice and merits of each individual case, complaints made to him on administrative decisions.

Further, the need for independence of the office of the Ombudsman was recognised by the statutory appointment of the Ombudsman, his deputy and assistants, and was reinforced in February 1984, by the declaration of this office as an administrative office under the then Public Service Act. Further, in 1989 the Ombudsman Act was amended to provide that the approval of the appointment of the deputy Ombudsman and assistant Ombudsman be removed from Cabinet to allow the Ombudsman control over these appointments.

What concerns me most about the suggestion that the legislation which underpins the offices of the Ombudsman and the Auditor-General be amended to accommodate the select committee upon the operations of Homefund and FANMAC is that the committee has been established by the Parliament and is at the centre of what has obviously become a highly political debate. To draw the Ombudsman and the Auditor-General into this debate is to draw the Ombudsman, the Auditor-General and their offices into the politics of the debate.

I think all members would agree that the legislation that establishes the office of the Ombudsman and the Auditor-General goes to great lengths to separate the people who hold those offices and the people who work with them from the political processes of the Parliament. To alter that situation undermines their independence and forces them into the heart of the politics from which we in the past attempted to keep them away. I suggest that not only

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do the proposed legislative amendments threaten the independence of the offices of the Ombudsman and Auditor-General, but they run the risk of undermining the accountability of the Government and the public authorities in this State.

I do not for one moment wish to suggest that the matters which have been presented to the select committee are not important, nor do I wish to suggest that they are not appropriate for investigation. I have already said that this Government has not walked away from the need to have an inquiry. The only issue is the appropriate way in which to conduct the inquiry. I strongly believe that no member of this Parliament would urge that the appropriate way to conduct the inquiry should include the amendment of legislation which in turn will erode the independence of the offices of the Ombudsman and the Auditor-General and drag them into the politics of this debate. One has only to look at where this could potentially lead. In relation to this particular proposal it is necessary - and identified by the movers of the motion in another House - that the Parliament should amend the Act to allow the Ombudsman and the Auditor-General to be dragged, by a select committee of the Parliament, into an investigation which is being pursued for the purposes of the Parliament.

If that is the precedent that is to be adopted, there is no reason why at some future time either House of the Parliament might not seek to establish a select committee on a matter which is within the investigatory powers of the Auditor-General and the Ombudsman, and then for the select committee to seek to use the force of a resolution of the House to drag the Ombudsman and the Auditor-General directly into that parliamentary investigation. I cannot envisage anything more likely to undermine totally the independence of the Ombudsman and the Auditor-General than the Parliament seeking to use its powers complementary to powers of those two officers and dragging those two officers into joint activities. The Government has established two independent organisations. The structure of the legislation was to make certain that they should operate independently of the politics of the structure of government, that they should be able to respond to the needs of the community, and that they should report to the Parliament so that Parliament might act on the reports that they make.

This effort by the Legislative Assembly has now taken those two important offices of the structure of the body politic of New South Wales and drawn them down into the processes or the milieu of day-to-day political confrontation which is in fact the forum of the two Houses of this Parliament. I remind the House of the words of Frank Walker in regard to other commissioners who, at the time, were regarded as most important people performing a most important role when he referred to the need for the independence of the Ombudsman. In the debate on the Ombudsman Bill of 19th September, 1974, at page 1260 of *Hansard* he stated:

I believe that it is appropriate at this stage to express my deep conviction that unless the Ombudsman is given real powers, the whole concept of the office will be degraded in the minds of the public. The Commissioner for Consumer Affairs and the Prices Commissioner have become something of a public joke and held up to ridicule and contempt. I am not saying that this bill will have a similar result but there is such a danger unless the Ombudsman is clothed with sufficient powers. He must be given autonomy, which, to a considerable extent, he will be given by the bill. He should never be regarded as a vassal of the Government.

They were the words of the Australian Labor Party in 1974. What are the principles of the Australian Labor Party in that regard in 1993? I can only suggest that they are principles of political opportunism. I have absolutely no denial of a role for the Auditor-General to pursue his investigations into subject-matters of public debate relating to HomeFund, as he has power to do and which he was pursuing under the relevant legislation even before this matter became one of specific debate in this Parliament. Nor do I deny that the Ombudsman has a statutory role, which I understand he was also independently performing under his powers before this matter became the subject of political debate in this Parliament. Those investigations should continue, those officers should report to the Parliament, and the Parliament should act on those reports.

I believe all members of this House - acting fair-mindedly and, I have to say, without political constraint - would acknowledge that the wording of the motion of the other House to establish the select committee was the first step in dragging those two important offices into public debate and, to use the words of Frank Walker in 1974, potentially leading them to be held up to ridicule and contempt. That is something that I have said in this House should be avoided. It is a matter that I have argued in government should be avoided. If legislation is to be amended, it should be amended in order to address the general needs and powers of those institutions. It should not be amended for the purposes of short-term expediency. If the powers of these independent agents, the Ombudsman and the Auditor-General, need to be examined, that issue should be placed on the table of the Parliament for us to address it.

We should not, for short-term expediency, undermine the integrity and the future public respect of these two important offices within the body politic of New South Wales. If there is a need to investigate these matters, in the way it might be expected the Ombudsman should, we have the opportunity within the powers of the Parliament to bring those people who are involved before the Parliament to answer those matters that the Parliament requires to be answered. That is done regularly in both Chambers of this Parliament through the select committee procedures that have been established. On occasion issues requiring in-depth examination need to be considered. The Public Accounts Committee has done that on a regular basis and has been shown to be able to perform efficiently, effectively and accountably to the community.

A recent example of the ability of a select
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committee of this Parliament to address financial issues is that of the committee inquiring into superannuation. The select committee on the Port Macquarie hospital project retained a number of independent experts to provide in-depth financial analysis and advice to the committee. The resources are there; the powers are there. The question is whether members of Parliament who serve on those committees wish to do the work with which they were entrusted by this House. What is proposed by the resolution of the other Chamber in undermining the roles of the Ombudsman and the Auditor-General suggests that those officers should do the work of the politicians serving on the committees and furnish the politicians with a report that the politicians will take for their own purposes. I must say that there is no greater trigger to undermining the role of those two officers than that exact process.

To suggest that a committee of the Parliament should require those two independent officers of State to pursue an investigation for what is potentially the political work of a select committee is to drag those officers into the mire of the politics of the Parliament. I conclude my comments by reminding the House of the words of Frank Walker, when referring to other matters, that there was the potential to hold up to ridicule and contempt independent officers of the body politic. The first step in that direction has been taken in the other Chamber. I am sure honourable members will remember the heated debate that ensued in the other Chamber in 1974 when

that motion was moved. It was late at night and many members were unaware of what was sought to be achieved. I have no doubt that not many members addressed their minds to the fact that this was potentially damaging to these two important institutions of the State.

I suspect that, given the opportunity to express good will, honourable members would have sought to amend the direction that the motion was going. The body politic will be undermined. This upper House of State Parliament, the body that is meant to review what is proposed in another Chamber - though that opportunity is not available by that resolution coming to this Chamber - should take this opportunity to express its view on a matter that will undermine institutions which this House has been responsible for creating and is responsible for maintaining. Unless the members of this House, in the strongest possible terms, express support for the independence of the Ombudsman and the Auditor-General, they will stand damned if those bodies are brought into contempt and ridicule and the important role in which they serve this State is demeaned.

The Hon. M. R. EGAN (Leader of the Opposition) [3.17]: I move:

That the question be amended by the omission of all words after "That" with a view to inserting instead "prior to the motion of the adjournment being put, the House ask the Auditor-General and the Ombudsman: -

- (a) whether they are willing to co-operate with the Legislative Assembly's Select Committee on the operations of HomeFund; and
- (b) whether they see a challenge to their independence in the Legislative Assembly's resolution establishing that Committee".

The Hon. J. P. Hannaford: Another cop-out.

The Hon. M. R. EGAN: A cop-out?

The Hon. J. P. Hannaford: Another Labor Party cop-out.

The Hon. M. R. EGAN: I would have thought that this was the main question in anyone's mind in addressing the motion for the adjournment that the Leader of the Government has put. Has anyone asked the Auditor-General or the Ombudsman whether they see the action of the Legislative Assembly in setting up this select committee and seeking their assistance as a challenge to their independence? Has there been any comment made either by the Auditor-General or by the Ombudsman that would give anyone that impression? I put it to the House that both the Ombudsman, Mr Landa, and the Auditor-General, Mr Harris, are known as very outspoken gentlemen. Neither of them has shirked from standing up when the independence of either office was under challenge. Yet have we heard a whisper from either of them? Has Mr Harris said anything about this challenge to his independence? Has Mr Landa said anything about the challenge to his independence?

The DEPUTY-PRESIDENT (The Hon. D. J. Gay): Order! Would the Leader of the Opposition repeat his motion?

The Hon. M. R. EGAN: Yes, the amendment I moved is as follows:

That the question be amended by the omission of all words after "That" with a view to inserting instead "prior to the motion of the adjournment being put, the House ask the Auditor-General and the Ombudsman: -

- (a) whether they are willing to co-operate with the Legislative Assembly's Select Committee on the operations of HomeFund; and
- (b) whether they see a challenge to their independence in the Legislative Assembly's resolution establishing that Committee".

The DEPUTY-PRESIDENT: Order! The motion for adjournment is merely a procedural device to provide an opportunity to discuss a matter of public importance. The moving of an amendment to that motion, on my understanding, is outside the rules of this House.

The Hon. M. R. EGAN: Is that your ruling, Mr Deputy-President?

The DEPUTY-PRESIDENT: Yes.

The Hon. M. R. EGAN: Certainly, Mr Deputy-President, I accept your ruling, but I think the point has been made. No one has bothered to inquire of the Auditor-General or the Ombudsman whether they see any challenge to their independence by the Legislative Assembly's resolution establishing this select committee. Neither the Auditor-General nor the Ombudsman has raised any objection to the Legislative Assembly's resolution. I understand both of them have indicated their willingness to co-operate with the Legislative Assembly's committee on

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HomeFund. Both have given evidence to that committee in public session. I would have thought that both office holders, being people rightly jealous of their independence, if they were in any doubt at all that their independence was being jeopardised would have said to that committee, "Before I say anything else, let me just say that I regard this whole process as a threat to my independence." Neither of them did so.

My understanding is that both of them explained to the committee how they could assist the committee and their willingness to assist the committee. They made the point that even under existing legislation that constitutes their offices they were able to assist the committee in its task. They simply pointed out that there would be certain legislative changes that would make the job of assisting the committee easier. It would mean they could do it in a straightforward fashion, an easier fashion, rather than adopting certain devices that are rightly available to them under the existing legislation. Far from the independence of either of these two independent officers of the Parliament being threatened, they have expressed their willingness to assist the committee.

The Hon. Elisabeth Kirkby: They are not officers of the Parliament.

The Hon. J. F. Ryan: They are not officers of the Parliament.

The Hon. M. R. EGAN: Well, that does explain the problem that members opposite are having. Both the Ombudsman and the Auditor-General, in this jurisdiction and in any other parliamentary jurisdiction in the Westminster system, are independent officers of the Parliament. They are not officers of the Executive Government, they are independent officers of the Parliament and that is why, for example, the Auditor-General reports direct to the Parliament. This is not an attempt by the Government in the Legislative Council to protect the independence of its officers, it is an attempt by the Government to put pressure on these two independent office holders and to shackle them because the Government knows full well - as does anyone who attended the first meeting of the HomeFund committee and all Government Ministers who have received correspondence on this matter from the Auditor-General and the Ombudsman - that the Auditor-General and the Ombudsman want to assist the committee; they want to assist the Parliament get to the bottom of the HomeFund fiasco.

The Auditor-General and the Ombudsman are willing to enter upon that task. They are ready, willing and able to assist the Parliament in its work, and the Government is terrified. Therefore, today, the Leader of the Government in this House moved a tawdry motion in an attempt to put pressure on the Auditor-General and the Ombudsman. It is an attempt which the Parliament should reject and an attempt that should be exposed for what it is: a cover-up by a Government that is guilty and embarrassed about the HomeFund fiasco and its failure to do anything to assist the tens of thousands of HomeFund borrowers who are paying 16 per cent on their home mortgages. Of course the Government is worried about what the Ombudsman and the Auditor-General might uncover in their inquiries. Auditor-Generals and Ombudsmen are generally people who terrify the life out of governments, but that is as it should be. That is why they are there, to keep the Government honest.

[Debate interrupted.]

DISTINGUISHED VISITOR

The PRESIDENT: I invite the attention of honourable members to the presence in the Chamber of Mr Robert Eadie, Parliamentary Commissioner for Administrative Investigations (State Ombudsman) Western Australia.

INDEPENDENCE OF THE AUDITOR- GENERAL AND THE OMBUDSMAN

Adjournment (S.O. 13)

[Debate resumed.]

The Hon. M. R. EGAN: If any member of this House is genuinely concerned that the Legislative Assembly's establishment of the HomeFund committee could be a threat to the independence of these officeholders, I would ask them to get on the phone, ring up Mr Harris and ring up Mr Landa before we proceed any further. If they are not prepared to do that, it simply shows how bogus and how hypocritical they are. I challenge every member opposite, all members on the crossbenches, indeed even my own colleagues, if they have any doubts, get the phone book, get their telephone number, ring them up, then come back to the House and tell us what they said.

The Hon. J. F. RYAN [3.27]: What rot we have heard from members opposite. This was an issue about which the Opposition cared so much and had thought through so deeply that the Leader of the Opposition used barely 15 minutes of the allotted 30 minutes to respond to the Government's challenge. It shows how little thought the Opposition has put into the serious role of the independence of someone like the Auditor-General and the New South Wales Ombudsman. This House is not trifling with some little political issue that can be dismissed easily in newspapers and forgotten; it is tampering with fundamental institutions of this State.

The New South Wales Ombudsman and the Auditor-General are officers whose responsibilities are to the Parliament, to be independent from it or any activity whatsoever of the Parliament. They are supposed to be in a position of standing aside from the activities of the Parliament and being able to speak to the Parliament on issues which fall within their ambit. They are totally independent not only of the Government but also of the Opposition and the crossbenches. To somehow suggest that these -

The Hon. J. R. Johnson: But they are officers of the Parliament.

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The Hon. J. F. RYAN: The Hon. J. R. Johnson interjects to say that they are officers of the Parliament. They are certainly officers of the Parliament in the sense that the Parliament has set up the Act under which they operate, but they are set up as an independent statutory authority. They are no more officers of the Parliament than the Commissioner of Police, the new Disabilities Commissioner, judges or even the Crown Solicitor. They are servants of the people of New South Wales, and they are unique in that they are able to make reports to the Parliament, but they are certainly not officers of the Parliament in the manner in which the Opposition is making claim. A joint select committee of this Parliament has been set up to investigate a number of financial and political issues.

The Hon. D. F. Moppett: It is not a joint select committee; it is a single-House committee.

The Hon. J. F. RYAN: That makes it worse. A committee of a single House of this Parliament has

been set up to investigate these matters. I ask Opposition members what possible role could the New South Wales Ombudsman or the Auditor-General play when considering questions such as what briefings the Premier, the former Minister for Housing, the current Minister for Housing, or Treasury have been given that are relevant to this matter? The Ombudsman and the Auditor-General would have no role in making those decisions. This committee of the lower House, which has been set up to determine a number of political questions for the benefit of the members of that House, is capable of examining issues and calling witnesses in accordance with the Parliamentary Evidence Act. Every witness that appears before that committee will have been summonsed to do so and, under oath or affirmation, will have to answer questions in a forthright and proper manner. If witnesses do not speak the truth they could be gaoled for an indeterminate period.

Given those powers, the committee should be able to obtain the information it needs, make the analysis that is required, and come to conclusions. One wonders why it wants to involve other independent New South Wales authorities such as the Auditor-General and the Ombudsman. It is not as though the committee will not have power. Is it suggested that members of that committee will not have the intelligence, the common sense, or the analytical ability to assess evidence given to them? That is the duty of members of Parliament serving on committees of the Parliament. Members in the other place are simply trying to unload their duty onto someone else. One wonders where they will stop. One day they might ask the Commissioner of Police to assist a select committee of this Parliament. They might ask the Crown Solicitor, or even a judge, to help them make their decisions. There might well be matters that the Parliament wants to consider and inquire into, on which those members might request a judge to assist in making their decisions.

All members of Parliament have been elected by the people of this State to, in the course of their responsibilities as members of parliamentary committees, hear evidence on matters relevant to the committee's inquiry. They should make those decisions themselves. There is little doubt that the Auditor-General or the Ombudsman are able to appear before a select committee and give evidence. I understand that they have already done so. That is something they are entitled to do - something that the committee may well determine is useful. Having asked these officers to give evidence before the committee, I would see it as a conflict to then ask them to become involved in the judgment process. That is wrong. If that were done we would be tampering with fundamental issues concerning the functions of those authorities.

When the committee finally reports it will have to make political decisions. It is highly likely that the committee will not have a unanimous view on the questions before it. Are Opposition members seriously suggesting that, if it does not have a unanimous view, somehow or another the impasse will be broken by servants of a statutory authority, such as the Ombudsman or the Auditor-General? I sincerely hope they are not. These officials, whose task is not only to assess the Government but also to assess any decision of the Parliament or, for that matter, any decision of a select committee, could be compromised. They are totally independent; they are not supposed to become involved in the day-to-day politics of the Parliament. They are certainly not supposed to become involved in parliamentary inquiries. That is not their role or function.

I ask Opposition members to consider the remarks made by the Crown Solicitor, as obviously they have not thought them through. The Crown Solicitor has said that neither of these officers is required to report to or advise a parliamentary select committee; that they have no legal capacity to do this. The Crown Solicitor has also said that it is equally uncertain what the Auditor-General might be able to do. It is no part of his official role to report to a select committee. Opposition members, and frequently members of the crossbenches in another place, seem to be greatly confused about the role of the Ombudsman and the Auditor-General. It is not their task to make judgments; that is a task for members of Parliament.

The task of the Ombudsman is to protect the freedom of individuals. Citizens are supposed to be able to go to the Ombudsman with complaints about government departments and other statutory authorities, which he should without fear or favour investigate. As a servant of the people of New South Wales it is his job to perform that task on their behalf. He is not supposed to be guided by any event occurring within either of these two Chambers at any time. Regardless of the pressure on the Parliament the Ombudsman is supposed, without fear or favour, to address the concerns of the citizens of New South Wales. Many times I have heard the Ombudsman say that his resources are stretched. He has to defend members of the public from injustices

perpetrated, for example, by the New South Wales Police Service and local government. How much more would his

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resources be stretched if he were to be dragged into a detailed and lengthy inquiry that is likely to arise as a result of the questions before the other place?

The Ombudsman and the Auditor-General have no role to play in this inquiry. If they are required to attend before a committee of this Parliament, we will be dragging them away from their primary responsibility of defending the citizens of this State, without reference to this Parliament. It is their role to report to this Parliament, without fear or favour, on matters that this Parliament may not even want to hear. If they become involved in any political matters their role and function is compromised. People seem to believe that, somehow or other, the Auditor-General has to weigh up political questions of the day or audit the activities of Government. The Auditor-General audits the accounts of this Parliament; that shows how independent of the Parliament he is. It is his job to make an objective assessment of whether money has been spent in accordance with the Acts of this Parliament. He is not in a position to weigh up economic or political questions. He is not in a position to determine who was briefed by whom, and for what purpose, and he is not able to determine the accuracy of those briefs. His role and function is to determine whether moneys expended by this Parliament were expended for the purpose for which they were intended.

The Auditor-General and the Ombudsman are not efficiency experts. Often the Auditor-General is dragged into discussions as though he were some sort of management or efficiency expert or a super accountant. His job is to audit, not to make decisions. He simply has to ensure that the decisions that have been made by this Parliament are observed by public servants and statutory authorities. In my view, it would be extremely dangerous to drag the Auditor-General into any political decisions; it would create a dangerous precedent. When will this dragging of independent officers into political questions end? Controversial questions might well split the committee, which might have to exercise political judgment on behalf of the people who elected its members to carry out that task. The Auditor-General or the Ombudsman should not be put in a position where they have to make decisions about these matters. Once they have been involved in the process there is no way of keeping them out. The Leader of the Opposition, who spoke earlier in debate, suggested that we ought to telephone these officers and ask them whether they are willing to participate in the committee. In my view such a question is improper.

The Hon. D. F. Moppett: It is a red herring.

The Hon. J. F. RYAN: It is a red herring; but it is an improper question to ask. I am sure that the Ombudsman and the Auditor-General are willing to serve the people of New South Wales. I believe that it is not their role, that it is not proper, and that it is dangerous to involve them in political questions such as those before that tainted committee that has been set up by the other House. Other controversies surround its very establishment and are of political concern to members of this House; in particular the unequivocal statements that have been made by some members of the committee, which question their ability to make an objective assessment at any point. Imagine adding to that cocktail of controversy this other attack on two independent institutions within this State.

The Hon. Ann Symonds: I did hear that the honourable member for Gordon was being a bit difficult.

The Hon. J. F. RYAN: I do not think the problem is with the honourable member for Gordon. Members opposite well know the issue to which I allude. I am not casting any aspersions on that particular member; but the composition of the committee is also controversial, and it creates a dangerous precedent to add to that cocktail of controversy the compromise of independent officers of this State who are supposed to be able to speak without fear or favour. Any decision of the Parliament would create a dangerous precedent. I support everything that the Leader of the Government said with regard to this question and I endorse it, as I am sure all Opposition members would.

It is important that members of Parliament carry out the task they are supposed to carry out, and leave it to

those officers to carry out their duties under their Acts as they see fit; not to invite, entice or ask them to become involved. It could be said that the two officers could initiate involvement of their own volition. It is up to them if they want to become involved; it is not up to us to determine that they should become involved or to drag them through a lengthy inquiry that would stretch their resources and compromise the independent judgment that they are supposed to exercise for the benefit of the people of New South Wales. [*Time expired.*]

The Hon. I. M. MACDONALD [3.42]: What a lot of rot we have heard from the Hon. J. F. Ryan and the Minister! They missed the most fundamental part of the issue that has been placed before the Parliament, which is that no one is telling the Auditor-General or the Ombudsman what to say. The second paragraph of the resolution establishing the committee requests the assistance of the Auditor-General and the Ombudsman. The fact that they both attended the first hearings of the committee and gave their views indicates that they are prepared to assist and to make statements as they see fit. Over the last three years the Auditor-General, in his reports, has become increasingly concerned with the operation of FANMAC under the expansionist program of the former Minister for Housing, Joe Schipp. He has said in various reports that he is concerned with the operation of FANMAC; that is set out in black and white.

