

LEGISLATIVE COUNCIL

Tuesday, 19 April 1994

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

The President offered the Prayers.

GAMING AND BETTING (RACE-MEETINGS) AMENDMENT BILL

LOTTERIES AND ART UNIONS (AMENDMENT) BILL

Formal stages and first readings agreed to.

WORKERS COMPENSATION LEGISLATION (FURTHER AMENDMENT) BILL

Message

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

Mr President

The Legislative Assembly has this day agreed to the Bill intituled "An Act to amend the Workers Compensation Act 1987 relating to benefits for partially incapacitated workers, statutory funds of insurers, self-insurers and the privatisation of GIO; to amend the Workers' Compensation (Dust Diseases) Act 1942 and the Motor Vehicles (Third Party Insurance) Act 1942; and for other purposes" with the amendments indicated by the accompanying Schedule, including an amendment to the Long Title, in which amendments the Assembly requests the concurrence of the Legislative Council.

Legislative Assembly
14 April 1994

K. R. Rozzoli
Speaker

WORKERS COMPENSATION LEGISLATION (FURTHER AMENDMENT) BILL

Schedule of amendments referred to in message of 14 April

- No. 1 Page 2, clause 1, line 4. Omit "(Further Amendment) Act 1992", insert instead "(Amendment) Act 1994".
- No. 2 Page 2, clause 5, lines 15-18. Omit the clause.
- No. 3 Pages 3-15, Schedule 1. Omit Schedule 1, insert instead:

SCHEDULE 1 - AMENDMENTS

**TO WORKERS COMPENSATION ACT
RELATING TO BENEFITS FOR
PARTIALLY INCAPACITATED WORKERS**

(Sec. 3)

(1) Sections 38, 38A:

Omit the sections, insert instead:

Partially incapacitated workers not suitably employed - special initial payments while seeking employment

38.(1) **Entitlement.** If:

- (a) a worker is partially incapacitated for work as a result of an injury; and
- (b) the worker is not suitably employed during any period of that partial incapacity for work,

the worker is to be compensated in accordance with this section during each such period as if the worker's incapacity for work were total.

(2) **Maximum period of entitlement.** The maximum total period for which the worker may be so compensated is 104 weeks.

(3) **Rate of compensation.** When a worker is so compensated, the compensation is payable at the relevant rate prescribed by this Act for the period of incapacity concerned. However, after the first 26 weeks of incapacity and until the worker has been compensated under this section for a total of 52 weeks, the rate is the greater of the following rates:

- (a) 80% of the worker's current weekly wage rate (that is, 80% of the rate prescribed by this Act for the first 26 weeks of incapacity);
- (b) the statutory indexed rate (that is, the rate prescribed by this Act for a period of incapacity after the first 26 weeks).

(4) **Worker to seek suitable employment.** Compensation is not payable to a worker in accordance with this section during any period unless the worker is seeking suitable employment during that period (as determined in accordance with section 38A).

Section 38 - determination of whether worker seeking suitable employment

38A.(1)**Application.** This section provides for the determination of whether a worker is seeking suitable employment for the purposes of section 38.

(2) **General requirements.** The worker is not to be regarded as seeking suitable employment unless:

- (a) the worker is ready, willing and able to accept an offer of suitable employment from the employer; and
- (b) the worker has supplied the employer (or the insurer who is liable to indemnify the employer) with a medical certificate in accordance with the regulations with respect to the worker's partial incapacity for work; and

- (c) the worker has requested the employer (or such an insurer) to provide suitable employment or it is apparent from the circumstances that the worker is ready, willing and able to accept an offer of suitable employment from the employer; and
- (d) the worker is taking reasonable steps to obtain suitable employment from some other person.

Taking reasonable steps to obtain suitable employment includes seeking or receiving rehabilitation training that is reasonably necessary to improve the worker's employment prospects.

(3) Notice of requirement relating to obtaining suitable employment from other person. The requirement under subsection (2)(d) does not apply unless the worker has been notified of the requirement in accordance with this subsection.

Such a notice:

- (a) must be given in writing by the insurer or self-insurer concerned; and
- (b) must state that the worker is required to take reasonable steps to obtain suitable employment from some other person in order to remain entitled to compensation under section 38; and

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- (c) may set out particular reasonable steps that can be taken by the worker in order to satisfy that general requirement; and
- (d) is subject to, and must comply with, any regulations and (subject to the regulations) any claims procedures notified by the Authority to insurers and self-insurers; and
- (e) does not constitute an admission of liability by an employer or insurer under this Act or independently of this Act.

The requirement under subsection (2)(d) does not apply, and a notice is not to be given under this subsection, while action is being taken by or on behalf of the employer to arrange or explore the possibility of suitable employment with the employer.

(4) Notice not applicable when proceedings pending etc. If proceedings relating to the payment of compensation under section 38 are before the Compensation Court or the insurer or self-insurer has denied liability to pay any such compensation:

- (a) a notice is not to be given under subsection (3), and the requirement under subsection (2)(d) applies without any such notice being given; and
- (b) particular steps to satisfy that requirement that are set out in a notice previously given do not restrict the determination of the matter by the Compensation Court or a conciliation officer.

(5) Workers treated as not seeking suitable employment. A worker is not to be regarded as seeking suitable employment if the worker has unreasonably refused an offer from any person of suitable employment or necessary rehabilitation training (unless the worker later demonstrates genuine efforts to seek suitable employment). A worker is also not to be regarded as seeking suitable employment if the worker:

- (a) unreasonably refuses to have an assessment made of the worker's employment prospects; or

- (b) unreasonably refuses to co-operate in procedures connected with the provision or arrangement of suitable employment or rehabilitation training under the employer's workplace rehabilitation program.

(6) **Court orders.** An order of the Compensation Court relating to the weekly payment of compensation:

- (a) may be subject to conditions relating to the worker taking reasonable steps to obtain suitable employment during any weekly payments under section 38; and
- (b) may include directions relating to the adjustment of the amount of weekly payments under section 38 for any future period of payments under section 40 when the worker obtains employment or when the period for payments under section 38 comes to an end.

(7) **Definitions.** In this section:

"employer" of a worker who is partially incapacitated for work means the employer liable to pay compensation to the worker in respect of the incapacity or, if there are 2 or more such employers, the employer so liable who last employed the worker;

"refusal" of an offer or to do a thing includes a failure to accept the offer or to do the thing;

"rehabilitation training" means training of a vocationally useful kind, and includes vocational re-education, work-trials, occupational rehabilitation services or treatment provided by way of rehabilitation;

"suitable employment" means suitable employment within the meaning of section 43A.

Explanatory note

The amendment improves and simplifies the benefit provisions for partially incapacitated workers who are not provided with suitable employment by their employer and who are therefore compensated at the higher total incapacity rate during an initial period of job-seeking and rehabilitation training.

The existing provisions are complex. They apply for a maximum period of 52 weeks, a higher rate of compensation being payable during certain phases such as a preliminary 4 weeks employment-seeking period and a post-training employment seeking period. Under the proposed provisions:

- (a) The maximum total period is extended to 104 weeks. Subject to that maximum, the totally incapacitated rate applies to any broken periods of unemployment. Accordingly, a partially incapacitated worker who finds employment retains any unused entitlement under section 38.
- (b) The totally incapacitated rate applies to the whole of the relevant period (with one exception) and does not differ according to kinds of activity undertaken by the injured worker. The relevant totally incapacitated rate is the current weekly wage rate of the worker during the first 26 weeks of incapacity and the statutory rate after that first 26 weeks, the exception being the maintenance of a minimum rate of 80% of the current weekly wage rate until the worker has been compensated under section 38 for a total of 52 weeks.
- (c) The requirement for the worker to be seeking suitable employment is simplified. Generally speaking, the injured worker should be actively seeking re-employment in a suitable position with his or her employer and undergoing any rehabilitation training provided or arranged by his or her employer. An actual request for a suitable position is not required if the worker's

willingness to work is apparent from the circumstances (for example, if a partially incapacitated worker who continues working is dismissed without being guilty of misconduct).

- (d) At present, if suitable employment or training with a view to such employment is not made available, the worker is required to seek employment from some other person in order to continue receiving the special higher rate of compensation payments. That requirement will no longer apply unless the worker is duly given notice of the requirement by the relevant insurer (notice is not required if court proceedings are pending). Instead of merely stating that the worker is required to take reasonable steps to obtain suitable employment, such a notice may set out, in addition, particular steps that can be taken by the worker to satisfy that general requirement. However, such particular steps must be reasonable in the circumstances and do not affect any subsequent proceedings before the Compensation Court or a conciliation officer.

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- (2) Section 39 (**Incapacity treated as total - "odd-lot" rule**):

Omit section 39 (3), insert instead:

- (3) The Compensation Court may, in determining whether a worker has taken all reasonable steps to obtain employment for the purposes of this section, have regard to circumstances of the kind referred to in section 38A (5).

Explanatory note

The amendment is consequential on the substitution of sections 38 and 38A and brings the terminology of section 39(3) (which follows the existing sections) into line with the related terminology in the proposed substituted sections.

- (3) Sections 40, 40A:

Omit section 40, insert instead:

Weekly payment during partial incapacity - general

40.(1) **Entitlement.** The weekly payment of compensation to an injured worker in respect of any period of partial incapacity for work is to be an amount not exceeding the reduction in the worker's weekly earnings, but is to bear such relation to the amount of that reduction as may appear proper in the circumstances of the case.

- (2) **Calculation of reduction in earnings of worker - general.** The reduction in the worker's weekly earnings is the difference between:

- (a) the weekly amount which the worker would probably have been earning as a worker but for the injury and had the worker continued to be employed in the same or some comparable employment (but not exceeding \$1,000); and
- (b) the average weekly amount that the worker is earning, or would be able to earn in some suitable employment, from time to time after the injury (but not exceeding \$1,000).

- (3) **Ability to earn in suitable employment.** The determination of the amount that an injured worker would be able to earn in some suitable employment is subject to the following:

- (a) the determination is to be based on the worker's ability to earn in the general labour market

reasonably accessible to the worker;

- (b) the determination is to be made having regard to suitable employment for the worker within the meaning of section 43A.

