

LEGISLATIVE COUNCIL

Wednesday, 27th October, 1993

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

The President offered the Prayers.

PETITIONS

Canterbury Hospital

Petition praying that Canterbury Hospital be retained and upgraded on its present site and that the services it provides continue during upgrading, received from the **Hon. Elisabeth Kirkby**.

Abortion

Petition praying that because of community support for the continued availability of abortions and a woman's right to choose abortion and the continued availability of counselling services for abortion clinics, the House not support any restriction of existing abortion services, received from the **Hon. Ann Symonds**.

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**.

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**.

LETONA CO-OPERATIVE (FINANCIAL ASSISTANCE) BILL

Suspension of Standing and Sessional Orders

Reverend the Hon. F. J. NILE [2.41]: I move:

That so much of the Standing and Sessional Orders be suspended as would preclude the Letona Co-operative (Financial Assistance) Bill being called on forthwith.

This matter is important and urgent. I believe the House should set aside the other matter of public importance at this time to allow the bill to proceed to the second reading.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [2.42]: The Government will oppose suspension of standing and sessional orders to allow this bill to proceed. I have indicated consistently in the House that the House makes Thursdays available as private members' business days. On Thursdays members may, with contingent notice, use the procedures of the House to bring on their private member's business at a time suitable to the House. There are occasions on Tuesdays and Wednesdays - which are set aside for dealing with Government business - when the Government is prepared to facilitate a private member's matter where that matter is of a nature that the Government is willing to support the interruption of its business.

The Hon. M. R. Egan: Will you facilitate this matter?

The Hon. J. P. HANNAFORD: No. The Government's view is that this matter is not appropriate to be dealt with other than on private members' day. The Government therefore opposes the bringing on of the matter.

The Hon. M. R. EGAN (Leader of the Opposition) [2.43]: The Opposition supports the motion of Reverend the Hon. F. J. Nile. As honourable members know from the Minister's response to my interjection a few moments ago, that is the only way in which this vital piece of legislation can be brought before the House for debate and, I hope, be voted on in a reasonable period of time. The bill that Reverend the Hon. F. J. Nile has indicated he will introduce into the House is a most important bill that is designed not only to save 230 permanent jobs and 800 casual jobs in the Letona canneries but also to save a whole community.

It is an absolute disgrace that National Party members of this Parliament and the Fahey Government are willing to see that cannery close. I can assure the House and the people of Leeton that the Opposition will do everything it can to save the cannery. The Leader of the Government in this House goes on about the opportunities for private members' business and bills to be introduced and dealt with on Thursdays, but he knows only too well that the standing orders of this House - which are so antiquated that it does not matter - make it absolutely impossible for private members' bills to be dealt with and voted upon.

That is why Reverend the Hon. F. J. Nile has taken this course of action today, and it is why the Opposition will support him today. The Opposition believes this bill is vital. The Opposition is determined to have the bill debated and voted upon by this House, notwithstanding the fact that the Government does not want it voted upon at all. I asked the Minister during his comments whether he would facilitate the bill coming on, being discussed and being voted upon. His answer: No. What other option, therefore, does the House have than to take over the business of the House on this occasion to deal with this vital piece of legislation?

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The Hon. ELISABETH KIRKBY [2.44]: I shall not prevent Reverend the Hon. F. J. Nile bringing on his motion because I believe it is proper that all members should have the right to bring on, under a contingent notice of motion, bills they believe are of importance. As honourable members are aware, I have done that myself, much to the fury of the Government. However, I place on record that it is with great regret that I, as the Leader of the Australian Democrats in this House, will not support the bill. I have taken advisings from the State Bank, which, of course, put a receiver into the Letona cannery. I have spoken also with the managing director of SPC Limited in Victoria and I have had other discussions on this matter. However hard and however tragic it is for the current management of Letona, the best thing that could happen would be for the factory to close. It could then be put under more dynamic management that would enable it to compete - as it should compete - for the benefit of the people of the Riverina. It will not do that under current management.

So long as Letona remains a co-operative the State Bank will do absolutely nothing to assist it. The

State Bank, of all the people who are owed money by Letona, is owed the largest sum of money. My colleague the Hon. R. S. L. Jones will give honourable members his views in a moment. They are not the same as mine. This morning I had conversations with the growers and with the Mayor of Leeton. They are aware that I understand their plight and the plight of the workers. Unfortunately, on this occasion, the wisest business decision would be for the cannery, under its present management, to close and for it to be revitalised under totally new management. At least two or three abattoirs in this State that were moribund and closed, in many cases for years, have now been revitalised, and jobs have been created through dynamic management. It happened in Cowra when Edgell's plant closed down. That plant has now reopened under new management. If Australia is to export to Asia and to make the best out of exporting its rural produce, co-operative management will never be good enough. Dynamic overseas marketing under a dynamic management structure and an upgrading of totally antiquated plant are needed.

The Hon. R. S. L. JONES [2.47]: I have also met with the people from Leeton and had the opportunity of going through the accounts with the Letona accountant. I have been involved in the restructuring of two loss-making companies that became very profitable after I became involved in their restructuring. One was a multimillion dollar British company that is now highly profitable. I have been through the accounts of the Letona company and I am aware of the tax payments it will make - \$1 million in payroll tax next year; \$3 million to \$4 million in group tax to the Federal Government; plus \$20 million at least to the local economy in wages alone for that town. I am totally convinced the company can be made viable within a maximum of two years.

The Hon. Dr B. P. V. Pezzutti: How much money?

The Hon. R. S. L. JONES: Letona needs a maximum of \$10 million to bring the company up to world best practice within 24 months. I will stand by the people of Leeton even if the National Party does not wish to do so. The jobs can be saved, and I will do my best to save them. I believe in this company. From my 30 years' experience in business, I believe this company can be rescued with a maximum of \$10 million. If I had the money to invest, I would invest in the company myself.

Reverend the Hon. F. J. NILE [2.49], in reply: To respond briefly to the Hon. Elisabeth Kirkby, I believe that the proposed legislation meets her concerns in a clear-cut detailed way. It provides for the existing board at Letona to be replaced by new management.

Question - That standing and sessional orders be suspended - put.

The House divided.

Ayes, 20

Mrs Arena	Mr Manson
Dr Burgmann	Mrs Nile
Ms Burnswoods	Revd F. J. Nile
Mr Dyer	Mr Obeid
Mr Egan	Mr Shaw
Mr Enderbury	Mrs Symonds
Mr Johnson	Mr Vaughan
Mr Jones	
Mr Kaldis	<i>Tellers,</i>
Mrs Kite	Mrs Isaksen
Mr Macdonald	Mr O'Grady

Noes, 18

Mr Bull	Dr Pezzutti
Mrs Chadwick	Mr Pickering
Mrs Evans	Mr Ryan
Mrs Forsythe	Mr Samios
Miss Gardiner	Mr Rowland Smith
Mr Gay	Mr Webster
Dr Goldsmith	
Mr Hannaford	<i>Tellers,</i>
Mr Moppett	Mr Coleman
Mr Mutch	Mrs Sham-Ho

Pair

Mrs Walker Mr Jobling

Question so resolved in the affirmative.

Motion for standing and sessional orders agreed to.

Motion

Reverend the Hon. F. J. NILE [2.56]: I move:

That General Business Notice of Motion No. 2 relating to the Letona Co-operative (Financial Assistance) Bill be called on forthwith.

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I have indicated already that this matter is extremely urgent. Last week I spoke to the receiver, Mr Miller. He said that unless something was done within seven days, the Letona cannery would collapse. Something had to be done and that is the reason for my unusual action of seeking to introduce the bill on a Government business day.

Motion agreed to.

Bill introduced and read a first time.

Second Reading

Reverend the Hon. F. J. NILE [3.0]: I move:

That this bill be now read a second time.

I realise that it is unusual that a bill is introduced to the House in this way. However, I appreciate the opportunity extended to me and I shall endeavour not to take up too much of the time allocated to deal with the matters on the program. The matters that I shall put on the record will, I believe, allay the concerns expressed by Government members and the Hon. Elisabeth Kirkby. The bill has been carefully drafted to take in a number of considerations. The concerns raised about the powers of the upper House and whether this bill is in fact a money bill have been addressed in the wording of the bill. The objects of the Letona Co-Operative (Financial Assistance) Bill are as follows:

- (a) to provide an endorsement by Parliament for a business plan and restructuring plan for the Letona Co-operative Limited ("Letona"); and

- (b) to recommend the provision of Government financial assistance to Letona and the growers who supply it; and
- (c) to facilitate the appointment of an administrator for the co-operative under the Co-operatives Act 1992 and to recommend that the State Bank revoke the appointment of a receiver and manager of Letona, for the purpose of enabling Letona to trade out of its current difficulties; and
- (d) to apply a provision of the Rural Assistance Act 1989 to loans from the State Bank to Letona so as to enable certain orders to be made under that Act (for example, orders suspending or deferring the payment of interest and principal) and to recommend immediate consideration of any assistance that can be given to Letona under that provision.

The clauses in the legislation are simple. Clause 1 specifies the short title of the proposed Act. Clause 2 provides for the commencement of the proposed Act on assent. Clause 3 contains definitions used in the proposed Act. Clause 4 endorses the business plan referred to in the bill and recommends its implementation. I seek the leave of the House to table the business plan.

Leave granted.

Clause 5 recommends that the State provide financial assistance to Letona by way of a \$5 million grant as part of a joint State-Commonwealth financial assistance package. Clause 6 recommends a special scheme be implemented under the Rural Assistance Act 1989 to assist growers who supply Letona, until they can be paid by Letona. Clause 7 recommends revocation of the appointment of a receiver and manager by the State Bank so that Letona can trade its way out of difficulty under the control of an administrator appointed under the Co-operatives Act 1992. Clause 8 applies section 35 of the Rural Assistance Act 1989 to existing loans from the State Bank to Letona. This will enable the Rural Assistance Authority to order the deferral of interest and principle under those loans. The clause also contains a recommendation by Parliament that the authority give immediate consideration to the assistance that can reasonably be given to Letona under that section.

Clause 9 provides that the assistance that the proposed Act recommends is to be funded by money to be appropriated by Parliament or out of money otherwise legally available. The bill is simple but its rejection will have a dramatic impact on the communities of the townships of Leeton and Batlow and families that live in that particular area of New South Wales. This is the only plant of its kind operating in New South Wales though there are similar operations in other States. There has been some suggestion that we should let it close down and move to Victoria. I think it is important for us to do all we can to maintain industry and jobs in this State.

The bill will give breathing space to the receiver, Mr Miller. When the bill becomes law an administrator will be appointed to provide the strong management skill and leadership that the Hon. Elisabeth Kirkby said she wanted to see. I hope, now that the bill has been presented to the House and she is aware of the import of the bill, that the Hon. Elisabeth Kirkby will support the bill. I acknowledge that there have been some practical difficulties in preparing the legislation. The matter has arisen only in the past few days, and hurried discussions with the Leeton Council, with legal advisers in Leeton, with the Parliamentary Council and with the receiver have taken place. I congratulate all those who were involved in getting the bill to the printed stage. That was a tremendous effort.

I apologise that copies of the bill were not available for the consideration of honourable members some days ago, as is normal practice. The bill was prepared in somewhat of an emergency. I have been advised that at the conclusion of my second reading speech the debate will be adjourned on the motion of the Deputy Leader of the Opposition, so that honourable members will have five clear days to consider the legislation in detail. In that time the Government may wish to offer some suggestions for assistance.

In 1935 Letona was sold by the State Government of New South Wales to a co-operative of fruitgrowers, and since that time the business has operated within a co-operative structure. During 1977 Letona acquired the Mountain Maid fruit and vegetable processing plant at Batlow. The Letona canning and juicing operations are an important part of the New South Wales rural economy and enjoy strong support from growers and the local communities. For many years Letona has suffered from a lack of free cash flow and, as a result, capital

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equipment has not been renewed on a timely basis. The abolition of grower levies in the early 1980s compounded this position.

In May 1991, Letona appointed Mr Ian Geddes as managing director. Mr Geddes undertook a complete review of the marketing process for the business, identifying areas where core products suffered from a loss of some brand recognition, and sought to address those issues. To an extent, these initiatives were successful with positive sales results flowing from the strategic plan developed and implemented in 1992. Letona encountered difficulties in 1993 as a result of a very poor tomato season, with a throughput of 19,000 tonnes against a budget of 31,000 tonnes. The peach crop was also of poor quality in the 1992-93 season. This gave rise to a substantial shortfall in budgeted results and was a key factor in the cash flow difficulties faced by Letona, eventually culminating in the appointment of a receiver and manager in August 1993. With regard to the need for more community support, I am pleased to table as part of my contribution - without reading from it, because it is a lengthy document - a document given to me by Leeton Council. It is a very important vote of confidence by the residents of Leeton.

The DEPUTY-PRESIDENT (The Hon. D. J. Gay): Order! Is the honourable member seeking leave to table a document?

Reverend the Hon. F. J. NILE: Yes. I shall read the introduction so that honourable members will know what the document is about.

The DEPUTY-PRESIDENT: Will you then seek leave of the House to table the document?

Reverend the Hon. F. J. NILE: I will do so in a moment. The document states:

Listed hereunder are the names and addresses of the 1,154 persons who have signed a statutory declaration supporting Leeton Shire Council's efforts to obtain State and Federal Government assistance to enable Letona to continue to operate.

I believe that this is a vote of confidence by the leading citizens of that community. They will get behind the renewed effort to save the Letona cannery. I seek the leave of the House to table this document.

Leave granted.

As a measure of the concern of the residents and Leeton Council, a business plan and restructure document was prepared. That business plan and restructure document seeks to achieve the following key objectives: to establish a commercial and viable business from the existing Letona co-operative; to restructure where necessary to achieve profitable growth and a positive cash flow; to continue to produce high-quality products for the domestic and international markets with motivated and committed growers and work force; to attract sufficient financial backing to implement this plan; and to seek a new, stronger and accountable management team and board with the necessary business skills to succeed. My proposal is designed to achieve just that. The business plan states that the future business should be restructured as a commercial company operating in the private sector, potentially as a division of a larger organisation.

From information I have received and from this document, the receiver manager is holding discussions with a number of parties with a view to obtaining a commitment from a skilled operator to

implement the key aspects of the restructured proposal. Such an operator would provide a significant benefit to the Leeton and Batlow canneries, with the introduction of sound financial and operational management principles. The passing of this bill would allow the receiver to continue to trade for the required period to allow time for that changeover. The business plan goes into great detail, as referred to by the Hon. R. S. L. Jones, and is a most encouraging document. I know that it could be improved upon but I believe it contains the essence of a rescue plan. From all sides of the Letona equation - from the employees, the growers and so on - there has been a genuine spirit of co-operation and willingness to sacrifice, as happened with the Shepparton Preserving Company. That company succeeded and I believe the same can apply to the Letona canneries.

The employees have made commitments, including: time banking in lieu of overtime, a saving of \$669,000; wage payments by electronic funds transfer, a saving of \$36,000; and salary savings through a reduction of 43 permanent positions offset in one year by redundancy costs, \$1,400,000; total payroll savings of \$2,105,000. The employees are committed not only to saving the Letona canneries and obviously their own jobs, but also to saving the economic future of the town and the retail businesses in Leeton that are dependent on families spending money. It is not simply the Letona canneries that are at risk. If this plan fails it could have a serious impact on retail businesses in the Leeton and Batlow areas.

The growers have made genuine commitments. Growers of deciduous fruit and grapes have agreed to a grower levy of 7.5 per cent phased over three years, which would bring in \$1,584,000, and to reschedule the payment cycle, spreading the payment for supplies more evenly over the season, which will save \$12,000. The tomato growers have also agreed to the rescheduled payment cycle, which will save \$4,000, and a 10 per cent debenture of the whole field bonus, which will save \$18,000. The vegetable growers have also supported the rescheduled payment cycle, thus saving \$4,000. Total grower savings are \$1,622,000 in addition to the payroll savings. The Leeton Council obviously is totally committed to saving the Letona canneries.

The mayor, Mr Peter Wood, has expended a tremendous amount of effort, both physical and mental, in doing all he could to provide leadership. I congratulate him on his sincerity and earnestness, and on the time he has devoted to the Letona cause. I do not wish to embarrass him, but when he spoke to me last week he broke down in tears and indicated his
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absolute frustration with the attitude of the Government. I felt I had to do all I could to assist the mayor and the Leeton community. I believe that neither the mayor nor the people of the community should be put in that position. Leeton Council has agreed to a cash injection by way of interest-free loans of \$250,000; rate and excess water rebates of \$150,000; assistance with trade waste disposal projects, \$250,000; and assistance with infrastructure upgrade, \$100,000. The Murrumbidgee Council has agreed to an electricity rebate of 17 per cent to 20 per cent, a saving of another \$100,000.

The Wagga Wagga Council has agreed to rescheduling of gas payments. The total local government savings are \$850,000 - almost \$1 million. The Natural Gas Company has agreed to reschedule gas payments. MIA Riverina Road Transport and allied industries have offered assistance with a low-interest loan of \$100,000. So the suppliers are committed to a total of \$100,000. Letona Co-operative, through the sale of surplus assets and houses, will achieve savings of approximately \$500,000, with a superannuation fund contribution holiday saving of \$536,000 - a total of \$1,036,000 from Letona. That is a total cost saving and local investment commitment of \$5,713,000. The State Government will lose almost \$1 million in payroll tax if the canneries are closed. The Federal Government will lose pay as you earn tax of more than \$3 million and obviously will have to pay unemployment benefits and Jobsearch payments to the unemployed work force. The Federal Government will suffer a loss amounting to millions of dollars.

Capital investment is required, which is one of the objectives of the bill, so that there can be a restructuring and updating of equipment. Some of the equipment is quite modern but other parts need modernising. I have contacted some industry leaders in Sydney who were unaware of the problem at

Letona. They are now looking at what assistance they can provide by way of modern canning equipment and so on. It is one thing to close down the canneries, but what do the employees do in the meantime? Do they sit in limbo? Some will be so discouraged that they will try to sell their homes at a low price because there will be a drop in real estate values and so on, and move out of the area. If and when someone attempts to restart the operation, all that skilled labour will have dissipated. It seems sensible to try to keep the operation alive and make it stronger rather than to let it die and then try to revive it by restructuring. That seems to be faulty logic unless there are other purposes behind it. As I have said, it may give someone an opportunity to buy the canneries at a cheaper price than would be justified if they were going concerns.

I congratulate the mayor of Leeton and the Leeton community action group led by Jim Bradley on their efforts. Leeton and Batlow are very much grass roots communities, and in many ways I am sure the National Party would have empathy with what the people are seeking to do. It is important that they receive all the help they can get. The Minister for Agriculture and Fisheries and Minister for Mines has said many times, "This situation has not developed overnight". He is dead right. He is well aware of that, as the State Government approved an increase in guarantees of about \$2 million without question only in the last few months. It seems that the Government has a head-in-the-sand approach to this issue.

I refer to the impact Letona has on society. The Letona canneries spend \$1 million on gas and coal; and Letona's account at Murrumbidgee Electricity is over \$500,000 at Leeton and \$245,000 at Batlow. If the canneries close, it will have an impact on those instrumentalities. Letona exports 50 per cent of its fruit and is ranked in the top 350 export companies in Australia. Two years ago it broke into the Scandinavian market, and now provides that market with one-third of its fruit exports. If Letona does not produce unpeeled tomatoes, there is no other producer of the product; Australia will need to import approximately 30,000 tonnes of unpeeled tomatoes. If Letona is not allowed to operate we may have to import more fruit and vegetables.

The receiver called for expressions of interest on Wednesday, 1st September, and by the closing date, Friday, 3rd September, only one party had expressed interest. That party indicated publicly that there would be massive sackings and no payment to growers waiting for payment. As we know, the growers have co-operated up until now, beyond the point of sacrifice. That is why the bill includes a clause on rural assistance. From discussions I have had with the growers I understand that they are owed up to \$2.6 million for what they have supplied to the cannery. They have made sacrifices and cannot continue to do so any longer. They should receive rural assistance grants.

I believe this legislation should be supported by the Government, as it is supported by the Opposition, Call to Australia and the Australian Democrats. I trust that in the five days before the bill is discussed further the Government will strongly consider giving its full support to the continued operation of the canneries. During those five days the Government will study this matter in more detail. Part of my strategy is to get the Government's attention, which I believe I now have. The Government should resolve to give support to allow for the continuation of the Letona canneries at Leeton and Batlow. I am pleased to have had the support of the majority of the members of this House for this very important piece of legislation.

The DEPUTY-PRESIDENT (The Hon. D. J. Gay): Order! Page 2 of the Letona Co-operative (Financial Assistance) Bill states:

"Business plan" means the Business Plan and Restructure Document for Letona prepared by the Letona Community Action Team and dated 27 September 1993, a copy of which was presented to the President of the Legislative Council (by the Member who introduced the Bill for this Act) when the Bill was read a second time in the Council.

Has that been done?

Reverend the Hon. F. J. NILE: Yes.

Debate adjourned on motion by the Hon. J. P. Hannaford.

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LEGAL AID IN ENVIRONMENTAL MATTERS

Matter of Public Interest

The Hon. JAN BURNSWOODS [3.24]: I move:

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

Legal aid in environmental matters.

I believe this matter is urgent. Over the last year or so the Government and the Legal Aid Commission have got into a difficult and confusing situation relating to legal aid for matters of public interest. I will state why I believe this matter is important.

The Hon. Dr B. P. V. Pezzutti: You have to establish that the matter is urgent, not that it is important.

The Hon. JAN BURNSWOODS: The Hon. Dr B. P. V. Pezzutti has informed me that I must establish urgency. I have already used the word urgent. The decision made on 17th December, 1992 to axe legal aid in civil cases, including all environmental matters, was made without consultation, without a proper financial study and without consideration of its social impact. That decision was made despite the fact that legal aid in civil and environmental matters was granted only when a case had a 99 per cent chance of winning and, therefore, costs would be returned to the commission. We were told then, and we have been told continually since, that legal aid in civil matters was axed because of lack of funding. However, a few weeks ago the Legal Aid Commission miraculously decided that it had enough money to assist people in need in a variety of civil matters, despite the fact that its budget allocation this financial year has decreased by more than \$4 million compared with last year. This is certainly a matter of grave urgency.

The House should look at this matter. Less than a year ago the Legal Aid Commission dropped civil legal aid for important matters such as victims' compensation, consumer protection, tenancy, coroners' inquests, employment, civil liberties, et cetera. Only a few weeks ago it was restored to the list, but with two important exceptions - environmental matters and matters dealing with breaches of duty by the legal profession. In this curious situation an urgent answer is needed. In an article published in the *Sydney Morning Herald* on 19th October Elizabeth Jurman made a number of statements which I believe the Government needs to deal with. It is time for the Government and the Legal Aid Commission to explain why civil legal aid was axed in the first place, as it is now clear that there was never any reason to do so because the system is almost self-funding. The Government and the Legal Aid Commission decided that the cupboard was not bare only after the Auditor-General pointed out that although the commission paid out \$9.8 million for civil legal aid in 1992-93, it actually received -

The Hon. Dr B. P. V. Pezzutti: On a point of order. I have been listening carefully to the Hon. Jan Burnswoods. Although she has used the word urgency a number of times, she is not in any way attempting to establish why this matter has to be dealt with urgently today and interfere with the operation of this House. I ask that she be reminded that the reason for this speech is to establish urgency.

The Hon. Elisabeth Kirkby: On the point of order. I appreciate why the honourable member

wishes to establish the urgency of this matter. My understanding is that she has no need to establish urgency, because the Government has agreed to it. She should be able to proceed and she should not have to establish urgency.

The Hon. Dr B. P. V. Pezzutti: Further to the point of order. The Leader of the Government offered the opportunity for the debate to come straight on, but the Hon. Jan Burnswoods declined that offer and asked to speak on the matter of urgency. I ask that you direct her to speak on the matter of urgency or ask her to accept the offer of the Leader of the Government to bring the debate straight on.

The Hon. Jan Burnswoods: On the point of order. I did not actually decline the offer; I said that I would like to say something about why I considered this matter is very urgent and that I would then go into the detail of the matter. However, I would be happy to conclude my remarks about urgency.

The DEPUTY-PRESIDENT (The Hon. D. J. Gay): Order! The Government indicated that it would agree to the declaration of urgency. The honourable member said she wished to speak briefly on the matter of urgency before addressing the substantive matter. I ask the member to make her remarks concise and to the point of urgency.

The Hon. JAN BURNSWOODS: I accept the ruling and am happy to conclude by saying that the matter must be debated today because the public needs to hear the full story.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [3.31]: The Government consents to urgency.

Motion agreed to.

The Hon. JAN BURNSWOODS [3.28]: I shall give a number of examples of the point I was making, but I will deal with some of the general issues first because, though it is important to deal with the specific cases of great environmental significance that have not received aid, we must focus strongly on the principles at stake. For almost a year we were continually told that the Legal Aid Commission lacked the money to provide civil legal aid. Yet the Auditor-General pointed out that the commission received back \$8.7 million in costs out of the total of \$9.8 million it had paid for civil legal aid. Most legal aid in civil matters has now been returned, although that has not

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been satisfactorily explained. Also, it has not been explained why legal aid in meritorious environmental matters has not been returned. Yet in the environmental area the Legal Aid Commission has broken even or even made a slight profit on the legal aid granted and the money recouped.

The figures for the Environmental Defender's Office show that in 1991-92 the Legal Aid Commission paid out \$203,098 to the EDO for approximately nine cases. The EDO won those cases and the commission will get a return of costs from the losing parties of \$270,000. Even if the commission negotiates to accept less than the \$270,000 owing to it, it will still be in front. Anyway, that amount is very small compared with the commission's total budget and, more importantly, with the great public benefit that resulted from that relatively small outlay. I admit that one of the problems for the commission is that unsuccessful developers and government departments have not been paying their bills to the commission, thereby creating a funding crisis for the commission. The Attorney General should examine why government departments and unsuccessful developers have been delaying. The nine cases that the Environmental Defender's Office has taken up -

The Hon. Dr B. P. V. Pezzutti: Are you sure you have got these right, or are they old?

The Hon. JAN BURNSWOODS: I refer first to a case that the Hon. Dr B. P. V. Pezzutti and other members have heard me refer to in this Chamber before, the Iron Gates development at Evans Head, the largest proposed development on the North Coast. That development has gone to the courts many

times, and with grants of legal aid. It has been in the Land and Environment Court and in the Court of Appeal on various occasions, not on frivolous grounds but because of the outrageous actions of the developer. The Minister for Planning, Mr Webster, and the Minister for Agriculture and Fisheries, Mr Causley -

The DEPUTY-PRESIDENT (The Hon. D. J. Gay): Order! The Hon. Dr B. P. V. Pezzutti can add his name to the speakers list if he wishes to contribute to the debate.

The Hon. Dr B. P. V. Pezzutti: On a point of order.

The DEPUTY-PRESIDENT: Order! The honourable member will not canvass - it is too much for me. Please carry on.

The Hon. JAN BURNSWOODS: Mr Deputy-President, you took the words right out of my mouth. The Hon. Dr B. P. V. Pezzutti is indeed too much. The Ministers I named have been right behind the development at Iron Gates and condoned the illegal actions of Iron Gates Development Pty Limited.

The Hon. Dr B. P. V. Pezzutti: On a point of order. It is not competent for the honourable member to make assertions as to the motives of people in another place. Her remarks are offensive, and she should withdraw them.

The DEPUTY-PRESIDENT: Order! I ask the honourable member to detail the areas he felt were offensive.

The Hon. Dr B. P. V. Pezzutti: The honourable member insisted that two Ministers have condoned illegal activities. She should withdraw those remarks and apologise. Standing Order 81 states that all imputations of improper motives and all personal reflections on members shall be deemed disorderly. Standing Order 80 states that no member shall use offensive words against either House of the Legislature, or any member thereof, or against any statute, unless when moving for its repeal.

The Hon. Jan Burnswoods: On the point of order. I was detailing the successful prosecution of cases and victories in the courts for the environmental groups against the developers. I should not have thought there was much doubt about the decision.

The DEPUTY-PRESIDENT: Order! I uphold the point of order. If the Hon. Jan Burnswoods wishes to make charges against any member of either House, she must do so by way of substantive motion. I ask the honourable member to withdraw the comments.

The Hon. JAN BURNSWOODS: I certainly withdraw them, Mr Deputy-President. Without legal aid the Iron Gates case would never have made it to the courts, and that would have made the National Party very happy indeed. The developer in the Iron Gates case is one of the developers who has failed to pay the Legal Aid Commission \$60,000 owing to it, thus contributing to some of the financial problems that the commission has faced. There is no doubt that environmental court cases create a lot of friction. Big developers, government departments and especially the National Party, including the Hon. Dr B. P. V. Pezzutti, do not take kindly to individuals and activist groups who take action to enforce public laws.

The Hon. Dr B. P. V. Pezzutti: On a point of order. Under Standing Order 81 I ask the honourable member to withdraw her remarks imputing improper motives to me.

The DEPUTY-PRESIDENT: Order! I uphold the point of order.

The Hon. JAN BURNSWOODS: I withdraw. The National Party now wants to keep every development like Iron Gates out of the courts. It is flexing its muscles to ensure that the Legal Aid Commission is never able to assist individuals or groups challenging developers or the Government.

One of the great problems with accountability in the Legal Aid Commission is that the commission makes its decisions in secret and does not give reasons for them. In this case the commission has told a number of people that political pressure from the National Party is the reason it will not restore environmental legal aid. The commission must explain its decision to the public. I am astounded that the Attorney General has done nothing to explain the situation.

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Only a few weeks ago the Managing Director of the Legal Aid Commission, Colin Neave, stated that the decision to cut civil legal aid was "completely correct". Then he announced the restoration of civil legal aid, but without any extra funding from the Government. So now he is presumably telling us that the decision to scrap legal aid in environmental matters is completely correct. Like many others, I do not agree with him. His previous statements relating to the whole area of civil legal aid make it clear that Mr Neave and in turn the Attorney General are either not very clear about the whole situation of the Legal Aid Commission or are not being honest with the public and the Parliament of New South Wales.

I hope the Attorney General has already ordered a report from the commission on what really happened with the civil legal aid decision, as he has the power to do. I also hope that we receive a frank and full report on the political intervention by the National Party in the commission's decision-making on environmental grounds. I hope that when the Attorney General speaks in this debate - I am pleased to see that his name is on the list - he will offer us more than empty rhetoric. He should realise the seriousness of the situation, especially the involvement of some of his colleagues.

In the Estimates Committee last week the Attorney General stated that since the decision to grant legal aid was made in December 1992 he had been working with the Legal Aid Commission to "have legal aid to the civil area returned". The Attorney General might like to explain why he did not campaign for the return of legal aid in environmental matters and, for that matter, in professional negligence cases, given that environmental cases pay for themselves. Again I quote part of an answer the Attorney General gave last week at the Estimates Committee:

As a matter of principle, the Legal Aid Commission has sought to make certain that funds are available for those organisations or individuals who want to be able to take proceedings that might involve government agencies or the like, so as to make certain that when it comes to dealing with what might be described as the strength or might of government, individuals are not disadvantaged.