What has the Government got to hide? What has this Minister got to hide that compels him in this House to attempt to obstruct the operation of a parliamentary committee that has been established to look into a vital matter of concern to 52,000 residents

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of this State and to report their views to the Parliament? No one is telling the Auditor-General or the Ombudsman what they should say about those matters. They are requested to look at those matters and to give the committee their opinion of them. In its resolution today, the Government has blown up the issue as much as possible - as its three acolytes on the committee have done at the last few meetings - in order to present a facade that somehow the independence of the Ombudsman and the Auditor-General are threatened by a request of a House of Parliament for assistance with matters of public importance, issues that confront the people, the Government and the Treasury. That is all they are being asked to do; they are not being asked or told to do anything other than to assist the inquiry.

Paragraph two requests them to assist, and from what I have seen they are prepared to provide that assistance. They have requested a certain number of minor changes to assist them in the conduct of this inquiry. None of those points threatens the independence of the Ombudsman or the Auditor-General in any way. What is the Government trying to cover up? It is trying to hide the fact that the Government has messed up the FANMAC program, that it has messed up HomeFund dramatically over the last few years. The behaviour of the honourable member for Gordon in the other Chamber, and the other two members in their abusive questioning of the Deputy Ombudsman and the Auditor-General, made it clear that the Government would go to any lengths to frustrate this inquiry into the operation of the HomeFund program.

Prior to the committee being appointed by the lower House, there was talk of a royal commission. A royal commission would have really got stuck into HomeFund, Joe Schipp, Nick Greiner, the Treasury and Lynch and company in relation to the operation of HomeFund. They did not want this, so they suggested a parliamentary inquiry, a Public Accounts Committee inquiry. The PAC is loaded up with inquiries. A parliamentary inquiry was set up to investigate the issues. The Ombudsman and the Auditor-General, both of whom had already been investigating these matters, were requested to provide some assistance to the inquiry. The Government runs for cover because it is worried that the points that have been made publicly about HomeFund will be confirmed by the inquiry and that the woeful advice received by the Government, both from Treasury and from FANMAC itself, will become obvious, along with the parlous advice from the department on how the scheme could operate in the future.

The Opposition wants an inquiry. Some assistance is needed from authorities with some knowledge and interest in these areas to provide a decent analysis of what is occurring. If the matter is sent to the PAC, it will not be determined until the year 2000; the PAC has enough to deal with. The inquiry relates specifically to HomeFund. It is merely seeking assistance from these bodies in order to reach conclusions about the state of affairs of HomeFund. Material I have seen indicates that the Auditor-General and the Ombudsman are both

happy to make inquiries and assist in getting to the truth of the matter. The Hon. Elisabeth Kirkby should talk to the honourable member for South Coast and attempt to find out a few facts about it.

The Hon. Elisabeth Kirkby: I have spoken to the honourable member for South Coast.

The Hon. I. M. MACDONALD: The Auditor-General and the Ombudsman can provide the assistance to give the inquiry more depth. The committee is not, as was suggested by the Hon. J. F. Ryan, asking them to sit in judgment of the Government's operation of HomeFund. On previous occasions the Auditor-General has expressed his concern about the operation FANMAC and HomeFund. Much more needs to be taken into consideration in regard to Homefund. The Auditor-General and the Ombudsman have been requested to assist. They are not compelled to come to any conclusion that might be negative to the Government. They are requested only to assist the Government to come to the truth of the matter.

I should have thought that members opposite would have been happy for the committee to be given assistance to arrive at the truth of the HomeFund matter. Instead, they reeled out the Attorney General and Minister for Industrial Relations to get him to shore up their case and to prevent the inquiry from being productive. The Government has made a classic attempt at obstruction. It has tried to politicise this inquiry further and to find a way of preventing the committee from finding out the truth of the allegations that have been made. I have no difficulty with an inquiry into HomeFund. The select committee is the perfectly appropriate forum for that. The independence of those officials is not under attack. They have been requested to assist with the inquiry.

The Hon. D. F. Moppett: How many times has it happened before?

The Hon. I. M. MACDONALD: It does not matter whether it has happened a million times before. We do new things every day. I know that the Hon. D. F. Moppett and his National Party colleagues are not accustomed to doing anything new, but some of us on this side of the House do new things every day. No one is asking those two officers to come to any conclusions; they are not asked to make statements about the direction in which the inquiry should go. They have been asked to assist. In other words, the Auditor-General will carry out a special investigation and provide a report that will give an idea of the financial details regarding HomeFund. That is not a problem to me. I do not understand why that should present any problem for the Hon. Elisabeth Kirkby or the Government. I suggest that the attitude of the Government is influenced by the fact that it has much to hide about the financial problems and operations of HomeFund in the past two or three years.

The Hon. J. F. Ryan: Do they get a vote?

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The Hon. I. M. MACDONALD: Neither of those officers get a vote, and nor should they. The committee could say that it does not agree with anything that the two officers say. No one is suggesting that whatever the Auditor-General and the Ombudsman put down in writing is Holy Writ and will constitute the finding of the inquiry; if it is, I am sure every honourable member would be happy to take their conclusions into account in reaching a judgment on the matter. Under the second term of reference the Auditor-General and the Ombudsman are requested to assist, in effect, in a special investigation of this matter. Similar investigations have been carried out in numerous areas of the public sector. That is not a problem, because it is done regularly. In effect, this would be a special audit under the terms of the Auditor-General's Act.

The Attorney General referred to the statement by the former Attorney General and Minister for Housing, the Hon. Frank Walker, who is now the Federal Special Minister of State. Unquestionably that was a fine, well-weighted statement relating to the facts as they were known at that time. But that statement is not applicable to the present situation. At no stage will the Auditor-General or the Ombudsman be asked to make judgments. They have been requested to consider the facts. The Attorney General attempted to establish that the committee was interfering in some way with the independence of such bodies by requesting them to provide material by way of an investigation that they have the power to conduct. That is drawing a longbow. It is

essential to get to the bottom of the HomeFund matter now. A similar program was run in Alaska by the architect of the HomeFund scheme.

The Hon. Elisabeth Kirkby: Appointed by a government of your political persuasion.

The Hon. I. M. MACDONALD: The Government of Alaska has had to spend \$1.3 billion over the past three years to shore up that program, which is roughly half the size of the New South Wales scheme. The Hon. Elisabeth Kirkby demonstrates her ignorance of HomeFund. The system was expanded dramatically in 1989; everyone must admit that. The HomeFund scheme was driven by Percy Allen, by the Minister for Housing at that time, and particularly by the former Premier, Mr Nicholas Greiner. The HomeFund scheme was greatly expanded beyond that which was in operation between 1985 and 1989. At that stage the scheme bore little resemblance to the present HomeFund program. The comments of the Hon. Elisabeth Kirkby miss the fact that it was an entirely different scheme, which was re-driven and re-engineered in 1989.

The select committee of the lower House, assisted by the Auditor-General and the Ombudsman, will get to the truth of the present HomeFund scheme. Members on the Government side of the House have demonstrated nothing less than that they have a lot to hide about how they re-jigged the HomeFund system to the detriment of many thousands of HomeFund borrowers in the State. That is why they had little Mr Kinross use his three minutes of legal experience to try to question the Ombudsman into submission. That is why he jumped in and attacked the poor old Auditor-General and got stuck into him during the inquiry. He acted in a most obnoxious way. The Government has much to hide from this inquiry. It changed the HomeFund system and made it into something that it was not. It must bear the brunt of its failure; it cannot escape that fact. [*Time expired.*]

The Hon. ELISABETH KIRKBY [3.57]: I learned that the Government intended to move the adjournment of the House to debate this motion only about one hour before the House was due to sit. In the intervening period I have attempted to get as much information as I can, especially from Mr Hatton, the member for South Coast, who is the chairman of the select committee that is planning to introduce legislation to expand the powers of the Auditor-General and the Ombudsman. The first question I asked Mr Hatton was whether he would let me see a copy of his proposed legislation. He said he was unable to do so as it was still being drafted; that I might be able to have it by 4.30 today. It is possible that by the time I finish my contribution to this debate I will have seen Mr Hatton's proposed legislation. I have not seen it to date.

I should go back to consider the terms of the motion that established the select committee. The motion appeared to envisage - and Mr Hatton has confirmed this - that the Ombudsman and the Auditor-General will act officially, that is, under the legislation establishing their offices they will carry out the functions assigned to them by the motion. In particular it seems to be envisaged that part of their task will be to carry out, separately and together, inquiries and investigations into matters that might be referred to them by the committee. That is where I come to a sticking point. The committee has been empowered by the other place to investigate, but is now attempting to introduce legislation to direct the Ombudsman to investigate on its behalf. This is what is wrong with the whole proposition. Obviously, this matter has not been thought through by members of the Opposition. It is perfectly true that the Ombudsman and the Auditor-General have indicated that they are happy to assist the committee. The Leader of the Opposition said that they would be ready, willing and able. However, they are ready, willing and able within the legislation by which they are governed. They are certainly not prepared to go beyond that legislation, nor would any honourable member of this House expect them to do so.

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

QUESTIONS WITHOUT NOTICE

COMMENTS OF DISTRICT COURT JUDGE SINCLAIR

The Hon. M. R. EGAN: My question without notice is directed to the Attorney General. Has the Attorney confirmed the accuracy of comments attributed to Judge Sinclair in today's *Sydney Morning Herald*? Did the judge reject that the rape victim in
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question had suffered substantial psychological effects because "she continued to live with the boyfriend for more than two years after the accident" and "her conduct in seeking a lift from three unknown Asian men was extremely stupid"? Will he consider whether these comments constitute grounds for the Government to lay a complaint under the Judicial Officers Act to the Judicial Commission? If not, why not?

The Hon. J. P. HANNAFORD: I thank the honourable member for his question because I also read this morning's *Sydney Morning Herald* front page article. On reading that article I was concerned particularly with the headline of the article. I immediately called for a copy of the file, the transcript of the hearing of the Victims Compensation Tribunal, a copy of the judgment of the tribunal magistrate and a copy of the judgment of His Honour Judge Sinclair. I have read the judgment of Judge Sinclair. First, I should like to dispel any concerns that may be held arising from the headline, which stated, "The rape victim who didn't suffer enough".

I should like to dispel any suggestion that such a statement was made by a judge of the District Court of New South Wales. No such comment was made by that judge. I believe the first paragraph of the article in the *Sydney Morning Herald* to be a misrepresentation of His Honour's remarks. It is important that I quote for the benefit of honourable members what was, in fact, said by the judge, having regard to recent newspaper reports of comments by other judges round the nation. It is important that I put on the record what was said by the judge in this case. He said:

I accept, on the evidence on a balance of probabilities, that she was sexually assaulted as she described and that she is entitled to an award of compensation. I am unable to be satisfied on the evidence that any substantial psychological affects of the act of violence extend beyond the period of about 3 years and I have some problem in accepting her complaints at full weight, bearing in mind her vagueness about relatively simple matters such as her employment and the fact that she continued to live with her boyfriend for more than two years after the accident and obviously continued to have intercourse with him.

The Hon. Franca Arena: How does he know that?

The Hon. J. P. HANNAFORD: I urge the honourable member not to interrupt and allow me to finish because it is important that what was said by the judge should be put in the context of his whole judgment. After reading the article and comments made I gained the impression that it was suggested that the woman would not have experienced substantial psychological effects. I have said on record that people do suffer psychological effects from such assaults. Judge Sinclair acknowledged that on the evidence she suffered psychological effects but that they did not extend further than three years after the event. The judge must act on the evidence put before him, and that must be put in the context of his role. He stated further:

The disability of the appellant is extremely difficult to assess. She was extremely vague about simple matters such as her periods of employment in Sydney between November 1988 and February 1991 and there are considerable inconsistencies in her evidence before me and her statement and the evidence before the Tribunal on that topic. It is curious that she has never sought any examination or treatment in relation to her gynaecological condition and her failure to take the benefit of any counselling is also very difficult to understand for a person of her education and occupation.

Nowhere in the judgment does the judge consider that the rape victim had not suffered enough - the inference to be drawn from the article. A reading of the judgment discloses that the judge did accept, as I said in my earlier comments, that the lady suffered psychological effects, that she was sexually assaulted and that she suffered psychological difficulties arising out of the violence. Having examined the evidence, the judgment and the material before me relating to this case, at this stage I do not intend to take further action in relation to the matter. It is open to suggestion that some in the media might wish to take this particular press article as an interpretation that the judge's comments reflect what might be described - though I do not personally subscribe

to this view - as aberrant behaviour on the part of the judge. I am happy to make a copy of the judgment available to all interested members.

The Hon. Franca Arena: I should certainly like a copy.

The Hon. J. P. HANNAFORD: I shall make that available today. The judge, in a difficult case, tried to balance the evidence and to reach an informed decision on the basis of the evidence. Many would take out of context the comment about being offered a lift in a street late at night. In the full context of the judgment it is clear that the judge recognised the unusual factors that gave rise to that incident and, taken out of context, one might be of the view that the judge was critical of the woman. In my view the judge has recognised his responsibility to be cognisant of the real impact that an assault and rape has on a woman and he tried to balance that in temperate and judicious language. It is unfortunate in the current public climate of media comment on judges' deliberations that this particular matter has been taken out of context.

I am conscious of judges' responsibilities in this area. I have indicated previously to the House that the Judicial Commission of New South Wales has embarked upon a program of regularly informing judges of issues in this area, to ensure that they are well and truly acquainted with developments and public sentiment. Recently on radio I said that the media has a role to play in bringing to public attention issues of contemporary comment. A judge should not be an island isolated from contemporary issues and comment. The media to some extent is performing a role in that regard but, in some cases, it is appropriate to look at the whole judgment in order to form a considered view on the issue, which is what I have tried to do in this House.

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SINGLE SEX CLASSES PERFORMANCE REVIEW

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 why a review is being undertaken of the performance of girls in single sex classes? What is hoped to be achieved through this review?

The Hon. VIRGINIA CHADWICK: I thank the Hon. Patricia Forsythe for her interest in this important issue. The honourable member is correct in her view that there will be a review of single sex classes and the performance of girls in secondary schools this year. A preliminary report prepared by the Ministry of Education revealed that the participation rates and achievements of girls in the 1992 higher school certificate indicated that girls from single sex high schools achieved higher tertiary entrance rank scores than their counterparts in comparable co-educational high schools. As a result of that interesting finding, the quality assurance unit of the department will this year review the educational outcomes for girls in secondary schools. The review will focus on HSC results for girls, whether there are advantages in single sex classes as well as single sex schools for girls, and policies related to the participation of girls in post-compulsory education.

The ministry's review of the 1992 HSC produced some interesting findings. Those who have an interest in educational opportunities for girls in our community will be interested to learn that girls now average a higher TER than boys in the HSC and that last year they topped 90 of the 141 subjects. Girls are participating in greater numbers and are performing at a higher level in mathematics and science subjects. Though mathematics and science are still areas of concern, it is interesting to note that in 1992 girls represented 36 per cent of HSC candidates in 4-unit maths. While that leaves vast room for improvement, when compared to the results of one year earlier where 34 per cent of girls were candidates in 4-unit maths, in 1982 only 20 per cent of girls attempted that subject. Clearly, some of the strategies the department has put in place to address that imbalance are having an effect. Similarly, in 4-unit science in 1992 female candidature was 56 per cent, compared with 47 per cent the previous year.

Though there have been significant improvements and there is still more to be achieved, looking at the disparity of performance between girls at single sex schools and girls from comparable academic or

socioeconomic backgrounds, the girls from single sex schools clearly performed better in the HSC last year. It would be remiss of the Government not to undertake further study in this area so that we can learn from that study and implement more strategies to assist girls in our aim of equality of opportunity to excellent education.

INDEPENDENT TENANT ADVICE SERVICE

The Hon. ELISABETH KIRKBY: My question without notice is directed to the Minister for Housing. Will the Minister take steps to reintroduce an independent tenant advice service to fill the gap left by the abolition of the Tenants Advice and Housing Referral Service in 1988? If not, how will the Minister ensure that low income tenants have access to the protection offered under the Residential Tenancies Act?

The Hon. R. J. WEBSTER: The Hon. Elisabeth Kirkby has asked a very good question. I have been concerned for some time about the absence of that type of advice for low income tenants. This matter was discussed some little while ago at a meeting with the New South Wales Council of Social Service. The Director of the Department of Housing has put in place a consultative forum where the matter can be explored. I do not have all the information on this matter at my fingertips, but I undertake to provide the Hon. Elisabeth Kirkby with more details at a later stage.

VOLUNTARY RETAIL TENANCY LEASING CODE

The Hon. B. H. VAUGHAN: I direct my question without notice to the Attorney General and Minister for Industrial Relations. I refer the Minister to his comments in relation to an answer to a question without notice on 10th March, where the Minister referred to the voluntary retail tenancy leasing code. On that occasion the Minister said:

They [the Retail Traders Association] have alleged that since the code of practice was drafted not one lease has been seen by the Retail Traders Association which fully incorporates the code's provisions. . . .

I therefore intend to meet with the BOMA and the Retail Traders Association to discuss this situation as soon as possible.

Will the Minister advise the House when this meeting took place and identify the representatives of the respective organisations whom he met; the outcome of the meeting; and the Government's position on this matter?

The Hon. J. P. HANNAFORD: I am pleased the Deputy Leader of the Opposition has a "bring- forward program" that reminds him of questions he asked on previous occasions.

The Hon. B. H. Vaughan: It was asked on the Government side. Obviously the Minister cannot remember what is asked and what is answered.

The Hon. J. P. HANNAFORD: But I do remember what occurred. The meeting was held but at this very moment I cannot tell the honourable member the exact day. I do not carry a daily reckoner with me to remind me of every appointment held.

The Hon. B. H. Vaughan: Reckoners add and subtract, do they not?

The Hon. J. P. HANNAFORD: Sometimes one has to add and subtract the days on which one deals with things. I have met with the Executive Director of the Retail Traders Association and also with Mr MacPherson, the Executive Director of the Building Owners and Managers Association, to discuss the issues as outlined in my response to the House on 10th March. Though I told the House that not a single lease complied with all aspects of the code, on a number of occasions there has been substantial compliance.

I recollect that I was told that the Retail Traders Association is concerned about non-compliance with the code. The Building Owners and Managers Association told me that approximately 1,000 leases have now been entered into pursuant to the code, with varying degrees of compliance. Substantial attempts are made by the members of BOMA to comply with the code. My recollection is that the meeting was completed with the Retail Traders Association and BOMA resolving to continue to work to achieve greater observance of the code and to develop the program further pursuant to the code.

It was pointed out to me that a number of mall operators are not members of the Building Owners and Managers Association and that some of the more prominent complaints about breaches of the code emanate from non-members. The meeting concluded on the basis that they would come back to me if they had matters that were still of concern. My responsibility in relation to this matter arose from the fact that at that time the director-general of my department had authority to approve the extension of trading hours, with such approval given on the understanding that mall operators would not seek to force people to trade on Sundays, and that was a matter of concern to me. The Minister responsible for this matter is my colleague the Minister for State Development, who continues to monitor the situation. My colleague the Minister for Consumer Affairs also has some limited responsibility in this area under the Contracts Review Act. The matter is one that the Government continues to watch closely and I trust I have covered all matters raised in the question.

VOLUNTARY RETAIL TENANCY LEASING CODE

The Hon. B. H. VAUGHAN: I have a supplementary question of the Attorney. In view of the answer, is the Attorney aware of the findings of the code management committee set up by his colleague the Hon. Peter Collins and chaired by the Hon. Peter Philips?

The Hon. J. P. HANNAFORD: To this stage that report has not been drawn to my attention, but I will make inquiries about it.

LEGISLATIVE COUNCIL CHAMBER AIR CONDITIONING

The Hon. D. J. GAY: Mr President, my question is addressed to you. Are you aware of a strong aroma in the House? Do you think its origin may be from a certain breed of highland cattle, or is mine a highly sensitive agricultural nose? Do you know the source of the irritation?

The PRESIDENT: I am able to inform honourable members that the rather rich aroma pervading the House this afternoon is caused by a proprietary brand of fertiliser called Banana Special that has been applied to part of the roof garden located approximately 10 metres from the Legislative Council air conditioning air intake. I am informed that Banana Special is the trade name for chicken manure. I am informed further that the gardener, when doing this work, was unaware that the Legislative Council would be sitting this week and is somewhat distressed at the inconvenience to honourable members. It was suggested that the problem could be alleviated by watering the fertiliser. However, more mature thought indicated that this might aggravate the problem. I ask honourable members to be patient. I am informed that in due course the aroma will not be evident.

SPEAKING TOUR OF DAVID IRVING

Reverend the Hon. F. J. NILE: I wish to ask the Attorney General, Minister for Industrial Relations and Vice-President of the Executive Council a question without notice. Is it a fact that there is widespread community concern about the proposed speaking tour by the controversial author David Irving and the proposed screening of David Irving's lectures on video at public meetings in Sydney and other capital cities? Is it a fact

that David Irving's addresses centre on his unsubstantiated allegations that the holocaust - the murder, gassing and cremation of approximately six million jews as well as millions of others of other nationalities - is the greatest hoax of the twentieth century?

What action is the Government taking, for example, under the Anti-Discrimination Act, the racial vilification legislation, or the classification laws, to protect the New South Wales relatives of the tragic victims of the holocaust from these outrageous, insensitive and provocative statements and or videos by David Irving, which involve the deepest emotions concerning the brutal murder of loved ones? In some cases that are known to me, only one member of a 50-member Jewish family survived the Nazi holocaust.