(4) **Rehabilitation - unemployed (or not fully employed) workers.** An injured worker who duly undertakes rehabilitation training under section 38 is not to be disadvantaged under this section by any increase in the amount that the worker would be able to earn merely because of that training, unless the worker unreasonably refuses an offer of suitable employment for which the worker has been trained. The Compensation Court may determine any dispute about the operation of this subsection and (subject to any order of the Court) a conciliation officer dealing with the dispute may give a direction or make a recommendation about that matter. The regulations under section 100C may require insurers and self-insurers to refer such disputes to conciliation officers for conciliation.

(5) **Maximum rate of compensation.** The weekly payment of compensation to an injured worker in respect of any period of partial incapacity for work is not to exceed the weekly payment that would be payable to the worker if it were a period of total incapacity for work.

(6) **Adjustment of compensation - indexation.** If it appears proper in the circumstances of the case, the weekly payment of compensation to an injured worker in respect of any period of partial incapacity for work may (subject to subsection (5)) be adjusted to take account of any adjustment because of the operation of Division 6 in the weekly payment that would be payable to the worker if it were a period of total incapacity for work.

- (7) **Adjustment of maximum amounts - application.** If an amount mentioned in subsection (2):

- (a) is adjusted by the operation of Division 6; or
- (b) is adjusted by an amendment of this section,

the weekly payment of compensation applicable to a worker injured before the date on which the adjustment takes effect is, for any period of partial incapacity for work occurring on and after that date, to be determined by reference to that amount as so adjusted. Such an adjustment does not apply to the extent that the liability to make weekly payments of compensation in respect of any such period of incapacity has been commuted under section 51.

(8) **Exemption.** This section does not apply to any period of partial incapacity for work during which the worker is compensated under this Act as if the worker's incapacity for work were total.

Assessment of incapacitated worker's ability to earn

40A.(1) An injured worker who is partially incapacitated for work may be required by the employer to undergo an assessment of the worker's ability to earn in some suitable employment.

(2) An injured worker is not required to undergo such an assessment unless the worker has been informed about the possible entitlements of the worker under section 38 and the requirements for the worker to obtain those entitlements. The giving of that information does not constitute an admission of liability by an employer or insurer under this Act or independently of this Act.

(3) The Authority may, by notice to insurers and self-insurers, require any such information to be given in the form approved by the Authority.

- (4) Any such assessment is at the cost of the person who requires it.

(5) If an injured worker fails, without reasonable excuse, to undergo any such assessment, the right to weekly compensation for partial incapacity for work is suspended while the failure continues.

Explanatory note

Section 40 of the Act presently provides for "make-up" weekly compensation payments for injured workers who are only partially incapacitated and who are not entitled to the higher rate under section 38 during job-seeking and rehabilitation training. The "make-up" payment is, generally speaking, the difference between the worker's pre-injury earnings and the amount the worker is earning or would be able to earn in some suitable employment after the injury. However, the Act presently provides that where the injured worker is unemployed (or not fully employed) the "make-up" payment is the usually lesser rate of the difference between the current weekly wage rate for the pre-injury employment and that rate for some suitable post-injury employment; the current weekly wage rate is determined by reference to the lesser award or standard rates of pay and not average actual earnings. If there are a number of positions that would provide suitable post-injury employment, the average rate for those positions may be used. Subject to the requirement for the lesser "make-up" payments for unemployed (or not fully employed) workers, section 43 provides the general rules for determining pre-injury and post-injury earnings.

Under the proposed provisions:

- (a) The requirement for the usually lesser rate of "make-up" payments for unemployed (or not fully employed) workers is to be removed. The

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ordinary rules for determining pre-injury and post-injury earnings will not be qualified by that requirement. This will bring the level of weekly "make-up" payments of compensation for unemployed (or not fully employed) workers closer to the actual loss of earnings suffered by them because of the injury (subject to the normal statutory limits on the amount of weekly compensation that are applicable to injured workers who are in paid employment). Accordingly, the distinction between unemployed workers and fully employed workers with respect to the amount of compensation payable will be eliminated.

- (b) Because of the different circumstances of each case, the determination of actual market earnings for potential employment by unemployed workers in accordance with the ordinary rules may be difficult. In order to assist in the determination of those earnings section 43 will provide that, if there is an ordinary rate of pay for that potential employment under an award or other common industrial provision, that rate may be used together with any overtime or other payments (by way of standard industry or other practice) that the worker could realistically expect to earn in the circumstances. The approach is consistent with the general principle of comparing like with like in the determination of pre-injury and post-injury earnings. However, the Compensation Court will retain the discretion to determine the appropriate amount of "make-up" payments having regard to the difference between pre-injury and post-injury earnings.
- (c) The effect of rehabilitation training under section 38 on "make-up" payments under section 40 for unemployed (or not fully employed) workers is to be clarified. Suitable employment for a worker includes suitable employment for which the worker has received rehabilitation training under section 38. The amendments will ensure that an injured worker is not disadvantaged by any increase in the amount that the worker is able to earn because of that training. Accordingly, the amount of "make-up" payments will not be reduced merely because of any such increase in the worker's notional earning capacity, unless it is established that the worker has refused an offer of suitable employment for which the worker has been specifically retrained under section 38. Such a reduction might otherwise operate as a disincentive for injured unemployed workers to improve their employment prospects by undertaking rehabilitation training while in receipt of the totally incapacitated rate. The amendments also make special provision to deal with disputes on the matter, including the referral of those disputes to conciliation officers.

- (d) Injured workers are to be given a proper opportunity to determine whether they are eligible for the higher rate under section 38 for job-seeking and rehabilitation training before they are assessed for "make-up" payments under section 40.
- (e) The power to make regulations setting out guidelines for any such assessment (at present contained in section 40(8)) is to be removed.

Generally, the other changes that have been made are not intended to alter the existing law - they reflect the interpretation that has been placed on the existing provisions of the Act or they are consequential changes. Those other changes include the following:

- (a) The use of the expression "the reduction in the worker's weekly earnings" to recast section 40 in plainer language.
- (b) An express statement that the determination of post-injury earnings is to be based on the worker's ability to earn in the general labour market reasonably accessible to the worker.
- (c) An express statement that the general rules in section 43 for determining post-injury earnings apply to the determination of a worker's ability to earn in suitable employment.
- (4) Section 43 (**Computation of average weekly earnings**):

After section 43 (1), insert:

(1A) Any relevant rules provided by this section are also to be observed in determining the average weekly amount that a worker would be able to earn in suitable employment for the purposes of section 40. If there is an ordinary weekly rate of pay generally applicable to employment of that kind under industrial law, the average weekly amount is to be determined by reference to that rate of pay together with any other likely weekly payments which it would be proper to include in the circumstances of the case (such as overtime or other amounts payable under common industry or other practice).

Explanatory note

The amendment is consequential on the amendment made to section 40 and is explained in the note to that amendment.

- (5) Section 43A:

After section 43, insert:

Suitable employment

43A.(1) For the purposes of sections 38, 38A and 40:

"suitable employment", in relation to a worker, means employment in work for which the worker is suited, having regard to the following:

- (a) the nature of the worker's incapacity and pre-injury employment;
- (b) the worker's age, education, skills and work experience;
- (c) the worker's place of residence;
- (d) the details given in the medical certificate supplied by the worker;

- (e) the provisions of the employer's workplace rehabilitation program and any rehabilitation assessment of, or rehabilitation plan for, the worker;
 - (f) any suitable employment for which the worker has received rehabilitation training;
 - (g) the length of time the worker has been seeking suitable employment;
 - (h) any other relevant circumstances.
- (2) In the case of employment provided by the worker's employer, suitable employment includes:
- (a) employment in respect of which:
 - (i) the number of hours each day or week that the worker performs work; or
 - (ii) the range of duties the worker performs,
 is suitably increased in stages (in accordance with a rehabilitation plan or otherwise); and

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- (b) if the employer does not provide employment involving the performance of work duties - suitable training of a vocationally useful kind provided:
 - (i) by the employer at the workplace or elsewhere; or
 - (ii) by any other person or body under arrangements made with the employer,
 but only if the employer pays an appropriate wage or salary to the worker in respect of the time the worker attends the training concerned.
- (3) However, in any such case, suitable employment does not include:
- (a) employment that is merely of a token nature and does not involve useful work having regard to the employer's trade or business; or
 - (b) employment that is demeaning in nature, having regard to subsection (1)(a) and (b) and to the worker's other employment prospects.
- (4) A worker is to be regarded as suitably employed if:
- (a) the worker's employer provides the worker with, or the worker obtains, suitable employment; or
 - (b) the worker has been reinstated to the worker's former employment under Part 7 of Chapter 3 of the Industrial Relations Act 1991.

Explanatory note

The amendment re-locates, with minor modifications, the provisions of existing section 38A relating to the definition of "suitable employment". The definition is relevant to the partial incapacity provisions of both sections 38 and 40. The power to make regulations concerning suitable employment (at present contained in section 38(14)) has been removed.

(6) Section 54 (**Notice required before termination or reduction of payment of weekly compensation**):

(a) In section 54(4)(b), after "in such form", insert "(or contain such information)".

(b) After section 54(5), insert:

(6) This section does not apply to a reduction in weekly compensation as a result only of the application of different rates of compensation after the expiration of earlier periods of incapacity for which higher rates were payable (whether under section 38 or otherwise).

(7) The notice referred to in this section is to include information about the possible entitlements of the injured worker under section 38 and the requirements for the worker to obtain those entitlements if:

(a) the notice relates to a reduction in the amount of the worker's weekly compensation as a result of the application of section 40; and

(b) the injured worker is not in receipt of earnings; and

(c) the information has not been supplied to the worker under section 40A.

The giving of that information does not constitute an admission of liability by an employer or insurer under this Act or independently of this Act.

Explanatory note

The amendment makes a consequential amendment to the provision relating to the giving of notice to an injured worker of a reduction in weekly compensation. The amendment makes it clear that a notice is not required for a change in the rate of weekly compensation arising from different rates for different periods of incapacity (i.e. when a worker receiving the job-seeking rate of payments obtains work or a period during which a particular rate is payable comes to an end). In addition, a reduction arising from a change to weekly payments under section 40 for an unemployed worker is not to be made unless information about the worker's entitlements under section 38 is included in the notice.

(7) Schedule 6 (**Savings, transitional and other provisions**):

After clause 5 of Part 4, insert:

Continued operation of 1987 version of s. 38 (1)-(5) for injuries before 30 June 1989 and incapacity before 1993 amending Act

5A.(1) In this clause:

"the 1989 amending Act" means the Workers Compensation (Benefits) Amendment Act 1989;

"the 1994 amending Act" means the Workers Compensation Legislation (Amendment) Act 1994.