When I read that I thought the Attorney General might indeed be talking about public interest environmental law cases. Certainly the words aptly describe the situation when individuals or local groups want to challenge what they believe is illegal activity of a government department or authority. Unfortunately, the Attorney General, like the Legal Aid Commission, has shown that he is scared of the National Party, which has lobbied hard behind the scenes to ensure that environmental legal aid is blackbanned. The Attorney General told the Estimates Committee that he is not able to give instructions to the Legal Aid Commission. Perhaps he can explain then why other people have been able to threaten the Legal Aid Commission to keep its ban on environmental matters.

It is a very worrying situation if one interest group in our society is able to successfully exert pressure on what is supposed to be an independent body. It sets a very dangerous precedent. I hope the Minister will tell us why aid in professional negligence cases also could not be restored as there is an obvious need in that area. I could detail a number of cases that have not been taken to court because of the decision of the Legal Aid Commission. In one case, for instance, a logging company was not leaving the required number of old growth trees as required by the conditions of its forestry licence, but simply going through the forest and clearing all trees. Of course, the Forestry Commission did nothing to stop the company's illegal felling.

The Wilderness Society wants to take out an injunction to force the company to comply with the

terms of its licence, but without legal aid no action can be taken to stop it. Why the Forestry Commission refused to take the action itself is a matter that will be taken up at a later stage. In another case the local council wanted to put in a landfill - that is, create a rubbish tip - near wetlands. The council went ahead without requiring an environmental impact study, as required under the Environmental Planning and Assessment Act. Legal aid was granted to local residents. The Legal Aid Commission recovered the costs it had paid out. An environmental impact study was conducted, and the council decided to go ahead. But by that stage in the proceedings no legal aid was available, and the residents were unable to continue. It is obvious that when a court makes a costs award against an unsuccessful litigant, the losing party is supposed to pay those costs. [*Quorum formed.*]

I repeat that it is of very great public importance that this Parliament should give rights to people and then, in effect, take those rights away by ensuring that people receive no financial assistance to run their cases. The Government has lots of money to throw around on certain types of legal aid. Peter Collins can attest to that. But when it comes to a whole range of important environmental matters - [*Time expired.*]

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [3.43]: After listening with interest to the comments of the Hon. Jan Burnswoods, I should put on record a few matters that will be of interest to those who will read this debate. Undoubtedly the honourable member will distribute her speech and the speeches of others to interested parties. During the course of her comments on this particular matter of public importance I noted that not a single member of the Labor Party was present in the Chamber to give her support. In fact, in order to assist the honourable member I called a quorum. The quorum bells were rung, but by the time the honourable member had finished her contribution not one single member of the Labor Party had entered the Chamber to support her.

Those who seek to address their minds to the deliberations in this debate should be conscious of the attitude of the Labor Party to this issue and, what is most important, to the honourable member. Those
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who read the honourable member's contribution should be aware that in this Chamber she has an outstanding reputation for being wrong on most occasions when she makes a contribution to debate. Any connection between the facts and what she has to say is tenuous - so tenuous that recently, in relation to an environmental issue that involved Woolloomooloo wharf, the Leader of the Opposition - the leader of her party - dissociated himself from the issue. Last night she made another outstanding -

The Hon. Jan Burnswoods: On a point of order. The Minister should refer to me rather than to another member. I seek an apology from the Minister.

The Hon. J. P. HANNAFORD: I apologise to the honourable member. It was the Hon. Dr Meredith Burgmann. Members are used to the usual problems with both of them. More will be heard about contributions the Hon. Jan Burnswoods made to a debate last night on environmental issues on the North Coast. She will hear much more about that particular matter in days to come. I acknowledge that in this debate she made one comment that was near to the truth. She acknowledged that legal aid is no longer generally available for environmental matters in New South Wales. But she did not point out that legal aid in environmental matters is not available in any State of Australia. I acknowledge that up until December of last year New South Wales was the only State providing legal aid in environmental matters. The Government is still making a contribution to legal aid, and I will comment on that later. The decision to discontinue making available legal aid in environmental matters was made late last year following the decision of the Legal Aid Commission to restrict the availability of legal aid in civil law matters. Concerns about -

The Hon. R. S. L. Jones: You politicised it.

The Hon. J. P. HANNAFORD: I will take up the interjection by the Hon. R. S. L. Jones because the

Hon. Jan Burnswoods made considerable comment in her speech about interference by the National Party in legal aid grants. I challenge her to provide one scintilla of evidence, one skerrick of evidence, that supports that proposition. The honourable member is alleging that the independent members of the Legal Aid Commission have been interfered with in making their decisions to grant legal aid. I categorically reject that proposition totally and absolutely.

The Hon. R. S. L. Jones: It is true.

The Hon. J. P. HANNAFORD: The Hon. R. S. L. Jones interjects by saying that it is true. I make the same challenge to him: that he provide one scintilla of evidence. The Hon. R. S. L. Jones is saying that there has been political interference in the Legal Aid Commission. I say to him clearly that if I am given one scintilla of evidence of political interference, I will deal with it. I challenge the honourable member to provide the evidence. The Legal Aid Commission made its own decision. There are concerns about the availability of legal aid for environmental matters generally and for other civil matters, not only in New South Wales but throughout Australia. These concerns are real but they have to be considered in the broader context of what the commission has achieved in a time of economic recession and increasing costs. Legal aid organisations worldwide are having to come to grips with an ever-increasing need for their services and the practical realities of living within confined budgets. Unfortunately there is no limitless source of funds available for any government service.

The Hon. R. S. L. Jones: Most of the moneys are refunded; 90 per cent comes back.

The Hon. J. P. HANNAFORD: The honourable member interjects in relation to the amount coming back. The Hon. Jan Burnswoods in her contribution said that all of it comes back. The Legal Aid Commission pays out approximately \$4 million net in grants of civil legal aid.

The Hon. R. S. L. Jones: We are talking about environmental legal aid now?

The Hon. J. P. HANNAFORD: The Legal Aid Commission pays out about \$4 million in civil legal aid. I have heard people say that the Legal Aid Commission makes a profit on civil legal aid. Paying out \$4 million seems the strangest profit I have ever heard of. Many of those comments are made by members of the Labor Party, but honourable members are used to members of the Labor Party not being able to handle figures. It is increasingly important that funds are directed to those most in need of help. It is equally important that legal aid services are provided in a cost-efficient manner. The Legal Aid Commission is well aware of the need to manage its resources in a way that ensures that as many disadvantaged people as possible are able to get legal assistance. To meet this aim the Commission has been closely considering the question of priorities for legal aid since the fundamental review of its programs was commenced in 1991.

The continuing consideration of priorities led the commission to review the operation of its civil law program late last year. The publicity surrounding the decision to restrict the availability of legal aid in civil matters has resulted in a number of misperceptions about the availability of legal aid generally. Some people think that aid is now available only for criminal matters. That is simply not the case. Legal aid is still available for a range of family, civil, administrative and criminal law matters. In civil matters legal aid has remained available for protected estate matters to safeguard the interests of those who are unable to manage their affairs; in anti-discrimination cases; in certain inquests involving deaths while in the custody of police, in a prison or in another institution; and in those cases where it is likely that the person will lose his home as a result of proceedings such as tenancy, ejectment, banking and consumer debt disputes.

Legal aid continues to be available for a wide range of civil matters for particularly vulnerable members of the community, such as children, people

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with a psychiatric illness or developmental or intellectual disability and people with a physical disability that creates a difficulty in dealing with the legal system. Legal aid is available for a wider range of civil

matters in New South Wales than in any other State. More people have access to civil legal aid in New South Wales than in any other part of Australia. As I said earlier, no other State provides aid for environmental matters. Legal advice remains available free of charge for all civil matters as well as for all other matters.

In August the commission reinstated legal aid for applicants for proceedings in the Victims Compensation Tribunal, and from 1st November legal aid will be available for consumer protection matters, civil liberties cases and inquests where questions of public interest are raised. These expansions of services have been possible because of intensive effort by the commission to review its civil policies and to identify the cost of providing assistance in certain types of matters. This is an ongoing process. I must make two important points in relation to legal aid for environmental matters. First, though legal aid is not generally available, the Legal Aid Commission in the exercise of its residual power will always consider applications for special grants in matters involving significant public interest. Second, the availability of assistance from the Environmental Defender's Office must not be overlooked. The Environmental Defender's Office is an independent public interest legal centre specialising in environmental law matters. [*Quorum formed.*]

In 1992-93 the Environmental Defender's Office received \$93,000 through the community legal centre funding program administered by the Legal Aid Commission. So funds were made available by the Legal Aid Commission to the Environmental Defender's Office to assist.

The Hon. R. S. L. Jones: How much came back?

The Hon. J. P. HANNAFORD: The Government makes moneys available by way of a grant and the moneys do not come back. The commission continues to explore a range of options for its civil law program so that it can provide the best service possible within its resources. The Government is committed to continuing an ongoing review of legal aid. As I have said on a number of occasions in this House, the Legal Aid Commission, however, is not subject to direction from the Minister; it makes its own decisions on the availability of legal assistance, and those decisions are made totally at its discretion. The State Government, together with the Federal Government, makes available such moneys as can be afforded by the governments of the day for the provision of legal assistance. The Government welcomes the decisions the Legal Aid Commission has made to seek to increase access to civil legal aid. No doubt as resources become available other areas of legal aid may be included. As I indicated, no other State of Australia provides legal aid for environmental assistance, but at least New South Wales has a special provision under which special cases receive consideration. Again that ensures that this Government is prepared to address issues of need.

The Hon. R. S. L. JONES [3.58]: I am grateful for the opportunity to speak about legal aid. I wanted to ask the Attorney General a question in relation to an article written by Elizabeth Jurman, which appeared in the *Sydney Morning Herald* on 19th October. In the final three paragraphs of her article she said:

Hannaford should demand an explanation of both the original decision and last week's variation.

On the change in legal aid, she said:

And he should ask why environmental and professional negligence cases remain excluded.

A view expressed both inside and outside the commission is that the National Party lobbied against restoring legal aid in environmental cases.

The Hon. Dr B. P. V. Pezzutti: Give us your evidence.

The Hon. R. S. L. JONES: The information comes from within the Legal Aid Commission. The

quote I have is, "Every time we grant legal aid on environmental matters we get monstered by the National Party".

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

QUESTIONS WITHOUT NOTICE

IN VITRO FERTILISATION

The Hon. J. R. JOHNSON: I ask the Attorney General a question without notice. Is he aware that within the past few days news from Washington in the United States of America has revealed that a university researcher has cloned human embryos? Does this reopen the debate on in vitro fertilisation and experimentation? Is the Attorney General aware that cloning is not illegal in New South Wales, despite the clear recommendations of the Law Reform Commission more than five years ago? The current National Health and Medical Research Council guidelines cannot stop an unscrupulous privately funded researcher from playing havoc with human life in unbridled Dr Mengele-like experimentations. Does the Government intend to legislate to outlaw these types of ventures or has the Government swept under the carpet the issue of trans-species fertilisation and human embryo experimentations? The people of this State are entitled to action. When can they expect it?

The Hon. J. P. HANNAFORD: The Hon. J. R. Johnson is correct when he says that New South Wales has no legislation governing the regulation of in vitro fertilisation practises or restricting IVF research and experimentation. The practice of IVF procedures is subject to the control of the National IVF Committee, a non-statutory body which oversees
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ethical and medical standards throughout Australia. The Hon. J. R. Johnson is also correct when he says that the New South Wales Law Reform Commission reported on in vitro fertilisation in 1988 under terms of reference it was given in October 1983. The main recommendations of the commission relate to the establishment of a biomedical council to be vested with advisory, policy and regulatory functions, and a system of licensing for practice and research.

The Government is continuing to examine the report and recommendations of the New South Wales Law Reform Commission on in vitro fertilisation. As I have said, the commission's report on IVF recommended that the practice of IVF in this State be regulated by a statutory scheme involving the establishment of a supervisory body called the Biomedical Council, to be vested with advisory, licensing, policy and regulatory functions. The majority of members of the commission also recommended that embryo experimentation be allowed to take place in limited circumstances. Specific legislative intervention in IVF practices will only become necessary if it becomes clear that the present system of self-regulation by the medical profession, under the guidance of the National IVF Committee, is not capable of maintaining ethical or medical standards in New South Wales. That is not presently the case. A review of particular legal issues relating to bioethics is being conducted by the Attorney General's Department, and that review will be maintained.

ASIAN-AUSTRALIAN JUVENILE OFFENDERS

The Hon. HELEN SHAM-HO: My question without notice is to the Attorney General, Minister for Justice and Vice President of the Executive Council. Is the Minister aware of an increased number of Asian-Australian youths in New South Wales juvenile justice facilities? Will the Minister inform the House

what is being done to help rehabilitate these young people and stop them from re-offending when they are released?

The Hon. J. P. HANNAFORD: As all honourable members appreciate, the Hon. Helen Sham-Ho has a special interest in this particular issue, which is of great concern. It is correct to say that there has been an increase in the Asian-Australian population in New South Wales juvenile justice centres. During the past three years the Asian-Australian population in New South Wales juvenile justice facilities has increased from 43 to 193. Already this year 46 Asian-Australian juveniles have passed through those facilities. That figure represents an increase from 1.56 per cent to 6.23 per cent of the juvenile justice facility population. The problem of the increasing crime rate in the Asian community is being co-operatively looked at by government departments. Statistics from the police, the courts, and the Office of Juvenile Justice suggests strongly that drug-related offences have increased among Asian-Australian youth.

Positive steps are being taken by the Fahey Government to combat the growing crime rate in the Asian-Australian community, which not only involves young people but also involves adults. There is strong anecdotal evidence to suggest that young people with Asian backgrounds are conscripted into the drug trade by adults with whom they have associated, and that it is almost impossible to convince these young people to identify the adults who have used them. The Minister for Police has informed me that to ensure community safety he has increased the number of police officers in areas with high Asian-Australian populations. But the extent of drug-related offences indicates that the arrest and conviction rate may increase further.

That has meant that the Government has had to look at other ways to combat the incidence of drug-related and other crimes in the Asian community in a way which is accepted by, and effective in, the Australian-Asian community in New South Wales, and which tries to prevent young people from becoming involved. Earlier this year an intergovernment agency meeting was held at the Cabramatta area juvenile justice office. That meeting was followed by a public meeting to investigate how the issue affects the community and whether suitable juvenile justice services and programs were available to the community. It was agreed at the interagency meeting that current programs aimed at crime, punishment and rehabilitation were not necessarily appropriate for Asian-Australian juveniles and that the Asian community should be consulted to formulate a specific program for juveniles and their families.

The public meeting focused on developing an intense community-based program of rehabilitation for those Asian-Australian juvenile offenders who are presently in detention but could be eligible for leave to community youth centres or on supervised orders. The Asian-Australian community groups represented include the Vietnamese Elderly Friendship Association, the Vietnamese Buddhist and Catholic associations, the migrant service team of Care Force Australia, Barnardo's Australia, the Cabramatta Community Centre and teachers from schools with high Vietnamese-Australian populations. The public meeting resolved that what was needed was an Asian-specific program that included family case work and support prior to a young person being released from detention. The meeting resolved that intervention should only be provided by Vietnamese-speaking welfare professionals who are sympathetic to the values of the parents but also aware of the needs of adolescents who are adjusting to the Australian culture.

These programs are currently being developed and the Asian-specific program should be up and running within a matter of weeks. The fact remains that, although the Government is implementing programs identified by professional and public consultation, the number of Asian-Australian youths in New South Wales juvenile justice centres is still rapidly and significantly increasing. The Office of Juvenile Justice is currently handling this problem by

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developing innovative and culturally appropriate responses to these young people, which it is hoped will become a model of world's best practice. The projects being implemented by the Office of Juvenile Justice include a community youth centre program. Prior to release juveniles may be assessed as

suitable for intensive counselling and could be included in the community youth centre program following release.

Another established program is the voluntary support scheme. Prior to release liaison is established with juveniles who have not had parole supervision ordered or who have been assessed as unsuitable for the community youth centre program. This voluntary support scheme offers support, guidance and referral to relevant agencies to juveniles on a voluntary basis. I am informed by the Office of Juvenile Justice that it is currently working on a proposed pilot interpreter service and the office will develop two specific initiatives for Asian-Australian young people: a pilot interpreter services program and an Asian-Australian program. The aim of the pilot interpreter program will be to provide every Asian-Australian detained in selected juvenile justice centres with access to a qualified interpreter service through on-site visits by qualified interpreters and use of the telephone interpreter service.

This program is being developed on the basis of the interim results of a survey of Asian-Australian detainees, which I will deal with shortly. The aim of the Asian-Australian program will be to provide a comprehensive agenda for the rehabilitation of Asian-Australian juvenile offenders who have been granted leave from juvenile justice centres or who are subject to court orders requiring supervision by the Office of Juvenile Justice. The program will involve individual counselling, group work, supervision and vocational components, as well as family counselling, pre-release preparation for parents and a parent support group.

Some juveniles have outstanding or current community service orders which are completed after release. This ensures that the Office of Juvenile Justice continues to monitor individual young people and give them an anchor to the programs they have just completed while in the care of juvenile justice centres. The young people in custody have also been surveyed to gain their views on the adequacy of existing service provision, gaps in service delivery, the attitude of staff to them and their treatment by staff. Additionally, the office conducted three focus groups with Asian-Australian detainees in order to explore further the issues raised in that particular survey. The survey and focus groups were conducted by people with an Asian background and are expected to produce valuable information for the culturally appropriate management of Asian-Australian juveniles in custody.

The Office of Juvenile Justice believes that one key way of providing effective and appropriate management of Asian-Australian people in custody is through the employment of Asian people in juvenile justice centres. There is currently an investigation into ways to increase employment of Asian-Australians, as well as examining the most suitable roles for those people to take in the centres. Currently there is one permanent Vietnamese senior youth worker, two casual Vietnamese youth workers and an Indo-Chinese clerical officer, but there seems to be a reluctance on the part of the Asian community to take up positions in juvenile justice centres, which the Office of Juvenile Justice is currently trying to overcome. Another key way of providing effective and appropriate management for Asian-Australians is by providing education and training for current staff in Asian languages, culture and traditions. The Mount Penang Juvenile Justice Centre has developed a pilot program on Vietnamese language, culture and traditions which is providing staff with basic language skills to assist in their communication with Asian-Australian residents.

Yasmar Juvenile Justice Centre conducted a seminar on Asian-Australian offenders which dealt with culture, street work, working with Asian-Australian families at risk, Asian crime, current trends and prevention, and management of Asian-Australian youth in juvenile justice centres. Asian language and culture classes in the centres have also been introduced, including the preparation of those programs which actually meet their direct needs. Specialist community workers and representatives from Asian community organisations are encouraged to visit the centres. The challenge for the Government and the Office of Juvenile Justice is to respond not only to Asian-Australians in its care but also to the multicultural diversity of the juvenile justice centre population. I am pleased that members such as the Hon. Franca Arena and the Hon. Ann Symonds have shown an interest in these issues. They recognise that there is a growing need in these areas, and I am pleased to have their support for these programs.

SEWAGE EFFLUENT IN AGRICULTURE

The Hon. R. S. L. JONES: My question is directed to the Minister for Planning and Minister for Housing. Is the Minister aware that today is open day at Flushing Meadows near Wagga Wagga, where the Commonwealth Scientific and Industrial Research Organization has been undertaking tests on the use of sewage effluent to grow trees such as *Eucalyptus Dunnii*? Has the test been so successful that it will be expanded, in conjunction with New South Wales Forests, to commercial plantations?

The Hon. R. J. WEBSTER: I was unaware of the eucalyptus species *Eucalyptus Dunnii*. However, I will take the honourable member's word for it. The honourable member has handed me a press release which is headed, "From Toilet Bowls to Tinsel". I have not had the benefit of reading the press release but I will digest it. With regard to the use of sewage effluent and sewage sludge in agriculture in general, honourable members would know that New South Wales Forests has been using sewage sludge as fertiliser in trial plots. I visited one such plot just outside Bathurst some time ago. As honourable

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members would expect, the honourable member for Bathurst - as he does with everything - was critical of the trial and claimed that people would suffer sickness because of it. But he was somewhat muzzled by the revelation that one of the more enlightened agrisocialists opposite, the Hon. I. M. Macdonald, was also experimenting with sewage sludge on his farm in the Southern Highlands.

I will take a keen interest in the work of the CSIRO at Wagga Wagga. I am not aware of what is happening at Flushing Meadows but, obviously, the work being done there is interesting and sounds worth while. So far as I am concerned, the Water Board is utilising sewage sludge in a variety of different ways at the moment, including in agriculture, with trial plots at Goulburn and the forestry experiment at Bathurst. My department will be comparing notes with the CSIRO to discover whatever secrets they may have revealed at Flushing Meadows, and I will report progress to the honourable member.

SCHOOL STUDENTS' PRIVATE INFORMATION

The Hon. JAN BURNSWOODS: My question without notice is addressed to the Minister for Education, Training and Youth Affairs. What action has the Minister taken to prevent her department releasing private details concerning school students? In particular, is the Minister aware of statements made on several radio stations last week by parents that their year 11 and year 12 children had received letters at home from companies attempting to sell various products, and making it clear that the companies had details of the courses that the students were doing? Will the Minister detail who authorised the release of students' private information, and to whom? Will the Minister immediately order a stop to this scandalous breach of privacy and her own department's rules?

The Hon. VIRGINIA CHADWICK: This question is similar to other questions asked recently by the honourable member - in fact, as recently as a few days ago in an Estimates Committee hearing. I refer the honourable member to the answer given at that time. Yes, there are guidelines. We are conscious of the privacy provisions. However, over a long period honourable members from both sides of the House have developed good and close relationships with their local schools and, under those circumstances, it has been common for some schools to do a number of things. In some instances principals have provided the names and addresses of students, and that is the matter that is of concern to the honourable member.

In some schools the principal provides the names of students, and the local member provides the letters which are handed out at school. In other schools principals accept letters without names on them

and they are distributed at the schools. At some schools, I suggest, principals determine that he or she will simply read a message from the local member to year 12 students at school assemblies. I understand and appreciate - and, indeed, share - the honourable member's concern about an abuse of private information, and that is precisely why we have privacy guidelines for our schools. I would have to say that, from time immemorial, members of all political persuasions have, because of a close relationship with the schools, written letters of this type. Quite frankly, I do not regard that practice as a capital offence.

If some students have taken umbrage and dislike receiving a well-meaning letter from their local member, I am sorry about that. It is my view that most students and parents would welcome their local member taking an interest in the welfare of students. I regret to say that I did not hear the radio broadcast referred to by the honourable member. I can think of no good reason that a school would provide that sort of information to a commercial company. However, if the honourable member would be good enough to tell me the name of the radio station that broadcast the information, I will gladly listen to the tapes, have the matter investigated and report back to the House.

SPECIAL EVENTS UNIT

The Hon. D. F. MOPPETT: My question is directed to the Minister for Education, Training and Youth Affairs, Minister for Tourism and Minister Assisting the Premier, but particularly in her capacity as Minister for Tourism. Will the Minister inform the House who has been appointed as the new executive director of the special events unit in New South Wales? What is the purpose of this unit, and how will it assist the tourism industry?

The Hon. VIRGINIA CHADWICK: I thank the honourable member for his question and for his interest in the dynamic and fast growing New South Wales tourism industry. I am delighted to report that a woman, Jan Edwards, has been recommended to head the special events unit. Jan Edwards is a special events and marketing expert. She has a history of involvement with marketing special events, including -

The Hon. Ann Symonds: Is she a Liberal candidate?

The Hon. VIRGINIA CHADWICK: Unlike the member opposite, I would not have a clue about Ms Edwards' political affiliations. I await the pleasure of meeting Ms Edwards, who was selected by a highly regarded and independent panel. The interjection is an indication of the appointments criteria of any future Labor Government. Ms Edwards has a history of involvement with marketing special events, and has extensive knowledge of major international events, business management and financial operations. She spent many years organising major marketing events with Spectator Sports Marketing, before spending more than four years with the head office of the Australian Bicentennial Authority as its director of special events. She has since completed several tourism projects for the Barbados Board of Tourism and several event-related government consultancies. More recently she

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accepted a short-term management and marketing consultancy with the Government for the inaugural Family Week. She was the successful applicant from 60 applicants for this exciting and new position, and will take up her job on 22nd November.

This is a most important development, because the unit will have as its core function the identification of opportunities to expand existing events and will bid to win events of national and international significance across sporting, cultural and artistic fields. In the lead-up to the Sydney Olympic Games, the unit will be working to capitalise on a growing reputation and to provide a much-needed focus for events hosted in New South Wales. It is our view that the unit will attract and develop more events to New South Wales, which will generate much-needed dollars and jobs within the State. Though I cannot inform the Hon. Ann Symonds of Ms Edwards' political affiliations, her relevant

credentials are well suited to the position and she will serve us well. I should have thought that the Hon. Ann Symonds would have expressed pleasure about the fact that a woman has been recommended for this important position. I look forward to working with Ms Edwards and reporting from time to time to the House on the success of the special events unit.

SCHOOL BUS SAFETY

The Hon. ELAINE NILE: I direct my question without notice to the Minister for Education, Training and Youth Affairs, representing the Minister for Transport and Minister for Roads. Is it a fact that there is an increase in the number of tragic deaths of schoolchildren after they have alighted from school buses - the latest being the death of an eight-year-old girl outside Mount Druitt station yesterday? Will the Government immediately introduce regulations similar to those in the United States that require school buses to be marked as such and to be fitted with red flashing lights? Further, the United States regulations require traffic in both directions to stop until all children have safely crossed the street. As a matter of urgency will the Government enforce the regulation operating in California that provides for the back of school buses to be marked in bold black letters "Stop when red lights are flashing"? Will the Government regulate that when lights flash at the rear and front of school buses, all vehicles must stop and remain stationary until the flashing lights are switched off?

The Hon. VIRGINIA CHADWICK: I thank the honourable member for her question. Though I do not have before me the details of action that the Minister for Transport is embarking upon, I am aware that he views this matter with concern and alarm. He has had several discussions with our colleague Mr Hazzard, the Chairman of the Joint Standing Committee upon Road Safety. I am aware also that consideration is being given to clearer markings on school busses, and I hope that a firm recommendation will be made on at least that aspect of this broad issue in the near future. Honourable members would be aware that the Government has implemented a system of changed speed limits in and around school areas in an attempt to get drivers in the community to do what common sense would suggest they should have been doing all along - recognise that on school mornings and afternoons extreme care and caution should be taken, and at the very least drivers should slow down

These requirements have been implemented and are initiatives of this Government. Improved signage of school busses is under way and will be phased in progressively over the next 12 months as part of a million dollar campaign to try to reduce road deaths and accidents. The number of wombat crossings outside schools is being increased from 60 to almost 200. It is the Government's view that the new 40-kilometre speed limit near schools coupled with parking issues, police enforcement and other measures will improve school safety. I am aware solely from media reports - so I certainly claim no expertise in this regard - of a scheme operating in some American States that requires buses to have better highlighting and signage, and that requires motorists to stop when a school bus in front of them stops. That scheme would have appeal to most members when they first hear of it. However, I know very little about it so I could not say whether it would be feasible, sensible or successful. I know that my colleague the honourable member for Wakehurst has been doing preliminary work on this matter. I am well aware that he and the Minister for Transport and Minister for Roads have had discussions about this serious matter. It needs urgent attention.

WINSTON LODGE RESIDENT CARE

The Hon. DOROTHY ISAKSEN: My question without notice is directed to the Minister for Education, Training and Youth Affairs, Minister for Tourism and Minister Assisting the Premier, representing the Minister for Community Services, Minister for Aboriginal Affairs and Minister for the Ageing. Is the Minister aware that an inquiry into the death of an elderly female resident at Winston Lodge has been told a 70-year-old suffering schizophrenia was in charge of the dispensing of medication to residents there? Given the claim by a licensing adviser to the Department of Community Services that

Winston Lodge was continually monitored, what changes have been made to ensure that there is no repeat of this situation and that conditions at the lodge comply with all licensing standards?

The Hon. VIRGINIA CHADWICK: I have no knowledge of that matter, other than what I read in the media report to which the honourable member was clearly referring. The assertions are serious. I will seek a detailed response from my colleague the Minister for Community Services, Minister for Aboriginal Affairs and Minister for the Ageing.

UNITED STATES OF AMERICA TOURISM SURVEY

The Hon. J. F. RYAN: My question is directed to the Minister for Education, Training and Youth Affairs, Minister for Tourism and Minister

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Assisting the Premier. Will the Minister inform the House of the results of a recent tourism survey conducted in the United States of America? Did the survey find Sydneysiders to be the friendliest in the world? What else did the survey uncover?

The Hon. VIRGINIA CHADWICK: Although from time to time in this Chamber one would doubt the results of that survey, the Hon. J. F. Ryan is correct: an American survey has rated Sydneysiders the friendliest people in the world. A major American travel magazine asked 38,000 Americans - certainly far from a small survey - to rate their favourite destinations anywhere in the world based on the people, cultural enrichment, restaurant facilities, environment and ambience. Of the respondents, 86.6 per cent voted Sydneysiders the friendliest. I inform the Hon. J. F. Ryan that Dublin came second in that regard; and, surprising as it may seem, Auckland came third.

Sydney was voted the third most popular destination by 80.7 per cent of respondents. And though we have all had our difficulties at airports from time to time, I am pleased to report that Sydney (Kingsford-Smith) Airport was rated the eighth best airport in the world. Clearly the information in this survey provides us with a huge opportunity. Approximately one-third of our international visitors come from the United States and Canada. If we can build on the fact that we have been viewed positively in so many areas, and can increase the number of visitors to our State, that will be very good for our economy and for the job prospects of our young people.

CANTERBURY HOSPITAL FUNDING

The Hon. ELISABETH KIRKBY: My question is directed to the Minister for Education, Training and Youth Affairs, Minister for Tourism and Minister Assisting the Premier, representing the Minister for Health. Is the Minister aware that, because it is rumoured that the new inner west hospital will go to the Central Sydney Area Health Service, CSAHS, and the Canterbury Hospital is in the Southern Sydney Area Health Service, SSAHS, Canterbury Hospital is now being starved for funds as the SSAHS does not want to lose control of funds allocated to Canterbury Hospital which will transfer to the inner west hospital on completion? What is the Minister going to do about this power struggle between the two area health services so that the community is not made to suffer the consequences?

The Hon. VIRGINIA CHADWICK: I thank the Hon. Elisabeth Kirkby for her question. I am unaware of the territorial battle that the honourable member alleges is being waged between area health services in Sydney. While I am dazzled by the honourable member's knowledge of acronyms in the health industry, the safest thing for me to do is to pass the question, acronyms and all, to the Minister for Health for a reply.