The Hon. J. P. HANNAFORD: I am aware of the controversy surrounding the visit to Australia of David Irving. I believe that all members of this House would take the view that anyone who sought to suggest that the holocaust is the greatest hoax of the twentieth century would be deluded or not living in the real world. I am aware of the great concern felt by members of the Jewish community about the visit of David Irving and about what can best be described as the incitement he seeks to preach. I take seriously racial vilification issues. I have already authorised two prosecutions under the provisions of the racial vilification legislation, and I would have no hesitation in approving others if it was brought to my attention

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that a person was pursuing racial incitement that could lead to breaches of the Anti-Discrimination Act. I make that comment clearly and unequivocally. I hold absolutely no truck whatsoever with any person who seeks to incite violence against another because of race or because of beliefs. I have a very strong view in that regard, as I am sure honourable members know. I can assure the House that, if such incitement occurs, I will make certain that it is pursued as diligently as it possibly can be pursued.

DEPARTMENT OF HOUSING RENTAL PAYMENTS

The Hon. R. D. DYER: I ask the Minister for Housing whether Department of Housing rentals will be required to be paid at post offices from March 1994. What are the reasons for this decision, given that the Minister said in question time yesterday that he has no intention of closing any Department of Housing office in New South Wales? Will the cost of \$1.25 per transaction to the Department of Housing be less than the cost of receiving rental payments at Department of Housing offices? Is the Minister able to give the House an assurance that Department of Housing staff will neither be retrenched nor dislocated arising out of the implementation of the recommendations of the Mant report relating to the location of regional offices of the department?

The Hon. R. J. WEBSTER: It was a very long question by the honourable member and I shall try to remember it.

The Hon. M. R. Egan: It was a very good one.

The Hon. R. J. WEBSTER: It was a very good question and one that I shall answer fully. I gave an assurance yesterday that, irrespective of where the regional headquarters of the Department of Housing are situated in the country, little or no expense will be involved and little or no dislocation. The honourable member ought to know enough about the way in which the Department of Housing is run to know that, irrespective of where the regional headquarters are, they will be in large population centres which already have large Department of Housing offices.

The Hon. R. D. Dyer: You might move one, for example, from Newcastle to Lismore.

The Hon. R. J. WEBSTER: The honourable member wants to speculate on what might happen. Does he know that there is a discussion paper and that a lot of consultation is taking place with Department of Housing staff. Let us just wait and see. To return to the issue of rent collection, the Hon. R. D. Dyer has obviously done some research on this issue and he would know that New South Wales is the only Australian

State where the Department of Housing collects rent from its clients. That is something which is not in the best interests of the efficiency of the Department of Housing, nor is it in the best interests of its employees who spend a great deal of time processing rent when they could be better serving their clients. The honourable member is right in saying that in every other State of Australia Department of Housing tenants can pay their rent at post offices, for which Australia Post charges a fee. Arrangements are being made with the Federal Government for a voluntary system of deduction of rents from pensions at source.

The Hon. R. D. Dyer: Will they be the only two methods of payment?

The Hon. R. J. WEBSTER: Eventually that may well be the case, but it will take some time to get to that point. It is not intended to do away with Department of Housing staff but rather to free up staff to better serve the department's clients. I have nothing but admiration for the staff of the Department of Housing in general, but criticism has been levelled at the department by the Mant report and lots of correspondence, which I am sure all honourable members have received, that in many cases clients of the Department of Housing do not receive the sort of service they would expect to receive from their landlord. It has occurred in other States, and I have had discussions with my ministerial colleagues. It will be a major advance if Department of Housing staff can be freed up from collecting rent to do other things for its clients. I think that will eventually happen and it will happen reasonably soon. Is that all? The honourable member had about five questions.

The Hon. R. D. Dyer: I asked about retrenchment or dislocation of staff.

The Hon. R. J. WEBSTER: No, I think I answered that question and I answered it yesterday as well. Now I have answered it twice.

TERTIARY EDUCATION CREDIT TRANSFERS

The Hon. D. F. MOPPETT: My question without notice is directed to the Minister for Education and Youth Affairs and Minister for Employment and Training. I have become aware that large numbers of families in country areas as well as in the city have shown a keen interest in the credit transfer system. Will the Minister inform the House of the details of the credit transfer system which operates between universities and TAFE? Are TAFE qualified students taking advantage of this by continuing on to university studies?

The Hon. VIRGINIA CHADWICK: One of the things that all members should be proud of in recent years is the enhanced image of TAFE, the vocational training sector in New South Wales. Today, New South Wales represents 42 per cent of the national vocational training effort. The image of that sector is high, and rightly so. In the long term it will be to the benefit of all in the community, as people can make more valid, more sensible and more meaningful choices about further education between university and the vocational education sector. A greater balance and an improved image of TAFE are long overdue. Part of the work has been to ensure

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that those who study at TAFE and who achieve have their efforts recognised and some of their work accredited if they wish to continue their studies at university. The success of that accreditation is now quite evident.

In 1991, 6 per cent of university applications were from TAFE qualified students; last year, following the introduction of the credit transfer system, those applications rose to 7.5 per cent. The increasing trend will be sustained because a lot of valuable work between the university and TAFE is ongoing in this regard. The figures are the result of a study undertaken by the ministry and funded by the Commonwealth Department of Employment, Education and Training, for which I am very grateful. This first study of the effectiveness of credit transfers indicates that people with TAFE qualifications are seizing the opportunity to undertake university study. In 1992, 49 per cent of TAFE qualified students who applied for university enrolment received an offer. Given the challenges and the pressures applied to gaining scarce university places, I think that is a fine record and an indication of the quality and successes of TAFE students.

Open pathways between TAFE and universities offer the opportunity for TAFE students to gain a university degree without being forced to go back and repeat subjects they would have done in a different context as part of a TAFE associate diploma course. Having their TAFE accreditation, such as an associate diploma, they gain credit at university and save time as they move on to a degree. The number of TAFE students continuing on to university is expected to grow over the next few years. It is a good thing for the students involved and it enhances the image of TAFE as a meaningful, relevant and equal student choice - a position that is long overdue.

FLUORIDATION

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, this question without notice. Is it a fact that on 1st May more than 70 per cent of voters in a poll in the City of Blue Mountains voted no to the question: do you want fluoridation of the public water supply to continue? Has the council unanimously decided to ask the local member, Barry Morris, to make representations to the Premier to request that fluoridation of the upper Blue Mountains water supply be discontinued? Now that the democratic wishes of the voters of the Blue Mountains are known, will he ensure that fluoridation is discontinued?

The Hon. VIRGINIA CHADWICK: I am ashamed to confess that I was unaware of the results of that referendum conducted in the Blue Mountains. I shall refer the matter to my colleague the Minister for Health for his comment. If the difference between the quality of my teeth and the teeth of my children - who grew up in the period of fluoridation - and the amount of time and money I spend on visits to the dentist are the result of fluoridation, it cannot be all bad.

VICTIMS OF CRIME SUPPORT

The Hon. Dr MARLENE GOLDSMITH: My question without notice is directed to the Attorney General and Minister for Industrial Relations and Vice-President of the Executive Council. Can the Minister indicate what measures are being made available to provide support to the victims of crime?

The Hon. J. P. HANNAFORD: The honourable member has shown continuing interest in this matter which I know she is concerned about. Her question is proper, following on comments I made earlier today. The victims of crime have innocently had fear, sorrow and anguish inflicted upon them. Those victims can also include the family and friends of persons who have been assaulted or otherwise deprived by the actions of criminals in our community. The community has a moral obligation to do all it can to help alleviate the emotional and physical suffering of these people. The Government must set an example to the community by providing support. The provision of compensation is just one facet of providing support to victims of crime.

A wide range of support is sought. I am pleased to inform the House that last Friday I handed a cheque for \$80,000 to the Sydney City Mission for the establishment of a 24-hour counselling service for victims of crime. The service, to be established by the mission, will include a 24-hour telephone counselling service, as well as a face-to-face counselling program to be provided during office hours. The establishment of the counselling service is affirmation of the Government's commitment to easing the suffering of the victims of crime.

The Hon. J. R. Johnson: Will there be ongoing funding for it?

The Hon. J. P. HANNAFORD: There will be ongoing funding for this program. Help and support, which victims of crime need, have to be available 24 hours a day. Victims of crime have indicated that sometimes all that is required is a friendly voice on the end of a phone. But at other times face-to-face counselling may be required. Often information is also required about the availability of other specialist services. Whatever the needs of the victims of crime, those who are helping them must have specific skills and knowledge. The Sydney City Mission has already trained more than 70 volunteers who have completed 15

weeks of vigorous training. In the coming month another 35 people will graduate from that program. The intensive 75-hour course includes training in: victims of crime counselling techniques, grief counselling, domestic violence counselling, sexual assault counselling, legal issues and the availability of resources for the aggrieved.

I pay tribute to those dedicated, selfless volunteers who, as supporters of the Sydney City Mission, have committed the time and energy to learn the skills which are required of them to provide this service to the community. I thank them very much for the help they have provided to the victims of crime. This service will be advertised throughout

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New South Wales - at police stations and hospitals, and in community health centres as well as through the avenue of local councils. There will be a broad promotion of the availability of these services through posters and signs, as well as brochures which will be able to be taken by victims. Listed in the New South Wales telephone book will be a Sydney metropolitan number as well as a 008 toll free number so that people can contact the free telephone service. A broad communication service strategy will be maintained by the Sydney City Mission with the support of the Government.

INDUSTRIAL RELATIONS ENTERPRISE SAFETY PLANS

The Hon. J. W. SHAW: Does the Minister for Industrial Relations intend to advance the concept of enterprise safety plans, which he announced at the Industrial Relations Society conference on 12th March, by legislation or regulation? Does the Minister intend to ensure that the minimum requirements of the Occupational Health and Safety Act remain unchanged with the implementation of enterprise safety plans? Will the Minister undertake to consult fully with the Labor Council and trade unions generally to seek their agreement to the implementation of this announced policy?

The Hon. J. P. HANNAFORD: The most important part of that question is whether or not the minimum requirements of the Occupational Health and Safety Act will be maintained. The answer to that is most definitely yes. It is my intention - it has been right from the word go - to maintain detailed consultation with the labour movement in relation to the development of this concept. Consultation has already commenced. This proposal, which is in its embryonic stages, has been conveyed to the Occupational Health and Safety Council, which includes members of the labour movement. In fact, that council is consulting with the labour movement. I intend to advance this concept of enterprise safety plans. The concept is not new; we have already seen its partial development. Model safety consistency programs have been developed by WorkCare and WorkCover at a national level.

The enterprise safety plan concept is well acknowledged in other parts of the world; significantly in Canada, where it is well advanced. I am sure honourable members would be aware that enterprise safety plans require people in the workplace to acknowledge the minimum requirements of the Occupational Health and Safety Act and to develop those requirements to meet their needs. There must be consultation with employers and employees to ensure that employees are aware of the provisions in the Occupational Health and Safety Act. Occupational health and safety programs which comply with minimum standards must be tailored to meet the needs of the workplace. The work force will then be able to implement such programs. It is hard to try to get employees at the workplace to become more conscious of safety.

The Hon. J. R. Johnson: And employers.

The Hon. J. P. HANNAFORD: And employers; very much so. If we can get employers and employees moving together on safety-related issues we shall have taken a significant step forward in improving the health and welfare of the work force. Fifteen times more working days are lost as a result of workplace injury than through industrial disputation. Industrial injuries cause greater loss of productivity than industrial disputation does.

The Hon. J. R. Johnson: We have been saying that for years.

The Hon. J. P. HANNAFORD: The Hon. J. R. Johnson does not have to tell me that. Very soon after being appointed as Attorney General and Minister for Industrial Relations I said that we need to promote occupational health and safety in the workplace. I have said, in a few speeches, that I regard this decade as the decade of workplace safety. Employers and employees need to move forward with workplace based and enterprise based industrial relations programs. This will significantly enhance workplace reforms and productivity and the future of workers and the companies they work for.

The Hon. J. R. Johnson: Some awards to encourage employers to comply might be an advantage.

The Hon. J. P. HANNAFORD: That issue has already been promoted by WorkSafe and the matter is being taken into account in New South Wales. If an employer moves forward in this area as a result of our workers' compensation legislation, he will achieve significant insurance savings. I have indicated to the WorkCover Authority that I wanted to start targeting parts of the industry where there have been safety failures. For example, there are a significant number of injuries in the timber industry and the farming industry. In this decade we have to start developing targeted programs to overcome safety problems. I trust that my colleague the Hon. J. W. Shaw will work with me on this program. I think he genuinely recognises that I am moving in the right direction. We must have co-operation from the union movement, employer organisations and employers. Benefits to employees will be unquantifiably significant. The employee has to understand that he has an obligation in this regard. The Government has made a commitment to ensuring that those obligations are observed.

CHRISTIAN SCHOOLS AND THE ANTI-DISCRIMINATION ACT

The Hon. ELAINE NILE: I address my question without notice to the Minister for Education and Youth Affairs and Minister for Employment and Training. Is it a fact that there has been a dramatic growth of non-government schools in New South Wales, especially Christian schools, but including a small number of Muslim schools? Is it a fact that these Christian schools, in accordance with their aims and objectives, uphold Christian ethics and beliefs in

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their school administration, staffing and curricula? Will the Government give a categorical assurance that it will reject the call today by the President of the New South Wales Anti-Discrimination Board, Mr Steve Mark, to remove the long-standing exemption of Christian schools from the provisions of the Anti-Discrimination Act? Will the Government continue to allow Christian schools to act and teach according to their beliefs and conscience and protect them - as Catholic parish schools and Muslim schools, et cetera - from harassment by homosexual activists who object to their orthodox Christian teaching that homosexuality is unnatural, abnormal, unhealthy and immoral?

The Hon. VIRGINIA CHADWICK: I, too, was startled when I read the reported comments of the head of the Anti-Discrimination Board advocating such a move. The Anti-Discrimination Board and its head have a view in terms of expanding their authority and role. They have been fairly consistent in arguing for this expanded role for about 10 years and have advocated it in annual reports and in a variety of other forums. That call has fallen on deaf ears, both under the previous government and under this Government, and will continue to fall on deaf ears. I would not purport to speak for the entire Government on a matter such as this. Cabinet has not recently discussed the reported comments of the president of the Anti-Discrimination Board. The legislation, introduced by Neville Wran in about 1977, has operated consistently from 1977 under the previous Government and this Government. There would be no support in the Government for the suggested move, and it is my view that it is not warranted. I would not advocate or support such a move.

Honourable members have been in public life long enough to know the propensity of government departments, authorities and instrumentalities, to seek to expand their area of influence. I am not surprised that the Anti-Discrimination Board, having discovered that it has no authority over this area of activity, would seek

to expand its influence in this regard. That does not necessarily make it the right move. Second, if this were a matter of real concern, I anticipate that I would have received a number of letters, approaches, submissions, and requests.

While I have not carried out a search on this issue, to the best of my recollection the only group in recent times to advocate to me an extension of the responsibility of anti-discrimination legislation is the head of the Gay and Lesbian Teachers and Students Association. I told him I had no desire or intention of taking up that proposal and advocating it, and I repeat now that I do not. I scarcely think that the fact that the Gay and Lesbian Teachers and Students Association has raised the matter with me is reason to think it is a deep burning issue in the community.

The introduction by the Labor Government in about 1977 of the anti-discrimination legislation was a bold and proper step at the time, controversial though it may have been in some quarters. By and large, it has served the State well. At that time the Government of the day decided, for all the reasons implied and stated in the Hon. Elaine Nile's question, to exempt non-government schools for the reasons outlined, to preserve the right of Jewish schools to employ Jewish teachers and to teach the Jewish ethos, culture and religion. The same applies in relation to Roman Catholic schools, other Christian schools, and the more traditional independent schools which rest on a particular ethos and value system.

The Hon. J. R. Johnson: Non-Catholics can attend Catholic schools.

The Hon. VIRGINIA CHADWICK: Indeed, but those schools seek to preserve the right to look to their staff and the nature of their staffing and would hold that right dear, because it goes to the very heart of the ethos of their school. That was the argument at the time; it would be the argument today, and I can see no difference in the validity of the argument between 1977 and 1993.

CHRISTIAN SCHOOLS AND THE ANTI-DISCRIMINATION ACT

The Hon. ELAINE NILE: A supplementary question. In regard to the statement today by Mr Mark, will the Minister issue a statement as soon as she receives word from the Government, because many church schools, as well as Jewish schools, are concerned? The matter has caused them much heartache, today in particular. Will the Minister issue a public statement regarding what the Government will not do about it?

The Hon. VIRGINIA CHADWICK: I can speak as Minister for Education, but the suggestion of the Hon. Elaine Nile has value and I would prefer to raise the matter with the Premier. If a statement is issued it should be for the entire Government.

NORTHERN BEACHES RESIDENTIAL DEVELOPMENT

The Hon. DOROTHY ISAKSEN: I direct my question without notice to the Minister for Planning and Minister for Housing. As Minister for Planning, was he consulted by the Minister for Transport before he called for expressions of interest for a mass transport system for the northern beaches? Will the 30,000 new homes he referred to in his announcement result in the release of Crown lands for residential purposes? Where will these new residential areas be located?

The Hon. R. J. WEBSTER: In answer to the first part of the question, yes, of course I was consulted. In answer to the second part of the question, I do not know, but there is still plenty of room on the northern beaches for more houses. The honourable member would know that there are already designated areas and there is enormous scope for urban consolidation on the northern beaches. I have had fruitful discussions with the Warringah Shire Council and the Pittwater Shire Council about those matters. They have undertaken to look at suitable areas close to transport nodes where high density residential developments can take place.

I give the honourable member a warm assurance that the northern beaches area has plenty of room for another 30,000 homes. Any mass transport system in the region would not be viable without those homes. I am not sure of the reason for the honourable member's question, unless she is trying to make mischief by suggesting that the Government will use sensitive Crown land for housing. She should know that I do not allow new developments on any land until all necessary environmental studies have been completed.

The Hon. Jan Burnswoods: Does the Minister want more people for his seat in that region?

The Hon. R. J. WEBSTER: We are putting plenty of people in the western suburbs in Labor Party held electorates.

The Hon. Jan Burnswoods: Is the Minister not going to have a seat in that area?

The Hon. R. J. WEBSTER: The honourable member is fantasising again. Plenty of land is available in the northern beaches area. The Hon. Dorothy Isaksen can be assured that if any new land is opened up for housing as a result of the transport proposal by the Hon. Bruce Baird, all proper environmental controls will be placed over the land before it is released.

SYDNEY METROPOLITAN PLANNING STRATEGY

The Hon. J. F. RYAN: I direct my question without notice to the Minister for Planning and Minister for Housing. I am sure he is aware of increasing community concern about the urban environment. Will he explain what the Department of Planning is doing to involve the community in the development of a new metropolitan strategy for the Sydney region?

The Hon. R. J. WEBSTER: A new metropolitan strategy for the greater metropolitan region is being prepared by the Department of Planning in consultation with government agencies and the community. The new strategy will revise and update the 1988 metropolitan strategy, which concentrated on Sydney's growth and expansion. Our understanding of the key issues associated with Sydney's growth has changed since 1988 and a revised strategy is needed to reflect those changes. Greater emphasis is being placed on issues such as environmental problems, the cost of continued growth on Sydney's fringe and the need to consider Newcastle and Wollongong as part of a greater metropolitan region.

The Government has a much better appreciation of the value of community consultation, and this too will be reflected in the preparation of the new metropolitan strategy. The emphasis on consultation and co-ordination includes improving consultation between government agencies responsible for metropolitan planning. That has resulted in the development of an integrated approach to land use and transport planning. The metropolitan strategy is being prepared in parallel with the Department of Transport's integrated transport scheme. Together they will form an integrated approach to land use and transport planning in the greater Sydney region. The new integrated approach is well supported by a new approach to community consultation in the preparation of both strategies.

The development of the metropolitan strategy has broken new ground with its substantial community consultation program. The program acknowledges the need for the strategy to have a broad base of community understanding and support. The first phase of the community consultation program, which extended from August to November last year, involved three steps: first, a brochure inviting comment and including a short questionnaire was widely distributed; second, interested organisations were contacted and invited to make submissions; and, third, a series of workshops were held throughout the greater metropolitan region, participants being drawn from organisations involved in metropolitan planning.

More than 400 responses were received to the brochure, as well as more than 150 detailed written

submissions from State and local government agencies, interest groups and individuals. The responses indicated clearly the interest in environmental issues and support for improved public transport. Interest was shown also in Sydney's growth and there was general support for urban consolidation. The workshops raised many issues specific to particular parts of the greater metropolitan region, but the need for improved co-ordination was a common theme. The opinions and information provided in the three consultation steps have been assessed and are being taken into account in the preparation of the metropolitan strategy discussion paper. That paper, which is being prepared now, is due for release mid year. The release of the discussion paper will be followed by a second extended phase of community consultation, which will include a comprehensive program of workshops, seminars and informal liaison.

The community consultation program has been supported with the appointment of an independent advisory committee. That is another significant innovation in broadening the scope and depth of community consultation in metropolitan planning. The independent advisory committee was appointed by the Minister for Planning to provide direct input into the preparation of the revised strategy. The committee includes a wide range of non-government representatives and its essential function has been to advise on land use and transport interactions. This ongoing input from the independent advisory committee and responses from the second phase of the community consultation program will be reflected in the final document, to be completed towards the end of this year. That final document will take into account also the implications of new information made available through analysis of census data released last week.

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The Hon. J. P. HANNAFORD: If honourable members have further questions, I suggest they put them on notice.

WATER BOARD FEMALE OFFICER RETRENCHMENTS

The Hon. R. J. WEBSTER: Yesterday the Hon. Dr Meredith Burgmann asked whether I was aware that in the recent restructuring of the Water Board the proportion of women in senior positions plummeted drastically. She asked also whether it was true that only seven of 80 senior executive service positions were held by women. The restructuring of the Water Board does not target female staff. Since I became Minister responsible for the Water Board the board has had more senior female officers than at any other time. Of a total of 64 senior executive service officers at the board, 11 are females. There are not, as Dr Burgmann alleged yesterday, only seven women in the 80 senior executive service positions. All resignations or redundancies from the board are on a voluntary basis. So the honourable member got it wrong.

PESTICIDE CHLORDIMEFORM

The Hon. J. P. HANNAFORD: On 21st April the Hon. J. R. Johnson asked me a question about the residual life of the pesticide chlordimeform. I am now able to furnish the following answer:

Chlordimeform has a short residence time within the human body, being rapidly excreted in the urine. The amount of chlordimeform in the body is halved approximately every 8 hours, and no traces would remain in the body within a week or so of exposure.