(2) This clause applies to a period of incapacity for work (whether occurring before or after 4.00 p.m. on 30 June 1989), if the incapacity results from an injury received before that time.

(3) However, this clause does not apply to:

(a) a period of incapacity for work to which clause 5 applies (that is, incapacity from an injury received before the commencement of this Act); or

- (b) a period of incapacity for work occurring after the commencement of the amendments to section 38 of this Act by the 1994 amending Act (except in respect of the continued application under this clause of the maximum total period for which a worker may be compensated in accordance with section 38).
- (4) For the purpose of determining the weekly payment of compensation in respect of a period of incapacity for work to which this clause applies:
 - (a) section 38 (1)-(7) of this Act (as in force immediately before the commencement of Schedule 2(2) to the 1989 amending Act) continues to apply; and
 - (b) for the purposes of paragraph (a), section 38 (as so in force) applies as if:
 - (i) the word "immediately" in section 38(2)(a) and (c) were omitted; and
 - (ii) the words "wholly or mainly because of the injury" in section 38(4) were omitted; and
 - (iii) section 38(4)(b)-(d) were omitted; and
 - (iv) the words in section 38(7)(b) after "separate periods" were omitted.
- (5) If a period of incapacity for work results both from an injury received before 4.00 p.m. on 30 June 1989 and an injury received at or after that time, the incapacity is, for the purpose of determining the amount of the weekly payment of compensation (if any) payable under section 38 of this Act, to be treated as having resulted from the injury received at or after that time.
- (6) The Workers Compensation (Savings and Transitional) Regulation 1989 is repealed.

Operation of 1994 amending Act (ss. 38, 38A, 40, 40A, 43, 43A) - injuries before 1994 amending Act

5B.(1) In this clause, "**the 1994 amending Act**" means the Workers Compensation Legislation (Amendment) Act 1994.

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- (2) The amendments made by the 1994 amending Act to sections 38, 38A, 40, 40A, 43 and 43A of this Act apply to any period of incapacity for work occurring after (but not before) the commencement of those amendments (whether the incapacity results from an injury received before or after that commencement), except as provided by this clause.
- (3) In the case of a period of incapacity for work resulting from an injury received before the commencement of those amendments:
 - (a) when determining the different rates of compensation payable under section 38 of this Act (as amended by the 1994 amending Act) on the expiration of particular periods of incapacity, any period of incapacity occurring before the commencement of those amendments is not to be disregarded and, accordingly, is to be taken into account in determining the rate of compensation payable for the balance of any such period of incapacity occurring after that commencement; and
 - (b) the maximum total period for which a worker may be compensated in accordance with section 38 of this Act is to be 52 weeks instead of 104 weeks but only if the injury was received before 1 February 1992; and

(c) if the rate of compensation for a period of incapacity to which section 38 applies would be higher if the 1994 amending Act had not been enacted, the rate is to be determined as if the amending Act had not been enacted.

(4) Sections 38, 38A, 40 and 43 of this Act (as in force immediately before the commencement of the amendments to those sections by the 1994 amending Act) continue to apply to periods of incapacity for work occurring before the commencement of those amendments if the incapacity results from an injury received at or after 4.00 p.m. on 30 June 1989, except as provided by this clause.

(5) Section 38 of this Act continues to apply, as referred to in subclause (4), as if section 38(7A) and (7B) were omitted.

(6) If a period of incapacity for work results both from an injury received before a relevant date and an injury received on or after that date, the incapacity is, for the purpose of determining the amount of the weekly payment of compensation (if any) payable under section 38 or 40 of this Act, to be treated as having resulted from the injury received on or after that date. The relevant date for the purposes of subclause (3)(b) is 1 February 1992 and for any other purpose is the date of commencement of the amendment concerned.

(7) This clause does not apply to a period of incapacity to which clause 5 or 5A applies.

Operation of regulation relating to form of medical certificates under s. 38

5C. Clause 10(2) of the Workers Compensation (General) Regulation 1987 (as inserted by the Regulation published in the Gazette of 1 May 1992) extends to medical certificates supplied by a worker before 1 May 1992.

Explanatory note

Proposed clause 5A transfers to the Act the provisions of the Workers Compensation (Savings and Transitional) Regulation 1989 so that related provisions are located in the same place.

Proposed clause 5B provides that the changes made to weekly compensation for partial incapacity apply to future periods of incapacity, irrespective of the date of injury. However, if the injury was received before the commencement of the proposed amendments, the extension of the maximum period of section 38 special total incapacity payments is not extended from 52 weeks to 104 weeks but any unexpected reduction in the rate of compensation is not to have effect.

Proposed clause 5C extends the operation of a regulation made on 1 May 1992 relating to the form of medical certificates under section 38 about a worker's fitness for work to medical certificates given before that date. The regulation preserved the effectiveness of a certificate even though it was not given strictly in accordance with the prescribed form.

- No. 4 Page 17, Schedule 2(4), line 25. Omit "(Further Amendment) Act 1992", insert instead "(Amendment) Act 1994".
- No. 5 Page 21, Schedule 2(19), lines 20-24. Omit "(Further Amendment) Act 1992" wherever occurring, insert instead "(Amendment) Act 1994".
- No. 6 Page 31, Schedule 5(5)(c), lines 6 and 7. Omit "(Further Amendment) Act 1992", insert instead "(Amendment) Act 1994".
- No. 7 Page 36, Schedule 5(15), line 27. Omit "(Further Amendment) Act 1992", insert instead "(Amendment) Act 1994".

- No. 8 Page 37, Schedule 5(17), lines 23 and 24. Omit "(Further Amendment) Act 1992", insert instead "(Amendment) Act 1994".
- No. 9 Page 38, Schedule 6(1)(b), line 6. Omit "(Further Amendment) Act 1992", insert instead "(Amendment) Act 1994".
- No. 10 Page 38, Schedule 6(4)(a), line 34. Omit "(Further Amendment) Act 1992", insert instead "(Amendment) Act 1994".
- No. 11 Pages 40 and 41, Schedule 7. Omit the schedule.
- No. 12 Long Title. Omit "and the Motor Vehicles (Third Party Insurance) Act 1942".

OFFICE OF THE OMBUDSMAN

Report

The President, in accordance with section 31AA(1) of the Ombudsman Act 1974, tabled Report No. 4 of the Ombudsman entitled "Improper Access to and Use of Confidential Information by Police", dated 14 April 1994, received by him out of session, and reported to the House that he had authorised the report to be made public.

LEGISLATIVE COUNCIL ANNUAL REPORT

The President tabled the annual report of the Legislative Council for the year ended 30 June 1993.

Ordered to be printed.

JOINT SELECT COMMITTEE UPON THE SYDNEY WATER BOARD

Report

The Hon. Patricia Forsythe, on behalf of the Chairman, brought up the report of the Joint Select Committee upon the Sydney Water Board, dated April 1994, together with the minutes of evidence.

Ordered to be printed.

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PETITIONS

Anti-Discrimination (Homosexual Vilification) Legislation

Petitions praying that because the homosexual vilification amendments to the Anti-Discrimination Act censor criticism of homosexuals, they be repealed, received from the **Hon. J. Kaldis**, **Reverend the Hon. F. J. Nile** and the **Hon. Elaine Nile**.

Later,

The PRESIDENT: Order! Earlier this afternoon when I called for petitions a petition was presented by

the Hon. J. Kaldis. I regret to inform the House that I have ruled this petition out of order because it is a photocopy. I draw the attention of honourable members to Standing Order 36, which states:

A Petition must be signed by at least one person on the skin or sheet on which the prayer of the Petition is inscribed.

The petition that I have ruled out of order does not comply with the standing order.

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**.

JOINT SELECT COMMITTEE UPON THE SYDNEY WATER BOARD REPORT

Adjournment (S.O. 13)

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

The Report of the Joint Select Committee upon the Sydney Water Board.

Motion by the Hon. J. F. Ryan agreed to:

That the subject is urgent.

The Hon. J. F. RYAN [2.41]: I move:

That this House do now adjourn.

Government members of this House who were members of the Joint Select Committee upon the Sydney Water Board have called for an urgent debate because they strongly believe that there is a need for public exposure of the committee's report and that the recommendations will not improve the quality of water in Sydney but in fact set it back light years. If the detailed recommendations contained in the report, which we have described in other places as being virtually looney tunes, were implemented, it is likely that Sydney Water Board water bills would increase by more than \$1,000 a year; it would take longer for people to travel to and from work, because the Government would no longer be able to construct roads, or public buildings for that matter; the cost of new housing would skyrocket; jobs would be put at risk, and people would have a new job - the job of raking and stirring faeces in the new compost toilets that the report recommends be encouraged.

To implement the recommendations in the report without significant public exposure and debate taking place would be a travesty of the public interest. For that reason Government members of the committee have sought to bring forward this urgency motion to put before the House their concerns in detail. It is simply not possible or ethical to impose such fundamental changes on the lifestyle of the people of Sydney without allowing extensive public debate and detailed consultation. Later in the debate I shall comment in more detail on the allegations I have made. Government members want to put on record their expressions of total frustration with the process by which the majority report was compiled. They are disturbed at the manner in which the report wilfully misrepresents information and by the lack of attention that was given to the work of the committee by members of the Labor Party who served on it.

Government members were disgusted with the process by which the bulk of the report was drafted by the consultant to the committee before the evidence had even been concluded. Despite six months of bitter

argument by members of the Government, ALP members of the committee and Dr Macdonald refused to correct the more outrageous elements of this biased report. The majority report selectively used critical evidence, much of which came from politically aligned submissions that were critical of the Water Board, and deliberately ignored contrary evidence from other sources. Some evidence was not even put before the committee because the report had been completed before the people seeking to give that evidence had the chance to appear before the committee to instruct it.

Consequently, this majority report reflects an absurd level of extremism and contains recommendations that in some cases are totally bizarre, extreme, or expensive, or represent bureaucratic nightmares or pose risks to public health. The actions of the Australian Labor Party and the honourable member for Manly have destroyed any chance of a bipartisan report. It is a cynical exercise designed for political benefits. Government members of the committee were advised that in providing advice to the committee the Water Board spent \$300,000 worth of staff time.

The Hon. R. J. Webster: How much?