BUILDING INDUSTRY TASK FORCE PROSECUTION

The Hon. Dr MEREDITH BURGMANN: My question is directed to the Attorney General and Minister for Justice. What is the expenditure to date of the Building Industry Task Force in the prosecution of Paul Matters and Neville Hilton under section 545B of the Crimes Act in relation to watching and besetting? What is the anticipated cost of the case, including the three weeks set aside for it, the 43 Crown witnesses and the two Queen's Counsel? Is this appropriate expenditure for the retrieval of a \$500 fine? Does the Minister believe that the union leaders should be gaoled for taking part in a picket-line?

The Hon. J. P. HANNAFORD: I believe that all people in the community should be treated equally under the law. If a person is a member of a union, that does not exempt him from having to observe the law. I am not going to make any comments in relation to this particular case, nor would I want my comments to be seen as reflective in relation to this particular case. There is no doubt that from time to time members of some unions, particularly the Building Workers Industrial Union and the Builders Labourers Federation, take the view that the general law does not apply to them in their union activities.

We have seen instances in which the Labor Party has supported the unions in its approach to excluding the unions from the application of general law. The Federal Labor Party is proposing to amend section 45D of the Trade Practices Act so that there will be a separate regime applying to those operating in the industrial arena. It is clear that the honourable member is framing her question to let the Chamber draw the inference that she supports that approach. There should not be different rules for members of unions and the rest of the community. As to expenditure to date, I do not know. As to anticipated costs, I do not know. As far as I am concerned, expenditure incurred by law enforcement agencies in enforcing the law is appropriate expenditure.

SYDNEY METROPOLITAN STRATEGIC PLAN

The Hon. PATRICIA FORSYTHE: My question is directed to the Minister for Planning and Minister for Housing. Will the Minister explain what plans the Government has to make Sydney a better urban environment in which to live? What role does the metropolitan strategy play in achieving this?

The Hon. R. J. WEBSTER: Last week the Premier and Minister for Economic Development, the Minister for Transport and Minister for Roads and I released a blueprint for the future development of Sydney. The two discussion papers, entitled "Sydney's Future" and the "Integrated Transport Strategy", aim for a city which is cleaner, greener and easier to get around, with a greater emphasis on the

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links between where people live and work. The two documents combine to form a new approach to strategic planning for the greater metropolitan region.

The metro strategy has been prepared in response to community concern about the environmental, economic and social problems associated with continued urban growth. One thing we can be sure of is that Sydney will continue to grow. We live in a democracy where people can choose to live and work more or less where they like, and Sydney is a city where many people choose to live. To think we can stop Sydney growing is fanciful, so our task for the region is to plan for population growth, creating a city which suits its people. By 2011 Sydney will have a population of 4.5 million, an increase of 800,000 - or more than 40,000 a year. How we accommodate that growth in the Sydney region is what this strategy is all about.

Urban consolidation is integral to our urban policy. Family sizes will remain small over the next couple of decades, while single person households are on the increase. This means a million more homes will be needed in the next 20 years. If that kind of growth continues on the fringes we will need a massive economic investment in infrastructure. We will also be placing unsustainable pressure on the environment of the Sydney basin. That is why the Government's urban policy embraces the natural environment. Concern over the impact of urban development on the Hawkesbury-Nepean has led to

higher environmental standards for urban runoff and sewage disposal. It is essential that the highest environmental standards be met, but meeting those standards will make fringe development increasingly costly.

In the future, therefore, commercial and retail activities will be encouraged to locate in major centres to facilitate public transport use. The highly accessible central Sydney area will maintain its predominant role as an employment centre, while Parramatta's role as Sydney's second centre will be supported by major public transport proposals. Parramatta is forecast to grow more strongly to an employment level of 80,000 by 2011. Economic benefits are generated by improving the movements of both people and goods in Sydney, Newcastle and Wollongong. Sydney, Wollongong and Newcastle are major players in the Australian economy and major structural changes in the economy affect growth prospects in the region.

There is an opportunity to lessen Sydney's expansion by boosting urban development in the Newcastle region, but this will depend on increased job growth in the area. Any plan for a city will remain just that - a plan - without effective implementation. All the more reason for urban consolidation. It makes good social sense: the diversity of housing it offers more realistically reflects the changing composition of Sydney households. It makes good environmental sense: containing the city within reasonable bounds, decreasing the reliance on the car. And it makes good economic sense: it is the least wasteful use of all resources. So the metro strategy proposes a more compact city. More efficient use will be made of land and infrastructure.

New housing will still be built on the fringe but at a significantly reduced rate. New housing in established areas will be increased and will be focused on areas with good public transport. Over the next 20 years a higher proportion of new dwellings constructed annually will be in a multiunit form. This will provide a greater housing choice for a changing population. Residents will be able to live closer to jobs, shops and facilities. The draft strategy outlines mechanisms for improving current urban management practices, for achieving greater commitment between government agencies and for involving the community.

The plan for Sydney's future has been prepared with the involvement of a wide range of State Government agencies, together with community representatives on an independent advisory committee. A large number of local councils, community and business groups and individuals have also contributed through submissions and other forums. The integrated urban management approach has been recognised by environmental groups as the only way to proceed to achieve a sustainable urban environment. This strategy takes that fact as its starting point and builds a vision for Sydney's future which will guide us into the next century.

MARIJUANA DECRIMINALISATION

Reverend the Hon. F. J. NILE: I ask a question of the Attorney General and Minister for Justice, representing the Premier and the Minister for Police. Is it a fact that a scientific survey by the New South Wales Department of Health of seven State high schools in a middle class area of Sydney in 1990, as reported in the *Australian and New Zealand Journal of Psychiatry* 1990, 24:47-56, showed that marijuana users displayed poorer skill performance, spent less time on homework and had more school absenteeism and amotivational syndrome than non-users of marijuana? Is it a fact that the reported use of stimulants, hallucinogens, sedatives and especially heroin was almost entirely restricted to those students who reported use of marijuana, the gateway drug? Is it a fact that John Marsden, a member of the New South Wales Police Board, on 30th October, next Saturday, will spearhead an extensive newspaper advertising campaign in support of the legal use of marijuana? Will the Government dismiss or suspend Mr John Marsden from the New South Wales Police Board because of the serious conflict of interest and duties in his oversight of the New South Wales Police Service?

The Hon. J. P. HANNAFORD: I am not aware of the scientific survey or that Mr John Marsden will

spearhead a campaign in support of
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decriminalisation of marijuana this weekend, although I am well aware of Mr Marsden's campaign in favour of decriminalisation of marijuana. I remember that last year the Government announced in response to the climate in the United States that the call for decriminalisation of marijuana by Mr Marsden was not supported by the Government and the Government had no proposals for the decriminalisation of marijuana. That is not to say that people cannot hold a differing view. Many people believe in the decriminalisation of marijuana. It depends on what they mean by decriminalisation.

I recall that Mr John Avery, I think when he was Commissioner of Police, indicated that he felt that there should be a mechanism by which only infringement notices would be issued to persons who had in their possession quantities of marijuana or who were users of it. That statement by him was rejected by, I think, this Government. I think it was during the period of this administration or was at the cusp of the change. The President of the Court of Appeal made a similar comment, that instead of bringing people before the courts we should use an infringement notice program. I gather from his comments that he regards proceeding by way of infringement notices as representing a decriminalisation of marijuana. I see that there is a definitional problem. I would have thought decriminalisation meant that possession or use was not a criminal offence at all. Yet others are saying that instead of making it a court appearance matter it should be a court attendance notice matter.

Recently John Marsden has made the same comment, that it should be virtually a court attendance or infringement notice mechanism. If that is what he is advocating, I would not relate that to a decriminalisation comment. It is still keeping it a criminal offence; it is a matter of changing the mechanism for enforcement in regard to the criminal offence. Whichever approach is meant, the Government does not have any such changes on its agenda. Mr Marsden will not be dismissed from the Police Board. People are entitled to express a view on particular issues. That should not be seen as reflecting a failure to perform their duties appropriately in accordance with existing law. Judges have called for reforms but have still enforced the law. I have little doubt that Mr Marsden will perform his duties on the Police Board totally in accordance with the law and diligently. The mere fact that he expresses a contrary viewpoint should not debar him from holding his position.

POLITICAL LEADERS ACKNOWLEDGMENT OF COLOURING COMPETITION WINNER JACK SYMONDS

The Hon. ANN SYMONDS: My question without notice is directed to the Minister for Education, Training and Youth Affairs, Minister for Tourism and Minister Assisting the Premier. I draw the Minister's attention to correspondence received recently by my grandson from John Hewson, the Federal Leader of the Opposition, which states:

Jack Symonds
c/o Penny Short's Class
St Mary's Childcare
PO Box 163
WAVERLEY 2024

Dear Jack

I was pleased to hear of your recent win in the Colouring competition during Waverley Library's Book Week.

There were many entries in the competition and winning a prize is a great testament to all the hard work and diligence you devoted to your entry.

Once again I congratulate you and look forward to an even better project next year.

Yours sincerely

JOHN HEWSON

If the Federal Leader of the Opposition can take the time to offer such words of encouragement to a pre-schooler, why has not the State Minister for Education availed herself of the opportunity to acknowledge the achievement of this gifted New South Wales child?

The Hon. VIRGINIA CHADWICK: I stand humbled and chastised. I accept the criticism. I have been remiss. I give an absolute assurance that I, too, will write Jack a letter as quickly as possible to make up for my sin of omission. And I will send Jack a colouring book, if I can find one that is suitable, so that he can practise for next year's competition.

PSYCHIATRICALLY DISABLED TAFE STUDENTS

The Hon. JENNIFER GARDINER: My question is to the Minister for Education, Training and Youth Affairs, Minister for Tourism and Minister Assisting the Premier. Will the Minister inform the House how many students with psychiatric disabilities are studying at TAFE? Is there a project in place to examine ways of improving opportunities for these students?

The Hon. VIRGINIA CHADWICK: I thank the Hon. Jennifer Gardiner for her most important question. It is the policy of TAFE and indeed of all government departments and instrumentalities that people are not denied access to relevant courses because of a disability or a disadvantage of one kind or another. The needs of people with psychiatric disabilities have been neglected for a long time. I have personally agreed to provide \$214,000 funding for a 12-month research study based at Baulkham Hills College in the Western Sydney Institute of TAFE. The aim of the project is to examine various methods of providing the best possible educational support to students with psychiatric disabilities. This may include a modification of teaching methods; it may necessitate various support services being made available for people with special needs; given the nature of psychiatric illness, it may mean provision of more flexible timetables for students suffering such illness.

It is the aim of the New South Wales TAFE Commission to ensure that students with psychiatric disabilities have every opportunity to do well in their

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studies and hence to gain employment. It has been determined that a project of this kind is needed. Last year a study done by TAFE in New South Wales found a high level of demand by students with psychiatric disabilities for educational support services, in particular for flexible study methods. I would be the first to concede that the 1992 study was not 100 per cent conclusive in terms of the number of students surveyed. I am sure that from time to time, or perhaps in different circumstances, people other than those surveyed could identify themselves as needing that type of support. However, in the 1992 study 1600 TAFE students identified themselves as having psychiatric disability. There is a need. I think we will be able to provide higher quality and more extensive and relevant services as a result of the findings of that 12-month project.

PUBLIC HOLIDAYS

The Hon. A. B. MANSON: I direct my question without notice to the Minister for Education, Training and Youth Affairs, Minister for Tourism and Minister Assisting the Premier. Is the Minister aware that her Victorian Liberal Government colleagues have abolished three public holidays that Victoria has traditionally observed? Will the Government rule out the possibility of abolishing any public holidays

currently observed in New South Wales? If not, why not?

The Hon. VIRGINIA CHADWICK: I thank the honourable member for his question, which I will refer to my colleague the Minister for Industrial Relations and Employment and Minister for the Status of Women.

SYDNEY ORGANISING COMMITTEE FOR THE OLYMPIC GAMES

The Hon. ELISABETH KIRKBY: My question is directed to the Attorney General, Minister for Justice and Vice President of the Executive Council, representing the Premier and Minister for Economic Development. Why was it not possible to find one single woman in New South Wales to be on the 15-member Sydney Organising Committee for the Olympic Games? Is this an indication that the Premier believes that there is no woman in New South Wales competent enough to be on that committee? Will the Premier ensure that this gross insult to the women of New South Wales is addressed as quickly as possible?

The Hon. J. P. HANNAFORD: The Premier supports the view that in the appointment of people of ability to boards and other bodies there must be no discrimination or favouritism in one direction or another. He has been very strong in his support of women's issues. Undoubtedly it was necessary to look for people with special skills for appointment to the Sydney Organising Committee for the Olympic Games and to select the best possible people for appointment to particular positions. The Premier has made those particular choices. I believe the community has well received the names of those chosen for that organisation. Those who have been appointed will bring their skills to that board and thus ensure that it works in the best possible way to maximise our opportunity of staging the best Games that have ever been held.

DEPARTMENT OF SCHOOL EDUCATION COMPUTERISED PAYROLL SYSTEM AND Mr DEEPAK SARUP

The Hon. P. F. O'GRADY: My question is directed to the Minister for Education, Training and Youth Affairs. Was Mr Deepak Sarup, of the Office of Public Management, seconded to the committee which decided the tender for the computerised payroll system of the Department of School Education in February this year? Did Mr Sarup disclose to the department that he was a former partner in Deloitte, the successful tenderer? If so, why was he not disqualified from giving advice on the continuation of the Deloitte consultancy?

The Hon. VIRGINIA CHADWICK: I do not know Mr Sarup so I have no mechanism at this stage to enable me to say whether the honourable member is correct in his assertions. However, given the seriousness of the matter, as is clearly implied in the question, I will of course check it out.

CORRECTIONAL CENTRES INMATE POINTS POLICY

The Hon. ANN SYMONDS: My question without notice is directed to the Attorney General, Minister for Justice and Vice President of the Executive Council. I remind the Minister of his announcement of the introduction of a points policy in the gaol system that will enable inmates to accrue points that will entitle them to have more than basic personal property in their cells? Is the system now operating in all New South Wales gaols? Has a system relevant to the needs of women been introduced in Mulawa gaol?

The Hon. J. P. HANNAFORD: I thank the honourable member for her question. I did announce a new property policy. That program is being introduced into all gaols. In some gaols it is not yet operating. It is proposed for introduction at Mulawa. I was at Mulawa gaol last Sunday and while there I

visited some sections of it and spoke to the professional staff. At that time I inquired about the introduction of the new property policy into the women's prison. I was looking at the list of property that was allowed to be held in certain cells. That particular gaol is conducting an education program for officers on the introduction of the property policy and providing information programs for staff and inmates. When that program is completed the policy will be introduced. The gaol administration is conscious of the need to ensure that there is a clear program of information for all officers.

The introduction of the policy in Mulawa prison will have to be handled with sensitivity to make certain that it is introduced fairly and recognises the differing needs of people with different classifications. Page 4478

That is particularly important in Mulawa. I was satisfied from the answers given to me that there is a commitment to the introduction of this policy as rapidly as possible at Mulawa. I am led to believe from those discussions that it will be several weeks before the policy will be fully operational within Mulawa.

In view of the time I suggest that any further questions be put on the notice paper.

LEGAL AID IN ENVIRONMENTAL MATTERS

Matter of Public Interest

Debate resumed from an earlier hour.

The Hon. R. S. L. JONES [5.2]: Before question time I said that there is no doubt in my mind, from the evidence that I have heard so far, that the Legal Aid Commission has been politicised. I mentioned certain people within the Legal Aid Commission who said they were monstered every time they granted legal aid for environmental matters. Our environmental laws have been designed to encourage the community to play a role in environmental decision-making and enforcement. Community participation in the legal process and in the review of government decision-making leads to higher quality decisions that will have stronger community support for their implementation. It promotes accountability and efficiency.

The Environmental Planning and Assessment Act 1979 gives open standing, allowing any person to restrain breaches of the law. This is important because councils and government authorities often do not take action, either through a lack of resources or for political reasons, to protect public resources such as air, water, vegetation and heritage. Sometimes they just move too slowly. The Legal Aid Commission Act 1979 was introduced in the same year. It acknowledges the public interest importance of these matters in section 35 by allowing the means test to be waived for grants of legal aid in public interest environmental matters. It is no accident that these two pieces of legislation came at the same time. Legal aid is essential to enable the public participation that is the thrust of the Environmental Planning and Assessment Act.

Numerous other pieces of environmental legislation have been given open standing to restrain breaches of the law: the Heritage Act 1977, the Environmentally Hazardous Chemicals Act 1985, the Wilderness Act 1987 and, most recently, the Environmental Offences and Penalties Act 1989. Legal aid is crucial to this participation. Individuals do not have the resources to conduct these important cases. In public interest matters where the Government will not act to uphold the law, people should not have to risk their homes to stop the law being broken. Removing legal aid makes legal rights under our environmental and planning laws meaningless. It is deceptive to provide these rights and then remove the very means of enforcing them. Several important test cases have been brought successfully with the assistance of legal aid. Some have not been so ultimately successful. The hole in the ground where the Regent Theatre stood in George Street is a testament to the fact that legal challenges do not stop bad decisions being made. They simply ensure that the legal minimum process is followed.

It has never been easy to get legal aid in environmental matters. Legal aid was previously granted only after a review by an independent panel of experts, ensuring that only cases with important legal and environmental issues were funded. In deciding whether to grant legal aid, the commission has been assisted by an environmental consultative subcommittee of environmental law experts, which advised the commission on a voluntary basis, and by policy guidelines. Both the committee and the guidelines were changed in late 1991. These changes included a balancing of the committee, with the inclusion of a representative of the Chamber of Mines, the Forest Products Association, the Department of Planning and the Department of Agriculture. This meant that it had become almost impossible to get an objective view of the merits and prospects for success of a case put forward by an applicant for legal aid.

Very few grants of legal aid have been made since the reconstitution of the environmental consultative subcommittee. Often representatives had obvious conflicts of interest. On one occasion the Environmental Defender's Office client's legal advice, obtained from senior counsel, was forwarded to the industry representative of the opposing party. Even where recommendations were made by this committee, the final decision was made by the Legal Aid Commission, which makes its decisions in secret and without giving reasons. The commission refused aid in all cases but one. In this case the commission, without reason being given, made a lump sum grant of \$5,000 to the Shoalhaven branch of the Australian Conservation Foundation. For the first time in the history of environmental matters - to the knowledge of the Environmental Defender's Office - the commission refused to give a section 47 indemnity. This indemnity would have ensured that costs would not be payable by the legally aided applicant if the case was unsuccessful. This is critical in public interest cases.

Few people who do not personally stand to gain would risk their home for a case where the public as a whole benefits. Without this indemnity the clients of the EDO were unable to take up the grant of aid and were obliged to abandon their application. There was no evidence that the former committee was making poor recommendations. Indeed, the high success rate of cases recommended by the committee is evidence to the contrary. Despite repeated requests, the former committee was given no indication or guidance as to how much money it had at its disposal to allocate for environmental matters. There was certainly no indication that too many grants were made. The amount of expertise and scrutiny dedicated to the allocation of the \$203,098.60 to the

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EDO's clients during 1991-92, spread over nine grants of aid, is extraordinary. The court results speak for themselves.

The Environmental Defender's Office receives hundreds of requests for help from people. They have to be able to represent the public interest in only the most important environmental matters. During 1991-92 the EDO acted for nine legally aided clients, winning all nine cases with orders for costs in seven. Costs recovered are returned to the Government. The cost to the commission of environmental matters is a tiny fraction of the legal aid budget. Providing legal aid is providing access to justice, a fundamental right that should not be available only to the rich and powerful. It is unjust and deceptive to provide for rights without the means of enforcing them.

There is no logic to removing public interest environmental matters from legal aid. The decision is purely political. Successful environmental cases have trodden on some National Party toes. The only inference that can be realistically drawn is that the Government is pressuring the commission: leave out environmental legal aid or there will be no legal aid at all. This would not be surprising. The former Attorney General, Mr Collins, wrote to the former Chairman of the Legal Aid Commission, Justice Grove, suggesting that \$500,000 be cut from legal aid in environmental matters. This direct attempt to influence the commission was reprehensible. The former chairman did not act on the suggestion that was put to him and his term was not renewed. The new chairman appointed, who stood for Liberal Party preselection a few years ago, has complained privately on several occasions of the direct criticism and monstrosity from the National Party when grants of legal aid have been made in environmental matters in the past.

The total allocation for any year would be closer to half of the figure suggested. The system for allocation of legal aid was the subject of a review by three Government Ministers in 1991, and the conclusion was that no changes were recommended. The omission of public interest environmental legal aid signals the end of an independent Legal Aid Commission. It sets a dangerous precedent. Legal aid for people involved in civil protest, for people with consumer credit problems or other classes of people who may be at odds with the government of the day and who may need representation may also be marginalised in the future. The Attorney General must call for and make public the figures showing expenditure in the various categories of legal aid, including environmental matters, together with comparative figures for success rates and potential and actual return to the commission in successful cases. Adequate funds must be made available to the commission to enable it to do its job and to balance the additional funding made available for the prosecution of criminal cases.

The Legal Aid Commission Act must be amended so that the reasons for decisions of the commission and the information taken into account when making those decisions are made public. I should point out that a number of cases would have proceeded had legal aid been available. One of those cases relates to the Waterloo incinerator, which is operated by Woollahra and Waverley councils. The Australian Democrats believe that the pollution from that incinerator would be stopped as a result of legal action. The residents of Port Kembla are experiencing acid rain and brown fall-out because of increased pollution. I believe they would achieve a successful legal remedy in the Land and Environment Court. If the residents of Lemon Tree Passage, who have been subjected to illegal quarrying activities, including blasting and clearing of koala habitat, were successful in obtaining legal aid, they would most likely also receive redress in the Land and Environment Court.

The Department of Housing has cleared large areas of land, including land near Pennant Hills containing endangered species, without fauna assessments. Residents near Newcastle who are being saddled with a megatip, involving environmental issues such as leachate, which many people agree have not been properly addressed, would also most likely be able to receive redress in the Land and Environment Court. Farmers are being forced by local councils to pay for the use of biocides in southwest New South Wales, when required notice is not given and rules for use are not followed. Recently a man was sprayed by these chemicals from a helicopter, and neither the council nor the pilot will tell him the chemicals that made up the cocktail. A number of problems - [Time expired.]

Reverend the Hon. F. J. NILE [5.10]: I was not listed to speak in this debate but I wish to make one or two brief comments. It is important that legal aid be made available. Means testing usually seems to make it difficult for certain people to obtain legal aid, even when their causes are just. Over the years a number of people who have been unable to obtain legal aid have spent a great deal of money, particularly in relation to issues that have not been emphasised in this debate. I refer to moral issues, which are governed by State and Federal laws. I was deeply involved in court cases relating to the films "Hail Mary" and "The Last Temptation of Christ". No legal aid was made available. That meant that individuals had to bear legal costs amounting to thousands of dollars. From memory, in one case the amount was \$12,000. That is a heavy burden on ordinary citizens.

There should be a fairer way of dealing with legal aid, and perhaps environmental matters should not, as has been suggested in this debate, be given preference. All cases should be treated equally, depending on their merits and the individuals who are applying for legal aid. It would not be right for wealthy persons to receive legal aid when they are able to pay their own legal expenses. I accept that some means testing should apply. I hope that in future the need for legal aid will be more fairly assessed and that issues that I and many other people

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regard as important as environmental issues - blasphemous films and similar matters - will at least receive a fair hearing by the legal aid authorities.

The Hon. JAN BURNSWOODS [5.14], in reply: I thank members who have contributed to this debate. I express some disappointment at the Minister's response. I had raised serious questions about

the saga of the withdrawal of civil legal aid, which has continued for the past 12 months. Most of us have difficulty in understanding how the commission justified the restoration of civil legal aid in a variety of areas, allegedly because it had solved its budgetary problems, but did not restore legal aid in environmental matters. The figures I have quoted in relation to a number of different aspects of legal aid in environmental matters suggest that 80 per cent or more of the costs expended are recouped by the commission.

Although the Legal Aid Commission is an independent body, as I have already pointed out, the Act states that it may make reports to the Minister if he requests them. The Attorney General is beholden to ensure that he receives an appropriate report about what has happened in the whole saga of civil legal aid. He has not been able to explain to the House what has happened. He became heated about allegations that the issue has been politicised, but he certainly was not able to dismiss those allegations. The commissioners have said, and National Party members are on record as saying, that the National Party has fought successfully to stop the Legal Aid Commission making funds available for cases dealing with important environmental matters.

That is a serious allegation, and it should be answered by the Government. The Attorney General certainly did not make any attempt to answer the allegation. I suggest that we have not heard the last of this matter. Serious environmental cases will continue to arise, and those groups protesting about the granting of certain applications have good cases. It seems to me that it is no answer for the Attorney General to suggest that because no other State provides legal aid in environmental cases, that is an argument against New South Wales leading the way. The Government often makes statements about how New South Wales has the best environmental laws in Australia. If that kind of boast is to be made, it must be backed up by ensuring that people are able to bring genuine cases against bad decisions when they are unable to fund the cases themselves.

In the past, as a result of the Legal Aid Commission's merit test, it managed to make sure that it funded cases it was highly likely to win. Overwhelmingly, the cases it funded were successful. Costs were awarded and should have been repaid to the Legal Aid Commission. I conclude by reiterating that, apart from developers who fail to pay costs awarded against them, the other crucial group that has delayed in paying costs is in fact government departments. It is shameful that government departments that have been defeated on important matters have failed to pay their costs. At the same time the Government is suggesting that legal aid cannot be granted in environment cases because of a lack of money. In other words, the Government is not paying its debts to the Legal Aid Commission, but is claiming that a shortage of funds makes it impossible for the Legal Aid Commission to grant civil legal aid. The answers have not been given by the Attorney General; they have not been given by anyone else in the Government. I reiterate once again that this is an important matter that needs to be aired more fully again.

Discussion of matter of public interest concluded.

APPROPRIATION BILL

PARLIAMENTARY APPROPRIATION BILL

BUSINESS FRANCHISE LICENCES (PETROLEUM PRODUCTS) AMENDMENT BILL

MOTOR VEHICLES TAXATION (AMENDMENT) BILL

ROAD IMPROVEMENT (SPECIAL FUNDING) AMENDMENT BILL

Second Reading

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [5.19]: I move:

That these bills be now read a second time.

I commend the bills to the House.

Motion agreed to.

Bills read a second time.

Estimates Committees Reports

The Hon. R. T. M. Bull, as Chairman, brought up the report from Estimates Committee No. 8 - Consumer Affairs.

The Hon. J. F. Ryan, as Chairman, brought up the report from Estimates Committee No. 10 - Environment.

The Hon. Patricia Forsythe, as Chairman, brought up the report from Estimates Committee No. 13 - Industrial Relations and Employment and Status of Women.

The Hon. S. B. Mutch, as Chairman, brought up the report from Estimates Committee No. 14 - Police and Emergency Services.

The Hon. J. H. Jobling, on behalf of the Chairmen, brought up the reports from Estimates Committee No. 1 - The Legislature; Estimates Committee No. 2 - Premier and Economic Development; Estimates Committee No. 3 - Treasury and Arts; Estimates Committee No. 4 - Agriculture and Fisheries and Mines; Estimates Committee
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No. 5 - Attorney General and Justice; Estimates Committee No. 6 - Chief Secretary and Administrative Services; Estimates Committee No. 7 - Community Services and Aboriginal Affairs; Estimates Committee No. 9 - Education and Youth Affairs and Tourism; Estimates Committee No. 11 - Multicultural and Ethnic Affairs; Estimates Committee No. 12 - Health; Estimates Committee No. 15 - Energy and Local Government and Co-operatives; Estimates Committee No. 16 - Land and Water Conservation; Estimates Committee No. 17 - Planning and Housing; Estimates Committee No. 18 - Public Works and Ports; Estimates Committee No. 19 - Sport, Recreation and Racing; Estimates Committee No. 20 - Transport and Roads; and Estimates Committee No. 21 - Small Business and Regional Development.

Ordered to be printed.

In Committee

Estimates Committee No. 1 - The Legislature - Report.

Report adopted.

Estimates Committee No. 2 - Premier and Economic Development - Report.

Report adopted.

Estimates Committee No. 3 - Treasury and Arts - Report

The Hon. ELISABETH KIRKBY [5.24]: During the Estimates Committee I asked the Treasurer a

series of questions about funding for the First Government House museum compared with funding for museums outside the central business district and Ultimo circumference. This year the project has been allocated \$1.2 million. It will cost \$21.8 million when completed. By comparison, the regional museums program will receive only \$310,000. I wanted to highlight the fact that there are many sites of great historical importance outside the central business district. Parramatta, for instance, was crucial to the survival of the colony in its very early days. However, funding for historical sites and museums in western Sydney and in the remainder of New South Wales is minimal. In his answer to my question, the Treasurer argued that the Government could not change the site of the First Government House. I believe the Treasurer's answer was irrelevant. I am not criticising the site of the First Government House, I am not criticising the fact that \$21.8 million is to be spent on it, but I believe there are other sites of great historical importance that should also receive funding from the Government.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [5.26]: I take on board the honourable member's comments and will bring them to the attention of the Treasurer. I note from the standing orders establishing the committee, that questions that have not been answered during the course of the Estimates Committee are to be answered within a specified period afterwards. No doubt the Treasurer will take into account the honourable member's comments when making his reply.

Report adopted.

Estimates Committee No. 4 - Agriculture and Fisheries and Mines - Report

The Hon. R. S. L. JONES [5.27]: During the Estimates Committee I asked the Minister for Agriculture and Fisheries and Minister for Mines a question concerning the New South Wales banana industry. I regard his answer - that it is merely a matter for the Federal Government - as unsatisfactory. I believe this State should be very much involved in protecting the banana industry, and I was disappointed in the way the Minister fobbed off my question. I would also like to draw attention to his answer to my question on the gardens of stone - which the Minister referred to as the garden of stones. The Minister said that he believed that mining will be controlled with minimal damage.

My subsequent inquiries have revealed that a good proportion of the gardens of stone would be severely damaged, and in fact destroyed, by the proposed mining. The Government should have another look at the question of mining under the gardens of stone and should not allow that tourist attraction to be destroyed for a very low value return, compared to tourism, when other coal seams are available that are three times as thick as the seams under the gardens of stone. I believe the Minister's response to my question was incorrect. It is impossible to mine under the gardens of stone with minimal damage.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [5.28]: I will draw the attention of the Minister for Agriculture and Fisheries and Minister for Mines to the honourable member's comments and he will take those into account when he makes his reply, in accordance with standing orders.

Report adopted.