The tests presently being conducted by the WorkCover Authority are aimed at detecting early bladder changes among workers exposed to chlordimeform which may indicate an increased risk of bladder cancer, rather than any presence of the chemical within workers' bodies.

I am advised that to date there has been no measurable impact on the health and safety of workers in these areas. The screening tests are being conducted by WorkCover as a precautionary measure and will ensure the early detection and control of any problems that may occur in the future.

PORNOGRAPHIC MAGAZINES

The Hon. J. P. HANNAFORD: On 30th March the Hon. Elaine Nile asked me a question about New South Wales newsagencies being forced to sell pornographic magazines. I furnish the following answer:

I referred this matter to my colleague, the Minister for Consumer Affairs who provided the following information: Newsagencies in New South Wales are regulated in matters to do with the supply of newspapers and magazines by their need to be accredited by the Newsagency Council, an unincorporated body which consists of representatives of four major publishers (Fairfax, News Limited, Australian Consolidated Press and Eastern Suburbs Newspapers) and one representative from the Newsagents Association of New South Wales and the Australian Capital Territory. To become accredited, an incoming newsagent is required to sign a Newsagency Agreement with the publisher members of the Council. This Agreement is in effect a detailed contract for the supply of newspapers and magazines.

It appears that the basic intent of this arrangement is to regulate the supply and distribution of newspapers and magazines in an efficient and cost effective way. While this system could be seen as restrictive of trade and with the potential to allow the possibility of harsh and unconscionable contracts, an exemption for newsagency businesses was granted in 1988 under the Trade Practices Act. It is also relevant that newsagents may have contractual arrangements with publishers other than the four mentioned and that these arrangements may have restrictive elements.

The Trade Practices Commission has recently released a Discussion Paper and a Report on the regulation of the newsagency business. The Commission has also foreshadowed a review of the newsagency systems in New South Wales and Queensland.

In view of this the Hon. Elaine Nile has the option of making her concerns known to the Trade Practices Commission.

INDEPENDENCE OF THE AUDITOR- GENERAL AND THE OMBUDSMAN

Adjournment (S.O. 13)

Debate resumed from an earlier hour.

The Hon. ELISABETH KIRKBY [5.7]: I was dealing with the fact that although the Ombudsman and the Auditor-General were happy to assist the committee, they were concerned about their legal standing and whether they had the ability under their legislation to carry out an investigation. In his remarks the Leader of the Opposition asked who had discussed the matter with the Ombudsman or with the Auditor-General. I am in possession of a Crown Solicitor's advising to the Auditor-General, and certainly the Auditor-General sought legal advice as to the effect the legislation proposed by the honourable member for South Coast would have on his office. I understand also that the Ombudsman wishes to have further clarification of the implications of the proposed legislation. I have not yet received a copy of the private member's bill seeking to change the legislation. However, recently I have been informed that the honourable member for South Coast feels that it would be improper for me to have a copy of it before he presents a copy to the committee of which he is chairman. That committee will not meet until 5.15 p.m.

Even members of the committee have not seen the legislation prepared by the honourable member for South Coast, which he intends to introduce. That makes it difficult for members of this House to comment on it. There have been serious misconceptions about the proposed legislation. I have been asked whether the proposed amendments will really threaten the independence of the Ombudsman and the Auditor-General. I have been asked also whether these are not exactly the same circumstances that existed when the Ombudsman had to investigate the Angus Rigg affair. Of course this is not exactly the same situation. The Ombudsman investigated the Angus Rigg affair under his powers to oversight and take over an investigation from the police.

That is a totally different question.

Similarly, can a comparison be drawn between asking the Independent Commission Against Corruption to investigate the Metherell appointment and asking the Auditor-General and the Ombudsman to assist the select committee? The ICAC request was not made by the Government. Commissioner Temby informed the Premier that under his powers he was going to investigate; it was not a question of the Government directing him to investigate. We will get into dangerous waters if the Parliament or a select committee has the power to direct either the Ombudsman or the Auditor-General to investigate - and this is the whole point. When the joint committee on the Water Board is set up next week, will the chairman of that committee, the honourable member for Manly, direct the Ombudsman to investigate the Sydney Water Board?

The Ombudsman will be so busy investigating matters on behalf of committees that he will not be able to properly carry out his responsibilities, that is, investigating matters for ordinary members of the public who believe they have suffered an injustice, and have no other avenue of redress. Once the legislation of the honourable member for South Coast sets the precedent, it will be open slather from then on. That is why I am supporting the motion of the Leader of the House and why I cannot support the remarks of the Opposition. The Opposition does not appear to understand that there is no separation of powers in New South Wales, and that this is something that we should fight for. It is a ridiculous assertion to suggest that heads of independent statutory authorities are the servants of the Parliament.

If we are to fight for the separation of powers we must ensure the independence of statutory authorities and not legislate for them to unnecessarily investigate matters that a select committee of the Parliament, with the powers of a royal commission, has already been given power to investigate. The select committee into HomeFund has an extremely complicated job on its hands; it apparently believed that it could not carry out those duties and sought to find someone else to do the work for it. That is not the role of a select committee; that denigrates the powers and ability of a select committee. A select committee established by this Parliament should not be empowered to hand out work to some other statutory and independent authority. To do that is to denigrate the powers of our own committees and our own authority.

I should like to put certain matters on the record. Publication is an important matter for the committee. If the committee empowers the Ombudsman or the Auditor-General, the possibility of liability in defamation should be considered, because although these two officers are somewhat limited from liability, people dealing with them may also need that protection. It is necessary to consider what powers officers might exercise in that regard. Also, it should be noted that the power to administer an oath depends on statute. A committee might wish the Ombudsman to investigate conduct of which the Ombudsman would have no jurisdiction to investigate under existing legislation. The Ombudsman should not be required to do that; at all times he or she must retain the discretion to commence an investigation, and to discontinue an investigation.

A committee should not have the power to say to the Ombudsman, "You have not gone far enough. We want you to go further. Do some more". That would totally destroy the independence of the Ombudsman, and I cannot believe that would be the wish of the Ombudsman. At present there is no jurisdiction for the Ombudsman to make reports to, or advise, a committee of the Parliament, though he has a discretion to make a special report to the Minister for presentation to the Parliament. Nor does he have jurisdiction to make an investigation and report jointly or in co-operation with another person, such as the Auditor-General.

Section 34 of the Ombudsman's Act, which I believe is also relevant, prohibits the Ombudsman and his officers from disclosing any information obtained by the Ombudsman in the course of his office. No exception is made where the disclosure is made to a parliamentary committee. If a parliamentary committee seeks to have matters put on the public record, it may find that the Ombudsman is constrained by the provisions of his own legislation. That will prevent matters being placed on the record, and I am certain that is not what is sought by the honourable member for South Coast. The Opposition, through its remarks, also seeks that result, because it is accusing the Government of stalling the committee and the legislation of the honourable member for South Coast and trying to make the committee impotent. I do not believe that is the case. The committee

has been given the power; it is the committee that must carry out those powers.

Liability in defamation should also be taken into account, because section 17A(1) of the Defamation Act provides a defence of absolute privilege for "a publication to or by the Ombudsman, as Ombudsman, or to any officer of the Ombudsman, as such an officer". It is clear that the protection is conferred by the section and is limited to where the Ombudsman discharges some function that belongs to his statutory office. That protection might not apply if he is investigating on behalf of a select committee. Similarly, the Auditor-General has serious problems to consider, because his functions are circumscribed as to when he may investigate records, whom he may report to, and what powers of inquiry he has. At present his functions do not include advising or carrying out an inquiry on behalf of, or reporting to, a select committee.

I have not seen the legislation of the honourable member for South Coast. However, I have spoken to him about it and it does not seem to cover the points I have mentioned. I regret not having had an opportunity to look at the legislation. However, if it is necessary to change the powers of the Ombudsman or the Auditor-General as independent statutory officers, and to maintain at least some degree of separation of powers, that cannot be achieved through the proposed legislation of the honourable member for South Coast. We should be very careful about the

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precedent the Independents are trying to set by the introduction of their special legislation.

I shall continue to fight for the autonomy of this Parliament, and for this House to have the power of review. Certainly I do not think this House should be at the beck and call of another place simply because in that place - only temporarily - three Independents happen to hold the balance of power. I suggest to the Independents, who I know are not very happy with my stand on this issue, that they consider carefully to what extent they are being used to suit the political ends of the Opposition. It is the right of the Opposition to oppose; it is the right of the Opposition to use every method within the parliamentary procedure in order to gain what it seeks, that is, to gain office; but an Independent - and I was in this position between 1988 and 1991 - must be careful not to be used as a tool by an Opposition of whatever political colour, and must act in an independent manner. [*Time expired.*]

The Hon. D. F. MOPPETT [5.20]: I am pleased to support the Minister on this motion. It is most timely that attention is drawn to this aspect of the activities of the parliamentary inquiry into HomeFund. The Minister is to be commended for the restraint he has demonstrated in his comments. As Attorney General and Leader of the House he occupies a unique role and perhaps he has to be circumspect and restrained in the comments he makes. The Opposition and the Independents have brought considerable discredit on themselves by their complicity in this sad state of affairs. It has been obvious from the start of the debate in the other place that the Opposition has had cynical disregard for the future of HomeFund borrowers. The focus of the debate has been a witch hunt in an attempt to attach some blame to the former Minister for Housing; and to ride roughshod over the interests and anxieties of HomeFund borrowers who were simply caught in the aftermath of the recession - a savage consequence to borrowers serviced by this scheme who obviously had little access to more conventional forms of borrowing.

The point raised by the Minister in this debate demonstrates that the only reason the Ombudsman and the Auditor-General are involved is basically because the proposal for the establishment of a committee of inquiry had its legs knocked out from under it. In the vital week that the debate was unfolding in the press and in the Parliament, the Opposition and the Independents chose another tack. They were caught in a dilemma whereby, to gain some recognition from the public, they needed to obtain some respectability and remove the odium from the political exercise they had undertaken. The Leader of the Opposition and the Hon. I. M. Macdonald continually harangued us with disingenuous comments about the co-operation offered by the Ombudsman and the Auditor-General. That behaviour is evidence of the cynicism that surrounds the debate. Members would have been gullible to accept the arguments put forward in this debate by those two honourable members who, obviously, would have offered pro forma co-operation to the committee.

The comments of the Solicitor General clearly demonstrate how the Auditor-General and the Ombudsman

will be constrained by legislative restraints on their co-operation to provide any real assistance to the committee. I commend the Hon. Elisabeth Kirkby for her contribution to the debate and for her even-handed and dispassionate approach to this motion. I shall now shift the focus to the wider scene, because if one were to simply speak in the context of the formal motion, the point would be missed. The problem we face is much broader. We see almost a coalition for chaos in the other place where, because of the strange circumstance of the ballot, the group of Independents, who claim to be independent -

The Hon. Patricia Forsythe: The 2 per cent party.

The Hon. D. F. MOPPETT: Yes, the 2 per cent party - have fallen into collaboration with the Opposition and have been carried away with their own self-importance. A coalition between Machiavelli and Guy Fawkes would be the same; the results would be as unpredictable and explosive. The Independents are hellbent on trying to put a bomb under the Government, and the Opposition endlessly manipulates and schemes to bring down the Government for its own purpose. The interests of the public have become quite obscure. Since the 1991 election the Opposition has continually destabilised the good progress and management that the Government has offered to the people of New South Wales. That behaviour should be deplored not simply because of this particular issue but because of the continual program of harassment. The Independents are almost naive and unplanned collaborators - any excuse that could be offered for their behaviour has been whisked away like some transient mask and they are now seen for what they are: people who are carried away with their own importance and with another agenda; who are not at all interested in the wider scope of public affairs.

The interests of the borrowers caught in such a vicious bind have been cynically disregarded. Not only borrowers involved in HomeFund but many other borrowers across the credit-providing and credit-consuming spectrum in this State have been caught in difficult circumstances as a result of the recession into which we have been plunged. Constructive solutions must be achieved. This Government has shown genuine sympathy where it could help and where resources could be applied to actually bring about results that are in the interest of the public as well as individuals. The Opposition should be forced to cease making political play of the issue, regarding it as some type of tragic comedy affair, as it has been treated in the other place, leading ultimately to this inquiry, which suddenly had its credibility completely swept away by the measures brought in by the Government. It is sad to see the high offices of the Auditor-General and Ombudsman being brought into this issue.

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It is not only the scarce human resources of the parliamentary members engaged in the inquiry that will be squandered on this exercise; the resources of the offices of the Auditor-General and the Ombudsman, which are already stretched to the absolute limit, will be involved. The media have said that an estimated further \$250,000 will be required for the two statutory offices to participate in the inquiry in any meaningful way - to employ more staff in order that their normal core activities can continue while they are responding to the various inquiries.

Reverend the Hon. F. J. Nile: Who is going to pay?

The Hon. D. F. MOPPETT: Who is going to pay, indeed? Where is the extra \$250,000? Would it not be better if that money were used to benefit the borrowers rather than in a witch hunt? The Opposition is so shortsighted. I listened with great interest to the contribution of the Hon. Patricia Forsythe to the debate on the HomeFund motion. It may be of interest to her and other members that this scheme, in a slightly different form, was originally proposed to a former Liberal Party-National Party government in 1973. There is nothing new under the sun. The difficulties associated with trying to reach down to the furthest limits, to those who aspire to own their own homes but do not have access to the usual credit facilities, have resulted in a long-running saga. It was rightly said in debate that the Government was on sound ground in taking the risk because it is a deep-seated goal of Australians to own their own homes.

I am sure honourable members would agree with me that home ownership was a worthy objective for the Government to pursue through the HomeFund scheme. If something went wrong along the way, the important thing was to correct it, not to try to apportion blame or to try to get a political scalp. That is all the Opposition is interested in. It is all that the honourable member for South Coast is interested in, holding himself out as some sort of western marshal who rides in every now and then to straighten out the town and rides away with an outlaw in his care and custody. The honourable member is trying to play an absolutely ridiculous role of judge and jury on so many of these political issues. He has been caught out on many occasions and on this occasion he will be caught and embarrassed by his initiative.

Honourable members were entertained by another hectoring speech from the Hon. I. M. Macdonald, full of pious frauds designed to cover up the inadequacies of the response of his leader, the Hon. M. R. Egan. Members opposite could rightly be described as the press-gang of modern politics because they are interested only in headlines. As soon as the Leader of the Opposition concluded his speech, as soon as some substance might have been introduced into the debate, he scuttled out of the Chamber, not to do anything constructive but to lick his wounds from the interjections that rightly met the vacuous comments he made on this vital subject introduced today by the Minister.

I am deeply concerned about the central issues the Minister raised. I share the conviction of other members that offices such as the Auditor-General - which is of longer standing than the office of the Ombudsman - and the Ombudsman should be regarded as completely separate from the political process. They have duties to discharge irrespective of the colour, hue, or flavour of the government of the day. They should be free of the capricious whims of a vote of the lower House when the Government does not enjoy a majority in that place. It is appropriate that this House reaffirm its faith in the independence of those two offices and all statutory offices and that that independence not be trammelled by the expedience of everyday politics and the chance fall of the numbers at any election. I commend the Minister for introducing the motion. It is appropriate that the House debate it now, while the committee seems to be trying to find its feet and to set its direction. Honourable members should heed the Minister's comments. I support him in bringing the motion to the House.

Reverend the Hon. F. J. NILE [5.33]: I share the Minister's concern about the continued independence of the Ombudsman and of the Auditor-General. Part of the background to the urgency motion is the legislation proposed to be introduced in the other place by the honourable member for South Coast. That legislation would bring the Auditor-General and the Ombudsman into some relationship with the select committee of the other place and could perhaps make them direct servants of that committee. As the Hon. Elisabeth Kirkby said, we have not yet seen the legislation and to that extent we are in the dark as to its detail, though apparently what I have stated is the main thrust of it.

I asked the honourable member for South Coast if I could see a copy of the bill, but I was advised that that was not possible. The impression I gained from a quick conversation with him was that he wishes to discuss the bill with the committee and apparently the committee has not yet discussed it. It would seem also that Government members of the committee have not seen the bill. It is a pity that such a dramatic move has taken place at the end of this parliamentary session. This matter involves important questions that should not be decided in haste, though that could be the danger because it seems that the honourable member wants to get the committee off the ground and is aware that sitting days are, to put it mildly, right at the edge of the guillotine. Apparently the lower House plans to rise tomorrow.

The honourable member is proposing a bill that has not seen the light of day. As other honourable members have said, this matter seems to be creating new procedures and perhaps even new legal precedents relating to the establishment of the committee. It brings into question whether the committee is to be seen as a bona fide committee, as committees of both Houses have been viewed in the past. The question has been raised in both Houses and also in the media whether this committee has a political agenda. Some who were critical of

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HomeFund and the Government now have a leading role in the committee, and it is questionable whether the committee can be truly balanced and objective in carrying out its duties.

The objectivity of the committee will be a test for its chairman, the honourable member for South Coast, who I understand supported the motion of no confidence against the Minister, even though the media gave the impression that he opposed it. According to my reading of *Hansard*, he supported the motion of no confidence, as did the honourable member for Heffron. HomeFund is still at the centre of the debate but there has been an escalation of controversy and tension between the Government and the Opposition, and between the Government and the Independents, particularly with the honourable member for South Coast. It appears that tension is developing between the Legislative Assembly and the Legislative Council, and that is to be regretted. There is also potential for tension between the politicians and the public servants, if I might put it in those terms, relating to the positions of the Auditor-General and the Ombudsman. They are now being brought into the debate.

As the Attorney General said in his remarks, the motion of the honourable member for South Coast will set a precedent that may work satisfactorily on this occasion. However, that is open to question, as we know from the advice from the Crown Solicitor. The more important question, which may have escaped the honourable member who moved the bill in the other place, is whether the precedent opens the door to unintended consequences. Perhaps the precedent will be used by a future government to politicise the offices of the Ombudsman and of the Auditor-General and to remove their statutory independence. As other honourable members have said, the independence of those offices is vital if the interests of the community are to be maintained and if they are to respond to community complaints.

The Ombudsman and the Auditor-General could then be available to be servants of select committees, not just this committee but perhaps other select committees in the future. When they have the numbers in the other place, both sides of politics experience great temptations to use them to set up select committees, often with a political agenda to damage their opponent. The activities of various parties are observed in Parliament, and they are accepted. Parties with the numbers take the opportunity to seize the advantage. Concerns expressed by members may not be obvious now but in the future could become serious and damaging to the offices of the Ombudsman and the Auditor-General in carrying out their duties. With other speakers, I strongly support the continued independence of the Ombudsman and the Auditor-General.

As I understand it, the Ombudsman and the Auditor-General - perhaps the Ombudsman more than the Auditor-General - set their own agendas, work out their priorities, decide what their research staff should be doing, and allocate their budgets and their various duties. Though they have indicated they will co-operate with the committee, they would have no other choice if called as witnesses to give evidence. The proposed legislation of the honourable member for South Coast moves far beyond co-operation to where the Auditor-General and the Ombudsman will become, to some extent, servants of the select committee.

In a brief discussion I had with Mr Hatton outside the Chamber, he remarked to the effect that the select committee will cost money and the Ombudsman's Office will bill the select committee. Where does a select committee suddenly find thousands of dollars to pay the staff of the Ombudsman's Office? Where does the money come from, in these times, for the rush of select committees, the most recent to be chaired by Dr Macdonald? In a very humble way, he not only moved the motion to establish the committee but also put himself forward as chairman and will have what appears to be the balance of power. It must be a new idea that members of Parliament can create their own empires. It is a great temptation but, as honourable members know, I have resisted it. There is no Fred Nile select committee with Fred Nile as chairman, but the disease seems to be spreading in the other place. There is the Hatton committee, the Macdonald committee and, I imagine, if there was time, there might be the Clover Moore committee to enforce the homosexual vilification legislation, which she is keen to promote. It is not a healthy development.

If one select committee loses its credibility - I believe we are on the verge of it now - select committees of both Houses would lose their credibility. It would bring the entire parliamentary process into disrepute. Through the media the community would regard the Parliament as a place where people play games rather than carry out their serious duties and observe the conventions of the written or unwritten rules of how the Parliament should operate. Therefore, select committees should be formed, wherever humanly possible, only with the

concurrence of both sides of Parliament - the Government and the Opposition - and, where they exist, the Independents and the minor parties, as we have in this House on the crossbenches, so that genuine goodwill exists. Since the HomeFund tragedy the Government has appointed former Justice Rogers as the HomeFund Commissioner to put in place a procedure to rectify financial suffering by HomeFund borrowers. The priority should be to do all that is possible to assist the borrowers who are suffering. To that extent, perhaps a select committee of the other place is a distraction.

What is the real purpose of the Hatton-Grusovin select committee, if procedures have already been set in motion to resolve the problems experienced by borrowers and rectify any future problems? As I said, the committee could be tempted to spend more time seeking to discredit the Government, Mr Joe Schipp, the Minister at the time, or the current Minister, the Hon. Robert Webster. Is there a more sinister purpose? The Independents in the other place have produced their charter, aspects of which speak

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about a provision for a type of baton change, a change of government from the coalition Government to a Labor government, if corruption or maladministration can be shown. Will the select committee in the other place pursue that pathway to produce a report that would not only blacken a particular Minister but also blacken the coalition Government, thus providing some evidence to justify the so-called baton change? I hope that does not occur, but I have been in Parliament since 1981 and, having watched the various political plays, nothing would surprise me. My intuition has been proved correct 99 times out of 100.

It is important to maintain the independence of the Ombudsman's Office and the Auditor-General. I have studied the advice dated 29th April, 1993, given to the Attorney General by the Crown Solicitor's Office. His advice as an independent officer, looking at this matter in an objective way, must be accepted. He raised a number of real concerns in the document about how this arrangement would operate. On my reading he certainly is not giving it the green light, and that is why Mr Hatton is introducing his private member's bill in the other place. I share with other members a deep concern about the select committee to bring in a new law that would affect the operation of the Ombudsman and the Auditor-General. [*Time expired.*]

The Hon. J. P. HANNAFORD (Attorney General, Minister for Industrial Relations, and Vice-President of the Executive Council) [5.48], in reply: I draw the attention of the House to an additional remark made by a member of the Labor Party in relation to the Ombudsman (Amendment) Bill in its debate in the Legislative Assembly in 1990. I draw upon a comment of another shadow minister - one of the leadership team of the Labor Party - Mr J. H. Murray, who said in that debate:

The Ombudsman must be independent and distant from government in order to operate in a fair and impartial manner.