The Hon. J. F. RYAN: Three hundred thousand dollars worth of staff time.

The Hon. R. J. Webster: On a point of order: I am having great difficulty hearing my colleague in spite of the fact that he is standing beside me. Mr President, could you ask members to reduce the level of audible conversation?

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The PRESIDENT: Order! The processes of the House would be better served if honourable members kept their discussions to a low level of audibility.

The Hon. J. F. RYAN: The Water Board expended almost \$300,000 worth of staff time and other resources in responding to the requests of the committee. Most of the material produced was ignored. The committee chairman recommended the engagement of a consultant - which proved to be another wasted exercise - at a cost of a further \$50,000 to the committee. The attitude of members of the ALP was deplorable. They attended meetings irregularly and sometimes were absent. I remember that on the day of the committee's final deliberations the person who would be the alternative planning and environment Minister of this State read her newspaper while we discussed in detail the issues of the report.

The Hon. R. J. Webster: Who is she? Name her.

The Hon. J. F. RYAN: Such was the level of debate of Labor Party members in the committee that if I were to repeat some of the statements the honourable member for Blacktown uttered I would be accused of unparliamentary behaviour. On many occasions Labor Party members attended deliberative meetings of the committee and stayed for little more than an hour, or they left their books on the table and departed well before the scheduled close of the meeting. I remember another instance where the committee had scheduled an entire day for deliberations. Members of the Labor Party attended for about an hour, but before the end of the day every member representing the ALP had withdrawn, leaving the report and its details to be debated by the Government members present - I think there were about five - the Hon. R. S. L. Jones and Dr Macdonald. Dr Macdonald was offended that ALP members treated weighty and important matters with such contempt.

The parliamentary process has been sadly sacrificed in this exercise. Unlike the authors of the majority report, Government members were convinced that, following years of neglect, outstanding progress had been made under the clean waterways program. The Government members support that program, but they are not willing to dictate to the public the standards they should adopt and how much they should pay for water. They believe that the success of the clean waterways program should be judged by its environmental outcomes, which were reported in detail to the committee by the Environment Protection Authority and the Water Board. Honourable members will not find in the report most of the outstanding results of the clean waterways program

because they were ignored. The report was written almost before this information arrived.

The Government members believe that the standard by which the clean waterways program is judged should be the environmental outcomes, not how expensive the programs might seem to be. Unlike the majority, they support the drinking water treatment plants, regarding them as an important step in ensuring health standards for our water supply. They have a continuing commitment to catchment management and applaud the efforts of the Sydney Water Board to reduce the cost of this \$3 billion program by 16 per cent through contracting out the project to the private sector. The Government members deplore utterly the attempts of ALP members of the committee and members in another place to put these potential savings in jeopardy by continually calling for commercially sensitive information to be placed on the public record.

Unlike the authors of the majority report, Government members do not want to abandon the benefits of the established reticulated water and sewerage system in favour of untested alternative technology, such as self-composting toilets. They believe that the Sydney Water Board is correct in trialing new proven technology, such as grey water recycling in new developments at Rouse Hill and other places. They share the views of the majority of the committee, who have concluded that relationships between the various government agencies that have control over the water supply need to be more clearly defined and clarified in new legislation.

Government members support corporatisation of the Sydney Water Board as an important step in making sure that commercial aspects of supplying water and sewerage services are placed at arm's-length from political debate and that Water Board customers get the best service possible for the water rates they pay. Government members are convinced that legislation such as the Clean Waters Act needs urgent review, so that by means which include public consultation realistic and scientifically based standards can be set for our waterways. Unlike the authors of the majority report, Government members do not support a scheme whereby environmental standards are set by bureaucrats who are removed from public involvement and have no reference to their potential costs.

I return to the allegations I made at the commencement of my speech. I would not make those statements unless I were able to prove them, so prove them I shall. A great deal has been said about Sunday's press reports on how much water rates will be if the report is implemented, and there have been many challenges to prove that statement. I said to the press on Sunday that, so far as I was concerned, if the recommendations of the report were implemented - and I was not able to detail what those recommendations were - I believed that water bills would rise by \$1,000 a year. I say that because recommendation 32(e) of the report states:

Environmental standards should be set for all the rivers and tidal waters in the area of the Sydney Water Board requiring the waters to be made suitable for swimming at all times of the year by the year 1999.

If that recommendation is to be implemented, the very least that needs to be done is that the entire option P program, originally scheduled to take 20 years and cost \$7 billion, would have to be contracted into a six-

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year time frame. To date \$1 billion has been spent on option P. If one were to listen to members opposite, one would think nothing had been spent on it. About \$1 billion has been spent already on clean waterways. Presuming that a further \$6 billion is spent over six years, the one million Water Board customers in the Sydney Water Board area would share that \$6 billion over six years. Using simple arithmetic, that adds up to \$1,000 a year for each customer. Option P itself would not achieve the objective of making all our tidal waters and rivers swimmable by the year 2000. It could well cost each customer a great deal more than \$1,000 a year.

I begged - that is not an unreasonable word to use - Australian Labor Party members of the committee, on the few occasions on which they were present, to consider the extreme elements of the report and also whether the people they regard as their natural constituency - those in struggle street and the working-class who live in places like western Sydney - might have a spare \$1,000 each year to pay water bills for this kind of objective. They refused. They either did not attend or refused to debate the matters in detail. I said that it would put jobs at risk - and it would do that. Recommendation 29(c) gives some indication of the bureaucratic nightmare proposed in some of the recommendations of this report. It states:

Commencing in 1994 catchment management trusts and the Board should report annually upon the achievement of quantified goals relating to the environmental outcomes considered of fundamental importance to the particular trust or the Board.

That recommendation implies that catchment management trusts might make these decisions, but goes on to dictate those things that need to be reported in quantified terms and states that such reports should:

State in comparative form the quantified increase or decrease in urban and rural run-off.

Every drop of rainfall that falls on the Sydney Water Board catchment areas needs to be measured and quantified in comparative terms. The recommendation mentions tree and vegetation cover. Every blade of grass and tree would need to be counted in order to accord with that one recommendation. Recommendation 35 suggests:

Paper copies of the certificates of compliance for the licences [issued by the Environment Protection Authority] and the pollution reduction programs are to be displayed at local council offices within one month of the date by which such certificates are filed. Fees should escalate geometrically by reference to the volume and amount of pollution and should not have a ceiling.

Honourable members would be familiar with the poem by Coleridge in which he comments about water, water everywhere. Will members talk about paper, paper everywhere, as the report suggests in terms of the comparative annual reports that will be produced each year, the compliance certificates to be listed at local councils, and so on? Such red tape would choke job growth in our State and would do nothing to improve environmental standards. I refer to our new job of breaking and stirring faeces in compost toilets.

The Hon. R. S. L. Jones: You do not have to do that.

The Hon. J. F. RYAN: The Hon. R. S. L. Jones says, "You do not have to do that". That just goes to show the manner in which he ignored the evidence that was presented to the committee. I draw attention to that evidence, which was, I believe, circulated by the committee consultant. The evidence was ignored by members who say in the report that it is not necessary to maintain composting toilets. The Water Board report says that the disadvantages for the owner-user associated with the use of composting toilets instead of urban sewerage are that the owner must undertake some regular maintenance of the system, such as stirring, raking, addition of organic matter, et cetera. In addition, it has been suggested that people taking antibiotics may not be able to use composting toilets because antibiotics will inhibit the composting process.

According to the briefing, if it were not possible for owners to dispose of solid residue on the property, they would have an obligation to arrange alternative disposal. The Government would have to call in the night cart to remove the night soil of people on antibiotics because antibiotics inhibit the work of composting toilets. Whilst Government members do not deny there are some advantages in the use of composting toilets in certain areas of this State - advantages objectively pointed out in the report - they nevertheless would not ignore the health and logistical problems that might be associated with their use and whether that might meet with the approval of customers. Members opposite would probably like to impose the use of composting toilets on people. Government members believe that the public should have the opportunity to debate the issue in a balanced way and to make a decision on the merits. The issue should not be tip-toed over by the nonsense stated in the report.

Government members begged Australian Labor Party committee members to help them fix up the report. They circulated their amendments, asked Opposition members to vote with them and explained it to them in detail. The ALP members complained that the Government members took too long to make their explanation and that it was boring and time consuming to debate the report paragraph by paragraph, item by item. Nevertheless, they did so. I thank the Hon. R. S. L. Jones, who to his great credit refused to allow ALP members to railroad the report through in the time-honoured custom of spending an hour in the committee. The Hon. R. S. L. Jones, to his credit, allowed debate on this issue and took on board some of the comments made by Government members. I thank the honourable member for that and for the attention he gave to this issue.

This is a matter of concern to him. Whilst we may disagree with some of the conclusions in the report, I could not accuse the Hon. R. S. L. Jones of being in any way less than diligent about the manner in which he participated in the committee.

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As a result of their indolence in not attending the committee hearings and giving it the attention they should have, and dealing with the detail that Government members drew their attention to, the ALP will have to wear the results of these recommendations. They will not be able to run away from them. If I quote Bob Carr correctly, he said at the weekend that this report - I do not know how he would have known - "represented the last chance for New South Wales to clean up its Water Board". Well, if he endorses this report he had better understand what is contained within it. In fact, although the parliamentary rules prohibited me from doing it, I was nearly tempted to send a copy of this report to the Leader of the Opposition just to let him know the manner in which he had been let down by his colleagues on the committee, and to see whether he was still so confident about his protestations at the weekend and was still prepared to say that this was our last chance. If this report represents our last chance to clean up the Water Board, we have no hope of cleaning up our waterways; because it is the least chance of cleaning up our waterways in terms of its cost, in terms of its ignorance of the public and in terms of its ignorance of the issues and its extreme recommendations.

It has been said over and over again that the clean waterways program is not achieving anything and that the Government has abandoned its commitment to it. One example of how members of the majority ignored the protestations of Government members can be found on pages 10 and 11 of this report. There they attempted to insert in this report, and were successful, allegations that levels of mercury, organochlorines, oil and grease, phenols and chromium were increasing in terms of the discharges at the ocean outfalls. We attempted to prove for their benefit by detailed scientific argument that those conclusions could not be supported by the evidence in this report. I do not have the time to go into the details but I simply want to put on the record that pages 10 and 11 of this report represent cooked-up evidence that has no scientific validity. I simply ask people who are reading those pages of the report to look in detail to the remarks made by Government members about those two pages of the report.