Estimates Committee No. 5 - Attorney General and Justice - Report

The Hon. JAN BURNSWOODS [5.30]: I have a couple of comments to make about an answer given by the Attorney General about domestic violence and the implementation of some changes in courts. I applaud the changes dealing with such issues as counselling, the need to keep victims and offenders apart, and training, but I remain concerned that the Attorney General was unable to suggest where the money was going to come from for these measures. In answer to one question he said, "I do not know whether I would be able to provide specific allocations". More detail is needed. Keeping victims and

offenders apart has implications, perhaps, in the capital area for court facilities. I am not sure whether it is proposed that that laudable program will be implemented in all courts. The counselling and training areas, though excellent, obviously need
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resources to be made available. Finally, the Minister spoke about the issue of removing female juveniles to Yasmar, but can he tell us when that is going to happen?

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [5.31]: I recall the issue of domestic violence to which the honourable member made reference, but I do not recall the detail of the answer I gave at the time. I will take into account the comments she has made when addressing those issues. I understand that steps have now been taken to commence the works at Yasmar. My recollection of the program is that it is hoped to have the separate juvenile justice centre operational towards the end of February next year. I think that is the indicative time frame. If I am in error, I will draw that to the honourable member's attention. My recollection is that it will be some time in the new year.

Report adopted.

Estimates Committee No. 6 - Chief Secretary and Administrative Services - Report

Report adopted.

Estimates Committee No. 7 - Community Services and Aboriginal Affairs - Report

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [5.32]: During the estimates committee hearing the Hon. R. D. Dyer asked that certain graphs be tabled by the Minister. The Minister for Community Services, Minister for Aboriginal Affairs and Minister for the Ageing has now made available to me three graphs, which I seek leave to table in this House in answer to the questions raised by the honourable member on Tuesday, 19th October, 1993. The graphs represent the Home and Community Care program expenditure, the child protection program expenditure, and the overall community services budget expenditure. The graphs reveal that in the department's budget, expenditure increased from a little under \$200 million in 1983-84 to a little over \$300 million in 1987-88, but this year the total expenditure is in excess of \$900 million. That is almost a fourfold increase in expenditure in a decade and just under a threefold increase during the period of this Government's administration.

Expenditure for the Home and Community Care program for 1984-85 was slightly more than \$50 million. In 1987-88 it was slightly over \$100 million but this financial year it is just under \$220 million. Expenditure for the child protection program in 1987-88 was just under \$30 million and this year it is just under \$40 million. I seek leave to table the graphs rather than have them incorporated, as they are coloured documents and may be difficult to reproduce.

Leave granted.

The Hon. R. D. DYER [5.34]: I thank the Minister for tabling the documents. The Minister for Community Services indicated to the Estimates Committee dealing with the Department of Community Services and Aboriginal Affairs last week that the documents would be incorporated in *Hansard*. I accept, however, that there may be some technical difficulty in that the documents are at least partly coloured. I note that it was only after I circulated a proposed amendment yesterday afternoon that an indication was given that the material would be tabled in the House. Prior to that, the Usher of the Black Rod, who was the clerk attending upon that Estimates Committee, made a number of approaches to the office of the Minister for Community Services but as of yesterday had not received any satisfactory indication as to the form in which the documentation would be made available. In any event those matters are now history, and I thank the Government and the Attorney General for tabling the material

which his colleague the Minister for Community Services indicated on Tuesday last week would be made available.

One matter I wish to clarify relates to a question I asked regarding underspending. In part my question was, "Why were grants and subsidies actually expended in 1992-93 by the Department of Community Services only \$259.663 million when the estimated total available was \$273.596 million, representing underexpenditure of \$13.933 million?" The Minister responded in part as follows:

The question underlines much of the misinformation that has been promulgated of late about underspending in general. It implies that there is this pot of whatever figure happens to be floated at the time, which can be spent on something else. I think so far the Opposition has got as high as \$170 million of underspent moneys. The implication is, of course, quite inaccurate. The honourable member will consistently find that the funds being talked about have been committed and cannot be spent for a second or other purpose. They have been dedicated, they have been allocated and must therefore be available for expenditure.

I place on the record that at no stage have I suggested that funds available to the Department of Community Services in one program area can be switched across to some other area. In other words, it is not possible for funds from the Federal Government, for the sake of argument, under the supported accommodation assistance program, to be spent on child protection. Nor is it possible, to take another example, for child protection funds to be spent on disability matters. I make it quite clear - contrary to the understanding of the Minister for Community Services that my question in some way suggested a pot of money was available from which funds could be distributed willy-nilly among programs of the department - that that certainly is not and never has been my understanding or the understanding of the Opposition. Quite the contrary, we understand that funds available for a particular program area must be spent on that area.

What the Opposition does say, however, is that in a given financial year, and there have been many examples of this over recent financial years, the Department of Community Services has not spent all of the funds available to it on various program areas. That is certainly true in a global sense so far as this department is concerned, as illustrated by reference to
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Budget Paper No. 3, at page 227, where an indication is given in summary form that grants and subsidies actually expended last financial year by that department totalled \$259.663 million, when the estimated total figure available was \$273.596 million - representing underexpenditure in a global sense of \$13.933 million.

However, when one refers to the Budget Papers in regard to particular program areas such as child protection, one finds an underexpenditure of funds that were available last financial year. I am not saying that funds not used during that period cannot be used for child protection; in fact, funds for that purpose are rolled over into the following financial year and are used for child protection. All the Opposition has ever said with respect to underspending is that the funds available in a given financial year are not spent in their totality in that given financial year. Sometimes there may be reasons for that occurring and, on occasion, the Minister for Community Services has explained why that has occurred.

I wish to make it crystal clear that, contrary to the Minister's statement, the Opposition and I, as an individual, have not said, and are not saying, that there is a large pot of money that the Government can spend in some profligate fashion or distribute to some other program area. That is beyond the power of the Government. All the Opposition is saying is that the need in the community is great with respect to disability, child protection and child care. We make the legitimate political point that so far as possible every last dollar and cent should be spent during the year in which the funding becomes available.

The only other comment I wish to make about what the Attorney General and Minister for Justice said in regard to the tabled graphs is that unquestionably funding has increased over the years. One of

the graphs provides details of the home and community care program - a joint Federal-State program. The Attorney would be aware as a former community services Minister that as it is a joint Federal-State program not only has State funding increased year by year, so too has Federal funding - by an even greater amount.

Interestingly, though this graph shows by way of a red line expenditure under the previous State Labor Government, and by way of blue lines expenditure under the current Government, no distinction is made between Federal funding and State funding. The document is not particularly informative in that it does not show the origin of the funds in question. The State or Federal allocation is not shown in any of the graphs. That has particular relevance with respect to the Home and Community Care program, which is heavily funded by the Federal Government. I make those points for clarification.

I feel very strongly about underspending, as I have said often over the period that I have been the shadow minister for community services. I do not want my statements to be misrepresented any further. The Minister should know that what I am saying is that funds available in a given program area are available during the current financial year, and to the extent that they have not been spent during that accounting period an underspending has occurred. I realise that funds can be rolled over and cannot be used for other purposes, but the Minister in another place ought to desist from further misrepresenting what I am putting regarding underspending.

The Hon. ELISABETH KIRKBY [5.44]: I concur with the remarks made by the Hon. R. D. Dyer. I asked a question in the Estimates Committee of Minister Longley about funding for the Glebe Youth Centre. I got the classic answer from the Minister - that the centre had been given a one-off grant and the Government was still exploring the options. I pointed out during the adjournment debate last night the importance of the Glebe Youth Centre and the benefits to the whole community of keeping young people off the streets and giving them something meaningful to do.

I will simply make the point again that money allocated for grants for community youth projects was underspent by about \$1.3 million last year. All that was required for the Glebe centre was \$50,000. There has been a freeze on community services grant programs since 1988, pending the outcome of the review which is yet to be completed. The review has been under way for five years and during that time there has been a freeze on funding. How much longer is the review going to take? It is ridiculous that the review should take five years. It is the typical excuse that is used when one inquires about funds for much-needed youth refuges. Such bureaucratic intricacies and barriers are totally unacceptable. I hope that the very legitimate needs of the youth of Glebe and other parts of New South Wales are not sacrificed because of bureaucratic barriers and inefficiencies. I have said before that of all the departments under this Government the one that has suffered the most is community services. Since the change of administration in 1988 the portfolio has had four different Ministers. Not one of those Ministers has been in the portfolio long enough to come to terms with it.

There has been a change of focus as well. At one stage the department was titled the Department of Family and Community Services; it is the Department of Community Services once more. Though I realise it is not fair to blame individual Ministers, it seems to me that the Government has placed this portfolio very low on its list of priorities. As soon as a Minister starts to progress and get some work done, he or she is promoted and replaced by a less experienced Minister. This is a vital area, particularly in times of high unemployment and increasing youth violence. The portfolio should be given the highest priority, not the lowest.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [5.47]: I have noted the comments of the Hon. R. D. Dyer and the Hon. Elisabeth Kirkby, and I will bring them to the attention of the Minister for Community Services,

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Minister for Aboriginal Affairs and Minister for the Ageing - particularly the comments of the Hon. Elisabeth Kirkby.

Report adopted.

Estimates Committee No. 8 - Consumer Affairs - Report.

Report adopted.

Estimates Committee No. 9 - Education and Youth Affairs and Tourism - Report.

The Hon. FRANCA ARENA [5.48]: During the Estimates Committee I asked the Minister for Education, Training and Youth Affairs, Minister for Tourism and Minister Assisting the Premier a specific question about the allocation for next year to the Board of Ethnic Schools and the Federation of Ethnic Schools. Is the Minister able to give the detail of those allocations now?

The Hon. VIRGINIA CHADWICK (Minister for Education, Training and Youth Affairs, Minister for Tourism, and Minister Assisting the Premier) [5.49]: I am not in a position to give an answer with regard to the Federation of Ethnic Schools. My recollection is that an allocation was made to the Board of Ethnic Schools. However, given that the Hon. Franca Arena has a particular interest in this matter, I will seek out that information and provide it to her and the Estimates Committee chairman.

The Hon. B. H. VAUGHAN (Deputy Leader of the Opposition) [5.50]: During examination of the tourism estimates some of my questions were left unanswered. I appreciate that it may be difficult for the Minister to answer the questions now but I want them recorded in *Hansard*. I direct the Minister's attention to page 332 of Budget Paper No. 3. What part of staff make up the increase in the staffing level of the marketing division of the Tourism Commission?

The Hon. VIRGINIA CHADWICK (Minister for Education, Training and Youth Affairs, Minister for Tourism, and Minister Assisting the Premier) [5.51]: The head of marketing, Rob Giason, has worked at the commission for some little time. He was previously the head of the tourism association in the Blue Mountains. All honourable members are aware of the astounding success of tourism promotion in the Blue Mountains. I believe his appointment was a very good one. My recollection is that prior to his work in the Blue Mountains he worked in tourism in the Albury-Riverina area. The other staff members have worked in the commission for a considerable period either at the Sydney office or, in the case of regional promotion, as part of a zonal marketing team that was formed when we closed our regional offices. Some of the staff previously worked in the regional tourism offices.

The Hon. B. H. VAUGHAN (Deputy Leader of the Opposition) [5.52]: According to page 332 of Budget Paper No. 3 the Tourism Commission expects an additional \$800,000 in revenue from travel centre commissions. Could you explain this?

The Hon. VIRGINIA CHADWICK (Minister for Education, Training and Youth Affairs, Minister for Tourism, and Minister Assisting the Premier) [5.52]: At the moment the travel centres provide a variety of services - information, advice, brochures. Other activities include direct booking. For example, if the honourable member were to go into the Sydney centre and ask for information about going to the Blue Mountains next weekend, we could provide him with that information, and it could well be that we would have the capacity and authority to act as agents for the resort, hotel or complex at which he wished to stay. If such bookings are made through us, we take a commission in precisely the same way as any other travel agent does. We are concentrating on lifting our game to generate further income from direct bookings. That will be dependent upon our strenuous efforts and the willingness of industry to have us act as agents. But given our high reputation, many industry groups are willing to have us act as agents. We are also negotiating to increase the level of commission so that it is more in line with the commission charged by private enterprise.

The Hon. B. H. VAUGHAN (Deputy Leader of the Opposition) [5.54]: I notice that donations and

industry contributions to the commission are down by \$2 million. Can the Minister explain why that is so?

The Hon. VIRGINIA CHADWICK (Minister for Education, Training and Youth Affairs, Minister for Tourism, and Minister Assisting the Premier) [5.54]: One could only hypothesise, rather than say with any certainty, why this would be so. In the short time I have had responsibility for this portfolio, my similar inquiries have revealed a number of factors. The honourable member would be aware that we have been going through a recession and, despite the many success stories and buoyancy of the tourism industry, many people are finding life difficult in precisely the same way that people in every other area of economic endeavour are finding life difficult. Marketing has not been as vigorous and dynamic as the industry and I would like, and there has not been the interest from every sector of the industry that we would hope for. I will endeavour to turn the situation around with the advertising campaign that will begin next Sunday evening. The campaign has the support of the industry. With the exception of the first run of 60-second advertisements to position our advertising, from that point on all the television, print and radio advertising will be tagged. The tags will be prepared, presented and paid for by industry. I expect to see a dramatic turnaround in industry contributions over the next 12 months.

The Hon. B. H. VAUGHAN (Deputy Leader of the Opposition) [5.56]: I am not surprised that there has been an increase in funding to the Sydney Convention and Visitors Bureau. How will the increase be used?

The Hon. VIRGINIA CHADWICK (Minister for Education, Training and Youth Affairs, Minister for Tourism, and Minister Assisting the Premier) [5.57]: Funding of the Sydney Convention and
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Visitors Bureau has been virtually doubled. Regardless of the success I had in seeking a budget enhancement for tourism generally, it was uppermost in my mind to give every possible support to the Convention and Visitors Bureau, because it is that centre that markets Sydney for meetings, conferences, conventions, exhibitions and a growing incentive industry. We will ensure that the additional funding will support those working at the centre - it is not meant to be a massive increase for staff or overheads. It is meant to go straight to help our bidding for overseas and domestic conventions, conferences, exhibitions and the like.

Similar organisations in other States and other countries and the infrastructure for convention facilities in other States - and most certainly in some of our competitor South-east Asian neighbours - receive a reasonable level of funding. Not to have increased funding for the Sydney centre would have meant that the staff, headed so wonderfully by Tony South in recent times, had to fight with one hand tied behind their backs. The wonderful thing about the funding to the Convention and Visitors Bureau is that it is provided by the New South Wales Tourism Commission on the understanding that whatever money is given is matched dollar for dollar by industry. Therefore, the additional funding shown in the Budget Papers can be doubled because it is a prerequisite of State funding that the money is matched by industry.

The Hon. B. H. VAUGHAN (Deputy Leader of the Opposition) [5.59]: The ministerial liaison entry under corporate services shows an increase of staff. Will the Minister tell me something about the staff or the department they have come from?

The Hon. VIRGINIA CHADWICK (Minister for Education, Training and Youth affairs, Minister for Tourism, and Minister Assisting the Premier) [6.0]: I welcome the interest expressed by the Deputy Leader of the Opposition in the Tourism Commission, but I fail to comprehend how, in an examination of the Budget, he would want potted CVs of some of the staff. However, given that I would wish to encourage his interest in that area, I am more than happy to provide him and other members with potted CVs of those people.

The Hon. B. H. Vaughan: I give the Minister 8 out of 10: not bad, without notes.

The Hon. VIRGINIA CHADWICK: I thank the honourable member.

Report adopted.

Estimates Committee No. 10 - Environment - Report

The Hon. R. S. L. JONES [6.1]: I asked a question of the Minister about hypothecation of funds from pollution licences and gave him an example of \$17 million raised from Water Board licence fees. I do not think the Minister understood that I meant that funds from pollution licences, including Water Board licences, could be hypothecated not just to one program but to the entire Environment Protection Authority to allow that authority to do its work. The Minister seemed to suggest in his answer that he thought hypothecation would strangle some programs and overfund others. I point out to the Minister that I was not the only member asking about hypothecation of funds from pollution licences. The honourable member for Bligh also asked about waste levies, which raise \$11 million per year, to be hypothecated to help fund the Environment Protection Authority. I believe that authority will need a lot more money than it is currently receiving.

I know that one honourable member of this House - whose name I will not mention - has a friend who has on his farm arsenic and drums of lucijet that he wishes to dispose of. He went to the Minister. The Minister said he should go to the Environment Protection Authority. He went to the Environment Protection Authority. The authority said, "We do not know what to do with it". There was no program for disposal of dangerous substances such as arsenic and lucijet. This was in relation to just one farm. Many other farms must have the same problem. The Minister should have another look at my question and reconsider hypothecation of licence fees and levies back to the EPA so that polluters pay for cleaning up the problems they cause. The EPA could then use that money to solve problems similar to that caused by the need to dispose of arsenic and lucijet.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [6.4]: I assure the honourable member that I shall draw his comments to the attention of the Minister.

Report adopted.

Estimates Committee No. 11 - Multicultural and Ethnic Affairs - Report

Report adopted.

Estimates Committee No. 12 - Health - Report

The Hon. ELISABETH KIRKBY [6.5]: I asked the Minister for Health about progress being made on the resource allocation formula, commonly known as RAF, particularly with regard to the Hunter region. The Minister answered that the Hunter was very close to the RAF. I replied that I had material which indicated this was not the case. The Hunter Area Health Service is at a financial and medical staff disadvantage compared with other health areas in New South Wales. Though the Hunter Area Health Service has an 8.8 per cent share of the RAF, the Eastern Suburbs Area Health Service has more than 12 per cent, western Sydney has 11 per cent, and northern Sydney has 10.5 per cent. The Hunter has 0.4 public hospital doctors per thousand population, eastern Sydney has 1.4, and central Sydney has 0.8. The Hunter has only two doctors per thousand people; eastern Sydney has seven doctors per thousand people; central Sydney has 4.2; northern Sydney has 2.9 and western Sydney has 2.4. Whichever way one looks at these figures, the Hunter always comes out lower than eastern Sydney, north Sydney, western Sydney and central Sydney.

The reason for a resource allocation formula is to spread the money evenly throughout the State and not have all of it allocated in one area, with the biggest accommodation being made for Sydney. Until there is sufficient political will to overcome gross overfunding of the Eastern Suburbs Area Health Service and in the northern Sydney region, the Hunter will fall further and further behind. After the Estimates Committee I made the Minister aware that I could provide him with these figures in graph form. They have been worked out scientifically; I am not relying on my expertise in this matter. I have already sent those graphs, as he asked, to the Minister and requested that his advisers look at them in detail to see if they can do something to level out this gross inequality.

After the health Estimates Committee had commenced, members of the Opposition attempted to ask questions comparing line items allocations for 1993-94 with allocations for 1992-93. The Minister revealed that such comparison was not possible because it was not comparing like with like. What had been shown in 1992-93 was based on the old system of accounting, whereas his estimates for 1993-94 were based on the new system of accrual accounting. The Government has been moving to accrual accounting over a long period - a move introduced when this administration took office. I approve of accrual accounting. However, Budget Estimates are presented for the benefit not only of parliamentarians but also of the public. If a 1992-93 line item cannot be compared with an item for 1993-94, an explanatory note should be provided explaining why that cannot be done. Otherwise, a completely false impression could be created in the minds of members of the public, who do not have that information available to them.

One of the big things Mr Greiner did when he became Treasurer was to decide that estimates would be presented in a form that would make them absolutely clear and transparent for every member of the public. During his time as Treasurer I believe he made every attempt to do that. This year, under the new Treasurer, that has not happened, as was borne out by the Minister's admission on health and by the graphs presented to the Hon. R. D. Dyer on the instruction of the Minister for Community Services. It seems the Government is reverting to the system that used to operate when figures were organised to suit what the Minister was trying to convey to the public. Those figures do not stand up to examination. Given the system introduced by Mr Greiner, that is a tragedy.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [6.8]: I shall draw the attention of the Minister to the honourable member's comments. I will ensure that they are addressed to the Minister and that a response is provided to the question.

Report adopted.

Estimates Committee No. 13 - Industrial Relations and Employment and Status of Women - Report

Report adopted.

Estimates Committee No. 14 - Police and Emergency Services - Report

Report adopted.

Estimates Committee No. 15 - Energy and Local Government and Co-operatives - Report

Report adopted.

Estimates Committee No. 16 - Land and Water Conservation - Report

The Hon. R. S. L. JONES [6.10]: I asked two almost identical questions. In fact, the second question was asked at the invitation of the Minister, and was about undercharging of royalties on hardwood. I mentioned a figure of \$60 million per annum lost because of undercharging and political

interference in what was the Forestry Commission. That information came from a senior person within State Forests administration. I know the figure is correct. Would the Minister pass it on for answer to Dr Hans Drielsma, who said it was very much a hypothetical question. I know that question has already been answered within State Forests. I ask the Minister to go once more to the senior people in State Forests and say to them, "I would like you to come up with a dollar figure that we are losing by undercharging for hardwoods and how much we would gain if all the hardwood resource were tendered out on a free and open market, as opposed to being given to friends and mates at the lower prices". I predict it could yield at least another \$60 million a year from our hardwood resource and it would not be wasted in the way it is being wasted today.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [6.11]: I will draw the Minister's attention to the fact that the Hon. R. S. L. Jones has reiterated his question, as he addresses the responses to other questions before that committee.

Report adopted.

Estimates Committee No. 17 - Planning and Housing - Report

Report adopted.

Estimates Committee No. 18 - Public Works and Ports - Report

Report adopted.

Estimates Committee No. 19 - Sport, Recreation and Racing - Report

Report adopted.

Estimates Committee No. 20 - Transport and Roads - Report

Report adopted.

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Estimates Committee No. 21 - Small Business and Regional Development - Report

Report adopted.

Estimates Committees' reports agreed to.

Bills reported from Committee without amendment and passed through remaining stages.

CRIMES LEGISLATION (REVIEW OF CONVICTIONS) AMENDMENT BILL

Bill introduced and read a first time.

Declaration of urgency agreed to.

Second Reading

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [6.17]: I move:

That this bill be now read a second time.

The Government has become increasingly concerned with certain anomalies which have been highlighted in recent times in the scope and operation of section 475 of the Crimes Act 1900. Honourable members will be aware that section 475 provides for the review of a criminal conviction in cases where some new evidence or mitigating circumstances come to light following a trial, which cast some doubt on the justness of the conviction. Most importantly, the Government has been conscious that the present mechanism for the quashing of a conviction following a successful section 475 inquiry is not necessarily available to all deserving applicants because of existing procedural constraints.

Similarly, it appears that definitional problems per se may now preclude intellectually and mentally disabled persons, who are subject to a special finding of guilt under the Mental Health (Criminal Procedure) Act, from seeking access to a section 475 inquiry. The proliferation of applications in recent years has reinforced the need for detailed reform of the operation and effect of the section. Following a number of significant cases where post-conviction inquiries have resulted in convicted persons being granted free pardons, I directed the criminal law review division of my department to undertake a review of the procedures for re-examining convictions. This was their first comprehensive review of these procedures since the section was enacted in its present form in 1900, although some minor amendments were made by this Government in 1992. The criminal law review division produced an issues paper entitled "Reform of section 475 of the Crimes Act" in November 1992 and public submissions were sought. This bill incorporates a number of important reform initiatives arising out of that review.

Whilst the Government's proposals substantially revise and streamline the present law, most of the existing structure will be retained. A convicted person, or any other person on his or her behalf, will still be able to apply to the Supreme Court, or petition the Governor, for a judicial inquiry into the conviction. This is the existing position. Further, whilst the bill rationalises the two existing mechanisms for review of convictions under section 475 and section 26 of the Criminal Appeal Act, by incorporating both provisions into a new section 474 of the Crimes Act, the substance of section 26 has not been effectively altered. For convenience, I shall continue to refer to the new section 474 inquiries as section 475 inquiries. The most important changes in the bill will eliminate the present incompatibility between section 475 and section 26. At the completion of the hearing of the application, the justice or judicial officer, in addition to making a report to the Governor, will now be empowered to refer the matter directly to the Court of Criminal Appeal for its hearing of the application for the quashing of the conviction.

Where the justice or judicial officer does not so refer the matter, a convicted person to whom a free pardon has been granted will be entitled to apply to the Court of Criminal Appeal to have the conviction reviewed, and quashed, if that is appropriate. It is important to note that the Government proposes that these reforms governing the quashing of conviction should apply to all persons who have been pardoned, whether before or after the reforms come into force. Thus people who have already been pardoned, such as Mr Douglas Rendell and Mr Siegfried Pohl, will be able to apply to have their convictions reviewed and quashed by the Court of Criminal Appeal. In summary, the Court of Criminal Appeal will be able to review and, where appropriate, quash a conviction if the case is referred to it directly by the Attorney General following a petition to the Governor; if the case is referred to it by a judicial officer conducting an inquiry under section 475; or on the application of the convicted person after being granted a free pardon.

A further important reform initiative in the bill will ensure that a section 475 inquiry is available to intellectually disabled and mentally ill persons by expanding the definition of "conviction" in section 475 to include a special finding of guilt under the Mental Health (Criminal Procedure) Act 1900. This will remove the present uncertainty in this area where it appears that a section 475 inquiry is not available to a person who has been the subject of an adverse finding under that Act. This anomaly has been recently highlighted in the case of Mr Michael Parker. The bill also provides for some limit to be placed on subsequent and further applications for a section 475 inquiry, by adopting a test similar to section 22A of the Bail Act. The Government is concerned that in removing restrictions on the post-conviction inquiry

procedure, some additional safeguards are required against the waste of judicial resources that can flow from repeated unmeritorious applications for inquiries. Consequently, either the Governor or the Attorney General in the case of petitions, or the Supreme Court in the case of applications to it, will be entitled to refuse to consider an inquiry if the matter is substantially the same as one that has already been dealt with and there are no special circumstances justifying further action.

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Other procedural reforms in the bill which seek to clarify the operation of the section include the following. When the judge is determining whether to direct an inquiry, he or she may consider any written submissions made by the Crown with respect to the application; the Crown will be given a right of appearance or to make submissions at the quashing hearing; and a judicial inquiry will have the relevant powers of a royal commission for the purposes of obtaining evidence, summoning witnesses, and providing witnesses with the same protection as is given to witnesses before royal commissions. In addition, when considering a quashing application, the Court of Criminal Appeal will normally only consider the relevant judicial inquiry report, and any Supreme Court report where applicable, together with the submissions of the Crown and the convicted person on the reports.

The court will be able to grant leave to allow any other material to be introduced before it. The Court of Criminal Appeal will also not be bound by the rules of evidence in hearing the quashing application. These procedural reforms for quashing hearings will ensure that there is no unnecessary duplication of the evidence already heard in the section 475 inquiry, except where appropriate. In summary, the bill provides a carefully considered set of reforms which deal comprehensively with the problems of post-conviction inquiries. They will ensure better accessibility to the review of convictions generally, and will remove the stigma of convictions in appropriate cases by providing a more efficient and equitable mechanism for the quashing of convictions. I commend the bill to the House.

The Hon. J. W. SHAW [6.24]: The Opposition has had a relatively limited time to examine the provisions of the bill. However, I have conferred with my colleague the shadow attorney general, the honourable member for Ashfield, and the Opposition has determined to facilitate the urgent passage of this bill through this House. The Opposition, of course, reserves its rights, when the bill is dealt with in another place, to deal with any matters of detail or drafting that occur to the Opposition as requiring attention. We note that the bill does not in any way address questions, either of procedure or of substance, concerning compensation. That is something which, in due course, the Opposition believes will need to be addressed by this Parliament. It is fair to place on the record that as the Opposition understands it, the genesis of this bill lies in two private members' bills introduced into the Legislative Assembly dealing with specific cases of gross injustice.

The Hon. J. P. Hannaford: It was I who delivered a discussion paper last year on the subject.

The Hon. J. W. SHAW: The Attorney General indicates a different view about the genesis of the bill, but in any event it is worth noting that two private members' bills are before the Legislative Assembly, one introduced by the honourable member for Wallsend and the other introduced by the honourable member for Rockdale. They specifically address two cases of gross injustice. Whatever the precise inspiration for this bill, it is clear that it deals with the same general area in that it clarifies the law procedurally to deal with cases of wrongful conviction and to allow the courts to remedy injustices. Unfortunately, particularly in the United Kingdom, the criminal justice system has had a proliferation of cases where people have ultimately been found to have been wrongly convicted. That is a blight on the legal system and a matter of great regret.

In the best traditions of the common law, the law can provide a proper and just method to rectify those problems when they come to light. One of the clear virtues of the bill is that it enables the Court of Criminal Appeal to remove from the record an erroneous conviction where a pardon has been granted. That is a gap or anomaly in the existing law, which was exposed and which clearly called out for redress.

Many of the existing procedural aspects of the law are replicated in the bill. However, they are made clearer with more modern drafting. Generally speaking, the bill has the utility which we have described. The Opposition will support the bill in this House, but will give it further scrutiny and, if necessary, deal with it further in the Legislative Assembly.

The Hon. S. B. MUTCH [6.27]: I support the Crimes Legislation (Review of Convictions) Amendment Bill. I compliment the Opposition for its reasonableness in allowing the bill to take precedence. The bill reviews section 475 of the Crimes Act, which provides the procedure for review or scrutiny of a criminal conviction in a case where new or unknown evidence or mitigating circumstances come to light following the trial and raise doubt about the justness of the conviction. As the Attorney General pointed out, he delivered a discussion paper on this subject last year, and some anomalies in the scope of section 475 of the Crimes Act have come to light. There are some definition problems as well. It is believed that the definition may well preclude intellectually disabled or mentally ill persons who are subject to special findings of guilt from seeking access to section 475 inquiries. The main proposal in the bill provides for more direct and expeditious quashing of convictions following successful section 475 inquiries. It is proposed to allow a judge, upon completion of the hearing of a section 475 inquiry, to refer the matter directly to the Court of Criminal Appeal.

If the judge does not do so, a convicted person who has been granted a pardon by the Governor will be entitled to have the matter referred under section 26 to the Court of Criminal Appeal for the quashing of the conviction. The proposed amendments will provide better access to review of convictions generally, especially for mentally and intellectually disabled persons. That position is consistent with the New South Wales Disability Services Bill. Honourable members will be aware that the bill promotes the general principle that people with disabilities should have the same basic human rights as other members of society. Similarly, in

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appropriate cases, greater accessibility to the quashing of convictions will provide a more satisfactory mechanism for the removal of the stigma of a conviction.

It is all very well to be pardoned, but it is important that the offence be quashed ab initio. The restrictions on repeated applications will still ensure that, at any time, convicted persons may legitimately take advantage of unforeseen developments that raise genuine doubt as to their convictions. There have been a few celebrated cases, of course, and the Opposition spokesman noted that some members of the lower House have introduced private members' bills relating to the quashing of certain convictions - one related to the Ziggy Pohl case and the other to the Douglas Rendell case. The Government's legislation will provide a procedure to enable those matters to be adequately and properly dealt with. I commend the bill.

[The Deputy-President (The Hon. Beryl Evans) left the chair at 6.32 p.m. The House resumed at 8.30 p.m.]