Included in that statement after the word "government" should be the words "and the Parliament", if the Parliament seeks to operate as though it were the Government. It is clear from comments they have made that members on the crossbenches and Government members recognise the important independent role played by the Auditor-General and the Ombudsman. The motion was instigated by the Government, which welcomes the comments of members on the crossbenches that reinforce that independence. Members on the crossbenches have also recognised that it is important to place their expression of support on the record because of what might occur in the future. It is a real possibility that no government will again control this Chamber.

I have been able to draw on comments that were made in 1974. In the same way people will be able to draw on my comments and those of the crossbenchers in this debate. The roles of the Ombudsman and the Auditor-General are independent of government and the controlling authority of sections of the Parliament. I use those words advisedly. At times in the future, sections of the Parliament might seek to exert influence. Earlier I indicated that, at some time in the future, the Ombudsman and the Auditor-General might use their investigatory powers to determine whether the Parliament should set up a select committee to pursue a line of investigation. A debate such as that could become highly politicised, as has the debate on the HomeFund issue.

If a House of the Parliament, through a select committee, seeks to subjugate the role of the Ombudsman and the Auditor-General, at least the comments that have been made in this House can be brought to the fore to

demonstrate that that independence must be maintained. I commend members on the crossbenches for recognising and reasserting another important matter, that is, that the New South Wales Parliament is a bicameral institution. This House reasserts its independent authority within the framework of the parliamentary system. Recently I conveyed to members in the other Chamber that this Chamber jealously preserves that independence. This Chamber is not to be seen as a mirror of the other Chamber. So it is important for members on the crossbenches to reassert that independence.

Members of the Australian Labor Party have not reasserted that independence. Tonight honourable members did not hear comments from members of the Australian Labor Party that were supportive of the role of this Chamber. It might not even be a matter to which they turn their attention. The comments I made about the principles of the Labor Party might be more true than my observation. Today the Labor Party's principles are based upon opportunism. Honourable members might remember the principles espoused by Walker in 1974 - the leader of the Left of the Labor Party. He strongly supported the independence of the Ombudsman. In 1974, Ron Mulock, one of the doyens of the Right of the Labor Party, on a matter of principle, similarly asserted this independence. Today, by and large, the Labor Party is without principles on such issues.

In a debate of fundamental importance - the relationship of government with government instrumentalities - the Leader of the Opposition was absent from the Chamber. During debate on this matter at most only one or two members of the Labor Party have been in the Chamber, but at the moment there are three. That reflects the degree of importance members of the Labor Party place on this issue. Only the Left has maintained a presence in the House today. No doubt the Left drew the short straw, as it indicated support for the principles we are debating. Those principles are dear to our hearts. I welcome the significant contributions made by my colleagues during this debate. I thank them and members on the crossbenches.

Motion, by leave, withdrawn.

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ANTIOCHIAN ORTHODOX CHURCH PROPERTY TRUST BILL

Restored

Message received from the Legislative Assembly and, pursuant to Standing Order 201, bill restored on motion by the **Hon. J. P. Hannaford**.

Suspension of certain standing orders agreed to.

FAIR TRADING (LAY-BY) AMENDMENT BILL

Suspension of certain standing orders agreed to.

Second Reading

The Hon. VIRGINIA CHADWICK (Minister for Education and Youth Affairs, and Minister for Employment and Training) [6.0]: I move:

That this bill be now read a second time.

The purpose of the bill is to remove undue restrictions on lay-by sales transactions by repealing the Lay-by Sales Act 1943 and to provide for a new simplified lay-by scheme by amending the Fair Trading Act 1987 to incorporate appropriate provisions. The new provisions will establish consumer remedies through a clear refund structure in the event of the absence or inaccuracy of a written lay-by statement. The major problem area has been disputes between supplier and consumer about the amount of refund, or indeed the lack of any

refund, after a cancellation, or what happens when the goods are not available. Consumers generally think they should get all their money back, and suppliers often think that they can keep the deposit or some other greater amount. Depending on the circumstances, both may be right, but the old Act is not always clear or easily understood.

The old Act was found to be overprescriptive, incomprehensible in parts, and outdated. It is not actively enforced because it does not provide any deterrent to offenders nor any remedies for consumer loss. In response to community feedback, the proposed new provisions fill the need to clarify the rights and remedies of both the supplier and the consumer. Although much of any lay-by arrangement is left to the consumer and supplier to decide upon, the keystone provision of the proposed new scheme will be a requirement for the supplier to give to the consumer a written statement, to be called the lay-by statement, containing all the relevant terms of the transaction at the time of entering the lay-by. Without actually prescribing the terms, the proposed provision gives some examples of what may be considered as important and relevant terms, such as the cancellation fee.

It is up to the supplier to decide what information is relevant or not, and whether a statement is given as a sales docket, a receipt or an envelope, or anything else. The new scheme will allow the consumer to cancel the lay-by at any time before its completion, subject to the specified cancellation charge. It also allows the supplier to cancel if the consumer has defaulted on payments, subject to the specified cancellation charge. All other moneys must be refunded. Failure to comply with the fundamental requirement of providing a lay-by statement will not be an offence, but will lead directly to clear remedies for the consumer. The supplier will not be allowed to keep the cancellation charge if: the supplier has breached any term of the lay-by, such as supplying goods which are not as ordered; the goods were not supplied at all; there was not a written lay-by statement; there was no cancellation charge specified in the lay-by statement; or any term was misleading, deceptive or materially false.

The proposed scheme imposes a limit on the cancellation charge payable when the lay-by is cancelled. The charge is not to exceed the supplier's reasonable selling costs and an amount, if applicable, for loss of value of the goods. The onus is on the supplier to establish those reasonable selling costs, and any loss of value, and that the loss of value could not have been avoided. The issues of what is reasonable and when is a loss of value chargeable will be part of a program of education for both consumers and suppliers. Although the cancellation charge specified in the upfront lay-by statement may be taken as an agreement between the two parties, the passing of time between early or later cancellation may vary the reasonableness of any ostensible selling costs. It is also expected that any cases of loss of value will be infrequent. In any event, the consumer maintains a right to dispute these matters in a court or tribunal.

The new scheme also provides that the supplier will not be entitled to demand full payment before the end of the lay-by period. It will also be an offence to contract out of the new provisions; that is, to include a term in the lay-by statement which excludes, modifies or restricts the operation of these provisions. The maximum penalty for that offence will be \$5,000. The bill provides for miscellaneous amendments to the Fair Trading Act to extend other remedial provisions of that Act to the new part. These proposals as a whole represent a recognition that lay-bys are an increasingly popular business arrangement for suppliers to attract customers, and for customers to organise their shopping without resorting to overuse of credit cards. It is a system of trading worthy of preservation. Allowing time for further consultation with the Retail Traders Association to ensure consistency of promotional materials, commencement is proposed for August this year. I commend the bill to the House.

The Hon. R. S. L. JONES [6.4]: The Australian Democrats support the Fair Trading (Lay-by) Amendment Bill. This legislation repeals and updates the Lay-by Sales Act 1943. I thank the Minister for Consumer Affairs and Assistant Minister for Education and her advisers for briefing me on this legislation. It appears that most problems arising from the increasing use of lay-bys relate to whether or not buyers can claim refunds of deposits and payments when cancelling a purchase. About 200 cases a year

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involve disputes between purchasers and vendors and I believe that many, if not all, of these disputes will be

eliminated by the provisions in the legislation. While the legislation is far less prescriptive than the 1943 Act, it will nevertheless be more effective, in my view.

When a purchaser makes a decision to lay-by, the purchaser will be given the conditions of the lay-by, including the cancellation fee, at the time of making the first deposit. A person who decides to cancel a purchase will now know exactly how much he is liable to lose. The vendor may well have different cancellation fees depending on how soon after the initial deposit the purchaser cancels. For example, if the purchaser cancels the day after putting a deposit on an item, there may well be a 100 per cent refund. If, however, the vendor has had to have the item specially manufactured for the purchaser, the cancellation fee could be very high if cancellation occurs after the item has been manufactured. The details of the cancellation fee must be given to the purchaser at the time of entering the contract. If no cancellation fee is mentioned on the document given to the purchaser, the vendor may not claim any cancellation fee at all.

It is interesting to see that the use of lay-by has been increasing lately. The honourable member for Mount Druitt, the shadow minister for consumer affairs, provided a list of companies offering lay-by in his speech in the other place on 12th May. Conditions vary from store to store. I have no doubt that when charges for credit cards are introduced so that there is no longer a free period, people will use the lay-by system even more. I believe also that many people have been frightened by the size of their credit card bills and are going back to what might be deemed an old-fashioned way of buying items. I note that the Minister herself uses the lay-by system for purchasing Christmas presents. One of her reasons for doing this is to ensure that she can keep her Christmas presents secret until she can pay for them and bring them home.

My first experience of lay-by was for a blue and white painting of yachts on Sydney Harbour by an artist called Stodulka, which hung on the wall of a restaurant which I frequented, opposite the place where I worked at 119-121 Liverpool Street. Both the restaurant and the place where I worked have long gone, through what is called redevelopment, but I still have the painting on my wall, at home. I believe that lay-by is a very safe way of buying stock. It saves people the heartache of being landed with the bill some weeks later. It helps to prevent people from going over their heads in debt. Unless they have paid for the item, they do not get it. I, for one, hope that the lay-by system will boom.

The Hon. J. W. SHAW [6.8]: I must confess that in recent years I have not given a great deal of thought to the institution of the lay-by. I suppose that reflects the era of the credit card. Certainly I recall growing up in the 1950s when our family used lay-bys as a means to purchase various goods. It is obvious that in more difficult economic times the lay-by is again becoming common, as it used to be. An examination of the bill reveals that it is a competent piece of consumer protection. Its terms are simple; it makes clear prescriptions about the rights of purchasers and sellers using the lay-by method. Consistent with many bills I have read recently, it is an example of good, clear, modern drafting in the New South Wales jurisdiction.

I am increasingly becoming an admirer of the work of the Parliamentary Counsel. First, the bill contains a definition of a lay-by. Proposed section 60E defines the meaning of a lay-by for the purposes of the legislation. It states the entitlement of the consumer to a written statement of the terms governing the lay-by and provides a right to cancel the lay-by if the consumer notifies the supplier in writing that the consumer wants to cancel. Obviously that must be done before the point of delivery. The bill explains the consequences of cancellation. A cancellation charge is allowable, but restrictions are placed on it so that it cannot exceed a reasonable sum. Neither consumers nor sellers of goods can contract out of the legislative provision. All in all this is good legislation and the Opposition is happy to support it.

The Hon. HELEN SHAM-HO [6.11]: It gives me great pleasure to support the Fair Trading (Lay-by) Amendment Bill, which will have far-reaching benefits for the public. This is a significant and progressive milestone for consumer spending. The purpose of the bill is to simplify the lay-by process for retailers and buyers alike. By repealing the Lay-by Sales Act of 1943 and amending the Fair Trading Act the Government will streamline lay-by laws for the good of everyone. In these continuing tough economic times any measure that will encourage people to better manage their finances and thus alleviate credit problems is to be commended. I am pleased to learn that the Opposition fully supports the bill. No sensible person would not

support the measure. Most of my honourable colleagues will remember when credit cards were not available and many major purchases were made by using the lay-by system. It was a good means of purchasing goods.

The Hon. Virginia Chadwick: For some people who could not afford to buy them, it was the only means.

The Hon. HELEN SHAM-HO: As the Minister said, for some people it was the only means of buying Christmas and birthday presents, new furniture, electrical appliances, clothes and for children to purchase the latest record. People were able to budget for a purchase because they knew that they had a limited time within which to pay it off. In the 1970s credit cards and hire purchase became available. For many these have become the only means of purchasing various items. Unfortunately, for some people it has caused also appalling credit problems. Obtaining credit has become much easier, and putting it on the plastic - as I do all the time - and worrying about paying only later has become a way of life for many people. I well remember when I was a

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social worker a number of people who had got themselves into disastrous financial situations; they were demoralised and degraded by constant visits from debt collectors and by an inability to extricate themselves from their difficulties. I had to arrange financial counsellors for many of my clients and often had to deal with retail stores, I recall Waltons being one at that time.

With the advent of credit cards lay-bying of goods became less popular and many retailers stopped offering that facility. For those who used the lay-by system the regulations were unclear, overprescriptive and often not enforced when disputes arose between sellers and buyers. No party was quite sure of its rights under the Acts governing purchases. The principal disputes concerned rights to refunds upon cancellation and the unavailability of goods after payment. The Government is intent on rectifying those problems by introducing this legislation. To ascertain the aspects of the existing legislation that needed changing, the Lay-by Sales Act was reviewed in 1992 as part of the consumer law review program. The consensus of opinion following that review was that basic requirements for lay-by transactions should be maintained after they were simplified and made more effective through fair trading legislation. The bill will meet that requirement.

The main provision is that purchasers will receive a written lay-by statement upfront, explaining their rights and obligations, including the right to a refund and the obligation to pay a cancellation fee, as well as the date by which final payment must be made. These matters are spelled out in proposed section 60F. The other main features that will be inserted into part 5B of the Fair Trading Act include proposed section 60E, which defines a lay-by and makes it clear that the goods ordered under a lay-by need not be in existence or in the supplier's possession at the time the lay-by commences.

A consumer's right to cancel at any time before the goods are delivered is provided for in proposed section 60G. A full refund is made subject to payment of an agreed cancellation charge under the provisions of proposed section 60I. A supplier will have the right to cancel and to keep agreed cancellation charges if a consumer breaches a term of the agreement. That right will not apply if the supplier has breached any term of the lay-by, if the goods are unavailable, or if the required lay-by statement is not given to the consumer or is misleading. All other amounts must be refunded to the purchaser, as provided for in proposed sections 60H and 60I.

Proposed section 60J will limit the supplier's rights and remedies to the entitlement to a cancellation fee only if specified at the beginning of the transaction and if the consumer cancels or defaults. Under proposed section 60K a supplier will not be allowed to demand full payment before the date specified in the lay-by statement. A limit on the cancellation charge payable when the lay-by is cancelled is specified in proposed section 60L. Proposed section 60M sets out that the supplier will not be allowed to contract out the provisions of the lay-by. It is important to note that any other rights consumers may have under other legislation, such as the Sale of Goods Act, will not be affected, provided they are consistent with the operation of the proposed insertion of section 60N into the Fair Trading Act.

I am sure all honourable members will agree that the proposed legislation will give a good message to the public: the Government understands that in the present economic recession every effort must be made to lessen the hardships many people are suffering. The Government wants to encourage people to practise saving for purchases and to buy what they can comfortably afford, rather than living beyond their means by succumbing to every temptation that credit cards present. As a result of the Federal legislation introduced last week that enables banks to charge fees for credit cards, it can be expected that even more economic hardship will be experienced by some people. The New South Wales Government wants to help citizens to lighten their credit burdens, not increase them. The Government will assist people by facilitating the lay-by system and encouraging shoppers to budget for their purchases and prevent credit card abuse.

The legislation will encourage more retailers to offer lay-bys, and this will ultimately improve the economy. It is well known that the Fahey Government is continually striving to improve the economy, in spite of the irresponsible policies of the Keating Federal Government which do not make the economic situation any easier. On a lighter note, by revising lay-by regulations the Government will make shopping for presents much easier for parents. Who has not had the problem of hiding children's birthday and Christmas presents away from inquisitive eyes, waiting for the special occasion? By lay-bying goods one can be assured of having the desired present but only needing to collect it the day before the special occasion.

The Hon. J. R. Johnson: One has to be careful that the storage place does not burn down in Christmas week, as happened to me.

The Hon. HELEN SHAM-HO: That was unfortunate; but it does not happen frequently - only once in a blue moon. Presents can always be collected shortly before they are needed. That will be one of the benefits of the legislation. I support the bill.

Reverend the Hon. F. J. NILE [6.19]: The Call to Australia group supports the Fair Trading (Lay-by) Amendment Bill. The object of the bill is to replace the existing Lay-by and Sales Act of 1943 with simpler and less prescriptive provisions for the protection of consumers under lay-by sales laws. The various new provisions of the bill will become part of the Fair Trading Act. For many years the lay-by system has worked effectively, in particular for people on low incomes, working-class people and those who are short of cash. By this method customers have been able to secure a particular item until such time as they save the cash for the lay-by payments. Even though customers cannot take the item home until the last payment has been made, they have a sense of ownership and satisfaction.

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In recent times credit cards have taken over from the lay-by system, but buyers did not realise that because of high interest rates credit cards would be far more expensive than the lay-by system. Despite considerable agitation to reduce those interest rates, they have been reduced only slightly compared with the interest rates paid by banks. The Federal Government has given the green light for a \$30 annual credit card charge, but without a guaranteed reduction in interest rates. That is a disgrace. The bill will provide consumer protection, will make the system more workable and, with adequate marketing, in future will probably take the place of credit cards. This will restore the lay-by system to its rightful place in the retail area. The Call to Australia group supports the bill.

The Hon. VIRGINIA CHADWICK (Minister for Education and Youth Affairs, and Minister for Employment and Training) [6.21], in reply: I thank all honourable members for their support of the bill and the lay-by system. I have many fond, and sometimes not so fond, memories of using the lay-by system extensively. From the comments of honourable members on both sides of the Chamber I suspect that they, too - particularly the Hon. Helen Sham-Ho and the Hon. Elaine Nile - have been grateful for the lay-by system. As with many honourable members, my family grew up with the lay-by system and on pay week part of the kitchen bench was liberally sprinkled with bits of paper stapled together and money on each docket in an effort to pay off lay-bys. As an impoverished university student on a scholarship I fell into this habit and I suspect I am not alone in still having fairly depressing memories of changing my scholarship money into ten shilling notes,

laying out all my lay-by papers along my bed and finding that there were not enough ten shilling notes to cover each pile of lay-by dockets.

Despite the rather depressing realisation that even with lay-bys a university student was still living beyond his or her means, the system is practical and has served the Australian community well. I never understood why it fell into disuse. Perhaps it was because of some of the unwieldy mechanisms and lack of clarity in the rules, laws and regulations surrounding it. As the Hon. Helen Sham-Ho said, our fascination with bits of plastic probably helped lay-bys fall into disuse. Robert, the husband of the Hon. Helen Sham-Ho, must be an extremely tolerant man. I would never say in this Chamber that I have used plastic cards extensively in case my husband read that. The lay-by system is a practical mechanism for many people in the broader community and in times gone by many honourable members have been thankful for it. I thank honourable members for their support and commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

[*The President left the chair at 6.25 p.m. The House resumed at 8.30 p.m.*]

DOG (AMENDMENT) BILL

CRIMES (DOGS) AMENDMENT BILL

Second Reading

The Hon. J. P. HANNAFORD (Attorney General, Minister for Industrial Relations, and Vice-President of the Executive Council), on behalf of the Hon. R. J. Webster [8.30]: I move:

That these bills be now read a second time.

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

Leave granted.

The object of these Bills is to put in place stronger measures which may be taken against irresponsible dog owners. The Bills focus in particular on owners whose dogs have shown vicious behaviour and which may have already caused harm.

Whilst everyone in the community may not own a dog, there are few who are unaffected by dogs in their daily lives. The vast majority of dogs provide benefits to society through companionship or working skills. However, a small minority may pose a significant danger if uncontrolled. Responsible dog ownership is therefore imperative for the good of all in the community.

The existing Dog Act sets the minimum standards of dog ownership which the community expects to be observed, for example leashing a dog whilst it is outside its own yard. These standards are clear and easy to understand. There is, however, an element which does not observe these basic rules and it is here that the potential for harm arises.

The aim of the amendments is to build upon the existing legislation to encourage responsible dog ownership. The Bills make irresponsible owners more accountable for their actions, especially where their dogs have been proven to be dangerous to persons or animals. The measures will also reduce the likelihood of harm occurring in the first place.

I might emphasise that there is no intention to place any burden on the average family pet owner who is conscientious in controlling his or her dog.

The need for reform is demonstrated in the significant level of community concern over the number of injuries caused by dogs. Young children in particular have sustained horrific damage.

The New South Wales Department of Health maintains statistics on injuries caused by dogs which require hospitalisation. Recent figures show that there were 178 people hospitalised from dog bites in 1989/90 and this figure increased to 387 in 1990/91. Half of these victims were children. The much larger number of less serious attacks can only be guessed at.

Similar concerns have been voiced by other States and there has been joint commitment to develop controls for vicious dogs. These Bills are in furtherance of that commitment by the Government.

In 1988 the New South Wales law reform commission made a number of recommendations on dog control in its report on "liability for injuries caused by dogs". Some of its recommendations were implemented immediately. With these further amendments a substantial proportion of the Commission's recommendations will have been implemented.

With the provisions of the Dog (Amendment) Bill and the Crimes (Dogs) Amendment Bill, the Government is fixing the responsibility for a savage dog squarely on the person who must control the animal - the owner. It is recognised that the problem of savage dogs in the community does not originate with the dog but with the owner. This then is where the burden must lie.

Let me first mention the amendments to the Crimes Act. The legislation follows the recommendations of the Law Reform
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Commission. It was concerned at, and I quote from the Commission's Report, "the dog which is kept for its vicious character" and that "existing criminal sanctions...Do not adequately reflect the seriousness of the offence committed when such a dog is set on someone".

The offences have been created to ensure that the law is effective against a person who uses a dog as a weapon to cause harm. Such cases may be isolated but are completely reprehensible.

New clause 35A provides that where a person maliciously uses a dog to cause actual or grievous bodily harm, a maximum penalty of 5 years imprisonment may be imposed if actual bodily harm is caused, or 7 years if grievous bodily harm results.

I would stress that all of the common law defences such as acting in self defence apply to these offences. Responsible use of a guard dog does not therefore expose any person to conviction.

Section 440AA of the Crimes Act also applies to impose a maximum penalty of \$100,000 as an alternative to imprisonment.