As an alternative to the 54 tests taken over two years, on which these conclusions are based, the committee had access to 160,000 tests - count them - from which they would have concluded that in fact the clean waterways program was succeeding in terms of reducing those particular pollution problems associated with oil, grease and heavy metals. The incidence of suspended solids has been nearly halved at the Water Board treatment plants. The discharge of grease has been reduced from 100 tonnes a day to just over 40 tonnes a day. The amount of nickel being discharged from the Water Board treatment plants has plummeted from 90 kilograms a day under the Labor Party to 35 kilograms a day now.

The level of arsenic has been reduced from 30 kilograms to less than five kilograms; in fact it may now be too low to measure the level. The presence of cadmium has been reduced from 12 kilograms a day to three kilograms a day. That is because the clean waterways program started by this Government is beginning to work and to have effect. Government members will say again that we endorse the clean waterways program and that we emphasise for the record that every objective set under option P in the business plan that was circulated to the members of the Water Board in 1991, that is supposed to have been achieved by now, has either been achieved or bettered, with the exception of one objective, which would require a billion dollars to achieve.

The Hon. R. J. Webster: Two billion dollars.

The Hon. J. F. RYAN: I accept the Minister's correction: it would cost \$2 billion. If members of the ALP are happy to pass the hat around and ask for an extra couple of thousand dollars a year from each person living in Sydney in order to achieve that objective by the year 2000, if they are happy to wear the political odium of that, fair enough. But I as a member of the Government do not believe that we should be imposing that level of expenditure before inviting extensive public consultation.

The chapter in this report dealing with catchment management and drinking water treatment plants is one of the most irresponsible treatises in a report ever put before this Parliament. From reading this report one would never dream that the Sydney Water Board put to the members of the committee that one of the reasons that they were building water treatment plants was because of health issues. When I tried to convince the authors of the majority report to at least include in the report an acknowledgement of that evidence, they simply voted not to include it. But I am sure that members of the House who were not members of the joint select committee will join with members of the Government in expressing concern that parasites such as giardia and cryptosporidium had been found in Water Board storages and there is a need to protect the public from the possible implications of that.

Would not all members of this House be as concerned as Government members that our water supply is not meeting with the standards set in 1987 by the National Health and Medical Research Council? Would not members of this House who were not supporters of the majority report express their concern that Prospect Reservoir, which is intended to allow sediment in our water to settle, and was designed to retain water for five months, is now passing it through in two days? Would not all members of this House, not just the Government members, express their concern about that? We have expressed our concern and we continue to do so. Those problems need to be solved, and they will not be solved by any amount of catchment management. That is not to say that Government members do not support catchment management. The Water Board has been managing its schedule one and schedule two lands and the areas which surround them by catchment management for generations. That was the charter of the original Water Board Act, which was enacted in the nineteenth century.

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This report attempts to make a big deal of the fact that the Water Board reviewed and formalised that policy in 1993. It is not as if it has just arrived for the first time. A considerable level of hypocrisy has been demonstrated by members of the Labor Party, who have done everything they can to jeopardise the successful implementation of the water treatment plants. That includes the honourable member for Moorebank, who was a member of the committee. I can remember several occasions on which the honourable member for Moorebank railed in his local press, such as the *Macarthur Advertiser* and the *Macarthur Chronicle*, complaining about rusty water going to customers. He complained about that for some time, and said he was going to do something about it. Now he attempts to sabotage the very process by which the Government and the Water Board have involved the private sector to speedily, and at the lowest cost option to customers, implement a proposal which will solve that problem in the near future.

That demonstrates the hypocrisy of the Labor Party, and I am shocked that its members were not prepared to allow those important health considerations to be included in the committee's majority report. They would rather go on with all this romantic nonsense about pristine catchments as if they were fit for human consumption. Some pristine catchments would not necessarily meet the requirements of the National Health and Medical Research Council. That needs to be understood, because bushfires occur in pristine catchments, floods occur in pristine catchments, and animals live - and I will leave it to the imagination of members as to what else they do - in pristine catchments. Even fish live in pristine catchments, and that water must be treated before it is distributed to an urban city such as Sydney.

There is a lot of mention in this report, and there has been talk in my local press, about the need to set standards under the Clean Waters Act. I simply ask members of the Labor Party: how are you going to campaign in the seats of Port Stephens and Camden and tell those people that the only alternative to altering the schedule of the Clean Waters Act relating to the Myall River and the Hawkesbury-Nepean river system in order to put those people on to the reticulated sewerage system is to give them composting toilets. I suspect that those voters would prefer the Clean Waters Act to be revised, as it was when Labor governments were in office in other States and at the national level.

Under the guidance of the Federal Government we have been revising standards for water bodies, and that

has involved scientific consideration and public consultation. Either we go through that process or we set standards that do not exist in the real world, and probably never did, which will prohibit us from connecting to the sewer all those people who live in Picton and Karuah. They will have to continue to use their septic tanks, which currently leach into rivers and pollute much more than any high-tech, best available management sewage treatment plant that is proposed to be installed to replace those tanks. The health risks are so much greater. Finally, I simply note that the manner in which the ALP dealt with corporatisation had to be seen to be believed. I remember at one of the meetings of the committee the ALP had circulated a recommendation that the Water Board be corporatised. It read:

The Sydney Water Board Act should be replaced by an Act made under the State Owned Corporations Act and after that Act has been amended. The amendments to the State Owned Corporations Act and the Acts to be made under it should give effect to the matters listed below.

And it went on. In other words, the ALP recommended corporatisation. I moved that recommendation, but members of the Labor Party voted it down, and it does not appear in the committee's report. Therefore it would appear that the Left and the Right of the Labor Party were not able to get together on this issue. Despite the fact that in another place the honourable member for Blacktown said that corporatisation rather than privatisation seems to be the Australian way forward, and that she supports it, it would appear that members of the Labor Party want to run away from corporatisation. Their running away from it appears to be recent, considering the documentation that was handed to the committee.

These issues are important. Important evidence was ignored by members opposite, and Government members want to make it clear that this report takes us back light years, rather than taking us forward. The Government endorses what has already been occurring with regard to the document's options for clean waterways - which have been circulated by the Government - and the continuation of the clean waterways program as it continues to be implemented, with public consultation by the Government. These issues are so important that the Government took the unusual step of using a Standing Order 13 debate to bring them to the attention of the House - even before, as I understand it, they have been brought to the attention of members in another place.

The Hon. A. B. MANSON [3.11]: I wish to make some general comments on the report of the Joint Select Committee upon the Sydney Water Board, and in response to the urgency motion moved by the Hon. J. F. Ryan. At the outset I mention that as an Australian Labor Party member of the committee I could not help noticing the superior support received by Government members on the committee. While I make no allegations of bias by the committee staff, who I believe deserve our congratulations, it must be said that on many occasions Government members appeared to have information at their fingertips that supported the views of the management of the Water Board and the Government itself. This included detailed criticisms of many aspects of the draft reports on which the committee deliberated. I do not wish to go into detail on this subject, but I feel it is important that it be placed on record.

The principal issue that arose from this inquiry, and the issue that received the bulk of publicity, was the Government's lack of will to ensure the ongoing

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success of the clean waterways program. Much evidence was received to support the popular view that the Government is heading towards abandoning the clean waterways program. Outside the committee's deliberations, the current proposal to have a further 12-month consultation process on clean water lends further weight to this view.

The public demanded action to clean our rivers, beaches and water. An intense public consultation process followed, and one option for action prevailed against all other: the now infamous option P. This is a \$7 billion program - a massive investment, but one justified by the fact that our most vital resource is threatened. Each of the six million people in our State would benefit from a program designed to guarantee the cleanliness of our water and our environment. The program is clearly justified. However, the evidence received by the committee of constant underspending on the program, and of the unjustified \$200 million raid on environmental

funding by the Government, demonstrated a clear loss of commitment to the program on the part of the Government.

The six million intended beneficiaries of the program - the water consumers of this State - have not abandoned their call for action. They now know that their commitment to the clean waterways program will require 20 years of vigilance to ensure that it is fully implemented, because the Government has clearly lost its way. There has also been a constant failure on the part of regulators in the water industry, who represent arms of government, to maintain the will to enforce legislative requirements. The Environment Protection Authority has shown itself to be obsessed by details rather than by sound environmental outcomes. It has attempted to be an educative body, which is to be encouraged, but it is operating with limited resources. The EPA legislative mandate is to prosecute environmental offenders and enforce outcomes.

The Department of Planning is well placed to play an overall monitoring role, to pull all the threads of water management together - economic capability, environmental outcomes, and social demands - yet the evidence received by the committee indicated that the department has rejected this role. Of course, as is the way with the Government, proper oversight has been replaced by the use of consultants. The costs of contracting and consultancies for the Water Board are currently five times higher than they were in 1989. However, it is not only the Government which has largely abandoned the clean waterways program. The Water Board itself has shirked its responsibilities to its clients, the water consumers, by adopting what is called a primitive approach to reform.

This is not all that surprising. All parties agree that the Water Board's entire history shows a reactive approach to problems. As water demand has increased, and with it the effects of pollution, the Water Board's consistent response has been to continue as before and expand its network of pipes. The public and the architects of the clean waterways program wanted a fundamental shift from this reactive attitude. They were demanding a deeper sense of value from the Water Board, one that could balance water needs with environmental effect in a cost-conscious way. However, the board did not deliver. Instead, its response was to react, resulting in vast staff redundancies. This in turn has led to the increased use of consultants and contractors, opening up new opportunities for waste, and negating the efficiency improvements that were made.

In the long term, the skills base of the water industry will suffer. There has been a massive draining of knowledge from the board as a result of the board's extensive redundancy program - the costs of which are probably not yet fully apparent. The other aspect of the Water Board's reactive approach is its dependence upon the policy of user-pays. This is the board's excuse for a demand strategy - if consumers use more water than we deem appropriate, they will pay more.

It is the board's responsibility to promote the concept of efficient water use, but again it has shrunk from this responsibility and retreated to a less efficient compromise position. Obviously, financing water has become more important to the Government than protecting it as a resource. This is the only conclusion I can draw on the basis of the evidence I heard as a member of the joint select committee. The Government must restore the integrity of the clean waterways program, and it must accept its legislative responsibility to enforce the proper administration of the program by the Water Board.