The Hon. ELISABETH KIRKBY [8.30]: I support the Crimes Legislation (Review of Convictions) Amendment Bill. The explanatory note to the bill states that, in addition to any rights of appeal that may otherwise exist, criminal convictions are reviewable in accordance with the provisions of section 475 of the Crimes Act 1900, which provides for the conduct of inquiries into doubtful convictions, and section 26 of the Criminal Appeal Act 1912, which provides for the referral of doubtful cases to the Court of Criminal Appeal for review or comment. I feel quite sure that the Attorney General and Leader of the House is aware of the mountain of material that I have in regard to one case that will be affected by the legislation before the House - that is, the documentation for Douglas Harry Rendell.

I do not intend to put all that material into the public record. However, I believe that certain things about Mr Rendell's case should be put on record. Over the past six months I have received voluminous correspondence from Professor Barry Boettcher, who is a member of the medical faculty of the University of Newcastle. Honourable members may very well be aware that it was Professor Boettcher whose

forensic evidence eventually ensured that Mrs Lindy Chamberlain was found not guilty of the murder of her youngest child. His forensic work in the Chamberlain case put him into the world league of forensic experts. Professor Boettcher has been very concerned about the case of Mr Rendell and has been corresponding with me about the matter on a regular basis. I received a letter from him dated 27th May, 1993, which was directed to the Leader of the House in his capacity as Attorney General. In part the letter says:

I note that you are giving consideration to introducing legislation to provide that a conviction may be quashed when a pardon is granted pursuant to a section 475 Inquiry. I am certain that this step would be applauded by many, including Mr Rendell and me. It really is important to innocent people that their name is cleared. I know how important this principle has been to the Chamberlains, and I know how important it is to Mr Rendell and his family. His children and his grandchildren should see that his conviction was incorrect.

I spoke to Professor Boettcher earlier today, as soon as the Attorney General told me that he proposed to introduce the legislation today as a matter of urgency. I know there is great delight, both about the undertaking previously given by the Attorney General now being honoured and the fact that there is now legislation before the House and at least Mr Rendell knows that his conviction will be quashed by the court. Mr Rendell was convicted of murder in 1980 and spent the following 8½ years in Long Bay maximum security prison. Apparently, while he was in prison he was regarded as a model prisoner. At all times he protested his innocence and he sought the assistance of Professor Barry Boettcher since it was the same forensic pathologist who had bungled so badly in the Chamberlain case who provided the pathologists' evidence in the Rendell case.

In 1988 Mr Rendell was afforded an inquiry into his conviction under section 475 of the Crimes Act 1900. The important outcome of that inquiry was that three expert forensic pathologists concluded that the event had been an accident, as Mr Rendell had claimed all along. Additionally, the inquiry established that the police had withheld crucial evidence that the rifle involved in the incident was prone to accidental discharge. Further, the police ballistics experts, when questioned on that point by the judge, provided an answer about which counsel assisting the inquiry said, "A charitable view of his response to this question was that it did not reveal the full truth".

An unconditional pardon for Mr Rendell was announced in the Legislative Council by the Attorney General on 26th July, 1989. Mr Boettcher went on to explain that, since July 1989, he had been working to obtain for Mr Rendell the justice that he obviously deserved. That meant the quashing of his conviction and compensation to enable him to re-establish his life. I think honourable members should be aware that, until that conviction is quashed, it will be very difficult - if not impossible - for Mr Rendell, who is still a reasonably young man, to obtain any form of employment because, although he has been pardoned by the Governor, a conviction of murder is still recorded against him.

The honourable member for Wallsend in another place, Mr John Mills, took an interest in Mr Rendell's situation and, indeed, as pointed out by the Hon. J. W. Shaw earlier in the debate, introduced in the lower House the Post-conviction Inquiry (Quashing of Conviction) (Douglas Harry Rendell) Bill. That bill was passed in another place approximately two weeks ago. It provided for Mr Rendell to be able to return to the Court of Criminal Appeal so that he could apply to the court to have his conviction quashed. The bill introduced by the honourable member for Wallsend, however, provides for appropriate compensation to be assessed by an appropriate judicial officer. The bill passed the second reading stage in the lower House on Thursday, 14th October. The

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purpose of the honourable member's private member's bill is to enable Mr Rendell to have his conviction quashed as soon as possible. One would believe that there could be no more delay in respect of this case because it is now more than four years since the Governor gave Mr Rendell an unconditional pardon. It is often stated that justice delayed is justice denied, and a four-year delay - in spite of the tremendous efforts by legal people, Professor Boettcher, and the friends and associates of Mr Rendell to

obtain this type of action - can only be described as a denial of justice to Mr Rendell.

The private member's bill introduced by the honourable member for Wallsend enabled assessment of appropriate compensation by legal authorities. I believe all honourable members would agree that this would be a correct procedure. Mr Rendell was wrongly convicted within the legal system, which has procedures for assessing appropriate compensation in such circumstances. Accordingly, the matter should be referred back to the legal system for appropriate resolution. The bill before the House does not allow for compensation to be paid to Mr Rendell, to Mr Pohl, or to at least two other people of whom I am aware. Compensation should be given to them through the courts. I am informed by the Attorney General that even when this bill is passed tonight and is dealt with in another place, there will be nothing to prevent the private member's bill presented by the honourable member for Wallsend coming before the House, and for legal force to be given to the need to compensate the people involved.

There is no doubt that Mr Rendell and Mr Pohl should receive appropriate compensation, because that is the appropriate action for any person who has been imprisoned and then pardoned. This is provided for by the United Nations International Covenant on Civil and Political Rights, to which Australia, although not the States of the Commonwealth individually, is a signatory. Article 14 (iv) states:

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or a newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered the punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non disclosure of the unknown fact in time is wholly or partly attributable to him.

The request for compensation is appropriate, and that measure should be implemented readily in Australia. I hope honourable members would agree that Australia is a nation that prides itself on its recognition and adherence to the principles of civil and political rights. Mr Rendell's case for compensation is even stronger, because it was established during the section 475 inquiry into his conviction that the police withheld crucial evidence from the court and the trial judge. The inquiry that was held to enable Mr Rendell to obtain his pardon established that this crucial evidence had been withheld, and that there had been illegal activities by police and other members of the prosecution team. These activities included fabrication of a document, fabrication of evidence, conspiracy to pervert the course of justice, perjury and the presentation of false evidence.

Most of the documentation of these activities came from transcripts and a video that was prepared for the inquiry. Therefore, the inquiry did not rely only on the belief of Professor Boettcher and his ability as a forensic pathologist. The findings were documented and an application was made to Mr Justice Hunt of the New South Wales Supreme Court in December 1987. Mr Justice Hunt ordered the inquiry into Mr Rendell's conviction under section 475 of the Crimes Act to determine whether there was a doubt as to Mr Rendell's guilt. The inquiry was held during October 1988 and March 1989. When it was concluded that the magistrate, Mr A. Riedel, wrote at page 19 of his report:

Whatever allowances are made, it seems to me that Sergeant Musgrave withheld significant information which he must have known to be significant at the trial. He did not tell the whole truth in his answer to the trial judge.

Mr Riedel reported to Mr Justice Hunt, who duly reported to the Governor, recommending a pardon for Mr Rendell. At that stage - and this is the procedure that will be rectified by the legislation before the House - the options were either a pardon or a section 26 inquiry. A section 26 inquiry has wider powers than a section 475 inquiry, and it was a section 475 inquiry that was held. It was the belief of Professor Boettcher that a section 26 inquiry had the power to quash a conviction and also to award compensation. These points are of great importance because Mr Rendell is seeking not only to quash his conviction, but also to receive compensation for his wrongful imprisonment.

When the Minister brought to my attention that he wished to bring this bill on as a matter of urgency and have it proceed through all stages today, I asked him what would happen about compensation for Mr Rendell, because Mr Rendell has already received an ex gratia payment of \$100,000 from the New South Wales Government. I doubt if any honourable member would believe that \$100,000 could be considered sufficient compensation for being wrongly convicted of murder, for 8½ years incarceration, for the loss of one's career, the blackening of one's name, and the problems, tragedy and trauma associated with one's family. It is still necessary to have some avenue for Mr Rendell to obtain compensation for wrongful conviction and imprisonment by this State. I was informed by one of the Minister's advisers earlier today that, in spite of my belief that a section 26 inquiry had the power to award compensation, this was not the case. I hope that the Minister will amplify that in his reply.

I wish to place on the public record that the honourable member for Wallsend, who is present in the President's gallery, still intends to proceed with his private member's bill to ensure that Mr Rendell receives the opportunity to proceed to get compensation - to which I am perfectly certain every member in this Chamber would agree he is entitled.

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When that bill comes before this House I shall support it. I hope that nothing in this bill will make it impossible for him to proceed to obtain compensation. I hope the Minister puts on the record in his reply for the purposes of the Acts Interpretation Act that, whatever the provisions of his legislation, there will be nothing to prevent Mr Rendell, Mr Pohl, or any other person who might be affected, applying for their rightful compensation for wrongful conviction and wrongful imprisonment. Mr Rendell was convicted because perjured evidence was given to the court and evidence was withheld by members of the New South Wales Police Service. I support the bill.

Reverend the Hon. F. J. NILE [8.49]: The Call to Australia group is very pleased to support the Crimes Legislation (Review of Convictions) Amendment Bill. The bill, as has already been pointed out, arose because of the very serious situations that occurred in the cases of Douglas Harry Rendell and Siegfried Pohl, both of whom have been found not guilty of the serious charges on which they were originally found guilty. Section 475 of the Crimes Act 1900 contains provision for the conduct of inquiries into doubtful convictions, that is, when new evidence is made available that would warrant an inquiry. It is a serious step, once a person has been convicted, to reopen and review an inquiry. Section 26 of the Criminal Appeal Act 1912 provides for the referral of doubtful cases to the Court of Criminal Appeal for review or comment. Because of the gap in the law, which will be filled in by this legislation, the conviction of a person who has been granted a free pardon still stands. It has not been possible to remove the conviction. This bill will do that.

The object of this bill is to amend the Crimes Act 1900 and the Criminal Appeal Act 1912 so as to repeal section 475 and section 26 and to re-enact those provisions. In so doing, it will ensure, first, that a person who has been granted a free pardon in respect of a conviction can apply to the Court of Criminal Appeal for a review of a conviction. Second, it will enable the Governor and the Supreme Court to refuse to consider vexatious applications for an inquiry into a conviction. Third, it will allow persons in respect of whom a special finding of guilt under the Mental Health (Criminal Procedure) Act 1990 has been made to apply for an inquiry into that finding as if it were a conviction. Fourth, it will broaden the powers of a prescribed person - that is, a judicial officer or a justice of the peace - with respect to the conduct of an inquiry. Finally, it will enable a prescribed person conducting an inquiry to refer a case to the Court of Criminal Appeal if the person is of the opinion that there is a reasonable doubt as to the guilt of the convicted person concerned.

We support the Attorney General and Minister for Justice in bringing forward this legislation. We have also supported the request of the House that this be treated as an urgent bill so it can move through the various stages more rapidly than would normally be the case. The fact that a person can be found guilty of murder and that later new evidence can be brought to light showing that that person did not commit the murder, raises questions about our judicial system. In some cases someone comes forward

and confesses to the murder and evidence is clearly available to show that that confession is genuine. However, as we have heard in the past, sometimes a misguided or mentally unbalanced person might confess to a crime that he did not commit. That is not the situation in the cases we are considering in debating this legislation tonight. All those cases, especially those dealing with serious charges such as murder, point to the dangers of relying solely on circumstantial evidence.

The Hon. Elisabeth Kirkby: Or perjured evidence.

Reverend the Hon. F. J. NILE: Yes. Sometimes circumstantial evidence seems to point to the guilt of a person, but later it is found that other evidence brings into doubt the earlier evidence. It also points up the dangers of giving blanket approval for capital punishment. If capital punishment had been in place, it is quite possible that both these men could have been hanged. No action of this Parliament would have ensured justice for them, because they would no longer be on this earth. There is obviously support for capital punishment, but these cases show the serious dangers that can occur in our current justice system. Capital punishment might be possible if we had a perfect system of justice, but at times it is imperfect.

The Parliament can ensure that there is justice for these two people, and there may be others - I hope not too many - who become the subject of similar legislation or even this legislation. There should be more than adequate compensation. That will be a matter for another piece of legislation. It is very important in court cases that there be thorough consideration of all the evidence. Sometimes evidence may be withheld that could be crucial to ensuring justice for the accused. I know that we have to balance the two needs - justice for the victim and justice for the accused. The Call to Australia group stands very strongly for justice and decency. Therefore, we are very pleased to support the bill.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [8.55], in reply: I thank honourable members for their support for this most important reform legislation. As all honourable members have indicated, it means that people who previously had the opportunity to have their convictions dealt with by way of a pardon will now have the opportunity to have their convictions quashed. Everyone has identified this as a long overdue reform. This mechanism will guarantee that the reform can be achieved expeditiously. I thank honourable members for their support. This is an important bill. People with a disability - Michael Parker comes into that category - who were unable to have the benefit of an inquiry, as all other members of the community now are, will be able to have the benefit of an inquiry, as will any other person the subject of an impairment who has had to be dealt with because of that impairment. This is a significant step

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forward in the reform of the criminal justice system. I thank honourable members for their support of this reform.

Motion agreed to.

Bill read a second time and passed through remaining stages.

ANTI-DISCRIMINATION (AGE DISCRIMINATION) AMENDMENT BILL

Bill introduced and read a first time.

Second Reading

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [8.59]: I move:

That this bill be now read a second time.

The Anti-Discrimination (Age Discrimination) Amendment Bill is the culmination of one of the most comprehensive and wide-ranging legislative consultation processes ever undertaken in this State. As honourable members would be aware, the Government released its first discussion paper, entitled "Age Discrimination - Options for New South Wales", in May 1992. That discussion paper, prepared by the Attorney General's Department, formed part of the Government's program to reduce age discrimination in our community. New South Wales was the first State in Australia to legislate on compulsory retirement, amending the Anti-Discrimination Act in 1990 to prohibit compulsory retirement from 1991 for the public sector, from 1992 for local government and from 1993 for the rest of employees in New South Wales. Upper age limits have also been removed from statutory appointments and government advisory committees. Employment programs for mature workers, youth and women have been targeted to encourage them to take advantage of work, training and retraining opportunities.

The discussion paper examined the case for age discrimination legislation, legislative developments in other jurisdictions and options for New South Wales, and sought public comment upon the form and content of such legislation. It was distributed widely for comment, and 59 submissions were received from a variety of respondents, including employer and industry groups, organisations representing or providing services to the aged, representatives of the insurance and superannuation industries, government agencies and individuals. Following the receipt and detailed consideration of submissions, in April 1993 the Government released a white paper, containing certain proposals for reform of the law in relation to age discrimination, seeking further public comment.

The bill that is before the House today is the result of the consultation process that I have outlined and has been fashioned to take into account views expressed by relevant industry, community and government organisations, as well as those groups the legislation has been drafted to protect - the young and the elderly. Before turning to the detail of the legislation, it would be beneficial at this stage for me to outline some of the difficulties which face mature persons and youth which have led to the development of the bill. Age discrimination is common in the workplace. Peer group pressure, business practices and workplace expectations have a profound effect on the older worker. Many workers are considered old in their forties or more commonly in their fifties. These factors have contributed to a large number of workers leaving full-time employment in their mid-fifties. It is likely that the implications of such factors are significant in the context of Australia's ageing population.

It is often argued that economic forces alone will ensure a change in trends in this area and, even without age discrimination legislation, employers will actively recruit older workers back to the work force. However, it seems clear that older workers are less likely to be trained in new technologies and are more likely to be retrenched. While employment is probably the most significant area of discrimination against the elderly, studies indicate that they also face problems of discrimination in other areas, notably in obtaining accommodation, education, insurance, access to credit and provision of health services. Old age has been called "An age of no consent". Decisions affecting older people are taken by others on their behalf in the belief, often mistaken, that the elderly are incapable of understanding their own best interests. Faced with this attitude, the elderly often experience a real sense of powerlessness. They are frustrated at no longer being considered as useful members of society with a contribution to make to its welfare. Similarly, young people often suffer from stereotypical assumptions based on age, and can suffer discrimination in access to credit and accommodation as a result. In addition, age-based criteria are regularly applied in the field of employment to the detriment of young people.

The Human Rights and Equal Opportunity Commission's national inquiry into homeless children found that young people often experience discrimination in the provision of rental accommodation. Landlords and real estate agents often view them as financial risks due to perceptions that they have relatively low incomes and insecure employment opportunities. In New South Wales, the Anti-Discrimination Board's report entitled "Discrimination and Age" referred to the special legal status of children and the restrictions on their legal rights flowing from it. In the field of employment, young people may face unfair discrimination where age is used as a proxy for competency and skills in the setting of

junior wages. The younger employee may also be disadvantaged by certain business practices such as the redundancy policy of last on first off. Young persons also face difficulty in obtaining credit and access to loans. The Government's extensive consultations have indicated that there is widespread support in the community for the legislative protection of the young and the elderly from discrimination based on age.

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The Anti-Discrimination (Age Discrimination) Amendment Bill 1993 seeks to remedy the problem by creating a ground of complaint to the Anti-Discrimination Board in respect of age discrimination, and seeks to utilise the extensive educative and conciliation roles of the board in bringing about attitudinal change by encouraging the community to recognise the contributions that the elderly and the young make to our society. The proposed reforms contained in the bill substantially reflect the proposals which appeared in the white paper, although some additional exemptions have been added as a result of suggestions contained in further submissions which have been received.

Turning to the detail of the bill, proposed section 49ZYA specifies the circumstances which may constitute unlawful discrimination on the ground of age. Divisions 2 and 3 of the bill deal with the areas of public life in which age discrimination is to be unlawful. To ensure maximum coverage of the legislation, it is proposed to include age as a ground of discrimination under the Act in the areas of employment, education, provision of goods and services, accommodation, registered clubs and access to places and vehicles. This approach accords with the coverage available in relation to the grounds of discrimination on the basis of race and sex which is currently provided by the Act. Honourable members should note that the proposed ground of complaint will provide protection for persons of all ages. It would be illogical to introduce age discrimination legislation which itself discriminates in the ages to which it purports to provide protection.

The proposed section also provides protection to persons who experience discrimination on the basis of their relationship or association with a person on the ground of that other person's age. The provisions would, for example, protect parents from discrimination in the provision of accommodation on the basis that they have children below a certain age. I do not propose to deal in detail with the areas of public life in which the ground of age discrimination will apply for, as I have mentioned, they accord with areas covered by other existing grounds under the Act. However, I do wish to briefly draw the attention of honourable members to a number of provisions which limit the coverage of the bill in these areas.

Clause 49ZYI of the bill relates to junior wage rates. The introduction of competency-based training wages for young people to replace present age-based systems involving junior wage rates was discussed at length in the white paper. Significant concerns have been expressed by employer groups that the removal of age-based wage systems in the wholesale-retail sector at this time could have a significant impact on teenage employment. The wholesale-retail sector accounts for 51.4 per cent of youth employment. This sector relies heavily on the use of junior rates of pay as a way of remunerating young people for their skills and there is very little development of competency standards in the industry at this stage. Employers also expressed concerns that the switch to training wages would involve considerable time and expense in the restructure of wage rates. Given the circumstances of the wholesale-retail sector, the Government considers that it would not be appropriate to immediately make systems involving junior wage rates unlawful under age discrimination legislation.

Accordingly, clause 49ZYI will not come into operation for at least two years, and it is the Government's intention to only proclaim this provision once the development of competency-based, rather than age-based, wage and training systems in the retail-wholesale sector is further advanced. The Government does not wish to impose age discrimination provisions on existing wage systems until industry is in a position to comply with these requirements. Clause 49ZYJ of the bill provides a specific exception to age discrimination in employment by providing that it is not unlawful to employ persons of a specified age or age group for a position where a particular age or age group is required for authenticity in

a dramatic performance or other entertainment, or where the purpose of a particular job is to provide personal services relating to the welfare and education of persons of a particular age.

Clause 49ZYJ is based upon equivalent exceptions already included in the Anti-Discrimination Act under the grounds of race and sex. Clause 49ZYJ also enables the Governor to make regulations providing that being of a particular age or age group may constitute a genuine occupational qualification for particular jobs, or classes of jobs. Clause 49ZYK provides an exception in relation to voluntary retirement or severance schemes based on length of service. Although the Government is of the view that voluntary retirement and other similar schemes based solely upon an employee's age are discriminatory on the ground of age, it is acknowledged that some voluntary redundancy schemes validly enable employees to take advantage of redundancy packages which recognise length of service.

Accordingly, as voluntary schemes based on length of service could otherwise be regarded as being indirectly discriminatory on the ground of age, the bill provides that entry criteria based on length of service, rather than age, is sufficiently objective to allow such schemes to operate without infringing the provisions of age discrimination legislation. This approach accords with the principle that long service leave arrangements should not be subject to the provisions of the Act. Clause 49ZYL of the bill contains an exception which will enable schools and other educational institutions to refuse admission to persons who are below the compulsory school age for entry. It would be obviously unfair if a child below the minimum school age, for example, would have a ground of complaint to the Anti-Discrimination Board if he or she was refused admission.

Clause 49ZYL also contains exceptions in relation to private and prescribed educational authorities, which already exist in other grounds of complaint under the Act, and an exception which enables schools, for example, to provide benefits such

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as concessions to students on the basis of age. Clause 49ZYN of the bill, which deals with age discrimination in the provision of goods and services, includes specific exemptions which will enable benefits, such as age-based travel and other concessions, to be provided to persons by reason of their age. This exception acknowledges that concessions such as the Seniors Card seek to redress disadvantages that certain age groups experience.

Similarly, holiday tours aimed at particular age groups, such as Contiki tours, which are aimed at the 18 to 35 years of age group, are exempted. A similar approach is taken in the Western Australian Equal Opportunity Act 1984, which provides that benefits, concessions and holiday tours provided or offered to persons of a particular age are not unlawful. Clause 49ZYN also makes it clear that the Government's proposals to make age discrimination unlawful do not interfere with the capacity of testators to make the disposal of goods or services dependent on the beneficiary attaining a certain age.

The exception reflects the philosophy that anti-discrimination legislation should not interfere with the right of testators to make gifts contingent upon age. Clauses 49ZYO and 49ZYP of the bill, which deal with age discrimination in the provision of accommodation and access to registered clubs respectively, include standard exemptions which appear in equivalent provisions under the other grounds of unlawful discrimination already covered in the Act, that is, race, sex, marital status, physical and intellectual impairment and homosexuality. I should note for the information of honourable members that the current provisions of clause 49ZYP will not affect current requirements concerning the minimum age for entry into registered clubs. The bill also contains a number of general exceptions to the age discrimination provisions, which are contained in division 4.

Clause 49ZYP of the bill provides a specific exemption to ensure that legal age requirements and protections, such as legal concepts of the age of majority, are not affected by the legislation. As honourable members would be aware, various laws and regulations exist in New South Wales which are designed to protect specific age groups or to set competency standards, for example, driver's licence requirements, voting age, drinking or smoking age, educational requirements concerning age, provisions

for the separate treatment of young people in the criminal justice and corrections systems, and the age of sexual consent. The Government has no intention that such requirements should be affected by the bill. So far as statutory provisions are concerned, section 54 of the Act currently provides a specific exemption for acts done in accordance with statutory requirements or requirements of regulations, by-laws, et cetera, made under statutes.

Clause 49ZYR of the bill contains a broad general exemption which enables programs and services which are aimed at meeting the special needs of particular age groups to operate without legislative interference. The provision constitutes a recognition on the part of the Government that certain age groups have a right to be provided with special facilities, services or opportunities to meet their particular needs. For example, the clause will enable institutions such as nursing homes or retirement villages to provide specialist aged care and accommodation without infringing the age discrimination provisions. Clauses 49ZYS, 49XYT and 49ZYV all provide similar exemptions in the areas of superannuation, insurance and assessment of credit applications respectively. The Government is of the view that organisations who provide superannuation, insurance or credit services should not be able to discriminate against applicants solely on the basis of age.

However, the Government also recognises that a person's age may be a relevant objective factor in determining the level of risk involved in providing superannuation, insurance or credit services. For example, a person applying for life insurance who is 25 and in good health would obviously involve a lesser risk for an insurer than a person of 70 with a history of heart disease. Similarly, the age of a loan applicant is one of a number of factors often taken into account by a credit provider in assessing a person's credit-worthiness, along with other considerations such as employment and credit history.

The Government is concerned that a person's age alone should not be used as a criterion in the provision of superannuation, insurance or credit services. Accordingly, clauses 49ZYS, 49ZYT and 49ZYU provide that discrimination on the ground of age in superannuation, insurance and credit provision respectively is unlawful, unless there is an actuarial, statistical or other reasonable basis for the discrimination. In practical terms, these provisions mean that a person's age can only be used as a relevant factor where there is an objective basis to suggest that the person's age puts him or her in a higher or lower risk category than other persons. The approach adopted by the bill in this regard has been reached in consultation with peak bodies in the areas of superannuation, insurance and credit provision, and is based upon equivalent provisions elsewhere in the Anti-Discrimination Act and relevant Commonwealth discrimination legislation.

Clause 49ZYV of the bill has been included to ensure that discretionary procedures of the Roads and Traffic Authority aimed at achieving road safety are not affected by the legislation. For example, drivers' licence requirements for persons above 80 years of age are often dependent upon such persons undergoing regular testing to assess their continued ability to drive safely. Clause 49ZYW of the bill exempts the exclusion of persons from competitive sport on the basis of age. The existing provisions of the Anti-Discrimination Act exempt sport from the various grounds of discrimination, and it is considered that an exemption from the age discrimination provisions is fully justified to ensure fair competition and to recognise differences in physical development at different ages. The exemption will not apply to non-competitive participation, administration and coaching of any sport.

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Finally, clause 49ZYY of the bill makes it clear that the proposed age discrimination provisions do not affect the operation of part 4E of the Act, which currently makes compulsory retirement unlawful. In conclusion, I note that the Anti-Discrimination (Age Discrimination) Amendment Bill 1993 constitutes the most comprehensive attempt by any Government in this country to address the problem of age discrimination. The legislation has been prepared following extensive and ongoing consultation with all interested groups, and its provisions constitute a sensible approach to the needs of all sectors of the community. The Government acknowledges that legislation alone is not sufficient to eliminate

discriminatory behaviour and believes that the educative processes of the Anti-Discrimination Board are a key factor in any reform such as the present proposal which seeks to affect prevalent community attitudes.

However, while an extensive educative campaign is planned by the Government in relation to age discrimination, it is considered that legislation is necessary to provide a means of redress where individual rights are infringed by age discrimination. The extension of the existing complaint procedures under the Anti-Discrimination Act 1977 to discrimination on the basis of age provides an opportunity for individual cases to be resolved by the Anti-Discrimination Board's conciliation processes before any involvement in the adversarial system becomes necessary. Furthermore, the introduction of specific age discrimination legislation provides the community with a message that carries far more weight than the employment of educational processes alone. I commend the bill to the House.

Debate adjourned on motion by the Hon. Franca Arena.

GLENREAGH TO DORRIGO RAILWAY (CLOSURE) BILL

Second Reading

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [9.8]: 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 facilitate the development and operation of a tourist railway by private interests on the disused Glenreagh-Dorrigo branch line west of Coffs Harbour.

The bill does this by authorising the closure of the public railway line of the State Rail Authority between Glenreagh and Dorrigo; confirming the title of the State Rail Authority to the land connected with the railway; providing claims for compensation for any person who has a lease over any of the land; enabling part or all of the land to be leased, sold or vested in the Crown for a tourist railway; and providing vacant possession of the corridor to any new owner or lessee.

The Transport Administration Act 1988 provides that the State Rail Authority shall not close a railway line unless authorised by an Act of Parliament. It goes on to preclude the disposal of the rail corridor without closure - hence the need for this bill. As well as sale, disposal is regarded as including a lease of more than fifty years. Accordingly, clause 5 of the bill provides for closure of the line and clause 6 provides for the rail corridor to be disposed of.

During the title searches by the SRA last year a few defects were found in the documentary title of the corridor. This is hardly surprising for a strip of land 69.5 km in length acquired some eighty years ago. However, the corridor cannot be leased, sold or transferred to a trust with these title defects. The usual remedy is simply to have the land surveyed but in this case, with a boundary of 140 km through rugged, forested terrain, the estimated cost was \$200,000 to \$300,000.

The only alternative is for the Authority to reacquire its land, as it were, by confirmatory resumption. However, anyone who establishes that he has a private interest in any of the rail corridor, such as a lease, will be eligible to seek compensation under the Land Acquisition (Just Terms Compensation) Act 1991.

Once the confirmatory resumption action has been taken and the line closed the Government will seek expressions of interest for the sale or one hundred year lease of the railway corridor, including all the works thereon. A very comprehensive expressions of interest document, newspaper advertisements and advertising brochures have already been prepared.

The Government is bound to dispose of this surplus rail land in accordance with the policy applicable to the disposal of surplus land generally. However, at the same time it is committed to doing everything practicable to ensure that a private tourist railway is operating on this line for the benefit of tourists to the North Coast. An indicative lease and contract of sale have been drawn up and they will ensure that such a railway must be operating within a reasonable time.

Although the invitation to express an interest in running a railway states that preference will be given to a single operator to reopen the whole line for tourist steam trains, submissions from proponents wishing to open only part of the line or carry out part of the project will also be welcome. While reopening the line is obviously a prerequisite, ancillary facilities, such as workshops, exhibition areas, car parking, cafes, gift shops and motels will also be permitted as a necessary adjunct to a successful railway in a remote area.

Every possible document will be made available to invitees to allow them to make a thorough and complete submission, including plans, rota sheets, line reports, infrastructure reports, statutory certificates, title details, an indicative lease and an indicative contract of sale.

Following evaluation of the expressions of interest received, it is hoped to enter into one or more leases or contracts of sale. However, in the most unlikely event that no suitable proponent is found to operate the railway, consideration may then be given to declaring the railway land to be Crown land under the Crown Lands Act 1989, at the same time specifying that the public purpose for which the land is to be reserved is for a tourist railway. This would then allow a reserve trust, charged with the care, control and management of the land, to be set up under the Crown Lands Act. This option is provided for in clause 7 of the bill.

Anybody who is successful in buying, or gaining a lease over, any part of the land on which he has rolling stock will obviously not be required to remove that rolling stock. Clause 8 of the bill will allow the Authority to give at least an additional six months' notice, after settlement of sale or lease of the corridor, to non-occupiers to remove any rolling stock that may then be on land which they neither

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own nor rent. For this clause to operate, however, it would first be necessary for the owners of the rolling stock to fail to buy or rent the corridor, to fail to sell their unwanted rolling stock to the new owners or lessees of the railway, to fail to remove their rolling stock within a reasonable time and, in effect, fail to give vacant possession of the corridor to the rightful occupier. All this is most unlikely to occur.