Turning now to the Dog (Amendment) Bill, councils will be given powers to declare any savage dog which is ordinarily kept in its area as "dangerous". The owner of a dog declared dangerous is then subject to stringent requirements to control the dog and to increased liability for harm caused by that dog.

Particularly, the owner of a dangerous dog must keep the dog effectively restrained while on the property where the dog is ordinarily kept so as to prevent it from attacking any person or animal. The means of restraint is at the discretion of the owner and could include a fence, chain or enclosure in a building if appropriate. In addition, clearly visible warning signs must be erected on the boundaries of the property.

The dog must be leashed at all times when outside the land or premises where it is ordinarily kept and the exemptions which apply to other dogs will not apply to dogs declared dangerous.

Other requirements deal with the movement of a dog to another place temporarily, change in the dog's ownership, and ensuring that the council is informed of the dog's whereabouts.

Liability for attacks by a dangerous dog extend to attacks occurring without provocation on land or premises where the dog is ordinarily kept, by amendment to sections 6, 20 and 20B of the Dog Act.

A council will be able to declare a dog dangerous under new clauses 9D and 9E if it has attacked a person or animal without provocation, or if it has repeatedly threatened to attack or chased a person or animal without provocation.

A definition of "provocation" is inserted in recognition that there will be instances where there is justification for the dog's

behaviour. If a dog has been provoked according to the definition, it cannot be declared dangerous.

For example, "provocation" includes the situation where a dog is being abused by a person or being attacked by another animal.

The definition also encompasses instances where a dog reacts viciously to a person who is attacking the dog's owner or another person towards whom the dog could reasonably be expected to be protective. A dog may have formed protective instincts, for example, towards members of the owner's immediate family or household.

The legislation therefore recognises the importance of responsible use of a guard dog to protect life and property.

Based on the principles of natural justice, clauses 9F to 9L will provide that if a council is considering the declaration of a dog, it must give notice of its intention to the owner. It must then consider any comments made by the owner. Following this, if a council decides to declare the dog dangerous, the owner will have 28 days to appeal to the local court which may confirm or revoke the declaration.

Once a declaration is in force, the dog owner is then subject to the strict requirements of clause 9T which have been outlined, in addition to all existing obligations.

The maximum penalty for any breach of the dangerous dog provisions is \$1000. The penalty is also applicable for failing to register a dangerous dog under section 5.

Magistrates' powers under the Dog Act to enforce these new measures have been consolidated and extended. They are now contained in new clauses 9M to 9S.

The local court has existing powers to order the control of a dog or even its destruction. These powers have been melded with the new provisions so that a magistrate will have the capacity to effectively resolve any matter involving a dog without the need for additional court proceedings.

To take one example, the court may declare a dog dangerous of its own initiative if satisfied that the dog has attacked without provocation as previously explained. It may also order further controls such as muzzling or finally destruction of the dog, if the dog attacks again. This is in addition to any penalties or criminal sanctions to which the owner is subject.

I must emphasise here that the ultimate sanction of destruction of a dog following an attack is given appropriately to the courts only. Local councils are not given any similar ability.

It is unfortunately true that some members of the community will continue to show a flagrant disregard for the rules of dog ownership. In particular, where a dog has attacked and caused injury to another, the dog's owner may continue to ignore obligations to control the dog, putting the community at risk.

To address this the courts have been given the power to disqualify a person from owning a dog for a time under clause 19A. The power is only available where a person has committed at least two criminal offences involving a dog attack. Of course, the exercise of the court's full discretion ensures that this measure is only imposed where warranted.

It has been necessary also to increase the penalties for all offences under the Act. It is manifestly clear that the current penalty levels in the Dog Act no longer reflect the cost to the community of the breach or of enforcement of the offence.

The maximum penalty for general offences is increased to \$500. Offences flowing from a dog attack are more serious, and a maximum penalty of \$1000 is imposed.

These penalties may be imposed by a magistrate if the owner is taken to court. Councils will continue to have the option to issue "on-the-spot" fines in a lesser amount for certain offences as an alternative to court proceedings. The level of penalty is specified in the Dog Regulation, together with other matters such as registration and impounding fees.

The Dog Regulation is set to be reviewed in its entirety as part of the government's ongoing regulation review process. The

review process will follow the passage of these Bills and will involve public consultation.

Of a more minor nature, Schedule 2(5) deletes certain administrative provisions which will be transferred to the regulations in anticipation of their review. Consequential regulation making powers are included in Schedule 2(6) and Schedule 1(10).

It has become clear that ordinary members of the community, both dog owning and otherwise, have borne the burden of savage dogs which are irresponsibly controlled. Any dog becomes a menace only if its owner lets it. Therefore the Bills fix the blame where it most often belongs, that is with the owner.

The range of measures which are proposed are designed to encourage responsible dog ownership throughout the community, especially in those persons whose dog owning ethic is demonstrably lacking.

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The government also strongly supports the warnings of animal welfare experts in response to dog attacks, particularly where a family pet has attacked members of the family. Regrettably, it must be said that any legislation is of only limited effect in these instances.

To repeat the warning - while dogs may be excellent companions, parents and dog owners should be especially aware of the danger any dog poses to a child, and any person should approach a dog with caution.

To further the community education process, there will be a three month "lead-in" period before the measures take effect. Through this, the public and enforcement agencies will become fully aware of the provisions and the continuing responsibilities which come with the pleasure of owning a dog. Animal groups such as the R.S.P.C.A. and the Animal Welfare League are already anticipating these amendments, having been involved in consultation prior to drafting.

I commend the bills.

The Hon. J. W. SHAW [8.32]: The Opposition does not propose to vote against these bills or to move any amendments, but we desire to express our view that they do not represent a completely satisfactory revision of the law in relation to dogs. It must be said that for many years governments generally have failed to fully provide satisfactory and balanced laws relating to dogs. Those who live in the inner city are aware not only of the general problems that dogs create but of the dangers that dogs pose, particularly to young children. The Opposition believes that this bill does not sufficiently grapple with those problems, and that the Government and the Opposition should find a satisfactory alternative.

Dog attacks are a serious problem. In 1990-91 in New South Wales, 387 people were hospitalised as a result of dog bites, and in 1989-90 178 people were hospitalised. Members of this House are well aware of some quite horrific and appalling attacks by dogs on young children, and we all react appropriately and emotionally to those attacks. Significant legal restraints need to be imposed on dog owners in order to preclude shocking and tragic dog attacks; and this legislation has not been embraced with any enthusiasm by interest groups - not only dog owners but parents and other interest groups. On the contrary, in so far as it attempts to provide an answer to the problems it has been regarded sceptically.

It is public knowledge that on 1st March a meeting of interested groups was convened at the Bankstown offices of the Department of Local Government. At that meeting were representatives of the Animal Welfare League, the Royal Society for the Prevention of Cruelty to Animals, the Canine Council, the Local Government and Shires Associations, the Australian Institute of Ordinance Inspectors, the Australian Institute of Environmental Health, New South Wales Division, the Child Accident Prevention Foundation, New South Wales Division, the Animal Welfare Advisory Council, the Police Service, the Australian Veterinary Association, the New South Wales Farmers Association, and perhaps other groups; certainly groups with a real and valid interest in this legislation. At the meeting a resolution was passed in the following terms:

That the Minister's initiatives are welcome but the proposed legislation is re-active rather than pro-active and is unlikely to be

capable of effective enforcement and will not prevent the majority of attacks.

A second resolution was in the following terms:

That the existing problem requires an effective educational program, both to the public and to Local Government, and a review of all fees and penalties which are clearly inadequate and ineffective.

The Opposition understands that those resolutions were passed unanimously. Despite that expression of criticism, it seems that the proposed legislation has not been substantially revised since the date of that meeting on 1st March. The new legislation increases relevant penalties, but there is doubt whether it sufficiently increases the penalties to provide an adequate deterrent or answer to the problem of dogs attacking citizens. The new legislation provides for new criminal offences, but they have the appearance of being rather difficult to prove and of providing rather expansive defences to defendants. It is legitimate to question whether the new criminal offences and avenues of criminal redress will really provide an effective and comprehensive answer to the problem of the conduct of dog owners.

The penalty provisions of the legislation will be increased to \$500 in many cases for general offences. The maximum penalty for a dog attack will be increased from \$200 to \$1,000. Again it is legitimate to question whether maximum fines of that magnitude are sufficient to deter wrongful behaviour by dog owners. Where a person uses a dog to inflict actual or grievous bodily harm on another person, significant penalties are provided, namely, imprisonment and fines of up to \$100,000, which can be imposed by the court. However, the Opposition makes the point that those offences are likely to be difficult to prove to the criminal standard of onus of proof - beyond reasonable doubt. One wonders whether those penalties will be sufficiently effective. I suppose I am expressing ambivalence about this legislation: the Opposition is not prepared to oppose it because it is an attempt to grapple with the problem, but it seems an inadequate attempt. It would be appropriate for both the Government and the Opposition to consider whether more comprehensive and more satisfactory laws should be enacted to deal with dog problems.

The Hon. BERYL EVANS [8.40]: I am pleased to support the Dog (Amendment) Bill and the cognate bill. The object of the bills is to strengthen measures for the control of dogs in the community, including dogs with vicious tendencies. In New South Wales alone, injuries caused by dog bites requiring hospital treatment increased sharply from 178 cases in 1989-90 to 420 cases in 1991-92. Over recent years disturbing graphic accounts of dog attacks, particularly on young children and the elderly, have been reported by the media, and there have been strong calls by the community for stricter dog control legislation. The present Dog Act requires the compulsory licensing of all dogs but enables local councils to level only a relatively small fine, and it is difficult for councils to enforce many of its provisions.

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The proposed amendments seek to avoid harm occurring in the first instance and to control dogs that have already caused injury. Schedule 1 of the Crimes (Dogs) Amendment Bill will amend section 35A of the Crimes Act by proposing two new criminal offences. A person using a dog as a weapon to inflict actual or grievous bodily harm on another person can incur a maximum penalty of seven years' imprisonment or a fine of \$100,000. However, it is emphasised that this does not include the responsible use of a guard dog for self-defence or other defence purposes. Amendments to the Dog Act will enable a local council to declare a dog to be dangerous if it has attacked a person or animal without provocation. Proposed sections 9F and 9G provide that a dog's owner has an opportunity to comment on a proposed declaration of a dog as dangerous and that such declaration will be subject to review by a magistrate.

The principal bill defines provocation as a person teasing, tormenting or abusing a dog, deliberately trespassing upon a place where a dog is kept, or attacking a person in front of a dog; or another animal attacking a dog. I find that definition intriguing. Many times I have seen teasing, tormenting or abusing of a dog. It is usually done by little boys who love to do just that. If a dog behind a fence barks at little boys, the boys will rattle the fence or walk backwards and forwards to tease and upset the dog. It is very difficult to tell little boys

that they must not do that. However, if they are not warned or if no one is there to warn them, and a dog attacks them, there is trouble. Over the years I have owned a German shepherd and it has been fascinating to watch that dog behave in the country. German shepherds are trained as one-owner dogs. My two sons had the greatest joy in teasing that dog by pretending that they would hurt me, and the dog's reaction was incredible. One trains a dog to look after its owner.

I used to have to travel hundreds of miles alone in my car to collect children from school and so on. I always took my dog with me and I knew there was no way that a single person could open the door of the car while the dog was in it. Yet at other times I have offered a lift to someone and the dog has sat back and smiled at that person, in the way that a dog often can, and not harmed that person. The important thing is that dog owners control and train their dogs. Once a dog has been declared dangerous by a local authority it must live under strict rules. The owner must restrain it by a fence, chain or enclosure to keep it on its property. A warning sign must be erected and the dog must be leashed at all times when it is outside the property. The local council must be notified within 24 hours if the dog goes missing, dies, is sold, or attacks a person or animal. Breaches of the provisions relating to dangerous dogs will incur a maximum penalty of \$1,000.

I wonder how we identify dogs as dangerous. I could tell the House a very interesting story, but the former Leader of the House told me I must not do so. I am amazed that when a council registers a dog the owner is given a tiny disc to attach to the dog's collar. If a dog is reported as lost and the only way it can be identified is by means of the disc on the collar, the owner will be very lucky if the disc is still there. The maximum penalty of \$1,000 is a lot of money and may make people realise how important it is to train and control their dogs. Proposed sections 9M to 9S of the Dog Act will extend a magistrate's powers in the event that the dangerous dog provisions are contravened, and will include the power to order the destruction of the dog, if necessary. A magistrate will also have power to disqualify repeat offenders from owning dogs for up to two years.

Penalties for contravening dog laws will also be increased. The maximum penalty for general offences will be increased from \$100 to \$500, and offences flowing from a dog attack will be increased from \$200 to \$1,000. These are maximum penalties that may be imposed by a magistrate if the owner is taken to court. In effect the new provisions will make all owners legally responsible for the behaviour of their dogs. It will be easier for anyone who is attacked to seek redress against a dog's owner. Very often owners do not understand the needs of their dogs. It is very easy to acquire a little dog, but eventually that little dog grows into a big dog, and the owner might have no idea of the dog's needs. One of my colleagues, for example, has a very large dog that needs continual exercise and control. Many people do not understand how intelligent dogs are.

The Minister has chosen not to single out a particular breed of dog, and I agree with that because there is no way that one can say that a particular breed of dog is savage. Dog attacks have involved not only bull terriers and other fighting breeds but also a wider range of breeds and crosses. Honourable members would know that in the country we have many different breeds of dogs. The smallest dog I have owned was a fox terrier, which my sons loved as a tiny pet. Admittedly that small dog was used to my small sons, but whenever anyone else came we had a problem. We tied the dog up in the back shed whenever small children came to visit. On one occasion my cousin visited with a small child. Most people will acknowledge that it is difficult to keep an eye on a small child all the time. That child roamed up to the shed, found the small dog, and patted it very nicely, but the dog almost bit off the child's ear and we had to race the youngster to the doctor. It is not the size or type of dog that makes it savage; it depends entirely on the dog itself and how it is provoked.

It is now generally acknowledged that it is not the breed of the animal that is the problem but the failure of the person who buys the animal to train it responsibly. How many times have we heard people say that Christmas is coming and that a small dog would be an ideal Christmas present? Unfortunately many parents are tempted to buy a darling little puppy for a child, thinking that the child will love the dog; but in six months' time the dog will be much bigger and often no thought will have been given to its proper care and control. There is a growing trend by some people in some areas to keep large guard dogs for protection, particularly with the escalation of

house robberies; but unfortunately many owners have no idea of how to control or train those dogs. A German shepherd is the most intelligent dog one can have, but if it is not trained and controlled, there is no way to predict what it will do.

These amendments will ensure that minimum standards for dog ownership are maintained, but the problem will not be solved by regulation alone. When two-year-old Romy Wallbank of Randwick approached a leashed dog and put her hand out to pat it, she could hardly have been expected to sense the danger of her action. Before she had a chance to touch it she was viciously attacked. I cannot understand parents who walk along with a small child, see a tethered dog, and allow the child to reach out its hand and pat the dog. That is probably one of the most dangerous things one could ever do, yet it is the dog that is blamed, not the parents. Children aged five years and younger are the most common targets of dog attacks, receiving most injuries to the head, neck and face, which are within the reach of the dog. If a parent does not say to a child, "It is a lovely dog, darling, but please do not touch it, just look at it", why blame the dog?

Dogs can attack for a variety of reasons. Some feel threatened, others are aggressive and territorial in nature. The very act of patting a dog on its head or back can be perceived by the dog as an aggressive action. Yet, this is what most adults accept and even encourage children to do when approaching a dog. Almost half of the children bitten by dogs are attacked in their own home or in relatives' homes. I have just explained to the House how the smallest dog my family ever owned was the only one that attacked a visitor's child. Young children are far too inexperienced to recognise the warning signals dogs give when provoked. It is important that adults teach their children the right way to approach and handle dogs.

The Minister has signalled his intention to introduce a public education program, which I am sure will be enthusiastically received by the community as well as by animal welfare and child protection groups. Education in the schools is most important. Children love animals, no matter how big they are, how small they are, or what they look like; children never sense any fear from animals. They are inclined to walk up and say, "Isn't it lovely?" and reach out their hand, and that is when the trouble occurs. I support the Dog (Amendment) Bill and the Crimes (Dogs) Amendment Bill and sincerely hope that these further measures, together with public education, will encourage more responsible dog ownership and reduce the growing number of vicious dog attacks, particularly on young children and the elderly.

The Hon. R. S. L. JONES [8.52]: An Australian Associated Press release dated 19th May says:

Pit bull terrier turns on owners

Police had to shoot a pit bull terrier after it unexpectedly turned on its owners and mauled them in St Albans in Melbourne's west last night.

The couple had their wounds stitched in hospital after the pit bull terrier they had owned for two years and described as usually very loving attacked them without warning when they went into their garden at 9 pm.

A few days ago an article in the *Sydney Morning Herald* reported:

Dog shot dead after elderly woman mauled

An elderly woman underwent emergency surgery on her leg last night after being mauled by a dog which jumped a two-metre fence and attacked her while she was gardening at a Roselands house yesterday.

The dog was an American stafford terrier.

The PRESIDENT: Order! I ask the Hon. R. S. L. Jones to identify the dates of the articles.

The Hon. R. S. L. JONES: The AAP release was dated 19th May, as I mentioned earlier, and the article in the *Sydney Morning Herald* was dated 3rd May. Two or three years ago I asked a question about the use of

pit bull terriers for dog fighting but I did not receive a satisfactory response. In any event, the legislation is now before the House and the Australian Democrats support the Dog (Amendment) Bill and its cognate bill, the Crimes (Dogs) Amendment Bill. As the Minister said in the lower House, responsible dog ownership must be encouraged. Owners must be made to realise that the dog they own is potentially a threat to any person or animal. They must exercise due care and be responsible for their dog's behaviour. The figures cited by the Minister are 178 hospitalisations in 1989-90 following attacks by dogs and 387 the following year. Those figures are worrying and indicate how serious the problem is and how alarmingly it is growing.

This legislation fails to sufficiently address the main issue. It is unquestionably true that people on the street are at risk from attacks by dangerous dogs, and judging from the article in the *Sydney Morning Herald* of 3rd May, that applies also to people in their gardens. Nevertheless, the greatest risk to people is in the home or at a neighbour's house where someone is attacked by a dog known to them. This has once again proved to be the case in the article I read about the dog attack in Melbourne. Research conducted by the Melbourne-based Child Accident Prevention Centre has shown that children under 12 - more specifically, children aged between one and four - are most likely to be attacked. Of those attacked, three quarters are friends or family of the dog owner.

This information indicates that more must be done to educate people about the dangers of owning a dog. Dogs cannot be blamed for being dogs, just as children cannot be blamed for being children. Babies and young children should be kept separate from dogs, in particular dogs that are known to be potentially dangerous. When a child is in the presence of a dog it should always be under strict supervision. Preferably, the dog should be kept out of reach of any children, as we all know that children are inquisitive by nature. It is very easy for a parent to be distracted, if only for a moment, and in that

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very short space of time an attack can occur, leaving a child scarred for life, not just physically but also mentally.

A number of dog breeds are known to be dangerous. Fortunately, on 26th November, 1991, the Federal Government announced a ban on the importation into Australia of four dog breeds and their genetic material. The dogs are the pit bull terrier, used for dog fighting in this country; the Japanese tosa; the dogo Argentino; and the fila Brasileiro. The latter two have not been imported into Australia, and now never will be. At that time the Federal Minister indicated that there were 10,000 American pit bull terriers in Australia, with a likely population of 30,000. As I have already said, many of these pit bull terriers are used for dog fighting.

If a family is considering buying a dog, or acquiring a dog from the pound, it is best to wait until the children reach school age and are able to understand that any dog, however tame and passive it may seem, has the potential to attack. I have had the unfortunate experience of having two Alsations, both acquired from other people, and both proved quite vicious and, regrettably, had to be put down. Apparently, they had had bad owners before us and somehow got to the stage where they were uncontrollable. It is very sad when one acquires a dog as a companion animal and it has to be put down because it is uncontrollable.

When one acquires a dog it should be taught to obey commands from any member of the family, not just the parents. Dogs can now be trained by official trainers and returned to the home fully trained. It is also important for a family to realise that a dog is for life. Often people buy puppies, which are cute and cuddly, but sometimes they grow into very large dogs. Many dogs are dumped at the Royal Society for the Prevention of Cruelty to Animals at Christmas time. People go on holidays and they have their dogs put down - it is tragic. I received a letter from the RSPCA on the legislation which said:

RSPCA NSW is in the main happy with this amendment as for the first time in Australia it puts more emphasis on the dog owners rather than the dogs themselves.

That aside, there are still major problems regarding dog attacks which can't be resolved by this amendment. The only resolution will be through education, of children, owners and the general public as a whole. All dogs show some sign before they attack.

It is also nearly impossible to implement these types of fines because the legal fraternity cannot come to grips with the fact that someone can steal a car and get a fine of merely \$200 or so and yet a dog attack can invoke a fine of up to \$10,000, or more and/or gaol. Also it is questionable whether increasing fines will reduce dog attacks.

Clearly more people and other resources are needed to police the current Acts rather than trying to find a resolution through some piece of legislation hastily put together which is difficult to implement, merely to satisfy public demand following sensationalised dog attacks.

The Dog (Amendment) Bill itself needs further clarification regarding the "means of restraint being at the discretion of the owner". The Minister's Second Reading Speech outlines that this discretion could include a fence, chain or enclosure. RSPCA NSW has some difficulty with the owners of dangerous dogs being given the discretion on the manner of "restraint". RSPCA NSW believes that all dangerous dogs should be housed in a suitable secure enclosure and only be on a leash and muzzled during exercise or transport.

The RSPCA supports this legislation, even though it is not as adequate as it should be. The RSPCA has provided me with information indentifying persons who have been attacked and where those attacks have occurred. I can make this information available to honourable members if they are interested. The Australian Democrats agree with the Opposition's comments on the desexing of dogs. It is widely recognised that desexed dogs are less aggressive. This legislation could only help in reducing the number of attacks. It is a step forward that this legislation places more emphasis on the dog owner than the dog, but it is not breed specific.