The Hon. PATRICIA FORSYTHE [3.20]: As a strong supporter of the committee system in Parliament it gives me no pleasure to say that I believe that, on the whole, the report of the Joint Select Committee upon the Sydney Water Board is not worth the paper on which it is printed. That is why discussion of this report is urgent. Some recommendations in the report are worthy of consideration, but as a blueprint for Sydney's future needs, the report fails. It ought to be consigned to the rubbish bin, as the only purpose for which it is likely to be able to be used is to serve the political ends of the committee's chairman and the Opposition through selective quoting - like the selective leaking of the committee's work that has gone on for months.

The committee was probably flawed from its inception. I do not believe there was ever an intention by some committee members to impartially analyse the evidence given to it. No attempt was made to find the common ground. Partisanship replaced bipartisanship in a way I have never experienced on any committee.

However, I must say that that criticism is not directed at the Hon. R. S. L. Jones, who made an effort to listen to the concerns of Government members. In the last weeks of the committee I suspect the chairman, Dr Macdonald, was becoming embarrassed as he, too, realised that many of the concerns being put by Government members were not baseless. Rather, they represented a genuine attempt by me and my colleagues the Hon. Jennifer Gardiner, the Hon. John

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Ryan, Andrew Humpherson, Stephen O'Doherty and Michael Richardson to have the report reflect the evidence put to the committee, especially by the Water Board - evidence that was frequently ignored, misinterpreted or contradicted.

I remind the House that the Government and the Minister welcomed the establishment of the committee. After all, a committee probing and examining documents and examining witnesses is a valuable means of taking up community concerns and testing community expectations. The committee therefore commenced its task with some sense of purpose. In July the Sydney Water Board presented to the committee a submission that was lengthy - in excess of 300 pages, including appendices - and comprehensive. With 10 separate terms of reference there was not much about the policies and performance of the Water Board, past, present and future, that was not the subject of the committee's inquiries. In total, the committee received 128 submissions, including nine from government departments.

The committee met on 22 days. The Water Board estimates the cost of its work for the committee at \$300,000. I suspect that about half a million dollars would be the overall cost of the committee - for a report that contains not only unanimous sections but also majority sections, that is, the views of the chairman, the Opposition and the Hon. R. S. L. Jones. It also contains other majority sections, though they were not identified as such, being the views of the chairman, the Hon. R. S. L. Jones and Government members, on which agreement was reached - usually on days when the Australian Labor Party members, preoccupied with factional brawls, did not bother to attend hearings or remain at them long enough to be constructive. The report contains a minority statement from the Hon. R. S. L. Jones on fluoridation and, most extraordinary of all, a summary of recommendations prepared by the chairman, which was included at the front of the report, but was never subject to committee deliberations. No wonder Government members insisted on a disclaimer being included with that summary. I will have more to say about it later.

The receipt of 128 submissions is a fair indication that water is an issue of concern to a broad cross-section of the community. Following receipt of submissions the committee heard from many witnesses. During that process my coalition colleagues and I, in keeping with the spirit in which the Government approached the committee, did not seek to hinder the calling of a series of witnesses suggested by the Opposition, as well as those proposed by the committee's consultant and the chairman. At the conclusion of the public hearings the committee received the first draft report, largely written by the consultant Michael Mobbs. It was at this point that the process of the committee came unstuck. Prior to receipt of this report late last October no effort was made to hold a deliberative meeting of the committee to discuss, argue or even analyse the submissions or the evidence given at the hearings. The committee was effectively ambushed by the consultant.

After reading the first draft of the report, which was selectively leaked to the media, I wondered whether I had received separate submissions or had missed a series of meetings. The report certainly did not reflect evidence I had read or heard, and it reflected none of the views that I and my colleagues had formed. The report read like the preconceived views of someone not prepared to be intellectually honest in approaching the evidence. I suspect that what we were presented with was no different from what we might have received had it been given to us prior to any evidence being taken. From that point until we dealt with the sixth draft report in recent weeks, Government members sought, through the painstaking process of challenging every page, to get the report to reflect what they believed to be the evidence they heard. No attempt was made by Government members to slow down, white-ant or in any way destroy the process. We sought only to get a more honest report. Our motive at all times was to produce a report that was worthy of its cost and worthy of the time the committee gave to it; and which was worthy of the staff, especially Ronda Miller, who acted as clerk, and Catherine Watson and Kendy McLean from the secretariat. I am sure that today those three must be breathing a collective sigh of relief. I thank them for their assistance.

The failure of the chairman, Dr Macdonald, to have a meeting to seek common ground before the report was written was a significant error. I do not know whether his political ends are best served by finding problems and not seeking solutions, but he lost the chance to make a real mark on history. It would have been a major achievement for him to have been the architect of the future direction of the Water Board. This report, however, is not the basis upon which he will be able to achieve such fame. At various times, as drafts of the report were received, members would find new sections, for example the latest overseas development, without any material being given to them to enable them to appraise for themselves the value of the initiative. I recall in recommendation 4(c) a mention of the Oslo convention. What we were not told was that that was not agreed to by all participants to the conference, and that it related to a body of water and issues very different to those confronting the committee.

We simply did not have the evidence and, quite frankly, the views of the consultant were not persuasive. The report fails, therefore, in part because it does not truly reflect the range of evidence presented to the committee. It fails too because it is narrow in its perspective. One need only look at the range of people and organisations quoted in the report to realise that it is anything but balanced. There was simply no serious attempt at a cost-benefit analysis, so much so that if every recommendation of the committee were adopted it would require a major proportion of the State Government's budget to pay for them. If the cost were passed on to consumers, it would simply put water in the luxury class. There are three elements to the report in addition to the minority statement of Government members and the minority

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statement of Opposition members. They are the summary of recommendations at the front of the report, prepared by the chairman after the final meeting, the narrative on each term of reference, and the recommendations in full.

However, the summary of recommendations is not a mere summary. In fact, the chairman, clearly embarrassed at the absurdity of some recommendations, has taken to them with soap and a scrubbing brush. As a set of recommendations, there is not much about the summary with which I or my colleagues would have disagreed, but they are not an accurate reflection of the text of the recommendations. That is why the report is useless as a document. If Dr Macdonald had expressed these opinions months ago we could have saved ourselves considerable time and expense. The summary contains no time frame, which is in stark contrast with the unrealistic dates set in the report. The recommendations that the committee deliberated upon in many cases bear little resemblance to the narrative that precedes them. As an illustration, the summary of recommendation 9, a section dealing with the clean waterways program, states:

The RTA should be accountable through its design, construction and maintenance of roads for a progressive reduction in run-off of water and pollution.

Government members would have accepted that, but what they deliberated on was the full recommendation, which states:

By January 1995:

- (i) To the extent that the contents and use of the RTA Stormwater Manual for the construction of roads affects the use and flow of water, the Manual should be approved by the Water Administration Ministerial Corporation.
- (ii) The RTA should design, construct and maintain roads so they do not increase either the amount of water run-off or the level of pollution presently entering or leaving the RTA's roads. As part of the implementation of this recommendation the RTA should report annually upon the amount of water and pollution entering or leaving its roads. The EPA's next State of the Environment Report should also incorporate data about such pollution and any trends.

All the data in the world does not result in clean waterways. Recommendation 9(iii) states:

- (iii) The RTA should install and clean sediment traps on its roads. The pollution trapped and cleaned out should be measured,

along with the costs incurred, and be made a specific matter for annual reporting by the RTA.

I remind honourable members that, as stated at the commencement of that recommendation, all that was to have been achieved by January 1995. If honourable members turn to the text of discussion to establish how the committee reached that conclusion they will not find one reference to the Roads and Traffic Authority in reference A and they will certainly not find any attempt to cost the recommendation. Of course, what is also missing is acknowledgment that the stormwater manual referred to in recommendation 9(i) has been developed by the Roads and Traffic Authority in a serious attempt to deal with the issue of runoff. The Government is proactive on this issue. The manual, as the Government members' minority report actually notes, recommends that all future road construction should utilise best management practices to minimise stormwater pollution and runoff.

The report of the committee is lengthy but not detailed, at least in the ways that are important to the process of government. There is not a single reference in the report to the cost of any of the recommendations, beyond that the Government implement the \$7 billion, 20-year clean waterways program. There is no reference to the cost for the establishment of a peer group review process, as required in recommendation 3(a); the cost of research and core sampling as required in 3(b); the cost of new guidelines as required in recommendation 4; the cost of the plan to be produced now to phase out all toxic pollutants as required in recommendation 4(c); the work involved in setting mandatory targets for water quality of the Hawkesbury-Nepean this year; the cost to the community of a moratorium on sand and gravel extraction in the Hawkesbury-Nepean area - and I hope the building industry is tuned in to that one - and the requirement of the Environment Protection Authority to report on the performance of each relevant Government agency on water quality goals every two years, to measure the actual weight of pollution every year and to give predictions for the weight or volumes of pollution for the forthcoming year.

All of that appears in the first six recommendations, and in total there are 43 principal recommendations, though some with many parts. The recommendations, if implemented, would send the cost of water through the roof. But would all of this improve the environment faster and better than the steps already being taken by the Government and the Water Board? The committee could never confront that question. The public consultation process was apparently a vexed issue for the committee. After all, in endorsing many of the Government Pricing Tribunal's recommendations on water and related services, the majority of the committee members could not bring themselves to endorse recommendations 5.1 and 5.2 which called on the Government to undertake a process of consultation.

Referring to recommendation 5.1, the tribunal recommended that the major capital expenditure to improve environmental quality not be undertaken without evidence that customers are willing to pay for such improvements. Recommendation 5.2 states that the tribunal recommends that water suppliers investigate the willingness of customers to pay for the most likely capital expenditure programs required to meet proposed standards. Yet the committee's first recommendation requires not only that the clean waterways program be continued but that the environmental goals and implementation program should be published by May 1995, for comment during a two-month display period, after which a public meeting should be held. On the one hand a

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public consultation process was endorsed. However on page 120 of the text, in discussing the reference on environmental standards and having previously discussed whether the community would be prepared to pay for higher standards, the text concludes:

In the absence of credible, robust information, any inquiry into desirable environmental standards will face fundamental flaws in its decision-making process.