The detailed plan of action now proposed will give all interested parties a fair and even chance to bid for the operation of tourist trains on the Glenreagh-Dorrigo line.

I commend the bill to the House.

The Hon. B. H. VAUGHAN (Deputy Leader of the Opposition) [9.20]: The alternative Government supports the Glenreagh to Dorrigo Railway (Closure) Bill. This is an extraordinary development involving, I think, about 72 kilometres of railway line. It will be a first-class tourist attraction. In the other place there was bipartisanship demonstrated when this bill was dealt with. The Government accepted three amendments moved by the Australian Labor Party. The Government also moved an amendment, which of course was accepted by the Labor Party. I support the legislation.

The Hon. R. S. L. JONES [9.21]: The Australian Democrats also support the bill. We have had

numerous representations from the people of Coffs Harbour about the legislation. We hope that now the controversy will die down and the line will become a first-class tourist attraction, which I believe it will be. I very much look forward to travelling on the line.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [9.22], in reply: I thank honourable members for their support of the bill, which I commend to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

MOTOR ACCIDENTS (AMENDMENT) BILL

Second Reading

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [9.23]: I move:

That this bill be now read a second time.

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

Leave granted.

The amendments to the Motor Accidents Act proposed by this bill follow an extensive review of the Act by the Government, with the assistance of the Motor Accidents Authority. The motor accidents scheme has now been in operation for four years and has proved to be successful in providing fair and effective compensation at an affordable price. One of the principal aims in deregulating the compulsory third party insurance market has been to foster competition to provide reduced premiums and enhanced service from insurers. All motor vehicle owners have enjoyed the substantial reductions in compulsory third party insurance premiums which have been possible under the scheme. Since the introduction of the scheme in 1989 average motor car premiums in the Sydney metropolitan region have dropped from \$350 to \$190. Premiums have now stabilised and are comparable with those in other States.

Market research commissioned by the Motor Accidents Authority has indicated that the community perceives the scheme to be both affordable and available. The ease with which the CTP green slip can be purchased has resulted in broad community understanding and acceptance. Management of the scheme by the Motor Accidents Authority has proved to be both sound and effective. Improved procedures, including the arbitration of claims and the introduction of alternative dispute resolution procedures, particularly mediation, have been introduced to encourage the early disposal of claims. The outstanding claims under the old third party schemes inherited from the previous Government are also being appropriately managed. The number of outstanding claims has been reduced from 78,000 as at September 1989 to 28,000 as at March this year. The estimated unfunded liability relating to these claims has been reduced from a massive \$5,000 million as at June 1988 to \$1,500 million at the end of 1992.

Fraud is being targeted and prosecuted, with the GIO special claims unit having been successful in gaining 600 verdicts against plaintiffs, and instigating 175 arrests with regard to more than 320 criminal charges. In addition, as a result of this unit's operations, many tens of millions of dollars have been saved, and many fraudulent and exaggerated claims have been voluntarily withdrawn or not proceeded with. In re-introducing modified common law rights for motor vehicle injury the Government

has been concerned to ensure that those entitled to compensation under the motor accident scheme receive all necessary care, and have access to all necessary services and facilities, to ensure their return, as much as possible, to their pre-injury abilities, employment and lifestyle.

The proposed changes to the Act contained in this bill continue the emphasis of the original legislation in meeting the needs of persons who have sustained moderate to severe injuries in a motor vehicle accident. The proposed amendments provide for notable improvements in the availability of compensation for non-economic loss, also known as compensation for pain and suffering, and home care services. Currently, to receive any compensation for non-economic loss, section 79(1) of the Act provides that injured persons must show that "their ability to lead a normal life is significantly impaired by the injury suffered in the accident". This has been interpreted by the courts to mean that the ability of persons to lead a normal life must be significantly impaired at the date of assessment of damages, such as at the date of the court hearing. Therefore, people who have endured pain, suffering and trauma but who have largely recovered from their injuries by the time their damages are assessed may be unable to claim non-economic loss damages.

I am pleased to be able to say that the proposed amendment to section 79(1) makes damages for non-economic loss available if the injured person's ability to lead a normal life was or is likely to be significantly impaired for a continuous period of at least six months. This means that if at the time damages are assessed the injured person's ability to lead a normal life has already been significantly impaired for six months, or is likely to be significantly impaired for at least six months in the near future, that person is entitled to claim for non-economic loss damages, despite not being significantly impaired at the time of assessment.

As a consequence of the amendments, claimants whose ability to lead a normal life has not been significantly impaired at the date of the assessment, but whose injuries will almost certainly cause a period of significant impairment in the near future, will not be prevented from making a non-economic loss claim. This is not intended to provide compensation where the only impairment is likely to be some form of long-term degeneration which would have

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likely occurred regardless of the accident. Compensation provided by family members in the form of home care services is presently payable only after those services have been provided for six months; and then only where the services exceed six hours per week.

This limitation has proved to be anomalous. It is proposed to remove these restrictions so that where a member of the injured person's household or family provides care and services, home care compensation will be available even during the first six months after the accident and for the first six hours of services each week. Because the compensation is for services provided voluntarily, the amount of compensation will continue to be limited to a maximum of 40 hours per week based on average weekly earnings in New South Wales. This limit has been in place since July 1984.

The value of respite care has also been given statutory recognition for the first time. Rest or respite for the carers of seriously injured motor accident victims is very important in helping the injured person to recover. Previously, these costs have been regarded as costs of the family and not of the person being cared for and were not necessarily covered in an award of damages. If the stresses of caring for a seriously injured person without relief are such that they result in family breakdown or burnout of the care giver, other care arrangements must be found for the injured person, at enormous emotional and economic cost.

Provision has therefore been included to enable a specific award of damages for respite care in cases where the claimant is seriously injured and constant care over a long period of time is required. The increase in premiums resulting from the changes to the legislation proposed by this bill has been estimated at \$11 per vehicle. However, the final impact on premiums will be determined by each insurer according to the overall assessment of the cost of the scheme and the impact of these changes

on the scheme. When considered against the dramatic fall in premiums since the introduction of the scheme, the additional cost involved in providing enhanced compensation for seriously injured persons is modest. I believe that under the statutory scheme provided for by the Motor Accidents Act the real client is the injured motorist.

The Government and the Motor Accidents Authority are committed to meeting the needs of motor accident victims. The scheme has placed considerable emphasis on rehabilitation, and as a result insurers are now working with rehabilitation providers to ensure that the severely injured have access to all necessary services. In other common law schemes insurers play no role in rehabilitation and the claimant has little support until the final lump sum compensation is paid. However, through the implementation of this scheme the Government has recognised that the early implementation of a rehabilitation plan reduces the cost of care borne by the community in the longer term.

I am pleased to be able to remind the House that the Motor Accidents Authority has committed over \$30 million to rehabilitation projects, including major new brain injury rehabilitation centres at Ryde, Westmead, and one under construction at Liverpool, with other facilities established in country regional areas. Brain injury rehabilitation for children is now available at the Camperdown Royal Alexandra Hospital for Children while the new paediatric brain injury unit is being constructed at Westmead. Over \$1 million has been provided towards the spinal injury awareness and prevention program, headed by Dr John Yeo. A chair in rehabilitation medicine has been established at Sydney University, and more than \$800,000 has been provided to the Brain Injury Association to enable it to support the families and carers of those with brain injury.

A number of changes proposed by the bill are directed at improving claims handling and the early payment of compensation under the legislation. I believe that if insurers are able to implement mechanisms to better assess and deal with claims at the outset the benefits for everyone are reduced legal costs, the quicker delivery of compensation and most importantly satisfied clients. Sections 43 and 44 of the Act currently set out certain requirements regarding the form of the notice of claim as well as the time for making a claim. The claim must be made within six months and must contain certain particulars.

These provisions have been amended so that if a late claim is made and no explanation is given, an insurer will no longer have the right to challenge the claim on the ground of delay if the claim is not rejected, or an explanation is not sought from the claimant, within two months after the late claim is received. If an explanation is given by the claimant, an insurer loses the right to challenge the claim on the ground of delay if the explanation is not rejected within two months after it is received. An insurer who has not lost the right to challenge a claim on the ground of delay may apply to have the court proceedings struck out for that reason only within two months after the statement of claim is served.

Where claim forms are incomplete the proposed amendments set a two-month time limit on the right of an insurer to reject a claim because it does not provide the necessary information or to reject further information needed to assess a claim because it is not given in the proper form. An insurer who has not lost the right to reject a claim or request further information will have only two months to apply to have court proceedings struck out if the claim is not given in the correct form or if it does not provide the necessary information. The Act also requires a claimant to co-operate with the insurer in respect of the claim and imposes a duty to answer any reasonable request made by the insurer to provide relevant information and documents.

The purpose of section 48 of the Act is to make sure that the insurer has access to all information necessary to be able to satisfy itself of the validity of the claim, assess liability at an early stage and to make an informed offer of settlement. However, there is some uncertainty as to how the section should operate in practice. The amendments are intended to make the purpose of the section clearer and to give some guidance as to what constitutes a reasonable request for information by the insurers.

The amendments include a statement of the section's objectives and set out criteria against which the reasonableness of a request can be assessed. By virtue of section 45 of the Act insurers are required to make interim payments prior to final settlement for hospital, medical, pharmaceutical and rehabilitation expenses once they have accepted responsibility for the claim.

However, the Act does not impose the same duty on insurers during the period between the date when a court or arbitrator has found the insurer responsible for the claim and the date of final settlement of the claim. The insurers will now have an obligation to make interim payments for medical, hospital and rehabilitation expenses during the period between the determination of liability by the court or arbitrator and the date of final settlement of the claim. In addition to claims handling mechanisms, other aspects of the legislation have been clarified and updated. In order to determine when a third party policy comes into effect, or in other words the date on which an insurer comes on risk under a third party policy, it is necessary to know the date on which the green slip is issued. In practice, it is not always easy to determine this date.

The new amendments determine when third party policies are to take effect by reference to the date of the vehicle's registration. The new provisions set out specifically the moment the insurer comes on risk depending on different times of renewal. Other minor amendments to the Act provide that claims may be made against the Nominal Defendant where injury results from accidents involving an uninsured trailer. An action will also be able to be brought by joint tortfeasors against the insurer where the insured is dead or unable to be served.

I commend the bill.

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The Hon. B. H. VAUGHAN (Deputy Leader of the Opposition) [9.23]: The main objectives of the Motor Accidents (Amendment) Bill are to clarify the time of commencement and the duration of third party policies by redefining the period for which a licensed insurer is at risk under a third party policy, to clarify the circumstances concerning the insurance of trailers, to provide for certain home care services, and to remove a number of limits on the making of claims. When the bill was discussed in the other place the Australian Labor Party supported the bill without reservation and indeed considered it part of a continuing process of upgrading the Unsworth Government's changes to third party insurance. As this bill seeks to upgrade third party insurance, the alternative Government demands - and rightly demands - that benefits derived from such will be passed on to the consumer. However, yesterday 16 amendments were produced. I must suggest to the Attorney that the sudden arrival of 60 amendments for the Legal Profession Reform Bill and 16 amendments for this bill is not quite the proper way to do business.

On a closer scrutiny of the bill I say to the Attorney that the Opposition has reservations about proposed section 45 and distinct reservations about the amendments to proposed section 72. I foreshadow that the proposed amendment will be more closely scrutinised than it was in the other place. Alas, proposed sections 73 and 79 are deserving of more scrutiny but the opportunity has been lost to so scrutinise them. With those significant reservations, I have been instructed to support the bill. I foreshadow to the Attorney that the Opposition wants the bill to be considered in Committee.

The Hon. L. D. W. COLEMAN [9.26]: I support the bill wholeheartedly. I am not sure where the Deputy Leader of the Opposition got the reference to the Unsworth Government. That is a liberty he has taken. He has sought to take a free ride on the back of our great success. Premiums have dropped from \$350 to less than \$190 on average. I will not take the time of the House. I congratulate the Greiner-Murray Government and the Fahey-Armstrong Government on a tremendous win. What they have done with regard to third party insurance is typical of the performance of coalition governments, and I am sure that standard of performance will continue for a long time. I support the bill.

The Hon. ELISABETH KIRKBY [9.27]: The Motor Accidents (Amendment) Bill in its original form

appeared to the Australian Democrats to be a comparatively straightforward bill. It made numerous amendments to the Motor Accidents Act 1988 to remove a number of anomalies and to improve compensation without a major increase in premiums under the current compulsory third party insurance scheme. The first major provision of the bill was to improve compensation for non-economic loss. Under current section 29(1) compensation for non-economic loss is awarded only if an injured person can show that his ability to lead a normal life is significantly impaired by the injury suffered in the accident. People who may have recovered by the time damages are assessed probably are unable to claim non-economic damages. But the bill proposes to amend section 79(1) so that damages for non-economic loss are available if the injured person's ability to lead a normal life was or is likely to be significantly impaired for a continuous period of at least six months.

Also in the bill the need for respite care is recognised for the first time in legislation by the provision of an award for damages for respite care in a case in which the claimant will require constant care over a long period. The bill also contains provisions to improve claims handling and the early payment of compensation. If a payment is not made six months after the date of accident or death, a full explanation must be made to the insurer. The bill makes it clear that the claimant must first give an explanation to the third party insurer. An insurer who wishes to challenge a late claim must do so within two months of receiving the claim or the right to challenge will be lost. The bill will also limit the right of an insurer to reject a claim because it does not provide the necessary information, or to reject further information in claim assessments because it has not been given in the proper form. This challenge must be made within two months of a statement of claim being served.

The bill also closes the loophole whereby insurers do not need to make interim payments of medical, hospital and rehabilitation expenses between the date when a court or arbitrator has found the insurer responsible for the claim and the date of final settlement of the claim. Insurers will now have to make interim payments between the determination of liability and the date of final settlement of the claim. The bill also clarifies what constitutes a reasonable request by an insurance company in relation to a claim. It makes it clear when an insurer comes on risk after renewal of registration. I note that the Law Society has criticised the bill because it does not deal with the issue of motor accident deductibles. However, I am informed - and I hope that the Leader of the Government will reassure the House on this matter in reply - that the Government is undertaking a major review of the Motor Accidents Act and is having detailed discussions with representatives of the Law Society and other bodies. Motor accident deductibles are a major issue and are beyond the scope of this bill.

As I said at the beginning of my remarks, the Australian Democrats have no major problems with the original bill but, as has been pointed out by the Deputy Leader of the Opposition, the Government will move 15 amendments to its own bill. The Australian Democrats support the amendments, but we have a number of questions and seek clarification on some points. After earlier consultation with the Leader of the Government, I provided a list of these questions to his advisers. If I ask the questions now, I hope the Minister will deal with them in his reply. I hope that will save some time when the bill reaches the Committee stage. Many of the Government's amendments are either procedural or clarify drafting. I do not believe the Opposition will have any problems with those amendments.

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However, one major revision relates to home care services provided by family members. In the original bill the Government was very generous to those injured in motor accidents, but for reasons that have not been fully explained and perhaps will be explained now, the Government seeks to take away those benefits through its amendments. That is ridiculous. The bottom line is that the situation is not very generous at the moment and there are some glaring anomalies. At the very worst, the amendments will maintain the status quo, so not much progress will be made. The first amendment makes it clear that a third party policy is taken to have remained in force where the registration of the vehicle has been cancelled for the non-payment of a fine but has been restored prior to the date for renewal of the registration. I hope the Minister will confirm that in reply.

The second amendment is purely procedural and contains a provision that the nominal defendant may join another person, or be joined by another person, for contribution or indemnity in respect of a claim or proceedings under the Act as if the nominal defendant were a tortfeasor. The amendment sets procedures for joinder of the nominal defendant. The third amendment makes it clear that the term "lawfully used or operated on a public street" refers to a vehicle that was not required to be registered or was exempt from registration or, if required to be registered, was not required to be registered under the Motor Accidents Act. I would like the Minister to confirm that that clarification means that the nominal defendant will not have recovery rights from the owner or driver of a motor vehicle that was in breach of a minor regulation.

In relation to the fourth amendment, the notes from the Attorney General make it clear that proposed section 43A will ensure that the technical issues involved in a late claim are dealt with at an early date. Subsection 43A(3)(c) states that if court proceedings are commenced in respect of a late claim, an insurer who has not lost the right to challenge the claim on the ground of delay may apply to have the proceedings struck out on the ground of delay only within two months after the statement of claim is served. It would appear that the amendment will provide that the insurer loses the right to have the proceeding struck out on the ground of delay, as I have said, only within two months after the statement of claim has been received. It has been argued that insurers are likely to be jeopardised in cases where the statement of claim is served on the defendant insured but is not passed on promptly to the insurer. Again I would like to hear the Minister's views about this concern in his reply.

The fifth amendment, which relates to section 44 of the Act, deals with the form in which the notice of claim must be made. The bill proposes section 44A, which allows for further information to be provided in a form approved by the Motor Accidents Authority. Again, it has been argued that the provisions as drafted will lead to confusion about the duty of claimants to co-operate in providing information under section 48 of the Act. Therefore, it is the Government's intention to amend proposed section 44A to make it clear that it is only to enable the Motor Accidents Authority to give its imprimatur to forms used by insurers in obtaining further information about claims. If that is what the amendment intends, the Australian Democrats have no problems with it. Perhaps the Minister will also refer to this amendment in his reply.

The Australian Democrats have no problems with the sixth, seventh and eighth amendments, which are consequential. The bill provides that an insurer who has not lost the right to challenge a claim for not providing information in the form required under section 44 may apply to have the court proceedings struck out on the ground of non-compliance within two months of the claim being served. The bill provides that a court may strike out the proceedings only if it is satisfied that the relevant non-compliance is substantial. It has been put to me that this phrasing may mean that cases may be struck out only in the most extreme circumstances. The ninth amendment, therefore, proposes to rephrase that provision so that the court may not strike out proceedings if the relevant non-compliance is technical or of no significance. I have concluded that power, therefore, is shifted towards the insurers. In this case that seems reasonable, but again I would like confirmation from the Minister.

Under section 48 of the Act claimants have an obligation to co-operate with insurers. Indeed, the bill lays down criteria as to what constitutes a reasonable request for information by an insurer. The tenth amendment proposes an assessment as to whether the claim or any part of the claim may be fraudulent, a reasonable purpose for seeking further information. The Australian Democrats accept this amendment but point out that it embodies an attitude of scepticism towards claimants. Possibly there is good reason for that. The eleventh amendment follows from the tenth amendment, but has some significant consequences. Under this amendment an insurer will not be required to state the purpose for which the insurer seeks information. The implication seems to be that if insurers indicate their purpose, they will be giving the game away. Although insurers should have the right, and possibly the duty, to determine whether a claim is fraudulent, I ask the Minister whether the provision will be open to abuse. How will the claimant be able to assess whether the request is reasonable if he or she does not know

what the ultimate purpose of the information-gathering exercise is? Again I would ask the Minister to address that aspect in reply.

The twelfth amendment reintroduces the six-hour six-month barrier. A major provision of the original bill was to liberalise home care compensation. At the moment, compensation is available only where family members provide home care services after the first six months of services, and those services exceed six hours per week. The original bill provided that home care compensation may be paid even during the first six months and for services up to 40 hours per week. I understand that the removal of the six-hour six-

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month limitation was designed to eliminate the anomaly whereby claimants could receive compensation for home care services of up to 40 hours per week provided on a commercial basis, but could not get compensation if those services were provided by a family or household member. The anomaly encouraged claimants to seek home care services independently of their households at very costly commercial rates.

The amendment reintroduces the six-hour six-month barrier so that claimants apparently will become entitled to compensation only after services have been provided by family members for six months and then only where the services exceed six hours. However, under the proposed amendments, claimants will be entitled to compensation for the entire period, including the first six-hours six-months, provided they meet the six-hour six-month threshold. I accept that there was probably a miscalculation of the impact of the amendment on third party premiums, and that it would increase premiums by \$11 instead of \$1, as was originally believed. I would like the Minister to place on the public record the reasons for that discrepancy in calculations.

The thirteenth and fourteenth amendments are purely procedural. The fifteenth amendment deals with retrospective benefits. I believe the Deputy Leader of the Opposition referred to this amendment and suggested that the Opposition proposes to move an amendment to section 72 in another place. The additional benefits conferred by this legislation will not be available in relation to accidents that occur before the new law comes into force. I am not certain why the Opposition objects to that, because if the additional benefits become available in relation to accidents that occurred before the new law came into force, there will obviously be a retrospective benefit. The Australian Democrats do not support retrospective legislation, even if it is beneficial. With those few comments, the Australian Democrats indicate their support for the bill, despite the major amendments foreshadowed by the Minister. I hope that in reply the Minister will address some of the points I have raised.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [9.43], in reply: I thank honourable members for their support for this important legislation. The bill is complex and the Government is concerned to ensure that it clearly spells out the rights and obligations of all parties. The legislation was introduced some time ago and made available to the community for comment. The bill passed through the lower House on 16th September, and further comments were received from the industry. Once again, I place on record comments made by the honourable member for Mount Druitt in support of this legislation. I commend him for the approach he has taken and I commend the Opposition. The honourable member for Mount Druitt said in his contribution to the debate:

I warn the Government that any further amendments to the motor accidents legislation that will have a dramatic effect on insurance premiums will be strongly resisted and criticised. The Opposition expects that any new benefits, any new concessions given to motorists through compulsory third party insurance will have to be paid for. Any dramatic drop in the deductible, the principal reason for which is the ever-decreasing road toll and accident rate, is the main reason that motorists in New South Wales are paying a reasonable rate for compulsory third party insurance and a reasonable rate to keep their vehicles on the road. The Opposition supports the bill and congratulates the Minister on its introduction.

The ever decreasing road toll and the decrease in the accident rate mean that motorists in New South Wales pay a reasonable rate for compulsory third party insurance and a reasonable rate to keep their vehicles on the road. The Opposition supports the bill. The Government also adopts those principles. The important issue is to keep the premiums down and have an affordable but workable scheme. Since the legislation was passed a further assessment has been done by the industry which brought to the Government's attention a number of issues of concern that will have an impact on premiums.

The amendments have been proposed because it is necessary to correct anomalies in the legislation which could lead to some increase in claims and therefore an increase in premiums. I will make comments in relation to those changes during my reply, but first I wish to address the issues raised by the Hon. Elisabeth Kirkby. The Hon. Elisabeth Kirkby sought an assurance that the deductible is being reviewed. I indicate that there is no specific review, apart from the ongoing review which is being undertaken in regard to all aspects of the Act. I am pleased to be able to advise the honourable member that, as a result of the review, there will be no increase in the \$17,500 deductible this year. That is of benefit to all claimants.

When commenting on the bill and the amendments that I proposed in committee and which I have circulated to all honourable members, the Hon. Elisabeth Kirkby raised a number of points to which I shall respond. First, as noted by the honourable member, proposed further amendments to section 48 expand on the existing reference in the section that places an obligation to co-operate fully with the person against whom the complaint is made, and that person's insurer, by complying with any reasonable request for additional information. It is proposed also to make reference in this process to the insurer's role in assessing whether a claim or any part of a claim may be fraudulent.

The honourable member suggested that the amendment embodies an attitude of scepticism towards claimants. I remind the House that fraudulent claims were responsible for adding millions of dollars to the cost of the previous scheme. The GIO special claims unit has gained 600 verdicts against plaintiffs who lodged fraudulent claims. There have been 175 arrests in relation to more than 320 criminal charges. Additionally, as a result of that unit's operations, many tens of millions of dollars have been saved, and many fraudulent and exaggerated claims have been voluntarily withdrawn or not proceeded with. Both the Government and insurers are anxious to prevent a recurrence of that type of abuse of the scheme.

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In that context it is also proposed to delete the requirement for insurers to give the purpose for which the information is sought. The honourable member has indicated that the effect of that will be to remove the claimant's ability to determine whether the request is reasonable. However, the bill lists seven other criteria by which the claimant and the insurer may gauge the reasonableness of the request for additional information. These other criteria include whether the request is cogent and relevant to a determination of liability or quantum of loss, having regard to the nature of the claim; the amount of information that has already been supplied to or is available to the insurer to enable liability and quantum of loss to be assessed and an offer of settlement to be made; and whether the information sought is sufficiently specified.

Reading that together with the existing onus on the insurer under the section to make only a reasonable request, I am of the view that the interests of claimants will be more than adequately protected. As I previously outlined, it is proposed to restore the six-hour six-month threshold in relation to the availability of compensation for home care services. However, I note that claims under section 72 will not be subject to the deductible at present applicable under that section. Under the proposed amendment, once the threshold is reached the injured party will be fully compensated for the whole period. As such, there is considerable potential for numerous claims to be made for various services, the provision of which may be difficult to prove. There is considerable potential for the provision to be used as a means of topping up damages, and thereby to overcome the effect of the section 79 deductible for

general damages.

Ultimately, there exists a real potential that increased awards under this provision would result in a rise in premiums of as much as \$11 per vehicle. As I indicated in my previous statements, this is considered to be an unreasonable impost on the motoring public. The only reason for proceeding with the amendment is that on actuarial assessments the rise in premiums will be as much as \$11 per vehicle, whereas in a speech in the other House it was indicated that the rise was expected to be \$1. Therefore, to give effect to the injunction of the Opposition that premiums should be kept to a reasonable level, which is also the intention of the Government, some changes have been made to section 72. It will be appreciated that the Act is complex. The Government is concerned to ensure that the rights and obligations of all parties are clearly spelt out in the legislation. In that respect, therefore, I note the following changes which are to be made. Proposed section 43A(3)(c) provides that if court proceedings are commenced in respect of a late claim, an insurer who has not lost the right to challenge the claim on the ground of delay may apply to have the proceedings struck out only within two months after the statement of claim is served. The provision has been amended to provide that the two-month period applies after the statement of claim is received by the insurer.

Section 48 of the Act relates to the claimant's obligation to co-operate fully with the other party in respect of the claim. The relationship between this provision and other sections in the Act has been clarified by a number of minor amendments. Section 48 sets out also a number of criteria to assess the reasonableness of a request by an insurer for further information. This proposal is designed to ensure that claimants are able to commence action without unnecessary delay. At the same time, the provision is intended to assist insurers in assessing the validity of the claim. In this context the provision is also intended to assist in the assessment of whether a claim is fraudulent. Further to these changes, the Government is concerned to prevent any possible interpretation of the legislation which may result in a watering down of the statutory thresholds which apply to awards for damages for non-economic loss.

In this respect I note the amendment to proposed section 72 to which I have adverted. Section 72 of the Act currently provides that compensation provided by family members in the form of home care services is payable only after these services have been provided for six months and then only where the services exceed six hours. This provision was found to be counter-productive, as claimants tend to engage commercial services for which the full costs may be claimed. The Motor Accidents (Amendment) Bill removes the six-hour six-month barrier. The increase in premiums arising from this change was originally estimated at \$1 per vehicle. However, recent actuarial estimates indicate that this figure could be as high as \$11 per vehicle. Coupled with the increase in premiums of \$10 per vehicle resulting from the change to the verbal threshold in section 79 (1), a further increase of up to \$11 is considered to be unacceptable. In the circumstances, it is proposed to restore the six-hour six-month threshold. However, I wish to emphasise that the proposed amendments would still entitle claimants to compensation for the whole period, including the first six hours six months, provided they meet the six-hour six-month threshold. With those comments I commend the bill.

In Committee

Schedule 1

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [5.57], by leave: I move the following amendments in globo:

Page 3, Schedule 1, line 35. After "section 13", insert ", subject to section 13(7)".

Page 4, Schedule 1. After line 19, insert:

- (2) Joinder of the Nominal Defendant is required to be effected in accordance with this section.

(3) A person seeking to join the Nominal Defendant in respect of a claim or proceedings must give the Nominal Defendant notice of the person's intention to do so. The notice must include a copy of the notice of claim under section 43 given to the person.

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(4) The notice must be given within 3 months after the claim is made against the person under section 43, or within 3 months after the person becomes a party to proceedings in respect of the claim, whichever occurs first.

(5) The court may extend the period for giving notice to the Nominal Defendant if the person seeking to join the Nominal Defendant gives a full and satisfactory explanation for not having given notice within the 3-month period.

(6) Within 2 months after notice is given, the person giving notice must provide the Nominal Defendant with full details of the allegations made against the Nominal Defendant (or against the person to whom the Nominal defendant is taken to have issued a third-party policy).

(7) An application may not be made to join the Nominal Defendant as a party to proceedings before the court after 3 years from the date on which the claim under section 43 in respect of which contribution or indemnity is sought must be made, except with the leave of the court.

(8) If the Nominal Defendant is sought to be joined because the identity of another motor vehicle is not known, joinder may not be effected unless due inquiry or search to identify the vehicle has been made. The inquiry or search may be proved orally or by affidavit of the person who made the inquiry or search.

(9) Except as provided by this section, nothing in this section affects any rules of court relating to the joinder of parties.

Page 4, Schedule 1, lines 24 and 25. Omit "which was lawfully used or operated on a public street", insert instead "which, at the relevant time, was not required to be registered or was exempt from registration or, if required to be registered, was not required to be insured under this Act".

Page 5, Schedule 1, line 27. Omit "served", insert instead "received by the insurer".

Page 6, Schedule 1, lines 9-14. Omit all matter on those lines, insert instead:

Other approved forms

44A.(1) The Authority may approve forms (other than the form for a notice of claim) for use by insurers for the purposes of this Part.

(2) Approved forms may include, but are not limited to, a certificate of earnings and a rehabilitation plan.

Page 6, Schedule 1, lines 21-25. Omit all matter on those lines.

Page 6, Schedule 1, line 28. Omit "or section 44A".

Page 6, Schedule 1, line 31. Omit "served", insert instead "received by the insurer".

Page 6, Schedule 1, lines 32 and 33. Omit all matter on those lines, insert instead:

(4) A court may not strike out proceedings if the relevant non-compliance is technical and of no significance.

Page 7, Schedule 1, line 10. After "claim", insert "and, in particular, to assess whether the claim or any part of the claim may be fraudulent".

Page 7, Schedule 1, lines 27 and 28. Omit all matter on those lines.

Page 9, Schedule 1. Before line 2, insert:

(2) No compensation is to be awarded if the services are provided, or are to be provided:

(a) for less than 6 hours per week; and

(b) for less than 6 months.

Page 9, Schedule 1, line 20. Omit "award", insert instead "amount".

Page 9, Schedule 1, line 31. Omit "subsection (2)", insert instead "subsection (3)".

Page 9, Schedule 1, line 35. Omit "subsection (2) or (3)", insert instead "subsection (3) or (4)".

Page 12, Schedule 1. After line 18, insert:

Maximum amount of damages for provision of certain home care services

13. Section 72, as substituted by the Motor Accidents (Amendment) Act 1993, does not apply to a motor accident occurring before the commencement of Schedule 1(13) to that Act.

Respite care

14. Section 72A does not apply to a motor accident occurring before the commencement of that section.

In respect to each of the items in the schedule of amendments, I have prepared some detailed comments to which I have adverted in my reply. Rather than go through all of them in detail I seek leave to have my comments incorporated.