Legislation enacted in the United Kingdom two years ago after well-publicised horrific attacks on small children targets the pit bull terrier and the Japanese tosa - two dogs that are bred to fight. As I said earlier, the Federal Government has banned the importation of these dogs and two other breeds of dogs that, as yet, have not been imported. We must ensure that the numbers of dogs with awesome power, which are bred to be aggressive, are kept to a minimum. Sooner or later a pit bull terrier will kill a child. The outcry that this could cause will undoubtedly provoke further calls for stricter controls. Legislation must be proactive rather than reactive. I hope this legislation will help reduce the incidence of attacks on children in particular. I rather fear that it may not be adequate to do that.

The Hon. R. T. M. BULL [9.2]: It gives me pleasure to support the Dog (Amendment) Bill and the Crimes (Dogs) Amendment Bill. As other speakers have clearly indicated, I hope this will overcome the number of unfortunate incidents that have occurred in recent times. These incidents have been occurring for a long time, but recently attacks on people and children by dangerous dogs have been a lot more serious. The legislation will increase penalties and allow for the classification of dangerous dogs. If a dog is guilty of any misdemeanour - attacking people or proving to be dangerous - a magistrate will have the power to impose additional controls. Without going through a number of clauses in the legislation, because other speakers have done that and debate is becoming repetitious, I would like to add a few thoughts of my own.

It was interesting to note tonight on a television program at 6.30 on Channel 9 that the importation of the American pit bull terrier has been banned in the United Kingdom. At present there are heavy controls over those dogs. Because of attacks in recent years that breed of dog has come to our notice. There has been a lot of pressure in Australia to implement similar restrictions but, as yet, that has not occurred. This legislation has been introduced to overcome community concern about attacks. Honourable members, when campaigning and door knocking in various suburbs and towns in this State, would be

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aware of the hazards they could be confronted with in unknown territory. I have had several unpleasant experiences when door knocking, the most recent at Wyoming during the last by-election for The Entrance. I was about to walk along the path of an unfenced yard when a dog broke away from its handler's leash and flew at me from about 10 metres. The dog managed to take my tie and part of my shirt but I count myself fortunate that my footwork was faster than the dog's, otherwise part of my abdomen would be missing.

I do not know what breed of dog it was. It looked like a pit bull terrier, but I will not condemn that breed on my reckoning of its background. I had not entered the premises, yet I was in the middle of what could have been a nasty attack. I am sure many other members of Parliament have been bitten on their ankles and have

had their socks and trousers torn. One of the most fearful moments of my life was when I was door knocking in Helensburgh during another by-election. I was thinking seriously about whether I should walk 100 metres along a path to a house in that electorate. I eventually decided it was worth it for another vote. When I arrived at the house I discovered that no one was home. My knock on the door brought a big dog out of the laundry. There I was on the verandah with no one at home and 100 yards between me and the exit to the property. I maximised my dog-staring skills, backed down the path for 100 yards without taking my eyes off the dog, and got out alive.

The Hon. Beryl Evans mentioned earlier that the trend nowadays is to own bigger and more vicious dogs because of the level of crime in our community. A lot of these dogs are ill-trained and housed in confined spaces, albeit small yards. Some of those yards are not secure enough for these large dogs. This presents a grave risk to people innocently walking by going about their lives, which is what they should be allowed to do. I hope this legislation will ensure that owners become aware of their responsibilities and look after the dogs that they choose to own and have on their properties. I believe the general level of safety within the community will be enhanced by this legislation.

Reverend the Hon. F. J. NILE [9.8]: The Call to Australia group is pleased to support the Dog (Amendment) Bill and the Crimes (Dogs) Amendment Bill. The existing Dog Act, which is being amended, has set out for some time the minimum standards of dog ownership that the community expects to be observed. These standards include a dog being leashed while outside its own yard. Because of the increase in attacks on adults and children I agree that there is a necessity to tighten dog laws. This legislation will encourage responsible dog ownership and make irresponsible owners more accountable for their actions, especially where their dogs have been proved to be dangerous to persons or animals. These measures will also reduce the likelihood of harm occurring in the first place.

This legislation is not directed at a person who is conscientious about caring for his or her dog. But there is a need for this reform because of the number of injuries caused by dogs. Younger children have sustained damage to their faces when dogs, for various reasons, have lashed out at them. At one barbecue that I attended a very friendly dog was moving around under the tables and chairs picking up food scraps. One of the children decided to get down on his hands and knees and at one point tried to remove the food from the dog, which up to that point had been quite friendly. The dog reacted, as it would under that kind of provocation, snapped at the child, and bit its cheek. Often a peaceful situation may change with a child's lack of understanding of how a dog may react if provoked.

On another occasion one of our pets, a dog that had been quite friendly, fastened its teeth on one of the children's feet and penetrated the child's foot. I do not know what our children were doing, but they may have been kicking the dog. Seeing such situations has made me more sympathetic to dogs, but at some point the realisation must be faced that it may be dangerous to have a dog in the vicinity of children because accidents can occur. The dog is then blamed for the accident. When a child is attacked by a dog, often no one is aware of the events that led to the attack. It is important that the Government, through this legislation, respond to widespread concern in the community, while not discouraging people from owning pets and not having an anti-dog attitude.

The Crimes (Dogs) Amendment Bill relates to some specialised areas. Proposed section 35A provides that where a person maliciously uses a dog to cause actual or grievous bodily harm, a heavy penalty should be imposed. A maximum penalty of five years' imprisonment may be imposed if actual bodily harm is caused, or seven years' if grievous bodily harm results. That can occur when people are protecting their property - particularly factory yards where guard dogs may have a genuine purpose - but may on occasion use the dog for the wrong purposes. Not the dog, but the owner who has misused the dog that has been trained as a guard dog, would be to blame. The Dog (Amendment) Bill will give powers to councils to declare any savage dog that is ordinarily kept in its area as dangerous. The owner of a dog declared dangerous is then subject to stringent requirements to control the dog and to increased liability for harm caused by that dog.

The owner of a dangerous dog must keep the dog effectively restrained while on the property where the

dog is ordinarily kept so as to prevent it attacking any person or animal. The restraint must be decided by the owner and could include a fence, chain or enclosure in a building, if appropriate. Some unchained dogs may cause problems if they are adept at jumping fences. I have owned a number of dogs that were very good at jumping over even six-foot fences. Owners must be careful to ensure that if a dog is restrained by a fence, it does not have the ability to jump the fence. Even a high fence is often

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not sufficient protection. The owner may need to keep the dog on a running chain within the yard, even when it is fenced. Owners should be aware of that possibility and should not rely merely on the fence.

A maximum penalty of \$1,000 exists for any breach of the dangerous dog provisions. That penalty is also applicable, under section 5, for failing to register a dangerous dog. The maximum penalty for general offences will increase to \$500. Offences flowing from a dog attack are more serious, and a maximum penalty of \$1,000 is imposed. If the public, the owners of dogs, conscientiously observe the bills, attacks on innocent children should reduce. The Call to Australia group is pleased to support the bills.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Industrial Relations, and Vice-President of the Executive Council) [9.14], in reply: I thank honourable members for their support of this important community legislation. Honourable members have raised a number of issues to which I should respond. The Hon. J. W. Shaw mentioned consultation with a number of main interest groups. The Government has consulted all those groups on the amendments to the Dog Act. This occurred long before, as well as leading up to, the meeting of 1st March, to which he referred. The issue of consultation was thoroughly observed by the Government. The Government is addressing the resolutions that were passed at that meeting, particularly the question of registration fees and on-the-spot fines, together with other financial provisions. These are contained in the Dog Act Regulations, which will be reviewed following the passage of these bills.

Councils will, for the first time, be given the ability to deal with dogs that are known to be dangerous. At present they are powerless to act in those circumstances. If a dog is declared dangerous, the owner must comply with the stringent control measures if he chooses to keep the dog. With these amendments, the Government will put in place provisions that will enable councils, police and ordinary citizens to take more effective measures against irresponsible dog owners. However, as animal welfare experts have reminded us, dogs are essentially animals that must be trained and controlled in a responsible manner. This legislation is aimed at encouraging responsible dog ownership, which is ultimately a matter for the individual.

The Government supports the importation bans on certain breeds of dog that are being imposed by the Federal Government. However, breed-specific controls within local communities are considered unworkable and discriminatory and would not receive the support of the Government. The Government reiterates that all dogs, regardless of breed, may be dangerous, and for legislation to be effective it must therefore apply to all dogs. Pit bull terriers are therefore adequately covered within the legislation, as raised by the Hon. R. S. L. Jones. The dangerous dog provisions apply to cases where dogs have repeatedly threatened to attack. The amendments seek to prevent all breeds of dogs causing harm. With those comments, I commend the bills to the House.

Motion agreed to.

Bills read a second time and passed through remaining stages.

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL STATUTE LAW (PENALTIES) BILL

Bills received and read a first time.

Suspension of certain standing orders agreed to.

JOINT SELECT COMMITTEE UPON SYDNEY WATER BOARD

Consideration of Legislative Assembly's Message of 13th May.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Industrial Relations, and Vice-President of the Executive Council) [9.21]: I move:

(1) That this House agrees to paragraphs (1) and (3) to (8) of the Resolution in the Legislative Assembly's Message of 13 May 1993, relating to the appointment of a Joint Select Committee on the Sydney Water Board.

(2) That this House insists that the Committee be composed of an equal number of Members of each House.

(3) That paragraph (2) of the Resolution in the Legislative Assembly's Message of 13 May 1993, be substituted as follows:

(2) That the Committee consist of twelve members, as follows:

(a) six shall be Members of the Legislative Assembly, being:

(i) three from the Government;

(ii) two from the Opposition;

who shall be nominated in writing to the Clerk of the Legislative Assembly by the relevant Party leaders; and

(iii) Dr Macdonald.

(b) six shall be Members of the Legislative Council; and

(c) that the representatives of the Legislative Council on the Committee be Miss Gardiner, Mrs Forsythe, Mr Jones, Mr Manson, Mr Obeid and Mr Ryan.

(4) That Thursday, 20 May 1993, at 5.15 p.m. in room 1043 be the time and place for the first meeting of the Committee.

(5) That the Legislative Council expresses the view that on any future occasion on which a Joint Committee may be proposed the same number of Members should be appointed from both Houses.

Since coming to office the Government has had a policy of openness and accountability. The establishment of the parliamentary joint select committee holds no fears for the Government or the Water Board. The parliamentary joint select committee will provide an opportunity for many issues

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to be raised and is in synergy with the way in which the board has been heading. In recent months the board has laid it on the line. It has nothing to hide and has already stated publicly that all aspects of its operations are under review. The board is interested only in being a better and more efficient organisation and getting the best environmental return from the dollars it invests. The new Managing Director of the Sydney Water Board has a simple philosophy of going back to basics, which truly describes what the board wants to achieve, that is, to supply water and sewerage products and services in an environmentally acceptable manner that meets the expectations of its customers.

The board welcomes the parliamentary joint select committee because it will provide another vehicle to review the scientific investigations already undertaken by the board as part of the Government's clean waterways program. I am sure the committee will find the board's substantial investigations an indispensable resource in its consideration, first of strategic planning for Sydney's wastewater treatment, including the role of local government in urban drainage, as well as options for decentralisation and beneficial use of water and sewerage; second, current and future environmental standards and how these reflect community needs and their

affordability; third, longer-term strategies for demand management and catchment protection; fourth, the pricing of water; and, finally, the regulation of water quality and quantity with regard to the environment.

I assure the House that whilst the committee is deliberating the board will continue in its efficient and productive manner. This is a testimony to the ethos ingrained in an organisation such as the board. The Sydney Water Board will continue to serve the community and will maintain the quality of service that is expected of it. The board will continue to do its job and it will continue to maintain business as usual. At the same time, the board will make available all resources that are necessary to assist the joint select committee. I should make a final comment about the constitution of the committee. The message as originally framed did not give this House equal representation on the committee. All members of the House have expressed strong views to me that this House must be seen as an equal partner in the administration of government in the State. Committees should have equal representation from both Houses. The view that has been strongly expressed to me by members from all parties is not a new position for this House.

On 20th October, 1988, in a report from the Select Committee on the Police Regulation (Reinstatement) Bill the House strongly expressed its view. On 23rd May, 1990, a message from the Legislative Assembly relating to the appointment of the Joint Standing Committee upon the Process and Funding of the Electoral System was amended to insist upon equal representation. Again, on 13th November, 1991, in respect of the Joint Select Committee upon the Constitution (Fixed Term Parliaments) Bills a message was amended to insist on equal numbers. The approach taken in the message under consideration that is to be returned to the Legislative Assembly is therefore not new. In the past five years the attitude of this House has been emphasised strongly three times. The clear message conveyed to me by members of this House should be conveyed strongly to the Legislative Assembly. I am pleased on behalf of the Government to commend the motion to the House and ask that the message be conveyed to the Legislative Assembly.

The Hon. R. S. L. JONES [9.26]: I support the comments of the Attorney General and Minister for Industrial Relations on the equality of the upper House with the other place in respect of membership on the Joint Select Committee upon the Sydney Water Board. I am pleased that the message is to be amended. I shall be happy to serve on the committee and inquire into the activities of the Water Board. For too many years the board has been reactive and has not kept up with community demands and needs for clean waters. Honourable members will recall the fiasco of the pollution of the seas from the outfalls for so many years. When the latest ocean outfalls were built the pollution problems were shifted further out to sea and for a greater distance along the coast. They have not solved the problem but rather have shown the board's attitude of out of sight, out of mind. I am assured by the Government that the program to clean up the waterways is not out of mind but will continue and that there will be further treatment of sewage. This State cannot afford to waste water and resources by discharging them into the ocean as is being done at present.

I question the concept of ocean outfalls. Clearly, water should be returned to the dams after being treated by one of a number of treatments until it is drinkable. It is ridiculous to waste water by discharging it into the sea. Today I hosted a press conference with a number of organisations, including Clean up Australia, the World Wildlife Fund, Greenpeace, SHURE, which is a group from the Hawkesbury, and others. Their representatives expressed concern about the continuation of the \$8 billion, 20-year clean waterways program. They do not believe that the Government is truly committed to that program and are of the view that the current push to corporatise the Sydney Water Board may lead to privatisation. It will not be profitable for a private organisation to engage in a clean waterways project on behalf of the community, because there is no money to be made from cleaning up the waterways. Those organisations are wondering what will happen to the clean waterways program.

The committee's inquiry will be beneficial in examining the Water Board's long-term strategies, whether they be for catchment management, treatment of sewage or pricing. For almost five years I have advocated strongly the introduction of demand management, which is gradually being introduced, although previous governments regarded it as too difficult. I believe that system will work. It is important to have demand management and a user-pays system for water, a valuable resource that for far too long has been wasted. Gradually we are moving

in the right direction. I hope that the Water Board's engineering mentality will change to a more ecological management strategy and that the board will be aware that it can no longer discharge sewage, treated or untreated, into the oceans. Water can no longer be wasted by discharging it into the oceans. It must be reused. It will be fascinating for me to be involved in the committee's hearings. I hope that the committee will help in bringing about a more ecologically sound and efficient Water Board, that the clean waterways program will continue, and that Sydney will have the cleanest waterways of any city in the world.

Reverend the Hon. F. J. NILE [9.30]: The Call to Australia group is pleased to support the message from the Legislative Council to the Legislative Assembly in response to its message concerning the Joint Select Committee upon the Sydney Water Board dated 13th May under the signature of the Speaker. We agree with statements by the Leader of the Government in this House that all joint committees of Parliament must have equal numbers from both Houses and we strongly oppose the establishment of any joint select committee that does not have equal numbers from the two Houses. To do otherwise undermines the sovereignty, independence and equal status of this House. The lower House gets carried away with its own importance, but both Houses of Parliament are of equal importance and legislation will not become law unless it is passed by both Houses, as the other House is learning.

The Call to Australia group is pleased that a further matter has been rectified in the reply of the Legislative Council. I find it remarkable that the mover of the motion in the other place to set up the Joint Select Committee upon the Sydney Water Board, the honourable member for Manly, moved that he be chairman of the committee and shall have both a deliberative and a casting vote. The joint select committees with which I have been involved have usually selected the chairman and deputy chairman. It is grossly improper for a person who may have a balance of power to use that to establish a little empire and make himself the emperor. By doing that, either accidentally or deliberately, the honourable member for Manly has undermined the value of the committee; it puts into question the genuine objectiveness of the committee or whether it is a witch hunt.

The Hon. R. S. L. Jones: No, it is not.

Reverend the Hon. F. J. NILE: The way to prove that is to let the committee choose its own chairman; it is not for the mover to try to drive the whole project with his own reference, selection of committee members and appointing himself chairman. He should have more faith in members of Parliament to select the best person as chairman. The honourable member for Manly, because of his emotional involvement, may not be the most suitable person to be the chairman in the issue. I was shocked when I saw in the message originating in the other place that the honourable member for Manly for the first time directed that the one Legislative Council member from the crossbenches be from the Australian Democrats. Normally in this House, when only one member from the crossbenches is to be selected, the agreement has been to toss a coin to establish which party will be represented. On a number of occasions that has been done, and I have accepted that practice. This is the first time that we have been steamrolled and not given a choice of who should be the representative from the crossbenches.

I am pleased that has been dropped from our response, even though the representatives of the Legislative Council on the committee are printed in the message as Miss Gardiner, Mrs Forsythe, Mr Jones, Mr Manson, Mr Obeid and Mr Ryan. At this stage I accept that. However, it is a departure from the conventions of the upper House. On earlier occasions when Call to Australia has felt that the Democrats would make a better contribution, we have accepted their representation on the committee. That was the case with the Rigg committee. We are not blind, selfish or single-minded; we consider what is best for the Parliament and the committee. We may have come to the conclusion that the Democrats would provide superior representation on the Joint Select Committee upon the Sydney Water Board. However, the matter should not be taken out of our hands. The lower House should not determine who the representatives from this House on joint committees should be, and I am pleased that matter has been clarified. I know that in a recent adjournment debate the Hon. Elisabeth Kirkby made the point that over the past 12 years the Call to Australia group in its own right has won three seats in the Legislative Council and the Australian Democrats only two.

The Hon. ANN SYMONDS [9.36]: It is important to record during this debate that the Opposition supports the proposal before the House; that is, that the proposed Joint Select Committee upon the Sydney Water Board be composed of an equal number of members of each House. In support of that I say, first, that I have high regard - as I am sure do all honourable members - for the operation of committees of the Parliament. In 1987, when the committee of inquiry into the establishment of committees of Parliament was undertaken by my colleague the Hon. R. D. Dyer, I spoke in evidence to that committee on the desirability of a range of joint standing committees in the operation of Parliament. The Joint Select Committee upon the Sydney Water Board is a matter of prime importance. Not only does it recognise the value of both Houses, but the substance of the inquiry itself is critical and so deserving of the support of both Houses.

The Hon. R. J. WEBSTER (Minister for Planning, and Minister for Housing), on behalf of the Hon. J. P. Hannaford [9.37], in reply: It is reassuring to hear the remarks of all honourable members in this debate. The motion before this House was amended to reflect the importance of this

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Chamber in the overall context of things. However, as Reverend the Hon. F. J. Nile said, the Government does not have control of the lower House, so it was not able to frame the motion for this committee in the traditional manner, by which the Government has always had the majority. However, I have negotiated with Dr Peter Macdonald, the honourable member for Manly, and I am satisfied that in moving the motion for this committee in the lower House, he is acting in a positive spirit.

I am much more sanguine about the setting up of this committee and its members than I was about the HomeFund committee, which I saw as a hastily contrived, political witch hunt - a committee which deliberately did not involve this Chamber. Earlier today honourable members in this House expressed concern about that matter. Notwithstanding that the nominated chairman is not a member of the Government, and that the Government does not have a majority on the committee, I have been able to negotiate with the honourable member for Manly a set of terms of reference which I believe look forward, not back, and address all the important issues which are vital to the future of our State.

I again pay tribute to former Premier Nick Greiner and former Minister for Environment Tim Moore, for the way they took control of the Sydney Water Board and the environmental issues which confronted them when the Government came to office after 12 years of Labor rule. Though there were many achievements of the former Labor Government, an efficient Sydney Water Board was not one of them. I am sure the Hon. R. S. L. Jones would agree with that. Though there is much more to be done in cleaning up the waterways, improving the drainage system to get rid of waste water, and re-using treated effluent the Government has made a good start and I am confident this select committee will carry on that good work in a positive way.

I am encouraged by the comments of all honourable members who spoke in this debate, particularly the Hon. R. S. L. Jones. He and I do not always agree. However, in relation to most of the matters he raised in the debate I must agree with him. Dr Peter Macdonald and I negotiated a clause in the terms of reference to ensure that the committee takes account of the cost of these important environmental works. We may all want what is in the sky, but sometimes we cannot achieve it because of the cost. Cost is an important part of this committee's terms of reference. Notwithstanding that, the challenge before the committee is good. The terms of reference are positive because they look forward and not back. The committee proposes to give a report to this Parliament upon which I as Minister responsible for the Water Board will take positive action. With those few remarks I commend this motion to the House.

Motion agreed to.

Message

Message forwarded to the Legislative Assembly conveying the terms of the resolution agreed to by the Legislative Council and requesting concurrence of the amendment to paragraph 2 of the Legislative Assembly's resolution.

ANTIOCHIAN ORTHODOX CHURCH PROPERTY TRUST BILL

Second Reading

The Hon. R. J. WEBSTER (Minister for Planning, and Minister for Housing), on behalf of the Hon. J. P. Hannaford [9.43]: 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 purpose of this bill is to constitute the Antiochian Orthodox Church Property Trust as a statutory body, to define the trust's powers, duties and functions, and to provide for the vesting of property in the trust.

The Antiochian Orthodox Church had its origins in Australia approximately one century ago.

Today, the Antiochian Orthodox Church in Australia consists of parishes in New South Wales, Victoria, South Australia and Queensland.

In New South Wales there are several parishes in Sydney and one in Wollongong.

This bill was originally introduced into the Parliament last year and it received bipartisan support when it passed through the Legislative Assembly on 26th February, 1992.

Further passage of the bill was deferred however, following representations from some parish councils requesting a further period of time for consultation within the church community.