Government members had difficulty understanding resistance to openness and accountability and, of course, the failure of the non-government members to give support to the Government for its decision to involve the public in a period of consultation on "Choices for Clean Waterways". For the committee to have addressed the question as to whether the environment was being improved by the actions already taken by the Government was simply not a question that would have suited the purposes of the chairman. It was not a question,

therefore, that was ever asked. Also, it would not have suited the purpose of the Opposition to admit that Government policy was actually focused on achieving the very improvements the Opposition wants. After all, clean beaches, clean rivers and quality drinking water are not the goals of one party but are shared goals. It is, therefore, a great pity that this committee could not have seen its role as bipartisan, working for shared goals, and not being about the cheap point-scoring and selective leaking that came to characterise this committee throughout its period of deliberation.

The Hon. E. M. OBEID [3.35]: I am amazed at the way the Hon. J. F. Ryan and the Hon. Patricia Forsythe have done nothing but criticise the participation of Labor Party members of the committee. From the outset the Opposition felt that this was an important select committee that was examining an institution that provides a vital service to this State - the supply of water. The Opposition hoped that this would be an impartial committee that would look at the facts and assess them as best it could together with the submissions received. From the outset, from day one, it was quite obvious to all committee members that the Government members were a mouthpiece for the Water Board. The only problem is that Government members could not get it right.

Day after day Government members haggled among themselves. All they could do was disagree among themselves. On most occasions Government members forgot who was the real leader from the Government side and for ever were seen to be bickering among each other and having differing points of view. Government members would refer to the manual and the instructions the Water Board gave them in order to remember what line to take. In this Chamber Government members have criticised the participation of Opposition members. The committee comprised members who did not give the Government majority control and the Government members could not accept that. The whole time that the Government members were deliberating, they were providing spoiling tactics.

The committee received many submissions, listened to them, examined them and came up with the best possible recommendations. No one is suggesting that this is the perfect solution but it is yet to be tested. Of course, anyone who listened to the Government members would swear that they were the guardians of an institution such as the Water Board. I remind honourable members that the Water Board belongs to the public. Honourable members are only in Government for the time being and when they are out of government will have the same problems as they are having today. If Government members were fair and objective in this matter they would be looking at the issues and not attacking the other side for lack of participation or involvement. They would not be talking all this hogwash we have heard today.

I assure Government members that the Opposition members were unanimous on the line that should be taken, and that is more than can be said for the attitude of Government members who spent most of their time squabbling about the line they should take. Most of the time they had to refer to the Water Board to bring the information up-to-date in order to advise the committee. Having said that, the committee has made some important recommendations. While those recommendations are yet to be tested as to their economic viability, at least there was a genuine effort to bring a new and fresh approach to problems associated with water supply and sewage disposal. I cannot understand the complaints of Government members as to certain recommendations and findings of this committee. On each occasion that matters were raised Government members could not see but one line, and that was to oppose it.

The Hon. J. F. Ryan: We supported quite a number of the recommendations.

The Hon. E. M. OBEID: For the information of the Hon. J. F. Ryan I will quote some statistics. Of the 112 summarised comments pertaining to particular recommendations, or portions of recommendations, Government members supported only 34 findings.

The Hon. J. F. Ryan: How would you know? You were not there.

The Hon. E. M. OBEID: I did not have to listen to your squabbling and your lack of information. The Opposition's problem was that it had to sit down and listen to Government members squabble among

themselves. The only sensible person among the Government members was the Hon. Jennifer Gardiner, who at least listened. The Government supported outright only 34 of the findings of the committee. It supported another 27 in a qualified fashion and opposed 51. That was the Government's participation in the committee.

The Hon. J. F. Ryan: Which recommendations did you support?

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The Hon. E. M. OBEID: We made recommendations, but we also supported the majority of the other recommendations. While Opposition members, Dr Macdonald, and the Hon. R. S. L. Jones, sought a platform of positive thinking to prepare a wide-ranging report for consideration by the Parliament, Government members of the committee rejected outright 51 of the 112 proposals. In respect of the terms of reference covering catchment and demand management they agreed with only one recommendation, which touches on extending the boundaries of the Hawkesbury-Nepean Catchment Management Trust and altering the membership of the trust.

The Hon. J. F. Ryan made great play of the behaviour of committee members and their lack of attendance, but I should remind him that the honourable member for Blue Mountains did not attend one meeting of the committee. He had to be replaced because of his failure to attend committee meetings. Having regard to what has occurred in the past few weeks, I can understand why he was so busy. That did not prevent other Government supporters from complaining about his non-attendance. Members of the committee got sick and tired of watching Government members squabble among themselves and the Hon. J. F. Ryan racing to the phone to get information from the Water Board. He was supposed to be objective in pursuing the interests of the citizens of the State and assisting to determine how the Water Board has functioned and how it should function in the future. He made no great complaint about the clean waterways program being diluted by the Government.

The Hon. J. F. Ryan: In what way?

The Hon. E. M. OBEID: David Harley, who was appointed as chairman of the board by the Greiner Government, resigned because he believed that the social contract to clean out the waterways had not been fulfilled. The Hon. J. F. Ryan made no complaint about that.

The Hon. J. F. Ryan: He was wrong though, was he not?

The Hon. E. M. OBEID: He certainly was. Many of the findings of the committee demonstrate that the work of committee members was creditable. One of the recommendations was that the clean waterways program must continue with quantified environmental goals. Any variations should be made available for public consultation. I see nothing wrong with that. Another recommendation was that measurable demand management and catchment management goals should be integrated with the clean waterways program. The Environment Protection Authority should co-ordinate all aquatic monitoring programs with its State of the Environment Report.

The Hon. J. F. Ryan: We agreed with that.

The Hon. E. M. OBEID: These are the exact findings. The honourable member and the Hon. Patricia Forsythe spent three-quarters of an hour complaining about the ALP members of the committee. They did not emphasise the excellent recommendations included in the report.

The Hon. J. F. Ryan: What about the recommendations that would prohibit sewerage services being provided at Karuah?

The Hon. E. M. OBEID: The honourable member now wants to go into detail, but he spent most of his time criticising the participation of committee members. That was his major contribution to this debate. That

was unfair, considering that the honourable member is only a mouthpiece for the Water Board. If he had any credibility he would stand up for what he believes and give his proper assessment of the performance of the Water Board. The state of the Water Board and the future capital requirements for Sydney's antiquated stormwater and sewerage systems are incredible. Regardless of which party might be in government, all honourable members agree that the problem must be addressed. Everyone should be concerned about the ocean outfalls and the standard of treatment works. Everyone will be concerned about the quality of water that is delivered to the citizens of the State.

The Government has extracted \$200 million in dividends from the Water Board, which does not have sufficient capital to carry out future projects. The Hon. J. F. Ryan said that the recommendations made in the report will require each ratepayer to contribute \$1,000 a year in water rates to fulfil the recommendations made in the report. He fails to understand that the first essential ingredient is that the Government not take money from an institution that provides such a vital service. The money should be left with the board to enable it to carry out its programs in the future. If anything, the Water Board should be given additional funds. The honourable member did not scream about the dividends paid by the Water Board to the Government, or the future dividends that will be taken from the board. The Hon. J. F. Ryan complained that ALP members were not putting forward the interests of the citizens of the State in regard to water treatment.

The Hon. J. F. Ryan: You opposed the proposal.

The Hon. E. M. OBEID: We did not oppose that. We were saying that the Government is to spend \$3,000 million over 25 years, the least we would have expected - and the honourable member agreed with this, but he failed to join in our condemnation of the haste and the inappropriate delegation -

The Hon. J. F. Ryan: So what? Does the honourable member not think it was necessary to act quickly?

The Hon. E. M. OBEID: No, that is not so. We were talking about the haste with which it was done.

The Hon. J. F. Ryan: Because it was urgent. The health of the citizens required it.

The Hon. E. M. OBEID: The honourable member agreed that the Water Board conducted the environmental impact study and the tendering processes in parallel, not in sequence.

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The Hon. J. F. Ryan: Exactly.

The Hon. E. M. OBEID: The honourable member further admitted that this involved a risk.

The Hon. J. F. Ryan: Yes.

The Hon. E. M. OBEID: The honourable member said that. That was his concern about the way the Water Board had contracted -

The Hon. J. F. Ryan: The environmental standards were hardly ignored, given that two of the plants have been deferred.

The Hon. E. M. OBEID: Exactly. They did not meet with the 1980 to 1987 water guidelines set down by the National Health and Medical Research Council. The honourable member admitted that they did not meet those guidelines.

The Hon. J. F. Ryan: Where was the honourable member when I needed his vote to put that detail in the report?

The Hon. E. M. OBEID: The Hon. J. F. Ryan was still bickering with other Government supporters about what he should say. The main problem was that other members of the committee had to watch Government members bickering among themselves day after day and hour after hour. I should acknowledge some of the things that Government members -

The Hon. J. F. Ryan: Have I confused the honourable member?

The Hon. E. M. OBEID: No, the Hon. J. F. Ryan has not confused me. The committee members did an honourable job, to the best of their ability. They considered many submissions that were concerned about the State's water supply and sewerage system. In my humble opinion it does no credit to Government members of the committee that they see fit only to criticise. They should examine the report carefully and consider what can be achieved by having the Water Board assess the economic viability of the recommendations contained in the report, after consultation. Members opposite should not whinge, but rather should take positive action. This was a great opportunity for honourable members to do something about the quality of the State's water.

The Hon. JENNIFER GARDINER [3.48]: I join my colleagues the Hon. Patricia Forsythe and the Hon. J. F. Ryan in damning a considerable proportion of this farce that is the report of the Joint Select Committee upon the Sydney Water Board. Before I proceed to deal with a number of points by following up what they have said, I should refer to the remarks made by the Hon. E. M. Obeid. He seemed to be trying to convince the House that Government members of the committee were doing the bidding of the Sydney Water Board. Whilst he was saying that, he was saying also that Government members of the joint select committee were having proper debate during the many months in which members deliberated. The two stories do not coincide. Government members of the committee indeed did have healthy debate about the matters that the chairman of the committee, the honourable member for Manly, said in his foreword were complex issues. The argument of the Hon. E. M. Obeid does not stack up. He also mentioned a couple of times that the recommendations of the joint select committee have yet to be tested as to their economic viability, and that is certainly true.

The Hon. J. F. Ryan: With any luck they never will be.