Leave granted.

Item 1 - Section 12

Section 12 relates to the commencement and duration of third party policies. Sub-section 12(9) specifies the conditions under which a licensed insurer is on risk in respect of a motor vehicle to which a trader's plate is fixed.

It is necessary to make a slight amendment to this provision to also make it clear that the third party policy will be taken to have remained in force where the registration of the vehicle has been cancelled for non-payment of a fine, but has been restored prior to the date for renewal of the registration, as specified in section 13(7) of the Act.

Item 2 - Section 28B

Proposed section 28B provides that the Nominal Defendant may join another person or be joined

by another person for contribution or indemnity in respect of a claim or proceedings under the Act as if the Nominal Defendant were a tortfeasor. The proposed provision has been expanded to set out procedures for joinder of the Nominal Defendant.

Item 3 - Section 31(3)

Section 31 deals with the recovery of monies paid and costs incurred by the Nominal Defendant from the owner or driver of a motor vehicle. Sub-section 31(3) provides that the Nominal Defendant is not entitled to recover where a motor vehicle (or trailer) was lawfully used or operated on a public street.

There is concern that a vehicle breaching some minor regulation such as a parking restriction may not be "lawfully used or operated on a public street", thereby giving unintended recovery rights to the Nominal Defendant.

This expression was intended to mean that the vehicle was not required to be registered, or was exempt from registration, or if required to be registered, was not required to be insured under the Motor Accidents Act. The proposed amendment contains wording to this effect.

Item 4 - Section 43A

Section 43 of the Act currently requires a claim to be lodged within 6 months unless a full and satisfactory explanation for the delay in making the claim is given.

Section 43A has been inserted to address the making of late claims. Under the proposed section an insurer will no longer have the right to challenge the claim on the ground of delay if the claim is not rejected, or an explanation is not sought from the claimant within two months after the claim is received. If an explanation is given by the claimant, an insurer loses the right to challenge the claim on the ground of delay if the explanation is not rejected within 2 months after it is received.

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The purpose of the proposed section 43A is to ensure that the technical issue of a late claim is dealt with at an early date. An insurer will therefore be unlikely to plead the lateness of the claim as a purely technical defence.

Sub-section 43A(3)(c) provides that if court proceedings are commenced in respect of a late claim, an insurer who has not lost the right to challenge the claim on the ground of delay may apply to have the proceedings struck out on the ground of delay only within 2 months after *the statement of claim is served*.

It is proposed to amend sub-section 43A slightly to provide that the insurer loses the right to apply to have the proceedings struck out on the ground of delay only within 2 months after *the statement of claim is received by the insurer*. As presently drafted, insurers are likely to be jeopardised in cases where the statement of claim is served on the defendant insured, but not passed on promptly to the insurer. A similar change is required to section 44B(3).

Item 5 - Section 44A

This section is intended to enable the Motor Accidents Authority to give its imprimatur to forms used by insurers in obtaining information about claims. Concern has been expressed that the provision as presently drafted will lead to confusion with the duty of claimants to co-operate in providing information under section 48 of the Act.

The section has therefore been redrafted to avoid any potential for confusion with requirements under other provisions of the legislation.

Item 6 - Section 44B

Again there is concern about the relationship between this section and section 48 of the Act. Given the changes to section 44A sub-section 44B(2) is no longer considered necessary.

Item 7 - Section 44B

This is a consequential amendment.

Item 8 - Section 44B

This is a consequential amendment.

Item 9 - Section 44B

Sub-section 44B(4) currently provides that a court may strike out proceedings only if it is satisfied that the relevant non-compliance (with a request to supply further information) *is substantial*. Concern has been raised that the courts may interpret this provision very broadly so that only the most extreme instances of non-compliance. [sic] The provision is intended to prevent technical arguments being used to strike out proceedings. The wording has therefore been altered to say that a court may strike out proceedings if the relevant non-compliance is technical and of no significance.

Item 10 - Section 48

Section 48 of the Act relates to the claimants obligation to co-operate fully with the other party in respect of the claim. The Motor Accidents (Amendment) Bill 1993 sets out a number of criteria to assess the reasonableness of a request for further information. One of the purposes of the proposed provision is to satisfy the insurer as to the validity of the claim. It is proposed to expand this to also include reference to the assessment of whether the claim is fraudulent.

Item 11 - Section 48

This change relates to Item 10 above and removes the requirement that an insurer give the purpose for which the insurer seeks information. Concern has been raised that his requirement may inhibit insurers investigating fraudulent claims.

Item 12 - Section 72

The existing section 72 of the Act provides that compensation provided by family members in the form of home care services is only payable after these services have been provided for six months and then only where the services exceed six hours. This provision is anomalous in that compensation could be paid where services were provided on a commercial basis.

The Motor Accidents (Amendment) Bill 1993 removes the six hour/six month barrier and thereby removes the distinction between services provided by family members and services provided commercially.

The increase in premiums arising from this change was originally estimated at \$1 per vehicle. However, recent actuarial estimates indicate that this figure could be as high as \$11 per vehicle.

Coupled with the increase in premiums of \$10 per vehicle resulting from the changes to the verbal

threshold in section 79(1), a further increase of up to \$11 is considered to be unacceptable. In the circumstances it is proposed to restore the six hour/six month threshold.

The existing provision in the Act provides that claimants only become entitled to compensation for services provided by family members after the first six hours/six months. However, the proposed amendments to the Bill would entitle claimants to compensation for the whole period, including the first six hours/six months, provided they meet the six hour/six month threshold.

Item 13 - Section 72

This amendment merely corrects an error in the Bill.

Items 14 and 15 - Section 72

These are consequential amendments following on from item 12 above.

Item 16 - Part 5

Part 5 covers the savings and transitional provisions. The Industry Deed contained in Schedule 5 of the Motor Accidents Act effectively precludes the enactment of amendments which would make additional benefits payable retrospectively. Furthermore, the Industry Deed provides that where an insurer will be materially affected by a change to the legislation the amendment can only apply in respect of accidents occurring 12 months after the date on which the variation is made. In practice insurers may agree to an earlier commencement date.

Consistent with the requirements set out in the Industry Deed, Part 5 provides that section 72 (home care services) and 72A (respite care) do not apply to motor accidents which occur before the commencement of those provisions.

The Hon. B. H. VAUGHAN (Deputy Leader of the Opposition) [5.58]: I draw the attention of the Attorney to section 79. The Attorney General used the word anomalies today and I think there is an anomaly here. The explanatory note to section 79 reads:

The amendment is intended to ensure that the only claimants who will benefit from likely significant impairment in the near future will be those for whom medical evidence indicates that the injuries would almost certainly cause the onset of significant impairment. An example might be a claimant with a badly broken hip where it is virtually certain that the hip will become severely arthritic within a few years.

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The second paragraph reads:

The intention is to prevent arguments that there may well be some degree of impairment.

In the paragraph I first read there is a certain and emphatic reference to a significant impairment, but in the second paragraph there is a reference to some degree of impairment at some time in the future.

If the period of impairment is not ceased at the date of assessment there must be clear evidence there is a real likelihood of impairment continuing in the future to produce a continuous period of impairment of at least six months.

I have spoken to the Attorney General and Minister for Justice and his advisers about this. This is lawyers' talk. Item (15) of schedule 1 refers to an amendment to section 79(1) in the following terms:

From section 79(1), omit "is significantly impaired", insert instead "has been, or in the near future is likely to be, significantly impaired for a continuous period of not less than 6 months".

The Attorney's two explanations for the necessity of section 79 are mutually exclusive. Because of that, any reference to "in the near future" is quite unfair to any litigant, any victim, where the injury at the time of the litigation is not static. It is as simple as that. It is a mistake. The word near will be the subject of a lot of litigation. It ought to be repaired now. I am quite sure that any judge will strike it down.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [10.1]: I hope that I will be able to clarify the matter raised by the Deputy Leader of the Opposition. As the honourable member properly pointed out, the amendment has inserted the words, "has been, or in the near future is likely to be, significantly impaired . . .". What is to be regarded as the near future? I refer to page 11 of the bill, which sets out the explanatory notes. It states:

The amendment is intended to ensure that the only claimants who will benefit from likely significant impairment in the near future will be those for whom medical evidence indicates that the injuries would almost certainly cause the onset of significant impairment (i.e. the commencement of a period of significant impairment) in the relatively near future.

That suggests that near future should be qualified by the terms of relatively. The explanatory notes continue:

An example might be a claimant with a badly broken hip, where it is virtually certain that the hip will become severely arthritic within a few years.

The purpose of the legislation is to allow the courts as broad an opportunity as is possible to apply the benefits under the legislation. "The near future" will very much depend upon the nature of the injury and the nature of the person who has suffered that injury. The court will be left with the opportunity to apply a reasonably broad interpretation, but not so broad as to say "in the realms of the future something might happen". It has to be within a relative proximity. The term "near future" was used to try to provide some qualification rather than the term "relative proximity", which would have been regarded as almost a juxtaposition of the incidents.

Section 79(1) of the Act will provide that no damages shall be awarded for the non-economic loss of an injured person as a consequence of a motor accident, unless the injured person's ability to lead a normal life is significantly impaired by the injuries suffered in the accident. The bill provides for an amendment to this verbal threshold by replacing the words "is significantly impaired" with "has been, or in the near future is likely to be, significantly impaired for a continuous period of not less than 6 months".

The Opposition's concern is that it would leave it wide open to any vague possibility of at some time in the future the claimant suffering some unforeseen disability. Actuarial studies have shown the necessity to limit the damages for future pain and suffering, and it is always open for the claimant to allege, with the support of medical evidence, that there is some prospect of future disability. Therefore, the Government has used these particular terms in as generous a way as possible to limit the size and extent of claims.

The Hon. B. H. VAUGHAN (Deputy Leader of the Opposition) [10.4]: What is the position of the punitive plaintiff who is quite properly advised not to litigate until the injury appears to be static?

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [10.4]: Under the legislation a claim will have to be lodged within the terms of the legislation. The injured person has to notify the claim and commence the proceedings.

The Hon. B. H. Vaughan: Lodge a claim to the insurers?

The Hon. J. P. HANNAFORD: Yes, to the insurer. The obvious structure of the Act is to make certain that these claims are lodged as early as possible so that there can be ongoing actuarial control of likely liabilities. But the time at which the litigation will proceed will obviously be a matter between the litigant and his solicitor. We are currently experiencing that. The Government has introduced in the District Court a new management section for motor vehicle accident litigation to try to have it dealt with as quickly as possible. Many of the claims being filed are not being litigated because the advice is that the injuries have not yet sufficiently stabilised to allow an appropriate assessment to be made of the level of injury so that an appropriate calculation can be made of the level of compensation. That reality will always remain.

Amendments agreed to.

Schedule as amended agreed to.

Bill reported from Committee with amendments, and report adopted.

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LEGAL PROFESSION REFORM BILL

MAINTENANCE AND CHAMPERTY ABOLITION BILL

Withdrawal

Order of the day for second reading of these bills discharged.

Bills ordered to be withdrawn.

LEGAL PROFESSION REFORM BILL (No. 2)

MAINTENANCE AND CHAMPERTY ABOLITION BILL (No. 2)

Bills introduced and read a first time.

Declaration of urgency agreed to.

Second Reading

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [10.10]: I move:

That these bills be now read a second time.

As a result of public comment and further consideration of the Legal Profession Reform Bill since its release the Government had proposed significant minor changes - 60 amendments - which would not have altered the direction of the bill but would have clarified it. Rather than moving the amendments in Committee, I have incorporated them into the bill to produce the Legal Profession Reform Bill (No. 2) so that the bill before the House is a clean and comprehensive bill that will expedite the House's consideration of the legislation. I commend the bills to the House.

The Hon. R. D. DYER [10.12]: The Legal Profession Reform Bill (No. 2) and the cognate bill, the

Maintenance and Champerty Abolition Bill (No. 2), are among the more important measures to come before this House. They affect the legal profession in this State and, more importantly, the rights of consumers of legal services. There is a large legal profession in this State comprising 10,464 solicitors and 1,540 barristers, according to statistics available from the Law Council of Australia as at 2nd March. The Attorney General said that it has become necessary to introduce in this place a second version of the Legal Profession Reform Bill having regard to the number of amendments the Government has seen fit to propose to the bill in its original form when the Minister made his second reading speech on 16th September.

Sixty amendments were circulated, at least to the Opposition, by the Government last Monday afternoon. I make no complaint on that account. The Opposition suggested to the Government that the cleanest and most convenient way of proceeding would be to reprint the bill incorporating the 60 amendments rather than proceed with the first version of the bill and have the Minister in Committee laboriously move 60 amendments. The Opposition welcomes the Government's decision to incorporate the amendments by way of the second version of the bill so that we have a clean copy and can proceed with the one document setting out the Government's intentions.

The Opposition has consulted significant interest groups regarding the bill, in particular the Law Society of New South Wales and the New South Wales Bar Association. The Deputy Leader of the Opposition and I had consultations with the President and the Chief Executive Officer of the Law Society, Mr John Nelson and Mr Frank Riley respectively, as recently as this week. I believe it is true to say that the solicitors' branch of the profession has no major problem with the present bill. That is not to say that the Law Society might not have difficulty with some aspects of it. However, in general terms the Deputy Leader of the Opposition and I were advised that the Law Society has no strong objections to the bill. But it became apparent during our discussions that the Law Society is rather impatient with the long time that it has taken to develop the bill through its various versions. I believe the Law Society will be glad to get on with its life in other respects and to have the legislation enacted.

The view of the Bar Association is radically different. I shall detail the concerns of the association. In addition, the judges of the Supreme Court of New South Wales, and the Chief Justice himself as their spokesman in effect, have significant difficulty with some aspects of the bill. That is no small matter because the Supreme Court is a superior court of record, and the views expressed by the Chief Justice and the judges of that court are entitled to respect by this Parliament and all its members. It is not my intention to attempt to break the speaking record of the Hon. J. H. Jobling on the Judicial Officers Bill. However, I note that the Attorney took at least an hour in his second reading speech to record the Government's reasons for the legislation and to give an explanation of its aspects. So the Opposition will not feel inhibited in dealing with the legislation in a measured fashion and placing firmly on the record its concerns and those of the bar and the judges in particular regarding various aspects of the bill.

It was the practice of the late Sir Adrian Solomons, in opposition, when speaking to legal bills, to go through the bills from beginning to end giving a detailed appraisal of all their provisions. It is not my intention to do that on this occasion because to do so would be unduly expensive in terms of time. I think it is preferable, having regard to the complexity of the bill and the significant number of controversial issues it raises, to deal with the controversial issues consequentially. That seems to be the most convenient and most direct means of presenting the Opposition's views on the bill. The first aspect of the legislation to which I refer is common admission. Over the years some consideration has been given, particularly by law reform bodies, to the desirability or otherwise of having a fused or divided profession. In this State there is currently a divided profession. Solicitors and barristers are admitted and practice quite separately from each other. I note that no

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provision is made in the principal bill for direct fusion, as originally sought by the Law Society of New South Wales. The changes proposed in the bill bearing on this issue of fusion as against a divided profession are three in number, that is, common admission, co-advocacy and direct public access to barristers.

The bill provides for common admission to the Supreme Court as a legal practitioner as distinct from either a barrister or solicitor, as is currently the case. But further provision is made by the bill for separate practice by legal practitioners, with the Bar Council and the Law Society respectively having power to issue practising certificates. Under the changes proposed by the bill there will be one Legal Practitioners Admission Board as distinct from the current Barristers Admission Board and Solicitors Admission Board, which are separate bodies. Following admission, under the terms of the bill legal practitioners will choose whether they will become barristers or solicitors; that is, they will make a choice as to the branch of the profession in which they will practice, notwithstanding the fact that at the point of admission they become legal practitioners without differentiation as between barristers and solicitors.

At the point they make that election, barristers or solicitors - as they will be in practice - will apply to the relevant professional council, either the Bar Council or the Law Society council, for a practising certificate. It is true that there does appear to be general support for these changes. However, there is very strong disagreement regarding the make-up of the amalgamated or fused Legal Practitioners Admission Board. For example, Supreme Court judges are highly critical of the proposal for the make-up of the admission board. They are also highly critical of the fact that the bill will abolish the inherent power or jurisdiction of the Supreme Court to admit barristers and solicitors. The judges note that for the first time in the history of this State judges will be in a minority on the admission board. The judges put the cogent view that the admission board needs the political neutrality and independence of judges. The judges are also concerned that while the bill does allow an appeal to the Supreme Court from a decision of the admission board, under the bill the court cannot intervene in protracted disputes over admissions.

The bar is also critical of the composition of the Legal Practitioners Admission Board. The bar takes the view that it is appropriate that there should be one board, given that all applicants are admitted as legal practitioners. However, the bar expresses the view that the composition proposed for the board means that the Supreme Court, which is the sole authority having power to admit legal practitioners as officers of the Supreme Court, and which properly retains its powers of supervision over the legal profession, does not hold majority representation on the new board. The bar notes that the judges enjoyed that majority when applications for admission were considered by separate boards, which are now to be abolished under the legislation before the House. The bar has said in its meeting with the Opposition that the bill, as presently drafted, could lead to the position where the Supreme Court would be required to admit a person whom the judges on the board had opposed, on occasions when the judges are outvoted by the other members of the board.

The Hon. Dr B. P. V. Pezzutti: What is wrong with that?

The Hon. R. D. DYER: I am not going to engage in chitchat with the Hon. Dr B. P. V. Pezzutti because my remarks will be sufficiently long without my being diverted by the tedious interjections of the honourable member, who has little knowledge of the matters under discussion. The bar has said to the Opposition that the authority of the Supreme Court as the admitting authority must be retained, consistent with other provisions in the bill. Not only is the bar critical of the provisions regarding the composition of the admission board, but the Supreme Court judges, in a submission made on the bill to the Attorney General, also noted that proposed section 10 produces the practical consequence that for the first time in the history of the State judges of the Supreme Court will be in a minority on the board that makes decisions concerning the eligibility of persons to be admitted as officers of the Supreme Court.

The judges made the rather charitable observation that this may simply have the unintended consequence of in effect amalgamating the two existing boards. They do say, though, that if it is an intended consequence, in their submission it is an inappropriate result. The judges say there is general public acceptance of such decisions being made by a board, a majority of whose members have the political neutrality and independence of judges. The judges of the Supreme Court also note that it was only relatively recently that the Solicitors Admission Board and the Barristers Admission Board were made up entirely of judges of the Supreme Court, with a small number of representatives of the legal

profession.

That position was altered by the Legal Profession Act 1987, but even following the implementation of those changes, the judges retained a majority on each board. However, what is proposed in the bill represents a radical departure from the provision laid down so recently under the Legal Profession Act 1987. The judges note that no reasons have been given by the Attorney General or the Government for that departure from existing law relating to the composition of existing boards. The judges very strongly put the point of view that whatever might otherwise be the constitution of the board - that is, no matter what its other representation might be - a majority of its members should be judges of the Supreme Court. That is my starting point so far as criticism of the bill is concerned. I place those criticisms of the judges and of the bar on the record for a response in due course from the Attorney General. So far as any criticism I make of this bill is concerned the Opposition reserves its right to move whatever amendments it may deem appropriate to give

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effect to its criticism, having regard to whatever responses might be made by the Government to the Opposition's concerns.

I shall now deal with a matter I adverted to a short time ago, the overriding and inherent right and power of the court to admit practitioners. Judges of the Supreme Court have pointed out to the Government that proposed section 11 of the bill may be contrasted with the existing provisions of the Legal Profession Act 1987. The first point they make is that it is the board and not the court which has to be satisfied regarding the good fame and character of an applicant for admission. In that regard the judges made reference, by way of comparison, to section 9 of the Legal Profession Act 1987. Furthermore they note that the overriding and inherent power of the court to admit practitioners has been taken away, and in that regard they cite section 4 of the Legal Profession Act 1987. The Supreme Court judges are of the very firm view that the inherent power of the court to admit practitioners is not only appropriate - bearing in mind that the practitioners are being admitted as officers of the court - but it also has been a matter of considerable practical utility in the past.

The judges state that the scheme of the bill under which the Supreme Court in effect admits people pursuant to a decision of the board represents a substantial change, and that in this respect also no reason for the change has been shown or given by the Government. There is a practical difficulty referred to by the judges in that they say that it is in their view far from clear how and by what procedure it is contemplated that the admission board will carry out its functions at first instance. The judges take a practical example by referring to their experience last year when an applicant for admission to the court was engaged in a disputed hearing about fitness that lasted for many weeks. I imagine that the judges are referring to the matter relating to Ms Kate Wentworth. They ask whether it is contemplated that the board - as distinct from the court - will engage in exercises of that character and of a very lengthy nature. Under the present arrangements if there is a substantial dispute, as there was in the Wentworth case, as to the fitness of the applicant for admission, that dispute is resolved by a judge of the court in the ordinary way of contested litigation as between the parties to those proceedings. The judges take the view - and I believe it is a reasonable view - that it is quite impractical to expect that the admission board, as will be constituted by clause 10 of the bill, could deal with disputes of that kind.

I pass now to the issue of direct access to barristers, which is another strand of what I was describing when I said that the bill does not give effect to fusion but to changed arrangements as between barristers and solicitors. I refer to these matters because I believe that the criticisms of the Bar Association need to be placed on the public record. I note that although there are some who take the view that the bar may be taking a self-interested position, the bar in this State does have an honoured tradition of fierce independence. It is true that barristers take on cases without fear or favour. They do not act exclusively for what is sometimes colloquially called the big end of town; they take on all sorts of cases, no matter how humble the client might be, and the Legislature should be careful not to prejudice the independence that the bar has enjoyed.

The Bar Association has pointed out to the Opposition that it has already adopted direct access to them by professionals, such as accountants - that is, direct access to them - but it is opposed to direct public access for various reasons. They say that it will result in less choice, access and competition, and that it will diminish the free market and provide less specialisation. They also take the view that direct access will result in some barristers inevitably - in their view the least competitive - operating as de facto solicitors but not providing the proper infrastructure of a solicitor's office or specialist advocate skills. It is true to say that the overheads of barristers are in approximate terms about one quarter those of solicitors. Barristers can provide specialised skills, built up in consequence of their daily practice for substantially less cost than is possible for solicitors who have much more infrastructure surrounding them to enable them to practice in their professional life.

The view of the Law Society regarding direct access to barristers is that direct access is for the Bar Association to determine, but the society does agree that barristers should be able to enter into contracts with clients and, therefore, sue for remuneration under the contract - both of which matters are provided for under the proposed legislation. I note that at an extraordinary general meeting of Law Society members - and it was extraordinary in more than one respect: it was extraordinary in the ordinary sense, and it was extraordinary in that it was attended by 900 solicitors - held in March this year the majority of solicitors were against direct public access to barristers. That was a particular concern held by suburban and regional law societies that were worried, according to the expressions that they made at that meeting, about direct access. They were concerned about less choice of barristers having regard to not only the matter I am referring to but to some other matters to which I shall come.

Before I deal with other matters I wish to say something about practising certificates, for which provision is made in proposed section 37 of the bill. The Bar Association has stated to the Opposition that the bill fails to include the present safeguard that the Bar Association is not required to issue practising certificates to those applicants who do not intend to practice as barristers. Historically the Bar Association has been able, under the existing legislation - the Legal Profession Act 1987 - to refuse the issue of practising certificates on the basis that the applicant did not intend to practise. This has served to protect the interests of the public against people who, by holding current certificates, purport to have the skills and experience of practising barristers and solicitors but who have not actually practised or perhaps have not practised for many or a number of years.

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The bar is of the view that the amendment encompassed in section 37 will fly in the face of the Trade Practices Act and the Fair Trading Act, which do not allow individuals to engage in conduct that is misleading or deceptive. Ironically, the bill, if enacted, would compel the Bar Association to issue practising certificates to people who do not intend to practise. Also, the bar is of the view that the amendment will enable solicitors' firms to employ non-practising barristers and to represent themselves as firms of barristers and solicitors notwithstanding that the barristers who are members of that firm have never in fact engaged in any advocacy. I pass now to a significant aspect of the bill which is described in the bill as joint advocacy, but which the profession appears to describe as co-advocacy. Provision for that is made in proposed section 38M of the bill.

The bar notes that the Attorney-General in his second reading speech, which was delivered approximately a month ago, stated that the provisions in the bill dealing with co-advocacy had attracted considerable criticism from the Bar Council. The Attorney noted that it had been put to him that the provision will be used by large city firms to pressure barristers into accepting a solicitor from a firm as a junior advocate. The Attorney noted also that it had been suggested to him by the bar that that would result in additional cost to clients. He informed the House that he had taken that concern on board and would be monitoring the operation of the provision to ensure that it does not give rise to overservicing or other misuse. I believe that the bar holds a genuine apprehension that co-advocacy could lead to the outcome it has in mind.

Perhaps I could suggest this scenario to the House. It is by no means improbable that a partner in a large commercial firm may telephone barrister X, offer him a brief in a substantial commercial cause - which might, for the sake of argument, be anticipated to last for some weeks - and suggest that he appear with partner Y in the firm in question. I would hazard a guess that if the barrister wanted to retain that brief, he would be loath to say that he would not appear with the partner. In other words, I am suggesting that large commercial firms might well have a great deal of clout in the decision as to whether a particular solicitor appears with a particular barrister in a given case.

The Bar Association has given a number of reasons for opposing the joint advocacy or co-advocacy provisions. For example, it has said that the overservicing and misuse to which the Attorney referred in the remarks I mentioned a moment ago would be constituted by engaging a second advocate, whether a barrister or solicitor, at the client's cost when none is required, or by engaging a solicitor advocate at a cost greater than that charged by a barrister for the same work, which is a feasible outcome if the solicitor is a partner in a large city commercial firm. The bar says also that a solicitor advocate could be engaged who has few or no skills and experience in advocacy compared with an appropriate barrister. The bar says also that if solicitors are allowed to brief members of their own firms, they may well derive profit from the engagement which conflicts with their duty to their clients to provide the most skilled and experienced legal service at the most competitive price.

The bar adds that co-advocacy must, therefore, be regulated by rules which bind both barristers and solicitors - in other words, joint rules - to prevent the potential for overcharging or abuse and that those joint rules should be in force before solicitors can take advantage of the co-advocacy provisions in proposed section 38N. Those are all serious matters which I believe the Attorney is not dismissing out of hand by any means, having regard to the matters he adverted to in his second reading speech when he introduced the original version of the bill approximately a month ago. If he was not concerned, he would not have made the reference to monitoring the operation of the provision. I invite the Attorney, in his reply to the second reading debate, to further address co-advocacy and the difficulties perceived by the Bar regarding possible abuses of co-advocacy and, particularly, the participation in that system of solicitors from large commercial firms in the city.

I refer now to Queen's Counsel. Proposed section 38O provides in part that any prerogative right or power of the Crown to appoint persons as Queen's Counsel or to grant letters patent of precedence to counsel is abrogated; that is, the right or power is totally set aside and, in effect, repealed. The Bar Council has submitted that the whole of proposed section 38O ought not to be proceeded with. The bar has given a number of reasons for that criticism. It has said that New South Wales is alone among Australian States in its proposal to cease appointing Queen's Counsel. It notes that Queen's Counsel is a title recognised and respected in Asia, where the market for Australian advocates is increasing, and that that is not a small consideration. In the view of the bar, there is no reason for New South Wales, which has the most vigorous and capable bar in this country, to opt out of this Asian market. The bar notes also that the existence of a peer recognition system is essential to provide an incentive to excellence within the bar.

To be fair, I realise that a peer recognition system can be developed by other means, such as by the bar giving certification to what it might call senior counsel. However, that argument by no means resolves the matter to which I just referred regarding the recognition of the title of Queen's Counsel in Asia and the fact that that title is used elsewhere throughout every other State of the country. The bar has also put the view to the Opposition, and I put it to the House, that there are historical and practical reasons why the Government of the day ought to have an input into the composition of the inner bar. The alternative would place a power of veto in the hands of the Chief Justice of the day.

The bar, I suggest, is delicately adverting to the fact that if the Government of the day has an input into the appointment of Queen's Counsel, over time

there can be some political balance in appointments to the inner bar. If that government input is not

present, it is difficult to have any certainty that that outcome will be achieved. The bar notes also that the Government can express its views by merely not appointing Queen's Counsel. There is no need for the Government to take away the power of a future government to appoint or not to appoint as it sees fit. Finally, the bar notes that the judges believe that the present system is appropriate. The judges have set out detailed reasons for that in their own submission. The judges, in a submission in response to the Attorney General's issues paper rather than in response to the bill before the House, had a great deal to say about Queen's Counsel. They noted that there is a perception on the part of some people that Queen's Counsel charge excessive fees. That may sometimes be the case, but the judges noted that the remedy for that mischief is unlikely to be found in the abolition of the title Queen's Counsel but, rather, in more direct measures specifically addressing the problem.

The judges asked what makes people think that senior counsel having that or some other title, or no title, will alter their practices as to fees? The judges mention that it is very likely that a substantial number of Queen's Counsel do not charge significantly more than senior barristers or highly competent junior barristers and that relatively few Queen's Counsel charge the spectacular fees sometimes mentioned in common everyday discussion. It is true that Queen's Counsel have traditionally been the prime source for the selection of persons for appointment to the Supreme Court. The judges make a number of other arguments in support of the retention of the current system for the appointment of Queen's Counsel.

I shall not detail each and every one of those arguments, but one of the more important arguments advanced by the court is that the title has so far been retained in all other jurisdictions of Australia. If there is to be a differential abolition in one State in this country - and the judges note that in a practical sense the legal profession is becoming increasingly integrated across the country - that is likely to cause confusion to the public, professional injustice between practitioners in different States, and an inevitable scramble by senior barristers in this State to gain appointments as Queen's Counsel in other States of Australia.

I would suggest, as the judges do, that it is obvious that if there is no system for senior counsel in New South Wales, that may cause an unfair comparative disadvantage to experienced barristers in this State for no equivalent gain to the public. The title Queen's Counsel is well recognised in the Asia-Pacific region. Australian legal practitioners have an actual and growing market in legal services, and appointment as Queen's Counsel assists Australian senior counsel to obtain access to that market. The Opposition is unaware of any reason why the Government has legislated in this extraordinary pre-emptive way to abrogate any prerogative right or power of the Crown to appoint persons as Queen's Counsel, because it is not happening elsewhere in the country.

Reverend the Hon. F. J. Nile: It is a pre-emptive strike.

The Hon. R. D. DYER: As Reverend the Hon. F. J. Nile said, it is a pre-emptive strike. But there is no cogent public policy reason why the Government should seek to bind future governments in regard to this matter. If the Government feels so strongly about not appointing Queen's Counsel, the remedy is in its own court, to use that expression loosely.

[Interruption]

This building is sometimes called the high court of Parliament. The remedy is in the Government's hands. All it needs to do is not appoint Queen's Counsel.