I have recently met with the most Reverend Archbishop Gibran Ramlawi primate of the Australasian Antiochian Orthodox Diocese. His Grace has assured me that the church community, following further consideration of the provisions of this bill, is in full support of the legislation now proceeding.

During last year the Patriarch of Antioch and all the east, His Beatitude Ignatius IV visited Australia. His Beatitude has also written to me expressing his full support for the property trust proposal and giving his assurance that in his discussions with church members during his visit there emerged complete support for the proposal.

With this background in mind, I turn to the provisions of the bill.

The bill provides for the creation of a statutory trust, to be known as the Antiochian Orthodox Church Property Trust, and invests it with certain powers in relation to dealings with property and the investment of funds.

The property of the Antiochian Orthodox Church is presently held on trust for the church by five companies incorporated in New South Wales and limited by guarantee. These companies are detailed in schedule 1 to the bill.

The bill empowers the holding of property by the trust, the co-operative use of church property, the blending of trust funds and the variation of trusts. By this bill, the trust may be appointed the executor or administrator of an estate.

The bill has been prepared in accordance with the Government's policy of assisting churches to better administer their temporal affairs. It avoids the costs of transferring church property to new trustees every time a trustee dies or retires, and enables the church to better invest its funds.

The provisions of this bill are consistent with the approach taken in other property trust legislation. As

honourable members will recall, the Holy Apostolic Catholic Assyrian Church of the East Property Trust Act and the Baptist Churches of New South Wales Property Trust (Amendment) Act received bipartisan support when they passed through both Houses of Parliament last year.

This bill will assist the Antiochian Orthodox Church in Australia to further its religious and charitable dealings.

I commend the bill to the House.

The Hon. FRANCA ARENA [9.44]: On behalf of the Opposition it gives me great pleasure to support this bill. The Antiochian Orthodox Church is part of the mainstream Orthodox Church. It is a small but significant church of devoted, honourable and respected members. I have the pleasure of knowing quite a few members of the Antiochian Orthodox Church, who I know to be among the most law abiding members of this society. Many of these people came to Australia from all over the world during the past 50 years after the second world war. It is an advantage for our country that they are an integral part of our multicultural society which is a showpiece to the rest of the world. The Antiochian Orthodox Church members came mostly from Lebanon but also from other parts of the world. Their devotion to their church, to their religion, and to the life of their families unites those members. They are industrious people who give generously to their church. Their religion is an integral part of their identity and culture.

The purpose and objects of the bill are to establish a statutory corporation to hold property on behalf of the church; to specify the functions of the statutory corporation; and to vest in the statutory corporation property held in trust for the church. The bill is simple. Clause 1 specifies the short title of the proposed Act. Clause 2 provides for the proposed Act to commence on a day or days to be proclaimed. Clause 3 defines terms used in the proposed Act, including bishop, board, church and trust property. Part 2 of the bill deals with the constitution and functions of the trust and provides for the Antiochian Orthodox Church Property Trust to be established as a corporation. This is a sensible move which will save money and time. The trust will consist of a Board of Trustees comprising the archbishop, the bishops and four officeholders appointed by the archbishop or, if no such members have been appointed, four lay persons. The bill provides also that no capacity or power of the trust is to be affected by the existence of vacancies in its membership and provides for the suspension of the powers exercisable by the trust where a quorum cannot be constituted.

Part 3 of the bill deals with the vesting of property in the trust. Part 4 deals with miscellaneous matters such as the custody of the seal of the trust, the delegation of the functions of the bishop, and so on. Schedule 1 deals with companies holding properties in trust for the church, and lists the names of the four companies by which property is currently held in trust for the church. Schedule 2 contains savings and transitional provisions. The bill is straightforward. The Opposition is happy to give its support and is sure that it will be much easier for the Antiochian Orthodox Church to administer its properties.

The Hon. J. M. SAMIOS [9.47]: I support the Antiochian Orthodox Church Property Trust Bill, which seeks to constitute the Antiochian Orthodox Church Property Trust as a statutory body, to define its powers and to provide for the vesting of property in the statutory corporation. The Antiochian Orthodox Church is part of the Eastern Orthodox Church which is the second largest Christian communion in the world today, with estimates approximating 250 million members. Essentially the Eastern Orthodox Church is represented in the majority of Christian parishes in the Middle East, the Balkans and Russia, though through migration it is now represented in the United States of America, Western Europe, East Africa and the Far East. Members may be aware that the Eastern Orthodox Church, of which the Antiochian Orthodox Church is an integral part, goes back to the earliest days of Christianity.

In A.D. 324 Emperor Constantine transferred the imperial capital from Rome to Byzantium on the Bosphorus and renamed it Constantinople-New Rome, which soon became not only the political capital of the eastern Roman empire but also the centre of the eastern Christian world. Today the Orthodox Church consists of 14 independent or autocephalous churches recognising the honorary primacy of the Ecumenical Patriarch of Constantinople, united in faith, sacraments and the common law, being the Patriarchates of Constantinople,

Alexandria, Antioch, Jerusalem, Russia, Georgia, Serbia, Romania, Bulgaria and the autocephalous churches of Cyprus, Greece, Poland, Czechoslovakia and America. With the arrival of Lebanese migrants in Australia, a number of denominations from both the Christian and non-Christian community established themselves here, including the Maronite Catholic Church, the Melkite Catholic Church, the Antiochian Orthodox Church, as well as members of the Islamic faith.

The Antiochian Orthodox Church was established in Australia almost 100 years ago by Lebanese migrants who played an important role in the commercial, cultural and social development of our multicultural society. Distinguished Australians of the Antiochian Orthodox faith include the late Nicholas Aboud, a former chairman of directors of a number of important Australian companies, Sir Nicholas Shehadie, a former Lord Mayor of Sydney and present Chairman of the Special Broadcasting Service, as well as many others. The Antiochian Orthodox Church in Australia, under Bishop Ramlawi, continues to remain under the ecclesiastical jurisdiction of the Orthodox Patriarchate of Antioch whose head, His Holiness Ignatius IV, Patriarch of the See of Antioch and all the East, visited Australia last year.

The Hon. Franca Arena: It was a very successful visit.

The Hon. J. M. SAMIOS: It was a very successful visit, as the Hon. Franca Arena has pointed out. Today the church includes the St George
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Antiochian Orthodox Cathedral in Redfern, the St Nicholas Antiochian Orthodox Church at Punchbowl, St Mary's Antiochian Orthodox Parish Association Limited, the St Elias Antiochian Orthodox Parish Association of Wollongong, and the Australasian Antiochian Orthodox Diocese Trust. Property is at present held in trust for the church by five companies incorporated in New South Wales and limited by guarantee, detailed in schedule 1 to the bill. This bill provides for the holding of the property in that schedule by the trust and the blending of trust funds in the variation of trust.

The bill avoids the cost of transferring church property to new trustees every time a trustee dies or retires and enables the church to better invest its funds. This bill is consistent with the Government's policy of assisting churches to better administer their temporal affairs. It is further good legislation of the Attorney General, the Hon. John Hannaford, who is noted for his acute social conscience. The legislation represents a watershed in the development of the Antiochian Orthodox Church, which will soon be celebrating the centenary of its presence in Australia. I support the bill.

Reverend the Hon. F. J. NILE [9.52]: Call to Australia is pleased to support the Antiochian Orthodox Church Property Trust Bill 1992. The date on the bill indicates the long delay that has occurred since its original introduction. Church property is at present held in trust for the Antiochian Orthodox Church by five companies incorporated in New South Wales and limited by guarantee. The objects of the bill are:

- (a) to constitute a statutory corporation to hold property on behalf of the Church; and
- (b) to specify the functions of the statutory corporation; and
- (c) to vest in the statutory corporation property held in trust for the Church.

One of the reasons for the delay in the bill's progress through this House has been the strong concerns expressed by parish leaders in various centres, a number of whom had long discussions with me last year when the bill was introduced. They were troubled because it seemed to them that, after many years of hard work and fund raising, the properties they controlled through the trust were to be transferred into a new trust under the control of the bishop. Although that is apparently within their church structure and the church canon, they felt that this was not in the best interests of the parishes that had worked to establish local congregations and buildings. They had exerted a great deal of effort to do that and felt that it was slipping out of their control.

The five parishes are the Antioch Orthodox Church of New South Wales, which is the overall body, St

Nicholas Antiochian Orthodox Parish Association, St Mary's Antiochian Orthodox Parish Association Limited, St Elias Antiochian Orthodox Parish Association Wollongong Limited, and the Australasian Antiochian Orthodox Diocese Trust. One group that expressed concern was the St Elias Antiochian Orthodox Parish Association in Wollongong. Their concerns were raised with me and with other members and a hold was put on the bill to try to resolve those concerns.

I had lengthy discussions with the bishop who was greatly distressed about the differences of opinion and about what I suppose appeared to him to be a lack of trust in his leadership. I remember that during one of those discussions he was virtually in tears. I felt for him because, even though bishops hold positions of authority, they wish to use that authority not by rules and regulations but by the acceptance and love of the people. He believed there was some breakdown in that relationship.

I am pleased that the matter has been resolved. The bishop is happy, individual parishes are happy, and this House can now proceed with the bill. The Antiochian Orthodox Church originated from the See of Antioch. As we all know from our biblical history, the term Christian was first used at Antioch to describe the people who followed Jesus Christ and that term has been used for almost 2,000 years. We can thank our Christian brothers and sisters in the Antiochian Orthodox Church for that. Call to Australia is pleased to support the bill.

The Hon. R. S. L. JONES [9.57]: The Australian Democrats have pleasure in supporting the legislation, which has been languishing for some time in this House. We are glad that the problems that beset the legislation have been resolved and that the bill can now be dealt with. Like the Hon. Franca Arena, I too have friends who are members of the Antiochian Orthodox Church; one of them is my oldest Australian friend. I am glad the problems have been ironed out and that the legislation will pass through this House this evening.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Industrial Relations, and Vice-President of the Executive Council) [9.58], in reply: I thank all honourable members for their support of this important piece of legislation which is a milestone in the history of the Antiochian Orthodox Church in Australia.

Motion agreed to.

Bill read a second time and passed through remaining stages.

ADJOURNMENT

The Hon. J. P. HANNAFORD (Attorney General, Minister for Industrial Relations, and Vice-President of the Executive Council) [9.59]: I move:

That this House do now adjourn.

POTTSVILLE WETLAND

The Hon. ANN SYMONDS [9.59]: The
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Pottsville wetland, number 54 under SEPP 14, the most significant wetland on the far North Coast, was gazetted on 12th December, 1985, when SEPP 14 was first promulgated. In accordance with the normal provisions, the owners of land subject to SEPP 14 have existing use rights that they cannot further drain, fill or clear the land. However, these wetlands are under continual threat from drainage and clearing. Canals have been constructed which drain substantial areas of the wetland. Tweed Shire Council took one of the landowners to court and the owners were to take certain measures to restore the water levels. There has been a stay of orders pending an appeal. The case has now been heard and it is expected that a decision will be handed down in June.

This matter has been raised before in the House. On 16th October, 1991, the Hon. R. S. L. Jones asked a

question of the relevant Minister concerning the damage occurring to the wetland by allowing a permanent drop in the water level. The Pottsville wetland was also referred to by the Hon. R. S. L. Jones on 13th November, 1991, during the adjournment debate in relation to the draining of the wetland by an unauthorised canal. On 15th October, 1992, the Hon. R. T. M. Bull and the Hon. D. J. Gay asked questions about the dispute. The Minister indicated he had received complaints from the Farmers Federation and Don Beck about this wetland, which, it should be noted, Don Beck owned at some time before the present owners, the Taggarts, bought it.

The Minister indicated he opposed further financial assistance to Tweed Shire Council to take action under legislation which should protect the wetlands. On the same day, the Hon. D. J. Gay raised the possibility of conflict of interest, as the solicitors for the Pottsville estate also act for the Tweed Shire Council. The Law Society advised in writing this year that there was no conflict of interest. The Taggarts lost the court case in the Land and Environment Court. The Minister, rather than upholding a decision of the court, said further negotiations should be entered into.

The Hon. R. T. M. Bull: Have you been there?

The Hon. ANN SYMONDS: I come from there. In this House in October 1992, the Minister said:

This is a case that will not be made clearer by further legal action, which would be costly for everyone involved, including the ratepayers of Tweed Shire.

If the outcome of all court cases were to be disregarded pending further negotiations, the rule of law would break down. Our justice system would be undermined. How can a Minister say in this House that court decisions arising from legislation for which he is responsible should be disregarded and parties should go off and negotiate further? Who did not like the decision? The Taggarts, the National Party, or the Minister? Court decisions should be upheld. SEPPs are administered by local government under the Environmental Planning and Assessment Act 1980. Though legal action over breaches of SEPP conditions can be prosecuted by third parties, the Department of Planning should take action and not leave the protection of classified areas to anyone who may be interested. Over the past 15 years councils have had their revenue dramatically reduced in real terms because of rate-pegging. They need assistance with what can be expensive legal battles to uphold State legislation. If the department will not mount legal challenges it must be willing to finance councils to do so.

In December 1992 Mr Apitz, Assistant Director of the Department of Planning, wrote to the Tweed Shire Council concerning a meeting with council, the department and two landowners over the contentious matter of the height of the bund wall. The assistant director recommended a bund wall of 0.7 metres. It started at 2.5 metres and the council had recommended two metres. This 0.7 recommendation appears to have been plucked from the air, because it did not arise from any technical information. In February 1993 a further study commissioned by the Department of Planning and released this month acknowledged that the wetland had been under siege by fire, drainage and clearing, but its SEPP 14 status had given it some protection.

The Calldera Society, an environment group in the Tweed Valley, has taken out an injunction against the Minister, restraining him from making a decision on the height of the bund wall until all the information is received. The Minister cannot make a proper decision in that matter until a hydrological survey is done. This must be done as a matter of urgency because the wetland must be protected. Wetlands are a crucial part of the ecosystem. Because they are muddy and flat and often smell they have been overlooked in popular campaigns. They have been the last of the natural environments to be protected. Wetlands are breeding grounds for many life forms, and their existence is crucial.

At a meeting in Tweed Shire last week, the Shire President, Max Boyd, bemoaned the fact that SEPP 14 restricted what people could do with their land. Let us not forget that owners have existing use rights when land is proclaimed under SEPP. In response to the shire president, the Minister said he was looking closely at SEPP 14 wetlands. I hope, for the future of this State, that the Minister is not one of those who fail to value wetlands. I remind the Minister that in answer to the Hon. R. T. M. Bull's question on 15th October, 1992, he

said that SEPP 14 was proclaimed in 1987. It was actually proclaimed in December 1985. There is some concern that the allocation of natural resources portfolios to the National Party was a sorry day for the environment. I should like the Minister to dispel these doubts and assure the House that the wetlands of this State in general, and of Pottsville in particular, will be protected. This matter requires an urgent decision on the bund wall and the will to uphold the EPA Act in court. I urge the Minister responsible to undertake all measures to

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follow the advice of interested persons in protecting that valuable wetland.

SOUTHEAST FOREST LOGGING

The Hon. R. S. L. JONES [10.4]: I bring to the attention of the House yet more misdeeds of the Forestry Commission in our southeast forest. Harvesting has proceeded in logging compartments 1405, 1406 and 1408 in Nalbaugh special prescription area - SPA - prior to agreement between the National Parks and Wildlife Service and the commission regarding prescriptions for managements of SPAs being reached. Harvesting in these coupes has proceeded in a manner which has little difference to clear felling. The coupes are situated in the headwaters of the Wog Wog River, and therefore the catchment area above drainage lines is not sufficient to require that filter strips be retained. The decision to retain or vary the width or upstream extension of a filter strip is, of course, dependent upon the opinion of the Forestry Commission. Apparently, it was the commission's opinion that very few filter strips were required. Drainage lines with water in them have not had filter strips retained, even though this would have been automatic in other areas.

The coupes have now been completely burned, including filter strips and retained tree groups. This is in direct conflict with the report, which clearly states that it is important that retained tree groups, filter strips, wildlife corridors and the Population Assisting Links - PAL - should not be burned. Trees have been felled into and across streams and drainage lines and the resulting debris has been burnt. The manner in which these coupes have been harvested has severely compromised the environmental integrity of the area, and one section between two major tributaries of the Wog Wog River has been harvested. This area would, if the recommended PAL were adopted, have formed part of the PAL. Roads in these coupes have been constructed without proper drainage, and soil erosion is evident throughout the coupes.

A recent article in the *Sydney Morning Herald* quotes Phil Clements, Bombala District Forester, as saying that if they had harvested these coupes in accordance with the NPWS, they would hardly have got anything out of them. This seems to be a rather unprofessional statement that does not justify the degradation that has occurred in this coupes, especially when the coupes are situated in the headquarters of one of the major watercourses in the region. Apparently the NPWS and the commission have now reached some sort of agreement regarding the harvesting of SPAs. However, the commission is not applying the recommendations contained in their report prepared by the NPWS as is evidenced by the attached copy of the prescription for coupe 1407. That is, the report recommends that three tree groups containing at least five trees and associated understorey be retained in each hectare. However, the commission's prescription for the coupe allows for only 15 tree groups to be retained throughout the whole of the harvesting area, which is approximately 41 hectares. This is less than 10 per cent of the recommended number of retained tree groups.

During the negotiations between the NPWS and the commission, representatives from Harris Daishowa (Australia) Pty Limited, Tablelands Sawmills and Duncans Eden and so on were invited to be included in the negotiations regarding the special prescriptions. HDA and Tablelands did not agree, so the negotiations continued until agreement was reached. This is an unprecedented event which reflects on the commission's integrity as managers of such sensitive areas by allowing participation by companies which have vested interests in the outcome of the negotiations. One of the factors which allow problems of environmental damage, soil erosion and sanding of watercourses is that even though the commission is legally bound by their pollution control licence to follow the code of logging practice and the standard erosion mitigation conditions, very few of the prescriptions are written in a language which makes their implication mandatory, thus making the enforcement of the pollution control licence almost impossible.

During an inspection of coupes on 11th March, 1993, by members of the South East Forest Conservation Council and an officer of the EPA it was noted that soil movement is not stopped by filter strips. Soil washing from coupe 1457 into the filter strip apparently disappeared when it reached leaf litter within the strip so that the first impression was that the filter strip was an effective means to stop silt and sand entering the stream. However, there were deposits of sand in the stream. Upon closer inspection it was revealed that the sand had travelled under the leaf litter, later emerging in the stream. It was also noted that where harvesting had taken place within the coupe there was virtually no remaining top soil. This is because this coupe has soil that is shallow, granite based, highly erodable, which, with few exceptions, is typical of most of the soils within Coolangubra State Forest.

The movement of soil and subsoil in coupe 1457 is a classic example of what is happening in coupes throughout Coolangubra and clearly illustrates the inadequacy of standard erosion mitigation conditions, the rate that we can expect water quality to decline, the expected quality of a regenerated forest growing only in subsoil and the need for tighter regulations relating to erosion mitigation in all coupes, especially in SPAs. As well as the problems outlined above, the commission is continuing to delay carrying out remedial work promised to commence during the autumn. This situation is unacceptable, considering the work that should have been done almost three years ago. The commission still has not given satisfactory answers to questions asked by the South East Forest Conservation Council in May 1992 and the council does not expect that it will.

SILENT HEARTS COMMITTEE

The Hon. Dr MARLENE GOLDSMITH [10.9]: Last Thursday, 13th May, I had the pleasure
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of hosting a dinner party in Parliament House for the Silent Hearts Committee. Silent Hearts is a group that brings together people researching organ donation and donor families. Its goal is to provide a supportive, empowering network for donor families. The appalling trauma that confronts organ donor families must be unimaginable to those who have not been through the experience. Their involvement begins with a sudden serious accident that occurs to a member of their family, often a young adult or a child, although donors range in age from one to 69. The parents, while desperately hoping that their child will live, learn that recovery is impossible and must then decide very quickly whether they are willing to authorise the use of their child's healthy organs to save other lives.

To make any decisions at such a terrible time must be difficult, but to make this decision must be particularly stressful - yet families do. In the midst of their own bereavement many of them choose to provide the gift of life to others. These families deserve both support and recognition. It has been a privilege for me to work with two of these special people - Ross and Peggy Stone - whose energy, commitment and care for others not only allowed their son Nicholas to be an organ donor but also resulted in the development of Silent Hearts as a donor family support network. Some donor families may just want to be alone, but others may want and need support of various kinds, whether information, consultation with professionals involved in organ donation and transplant patients, or simply the company of others who understand their feelings because they have been in the same situation.

The Australian Co-ordinating Committee on Organ Registries and Donation - ACCORD - was set up in 1989. What makes Silent Hearts unique is that it is a community group controlled by and for donor families. It was a special pleasure for me to meet Dr Jeremy Chapman, ACCORD member and renal specialist, at the Silent Hearts dinner, among a number of other special guests, including Matthew Kayrooz and Tommy Higgins, representatives of the National Roads and Motorists Association. The NRMA has been very supportive of Silent Hearts. The Hon. D. J. Gay attended the dinner and the Minister for Planning and Minister for Housing, the Hon. Robert Webster, and the Deputy-Speaker, Wendy Machin, dropped in. Ms Machin has on the notice paper of the other place a motion for the recognition of organ donor families. I look forward to her presentation on this issue later in the year. I congratulate the Silent Hearts Committee, which is comprised of Ross and Peggy Stone, Jeremy Chapman, Trish McKinnon, Roy and Micki Knudson, Margaret Loughnan

and Sue Pitman. In particular, I congratulate Ross and Peggy Stone who have been powerful catalysts in taking action to meet an important community need, to provide others with the support that they would have wished. I wish the committee well for its future development.

STATE OF ORIGIN RUGBY LEAGUE SERIES

The Hon. J. F. RYAN [10.12]: Though it is not the greatest issue in the world, it is important to put on the record of the New South Wales Parliament the pride of our people in the achievement of Phil Gould, Laurie Daley and the New South Wales rugby league team in winning the State of Origin series and treating all rugby league fans in this State and across the country to an outstanding performance. I congratulate the Queensland team and the New South Wales team for a wonderful display of the highest ideals of sportsmanship. I am sure all members of this House and all members in another place would join me in expressing pride in the achievement of our team in what has become a wonderful competition for all lovers of sport in this State.

Motion agreed to.

House adjourned at 10.14 p.m.