Reverend the Hon. F. J. Nile: And not appoint any more Attorneys General.

The Hon. R. D. DYER: We do need an Attorney General.

Reverend the Hon. F. J. Nile: I mean as a Queens's Counsel.

The Hon. R. D. DYER: Reverend the Hon. F. J. Nile has raised a relevant point. Some Ministers in the Government have been quick to avail themselves of the opportunity to appoint themselves as Queen's Counsel, notwithstanding their relative lack of seniority at the bar. The present Treasurer is certainly in that category. He rushed to appoint himself as Queen's Counsel. I remember clearly that some other Attorneys, such as the Hon. Ron Mulock and the Hon. Terry Sheahan, did not see fit to confer that distinction upon themselves and were loath to take that action. I am not seeking to make a party political point in regard to that matter. I merely wish to say that the Government of the day has the right to make the political decision not to appoint Queen's Counsel.

The Government has absolutely no reason to move in this way. It is unnecessarily binding future governments and, more importantly perhaps, it is not saving the litigants of New South Wales one cent in costs. Whether senior counsel are described as Queen's Counsel or as senior counsel, or by any other title, if they are counsel of eminence and recognised as such by their peers at the bar, they will charge according to the demand for their services. The fact that the Government, for some obscure reason, wants to prevent them calling themselves Queen's Counsel will not save litigants a cent or a dollar of the fees they would otherwise pay to the senior counsel they engage. I make a strong plea to the Government to provide some explanation of why it is engaging in what Reverend the Hon. F. J. Nile has described as this pre-emptive strike. It is an extraordinary move. It appears to have been initiated by an equally extraordinary address the Premier made to a gathering of the Law Society, but why he considers it appropriate or convenient to act in this way is beyond the Opposition and is certainly beyond the bar.

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Reverend the Hon. F. J. Nile: It might be just another of Mr Marsden's ploys.

The Hon. R. D. DYER: I am not sure whose ploy it is. It might be the Premier's ploy, but it is a threadbare move in the sense that it has no practical utility. It disadvantages the bar in significant respects and does not confer any commensurate benefit on the litigants of this State.

[*Interruption*]

I assure the House that I will finish my contribution in due course, whether that happens to be today or tomorrow. I do not want to delay honourable members but I am not responsible for the order in which the House considers matters. As I said at the outset, the Attorney General spent an hour reading his second reading speech, so I am within my rights in addressing this important legislation in some detail.

[*Interruption*]

The Opposition definitely has no intention of filibustering. Generally speaking, the Opposition supports the legislation, subject to some criticisms which I have said might result in amendments being moved either here or in another place. The next matter to which I want to refer is what are called multidisciplinary partnerships. Provision is made for those entities in proposed section 48G. I have not been able to discover in any discussions I have had with any legal practitioner, whether at the bar or in the solicitors' branch of the profession, the origin or genesis of this particular provision. I am advised, and I believe, that no provision was made for multidisciplinary partnerships in any draft of the bill and that such a provision was not suggested by the Law Reform Commission.

The origins of this dubious and totally unexplained concept appear to be recent. In any event, proposed section 48G provides that a barrister or solicitor may be in partnership with a person who is not a barrister or solicitor except to the extent, if any, that the regulations, barristers rules, solicitors rules or joint rules otherwise provide. This provision, unless overruled by the exceptions that I have just mentioned, would permit barristers to operate in partnership with solicitors, or any other persons, provided some part of the partnership business was ordinarily that of a barrister - presumably a barrister

appearing in court. The bar notes that for hundreds of years it has required its members to be sole practitioners. The philosophical basis for that requirement is that it is necessary to ensure that members of the bar are entirely independent and uninfluenced by the needs or wishes of others and are beholden to no one.

The bar makes the point that that is not merely a lofty ideal that can be readily brushed to one side, and that it takes little imagination to realise that barristers, particularly in their early years when they are struggling, could well accept minor partnerships in enterprises in circumstances where they must inevitably be placed in a position of conflict of interest of one sort or another. It is the very existence of an independent bar that allows many conflicts of interest within solicitors' firms to be completely overcome. Conflicts of interest do occur in solicitors' firms, particularly in large commercial firms where large corporations, banks, industrial companies and the like are suing each other. It is common practice for such conflicts of interest to arise in a civil action when one partner traditionally acts for a particular corporation and another partner acts for another. That can arise readily, and the situation is not always easily resolved.

The bar notes that it is the very existence of an independent bar that allows those conflicts of interest to be overcome, and that it is inconsistent with the concept of the profession of a barrister that the barrister's entitlement to practise should become a saleable item, that is, a share in a multidisciplinary partnership. The bar makes the point that though it would no doubt suit many solicitors' firms to advertise themselves as barristers and solicitors, it is impossible to see that any public benefit would accrue, given that a barrister, if a partner in a solicitor's firm would, no matter how competent, immediately cease to receive briefs from other solicitors and in that sense would cease to be a barrister. Also it is difficult to see how the standing of the profession could be maintained were barristers to become mere adjuncts of entrepreneurial and commercial enterprises.

It is not only multidisciplinary partnerships about which the Opposition and the bar have concerns. There is no limit or definition within the bill as to the persons with whom a barrister or a solicitor could enter into partnership. For example, it is entirely possible and probable that barristers and solicitors could go into partnership with accountants, real estate agents and so on. In fact, there is nothing in the bill, if I may say so, that would prevent a barrister or solicitor going into partnership with Christopher Skase.

Reverend the Hon. F. J. Nile: Or a used car salesman.

The Hon. R. D. DYER: I am pleased that Reverend the Hon. F. J. Nile saw fit to say that. There is absolutely no restriction. The Government owes the House an explanation for introducing this absolutely extraordinary proposal. Honourable members would not suggest that a barrister or solicitor should go into partnership with a used car salesman, or Christopher Skase, for that matter but, as the bill stands, there is absolutely no limitation in that regard. I am aware of the importance of the bill and I am equally aware that I am not in control of the time the Government chose to commence debate on this bill, but I will not truncate my remarks because of the lateness of the hour. I have a duty to the bar, to solicitors, to the public of this State, to the Opposition and to this Parliament -

Reverend the Hon. F. J. Nile: And to the crossbenchers.

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The Hon. R. D. DYER: And to the cross-benchers.

Reverend the Hon. F. J. Nile: We want to know the position of the Australian Labor Party.

The Hon. R. D. DYER: I intend to state the ALP's position on each important measure of the bill. I referred to multidisciplinary partnerships and I must emphasise the Opposition's grave concern about

the prospect of barristers and solicitors being permitted to make inappropriate arrangements, in my view, with persons with whom they ought not to be in practice. The Parliament is being asked to grope in the dark and approve this matter in the absence of sighting any rules limiting the extent or nature of these arrangements. The next matter to which I refer is proposed section 57I of the bill dealing with barristers' and solicitors' rules, the disallowance of them by the Attorney General and the absence of any right of appeal.

The Attorney General mentioned in his second reading speech that the Attorney of the day can disallow a rule on receipt of a report from the Advisory Council which indicates that the rule imposes restrictive or anti-competitive practices that are not in the public interest or that the rule otherwise is not in the public interest. The bar is of the view that the Attorney General should not have an unrestricted discretion to declare barristers' and or solicitors' rules as inoperative. There should be an express appeal as of right from the disallowance of a rule to the Supreme Court, for a number of reasons. The Attorney General, I note, appoints members of the Advisory Council referred to in the bill, and that council deals with the rules. There is, as I have suggested in passing, the absence of an appeal mechanism to the Supreme Court. It is a case of Caesar reporting to Caesar. In addition, it is essential, not only in the view of the bar but in the view of the Opposition, to preserve the separation of powers between the Legislature, the Executive and the judiciary.

The Hon. Dr B. P. V. Pezzutti: That is a bit original.

The Hon. R. D. DYER: The proposal of the Attorney General and Minister for Justice is very original. I am not aware of any other legislation where the Attorney General, not the Parliament, disallows these rules. That is without precedent, according to my knowledge.

The Hon. Dr B. P. V. Pezzutti: What a whole lot of old rot.

The Hon. R. D. DYER: If the Hon. Dr B. P. V. Pezzutti thinks that is a lot of rot I will be very interested to hear what precedents he can cite for a Minister of the Crown disallowing a rule or regulation, as distinct from -

The Hon. Dr B. P. V. Pezzutti: The chief law officer of the State.

The Hon. R. D. DYER: I am well aware of what the proposal is and I am well aware who the Attorney General is. I am equally well aware that, according to existing practice, it is not a matter for the Attorney General to disallow anything; it is a matter for the Parliament or, in some cases, the court in regard to court rules. The Attorney General is arrogating to himself the right to disallow these regulations. The bar also notes that the inclusion of an express right of appeal to the Supreme Court in regard to the matter to which I am referring will preserve the separation of powers and the accepted supervisory function of the Supreme Court of New South Wales over the legal profession. The court is concerned about that. The Attorney should not have that right.

I turn to the composition of the Advisory Council that is referred to in proposed section 58 of the bill. The Advisory Council is to be appointed by the Attorney General and is to comprise a chairperson, two barristers, three solicitors and five lay persons. There is no fixed term for the Advisory Council. If the arrangements proposed by the Government are allowed to occur, the Attorney General will have the power to disallow rules of the Bar Association and, for that matter, of the solicitors branch of the profession, on the recommendation of the Advisory Council he appoints and dismisses at his pleasure.

The Attorney may appoint a chairperson who has little or no understanding of the legal profession. The chairperson will have to advise lay members of the council, who comprise a majority of the council, on a great range of issues that will come before it. The bar is of the view that a chief justice, or a nominee of a chief justice, should be the chair of the Advisory Council. That would ensure that the Supreme Court would continue to play its role in the general supervision and conduct of the profession.

The bar is also of the view that the chief justice should select the lay representatives of the Advisory Council after advertising for expressions of interest, while the respective councils should nominate their representatives. In this way the Advisory Council would be truly independent of the Executive; it would ensure that the Attorney General of the day could not act capriciously, oppressively or politically in making appointments to the Advisory Council.

The arrangements regarding the Advisory Council and the disallowance of rules by the Attorney General are, in the view of the Opposition, extraordinary, oppressive and absolutely without precedent in the legislative history of this State. They require a lot of justification and a lot of explanation to this House.

The Hon. Delcia Kite: On a point of order. I cannot hear the Hon. R. D. Dyer because of all the conversation occurring in the Chamber. It is disgraceful.

The DEPUTY-PRESIDENT (The Hon. R. T. M. Bull): Order! I remind honourable members to be courteous to the Hon. R. D. Dyer, who has the call.

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The Hon. R. D. DYER: Thank you, Mr Deputy-President. I refer to a matter that has just been brought into the present version of the bill - that is, the Legal Profession Reform Bill (No. 2). It has been my understanding that, by and large, the 60 amendments brought in last Monday are of a substantially technical character. I believe that, in the main, remains true. However, the Attorney General has seen fit to bring in a provision amending section 216, which deals with the regulation-making power. I am concerned that this provision has been brought in at such a late stage. It is wholly inconsistent with the earlier proposals in relation to the professional associations evolving their own rules and presenting them for review by the Advisory Council. I refer to schedule 1(11) of the bill, which inserts the following paragraph:

- (b) matters for or with respect to which the barristers rules, solicitors rules or joint rules have been or may be made.

Even the restricted procedures proposed by the Government regarding the development and review of rules by the Advisory Council are to be circumvented, if the Government so desires, by simply enacting by regulation any rules for each association, the bar or solicitors, or joint rules that the Government dictates. Disallowance by Parliament is a haphazard procedure with regard to a comprehensive set of rules. Ordinarily, only bits and pieces are disallowed. It is totally inappropriate for this category of proposal to permanently affect the conduct of the legal profession. A regulation-making power over rules, as a matter of consistency, should be submitted to the Advisory Council and should be activated only on the recommendation of the Advisory Council following the appeal of a party to the Supreme Court from a decision of the Advisory Council.

The view of the Opposition is that the full implications of the proposed amendment to section 216 regarding regulations have not been explored or discussed by the Attorney General with either branch of the profession. There ought to be, and has not been, consultation about this matter with the legal profession or, for that matter, and even more importantly, the judiciary. I ask the Attorney General to address that matter in his reply in due course. It is a matter of concern to the Opposition and it is certainly a matter of concern to the bar.

Schedule 2 of the bill deals with reforms relating to complaints and discipline and the functions of the legal services commissioner. In the previous draft of the bill the Government proposed a legal ombudsman. That draft legislation made provision for the legal ombudsman to have the right to take over an investigation regarding a complaint made about a member of the profession. I can draw an analogy between that and the right of the Ombudsman of New South Wales to take over an investigation

involving the making of a complaint against police. That is the nearest analogy I can draw in regard to that matter.

It is a matter of concern that the Government saw fit to make that substantial provision in the draft bill but has not proceeded with it. For example, in the draft bill published by the Attorney General in June this year the proposed legal services commissioner was, by proposed section 131, given the function "to investigate or take over the investigation of a complaint if it is in the public interest or the interests of justice". It was further provided in proposed section 135 of the then draft bill that the commissioner might take over the handling of a complaint made to the Law Society Council by direction to the council or at the request of the council, and that if the commissioner took over the handling of the complaint the complaint was taken to have been made to the commissioner. In that case the council was to give the commissioner all the documents held by the council in connection with the complaint.

Those provisions have not been adhered to in this bill. The Australian Democrats have circulated an amendment dealing with the matter in terms very similar to those I have been describing in regard to the Government's previous draft of the bill. Those amendments will receive sympathetic consideration from the Opposition. I am attempting to condense my speech having regard to the late hour but it is an important and complex bill and it is not easy to deal with in a short time. I could say a lot more about complaints and discipline, however I focus on the right of the legal services commissioner in the original proposal to take over an investigation and the absence of that right in the bill in its present form.

The last significant matter I want to refer to is legal fees and other costs. The bill's provisions in regard to legal costs are complex. In essence, in dealing with cost arrangements between solicitors and clients, the bill makes provision for written costs agreements. That does not in substance change the existing law. At the moment a solicitor and a client may enter into a written agreement as to fees, and any such agreement, if it were to be found harsh or unconscionable, could be set aside under the Contracts Review Act 1980. It might not happen often, but that remedy is available. If there is no such costs agreement, the provisions of the bill significantly change the existing system in a way that could be argued to be adverse to the client. Under the present law, if there is no costs agreement and the client is dissatisfied with the bill he receives from his solicitor, he can require that bill to be taxed by a court officer in accordance with the scales of costs that are available and in force.

The bill in its present form abolishes those scales and also abolishes the taxing officers to which I have referred; it replaces them with what are termed cost assessors. Those officials must be barristers or solicitors of at least five years' standing. They are to assess what they consider to be a fair and reasonable amount for the costs. It is apparent from the Attorney's second reading speech that the proposed assessors will be part-time appointments and they will be barristers or solicitors who are still engaged in private practice. It is also self-evident that the assessment made by those assessors more often than not will be of a substantially higher amount than

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would have been allowed under the existing court scales by a taxing officer. That is a very different proposal from the draconian proposal the Government first had in mind - the benchmark fee. I am not making any complaint on that account.

The client can protect himself or herself to some extent from the jeopardy I am mentioning if he or she insists on a fixed fee quote from his or her solicitors. In a solicitor-client context one can doubt that that would be a major or widespread problem. There is an immediate and important difficulty: the applicability of the arrangements I am referring to apply not to solicitors and client costs but to party and party costs; that is, the costs of litigation that one party, generally the loser, is ordered to pay to another party - generally the winner. It is trite to say that the party ordered to pay those costs has absolutely no control over the amount and no way at the outset of litigation of making an estimate of the likely amount. I assume that one of the policy objectives of the bill is to facilitate access to justice. That is a concern of the Law Reform Commission and the Federal Prices Surveillance Authority. It is a concern also of this Government and the Opposition. A litigant is encountering a deadly hazard if he goes into court on the

basis that he is a person of limited resources and he is facing a difficult case.

Under the proposed new system the party and party costs will be fixed by a cost assessor on the same basis as a solicitor and client bill, at an amount that the assessor considers to be fair and reasonable. The relative importance of the two types of costs I am referring to is well illustrated by a simple statistic. In 1992 a total of 1,851 party and party bills for costs were filed for taxation in the Supreme Court while only 46 solicitor and client bills were filed in the same period. So it is absolutely apparent that the problem arises in regard to the taxing of costs - that is, the perception that costs are excessive and that the party desires to have them taxed, reduced to an acceptable level - overwhelmingly in the case of party and party costs flowing to an unsuccessful party to litigation and only rarely in regard to solicitor and client costs. That happened in only 46 cases last year.

It is accepted by the Government that the new basis will substantially increase the costs that an unsuccessful litigant will be called upon to pay. I place this difficulty firmly before the Government because I believe that, although scale costs might be said to be rigid and the Prices Surveillance Authority has said that competition will promote lower costs, that is very much in uncharted waters. It is all very well for the Hon. Dr B. P. V. Pezzutti to talk about moving away from scale costs but my concern is for the ability of the ordinary man or woman in the street, the small person or person of average means - the middle-class person.

The mischief in our society is that corporations and rich people can approach the courts. Equally, poor people can approach the courts because they can get grants of legal aid. People who cannot approach the courts are those of ordinary means, such as small business persons, professional persons or tradespersons. They are not impecunious, they have assets, but who really wants to gamble all their assets, their family home and their other limited resources, on litigation? That is fair comment. I have a very real personal apprehension - and in this regard the Opposition is also fearful - that the new costs regime could well lead to the opposite result to that contemplated by the Government. With regard to the issue of costs I give the Government credit for at least believing that it is reforming the law. However, it could well be mistaken in its belief in regard to litigation and in particular in regard to party and party costs, which an unsuccessful litigant is usually ordered to pay. Those costs are not only likely to be greater but are likely to be of an unascertainable amount at the point that a litigant enters proceedings. To that extent litigants are likely to be discouraged from maintaining their litigation.

A cognate measure to the bill is the Maintenance and Champerty Abolition Bill 1993. Maintenance can be defined as the giving of assistance and encouragement to one of the parties to litigation by a person who has neither an interest in the litigation nor any other motive recognised by the law as justifying that interference. The law of maintenance, a common law doctrine substantially, is intended to stop the involvement of what are described as wanton and officious meddlers who assist a party to take action without justification or excuse. I have often been tempted to describe the Hon. Dr B. P. V. Pezzutti as a wanton and officious meddler. I am glad he is not listening to me at the moment. Champerty is a particular kind of maintenance, that is, maintenance of an action in consideration of a promise to give the maintainer, the person who maintains the action, a share in the proceeds of the action. In the United States of America it is possible to take a slice of the action, so to speak - it is quite common for that to happen. However, it is not the view of the Government or the Opposition that that should be contemplated in this State.

The Hon. J. R. Johnson: It should not be made law.

The Hon. R. D. DYER: No.

The Hon. J. R. Johnson: It has happened.

The Hon. R. D. DYER: It might have happened but, if it has happened, it is a breach of the law of champerty and should lead to a prosecution. It is necessary for this cognate legislation to be introduced

because there is a provision in the main measure to the effect that it is permissible for a legal practitioner and his client to enter into a conditional cost agreement, that is, an agreement where a fee is payable only if the matter is successful. In those circumstances, the legal practitioner is permitted to charge a premium of up to 25 per cent above the normal cost that would be payable. However - and this is a very important gloss on that doctrine - fees may not be charged as a proportion of the amount recovered. That will continue to amount to champerty, a slice of the action. But to the extent

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that the law is now to provide that a conditional cost agreement can permit a fee payable, encompassing a premium up to 25 per cent, it is necessary for this cognate measure to be brought before the House.

I assured honourable members that I would finish before midnight. I have achieved that objective. I have dealt with the measure at some length. In a sense I apologise for that, having regard to the lateness of the hour, but I have a duty to the people of this State and to the Opposition. I dealt with the significant aspects of the bill as quickly and conveniently as I could. I ask the Government and the Attorney General in particular to pay heed to what the Opposition has said. The Opposition, the bar and the judges of the Supreme Court in particular have concerns regarding the proposed legislation. Subject to those concerns, the Opposition supports the bill.

Debate adjourned on motion by the Hon. J. M. Samios.

CREDIT (AMENDMENT) BILL

UNIVERSITY OF NEW ENGLAND BILL

SOUTHERN CROSS UNIVERSITY BILL

HIGHER EDUCATION (AMALGAMATION) AMENDMENT BILL

Bills received and read a first time.

Suspension of certain standing orders agreed to.

ADJOURNMENT

The Hon. VIRGINIA CHADWICK (Minister for Education, Training and Youth Affairs, Minister for Tourism, and Minister Assisting the Premier) [11.38]: I move:

That this House do now adjourn.

SOUTH AFRICAN ELECTIONS

The Hon. FRANCA ARENA [11.38]: I bring to the attention of the House the fact that 27th April, 1994, has been set as the date for elections in South Africa in which all black adults will have for the very first time the right to vote for a free democratic non-racial government. The elections will virtually guarantee that about 350 years of white-minority domination will end. These elections in a far away place are of great significance to democrats all over the world, who have fought through the years, together with the South Africans, to ensure the abolition of the despicable policy of apartheid. Since 1948 apartheid has disfigured so much, not just laws and structures but also people's hearts. Many Australians have worked in many ways to assist this process of democratisation, and now more than ever there is need for help.

I am appealing to members of Parliament specifically, and to the community in general, for help in two different campaigns. The first one is to ensure that there is wide voter education prior to the elections. A study commissioned by the Elections Commission of the African National Congress has shown that a sizeable number of South Africans have not decided whether they will vote in the forthcoming elections for a number of reasons, including the following: they might lose their jobs; they might be killed; they believe there will be no confidentiality and secrecy in voting; and they have no idea how they will reach the polling stations.

Let us not forget that black South Africans have not voted before and that 63 per cent of them are illiterate and speak at least nine different languages. Voter education and voter registration is an enormous undertaking. We must help to ensure that black South Africans are motivated to vote and understand the process. Women are particularly vulnerable. I trust that we can assist them by sponsoring voter education projects specifically designed for women. The African National Congress Women's League needs our financial help and donations, which can be made to its Sydney office. I can make the league's address available to members. Further, we have started a letter campaign to both Mr Nelson Mandela and President F. W. de Klerk to ensure that there are women candidates and women members of Parliament in the next Government. The black women of South Africa have fought valiantly with their men for their country, for their dignity, and for a better future for their children. We must ensure that they take their rightful place in the new South African government.

I have written to women's organisations and individuals asking them to write to Nelson Mandela and President de Klerk to ensure just representation for the women of South Africa in the new Parliament. I know that letters have been sent by many people but we need more, especially from members of Parliament. The elections next April will be of historical importance not only for South Africa but also for the rest of the world. Who could have predicted a few years ago that this miracle would happen and that de Klerk and Mandela would share the Nobel prize? I conclude with the words of Cyril Ramaphosa, the secretary-general of the ANC, who said recently:

We now stand at the gateway of the democracy, that so many of us have worked so hard for, and so many have died for.

Australians can help their friends in South Africa for whom the long-awaited vote will formally end the humiliation, injustice and injury of the last four decades, and complete the dismantling of apartheid. The elections of April 1994 will allow South Africa to regain a place in the community of nations. Let us help the people of South Africa to achieve such a worthwhile goal.

MARIJUANA DECRIMINALISATION

The Hon. ELAINE NILE [11.41]: I wish to speak about the push that is being made to decriminalise marijuana. The *Sydney Morning Herald* of 26th October stated:

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A former president of the NSW Law Society, Mr John Marsden - who began the campaign with a former Federal Minister, Professor Peter Baume, and a Canberra MP, Mr Michael Moore - said it was time for people to face reality.

That is the last thing that people on drugs face - reality. The article continued:

The campaign will begin on Saturday with newspaper advertisements urging government leaders to review marijuana laws.

On 18th October, 1992, the *Sunday Telegraph* stated:

Mr Marsden said it was "no secret" that he personally supported the decriminalisation of marijuana . . . He said there was no conflict of interest between his views, and his position on the Police Board.

There would be many people in society who would completely disagree with his point of view. I now read from an article "What every GP should know about marijuana" by a professor of medical physics and physiology at the University of California, Berkeley:

The average marijuana user - the young man who smokes two to three 'joints' per week - is adversely and persistently affected by the 'weed'. But he does not comprehend his situation . . . The fate of the active ingredient of the cannabis drugs, delta-9 tetrahydrocannabinol (THC), has been determined by a number of studies in laboratory animals and in humans by labelling the administered THC with a radioactive isotope (either hydrogen-3 or carbon-14) and tracing it in the body for distribution, retention, transformation to other chemical forms and excretion. The retention of labelled THC measured in humans is about 40% at one week . . . The THC taken up by the brain is concentrated largely in the cell membranes, where the local concentration is twice as high as the THC content of the red blood cells . . . The disappearance of the THC from the blood over the several hours of the 'high' is not due to its removal from the body; it merely accumulates in fat tissue, which has a high affinity for THC . . .

Among the known effects, THC depresses cell division and synthesis of DNA, suppresses the immune response of the blood lymphocytes, and alters the structure of the brain cell membrane . . . The frequently observed association of marijuana or hashish smoking with some degree of inflammation of the respiratory system, from sinusitis to bronchitis, suggests that valid results can be obtained from a demographic survey of the problem with a much smaller sample than was required to establish the effects of cigarette smoking. The signs are that emphysema and lung cancer will occur sooner than in the case of cigarette smoking . . . the induction of attacks of asthma seems to be caused by the chronic irritation by the marijuana smoke, an inflammation due to the cytotoxic impact of the THC itself. It certainly appears necessary to warn young asthmatics that aggravation is the more likely result of marijuana smoking . . . an indication that the mental reserves are thin. Daily marijuana users, though heavily affected, have no insight into their condition or recognition of what has happened to them . . . Clinical findings on heavy marijuana users point to the development of organic brain disease as described by Kolansky and Moore. It appears that irreversible brain changes may be encountered as marijuana use extends beyond three years . . . The average marijuana user, in between exposures, exhibits a wide range of brain changes:

1. He has shifted from a self-activating, interesting, and interested person to one who is withdrawn and given to disordered thinking . . .

2. Thought formation in the marijuana user tends to be less powerful: conclusions are relatively impetuous, and expressed ideas are often non-sequiturs . . .

3. The marijuana user's attention span and ability to concentrate have been reduced. Memory, especially short-term memory is shortened . . .

7. Marijuana is a hypnotic drug, and the hypnotic spell is long lasting. Thus, the user is likely to be talked into many situations that he would otherwise avoid . . .

10. He is likely to have a tendency toward paranoia or schizophrenia, or both.

We are seeing a lot of schizophrenia in young people today. The article states that marijuana use "can lead to completely inaccurate interpretations of the real world". That is what we are talking about, facing reality. The article continues:

The average marijuana user will stop using this drug upon being convinced that the life style and effects are not what he seeks. He is not addicted or physically dependent on marijuana; he uses it only about twice a week, while the narcotic addict requires his drug on a regular daily basis.

[Time expired.]

LENNOX HEAD SEWAGE OUTFALL

The Hon. Dr B. P. V. PEZZUTTI [11.46]: I address the House tonight more in sorrow than in anger to put the record straight on some of the outrageous statements made last evening by the Hon. Jan Burnswoods in misrepresenting the position - and I paraphrase the Hon. Bruce Baird in the old statement "Wrong, wrong, wrong", except that I have to add another wrong because the Hon. Jan Burnswoods was wrong on each occasion. Last evening she referred to Lennox Head sewage outfall. She should have been referring to the Skennars Head effluent outfall, which is not a new effluent outfall but an upgraded effluent outfall constructed after a challenge in the Land and Environment Court; not, as the Hon. Jan Burnswoods would have us believe, because of great conflict but as a result of an action in the Land and Environment Court in which history was made. The outcome was the result of a mediation undertaken at the behest of the Ballina environment society with the Ballina Shire Council. The Land and Environment Court accepted the mediated solution and for the very first time in New South Wales a mediation was accepted as part of the court's judgment - a most satisfactory arrangement.

However, the Hon. Jan Burnswoods tried to paint the picture that here was a society in turmoil where there was a concern that the local ratepayers were being done in some way, in spite of the fact that this mediated solution had been arrived at. The honourable member mentioned the problems of Mr Bill Ringland, of the Clean Seas Coalition, which was a party to the settlement that was negotiated to its satisfaction. Statements in the *Northern Star*, indicating people were initially dissatisfied, included:

The chairman of the Clean Seas Coalition and also Ballina Environmental Society president, Bill Ringland, said the result was "as good as could be expected".

Mr Bill Ringland is president of both organisations and he took part in that settlement. Unfortunately Mr Ringland went a bit further, having got this wonderful agreement in place, and was reported in the *Northern*

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Star of 2nd April as saying, "Sewage will still flow into the sea", and that was quoted precisely, as the Hon. Jan Burnswoods said. Last night the Hon. Jan Burnswoods said that Mr Ringland said, "Sewage is and will continue to be pumped surreptitiously at night and during storms" into the sea. The sad fact that the Hon. Jan Burnswoods did not point out last night was that the council got the *Northern Star* staff by the scruff of the neck, took them down to inspect that sewage treatment works which had been approved by the Environment Protection Authority and the Land and Environment Court, and demonstrated matters comprehensively to the newspaper's satisfaction so that it withdrew any association with that statement by Mr Ringland, pointing out clearly that it was not possible for any solid waste - and therefore sewage - to enter the sea because of this brand new, properly controlled effluent disposal process.

The *Northern Star* unreservedly withdrew and dissociated itself from that earlier statement. The council then asked Mr Ringland to apologise. He refused. What happened? After waiting a long time for an apology, Ballina Council sought, correctly, to put the record straight by asking its solicitors to seek a retraction from Mr Ringland. He refused. The council then decided to take him to court for malicious defamation. The council did so because of the need to ensure that the community understood clearly that the approval process had been proper and above board, and because it underlined the commitment of Ballina Council and Ballina ratepayers not to damage the environment. A tertiary treatment process, which is perfectly acceptable to the Environment Protection Authority and the Land and Environment Court, has now been put in place. The Hon. Jan Burnswoods did not point out that the council is moving

strongly to a proper disposal of as much as 60 per cent - [*Time expired.*]

NORTH OCEAN SHORES 7k HABITAT ZONED LAND

The Hon. R. S. L. JONES [11.51]: I bring to the attention of the House that 7k habitat zoned land immediately south of Jones Road, North Ocean Shores, being lot 1 in DP 779831, has been cleared by bulldozer in the past few days. No approval or consent for this activity was given by the Byron Council. A local person has written to the Minister for the Environment and the Minister for Planning and has received no replies. He has notified the National Parks and Wildlife Service and is most concerned that this 7k habitat zoned land has been cleared. No one is doing anything about it. I ask the Minister for the Environment and the Minister for Planning to find out what is going on and to ensure that this 7k habitat zoned land is protected.

Motion agreed to.

House adjourned at 11.52 p.m.