The Hon. JENNIFER GARDINER: As the Hon. J. F. Ryan says, with any luck many of them will never have to be costed because they are patently absurd. That is one of our main points. Government members believe that consideration should have been given to the economic viability of some of the more ridiculous recommendations made by the joint select committee. That is why we spent so much time producing alternative recommendations. Therefore, what do Australian Labor Party voters in battler-type electorates say about some of the recommendations that have had no economic costing? We intend to educate people in those electorates about the report and its implications, particularly voters in western suburbs electorates, such as the electorate covering the city of Lithgow, which is not irrelevant to the catchment area, and the electorate of Manly. In the chairman's foreword to this document he states:

The fact that the document is some months overdue reflects both the complexity of the issues and the extent of the Terms of Reference.

The complexity of the terms of reference was always known and nothing changed from day one. The issues are certainly complex, hence the necessity for extensive public consultation. That public consultation should not involve parliamentarians listening to evidence but should include wide consultation with the general public. The real reason that the committee's report is overdue is that Government members refused to have the majority report taken as read. We introduced real debate into the proceedings instead of allowing the draft prepared by the committee's consultant to be put before this House, despite the inconsistencies and misrepresentation of evidence that was exhibited time and again.

The foreword by the honourable member for Manly claims also that the clean waterways program is an optional program rather than a firm commitment. That statement is patently false; in fact, it is almost a joke. As the Minister for Planning and Minister for Housing said only last Thursday in this House, the commitment of the Liberal Party-National Party Government in this State has already involved spending more than \$1 billion. If

that is not a commitment, I do not know what is. The chairman claimed that improvement in our waterways is limited. Everyone, excluding blind Freddy and the honourable member for Manly, is aware of the improvements, including residents, visitors and overseas tourists. In respect of water quality, the honourable member for Manly in his foreword said, "The public should be trusted with the truth". That is quite correct, but it

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would have been more satisfactory if the evidence submitted to the joint select committee had been fairly reported in the majority document.

I turn now to some of the recommendations of the joint select committee. Recommendation No. 14(b) attempts to link EPA senior executive service officers' pollution reduction performance to their own performance. The absurdity of this generalised recommendation is obvious. How can a public servant, or anyone else for that matter, take into account natural occurrences such as storms and heavy rainfall? Indeed, why should they? That is a silly suggestion. Obviously the job of EPA employees is to reduce pollution generally, but to link stormwater flows and so on to their own personal performance is to expect them to be godlike in carrying out their duties, and that is unreasonable. The majority recommendations of the Government Pricing Tribunal are dealt with in reference C of the report. The majority report is extremely selective in its quoting of the recommendations of the tribunal. In the minority report Government members say:

It is significant that the 15 proposals noted for attention exclude the vital Recommendation No. 5.2 which requires water suppliers to investigate the willingness of customers to pay for capital expenditure to meet standards. If one were serious about examining the structure of the water industry, the issue of "willingness to pay" could hardly be glossed over.

Of course, that is exactly what the Minister for Planning is on about. As the Government Pricing Tribunal said, the people of Sydney and the people of New South Wales have a right to express whether they are willing to pay because the implications of such expenditure are statewide. The people of New South Wales are being given that opportunity by the Government. With respect to the clean waterways program, the Australian Labor Party apparently believes that the program should be enshrined in legislation. The Government takes issue with that suggestion. Technology is improving rapidly and the Water Board should be free to keep up with those changes in technology and not have to return to the Parliament for its next instruction from the honourable member for Manly as to the next variation in the program. Changing environmental and community needs should be coped with in a flexible regime.

The Government opposes also the majority recommendation relating to rebating Water Board customers disconnecting from the board's services. How on earth are we to get to the pristine catchments to which some people aspire if we are encouraged to disconnect from the Sydney Water Board system? That is not progress; it is a reversion to life on Sydney Cove in 1788, or worse. There has probably never been a more irresponsible recommendation so far as public health is concerned in the history of this Parliament. One can only imagine what the electorate of Manly would be like a few years after the implementation of such a policy. They would certainly have to rewrite the slogan because it would not be a thousand miles from care.

The Hon. R. J. Webster: They would give themselves a new member; you could guarantee that.

The Hon. JENNIFER GARDINER: The honourable member for Manly would be swept out on the tide of sewage. At one stage in its deliberations the majority of committee members were actually suggesting - and my colleagues will remember the draft report - that grey water be used in our air-conditioning.

The Hon. J. F. Ryan: Yes, and the Labor Party objected to us questioning on that.

The Hon. JENNIFER GARDINER: This was a clear example of Labor Party members not paying attention to the detail of the report. This radical suggestion was right at the end of our deliberations and suddenly the implications of widespread legionnaire's disease suddenly dawned on ALP members. At the last minute it was withdrawn from the report, but it is an indication of the lack of detailed attention to the draft

report given by the majority of members. With respect to the drinking water treatment plants, the report again is a sleight-of-hand exercise when it comes to health and safety. It is claimed that health problems relevant to the board are insignificant and arise from runoff problems in the catchment areas of the Water Board.

The Sydney Water Board - or the Metropolitan Water Sewerage and Drainage Board, or whatever name it has had during more than a century of existence - came into being for sanitary and health reasons. There is no reason to regress two centuries just because health problems arising from the Sydney Water Board's operations are so rare. The Sydney Water Board strives to meet health guidelines set by the National Health and Medical Research Council that are being reviewed and which all expect will be tougher than in the past. Instead of impeding progress towards achievement of those plans, the Government members believe that such progress should be speeded up and that the board should be allowed to get on and do the job they expect it to do. Government members support the view contained in a most important submission.

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

QUESTIONS WITHOUT NOTICE

BLUE MOUNTAINS CITY COUNCIL BOMBING

The Hon. M. R. EGAN: My question without notice is directed to the Attorney General and refers to an article by Mr Michael Wilkins in the *Sunday Telegraph* last Sunday. Did the Attorney General or his office, as suggested in that article, tell the *Sunday Telegraph* that police were investigating whether members of the Opposition should be charged with obstructing justice in relation to the Barry Morris affair? Why have officers from the major crime squad denied any such investigations? Is the Attorney General seeking to intimidate witnesses and influence the investigation into the bombing and murder threats?

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The Hon. J. P. HANNAFORD: I did not speak to Michael Wilkins but a person in my office did. I am informed that Mr Wilkins rang on Friday night and asked whether we were aware of the offence of misprision of felony. It was explained that this was a common law offence of withholding information. He asked for a comment on this in relation to the Barry Morris issues. I am informed that after discussing this the journalist was rung back and he was told:

The Morris matter is being investigated by the police. If the police become aware of such an offence they will be laying the appropriate charges. It is not for us to pre-empt or interfere with the police investigation.

The Wilkins article in fact was not an accurate report of that conversation.

HERITAGE WEEK COMPETITION AND VIDEO FOR SCHOOLS

The Hon. D. F. MOPPETT: My question without notice is directed to the Minister for Education, Training and Youth Affairs, Minister for Tourism and Minister Assisting the Premier. Will the Minister inform the House of the details of the heritage video for schools, which was launched last night? Could she also tell the House which students won the 1994 Heritage Week Competition for Schools?

The Hon. VIRGINIA CHADWICK: The Hon. D. F. Moppett has asked an important and timely question given that this is Heritage Week. The honourable member, one of our rural colleagues, would have

shared my joy yesterday evening in seeing students, many of whom had come from throughout New South Wales, join in the launch of the video. Students such as those from the small secondary school at Harden showed great stamina in travelling by train in significant numbers to Sydney and, after attending the function, hopping back on the train last night to return home. That is an illustration of the importance that the children and their schools have placed on the work they have done on heritage projects and on the support they have given to Heritage Week.

Groups of children and individuals from many parts of the State attended. A young student from a school in the Lismore area showed entrepreneurial spirit by contacting Hazelton Airlines and explaining that she was travelling to Sydney as one of the finalists and as an award winner. The Hon. Dr B. P. V. Pezzutti, who comes from that area, would be interested to know that, even though the request was made at short notice - and no doubt the airline receives many similar worthwhile requests for assistance - the young student and her mother travelled courtesy of Hazelton last night. Last Saturday was a very happy occasion.

There were two competitions. The winners of the years 7 and 8 joint competition to create a tourist brochure area for their area were Katie Hall and Melinda Whitney from Killara High School. The winner of the years 9 and 10 essay on entertaining an overseas guest, which was centred around heritage tourism, was Miriam Burns of Mater Dei College, Wyong. As well as the students and schools I have mentioned, many other students who attended and their schools were specially commended by way of certificates. I also had the pleasure of launching a video, which will be a most valuable resource to assist schools in the now mandatory study of Australian history. I stress that because this Government introduced mandatory study of Australian history so that students may understand their origins and place in the world.

The video, in providing guidance to students on how to research their own local history and heritage, will be a most valuable resource for schools. I am most grateful to the private and public companies that joined with the Government and the National Trust to productively bring that video to fruition. It was a wonderful opportunity to show how people interested in education, tourism, the National Trust and others could work productively together to make something that would make the successful students immediately proud and be of lasting benefit to future students of Australian history.

ABORTION LEGALITY

Reverend the Hon. F. J. NILE: I ask the Attorney General and Leader of the Government in this House the following question without notice. Is it a fact that Justice Newman of the New South Wales Supreme Court ruled in an important court case on 18 April that the plaintiff was not entitled to damages for doctors failing to diagnose her pregnancy because it would have been illegal for her to have an abortion as abortions are unlawful under the New South Wales Crimes Act, particularly sections 83 and 84? Is it a fact that Justice Newman ruled that Dr Edith Weisberg's evidence on behalf of the plaintiff used criteria for conducting an abortion that fell short of the test of unlawfulness stated in *Regina v. Wald* and *Regina v. Davidson*, that is, abortions performed by Dr Weisberg's criteria are illegal?

Is it a fact that Dr Weisberg, who is medical director of the New South Wales Family Planning Association, is also in charge of the proposed Sydney trials of the RU 486 abortion pill? Will the Government give assurances that relevant sections of the New South Wales Crimes Act will be retained and enforced, without fear or favour, to close illegal abortion clinics, such as those of Sue King of the Women's Electoral Lobby, to protect unborn babies in New South Wales and to protect the health of pregnant women? Will the Government investigate the proposed trial of the abortion drug RU 486 for illegality and prohibit its use to achieve abortions on demand as such abortions under Dr Weisberg's criteria would be illegal? Will the Government also conduct urgent consultations with the Federal Treasurer to ensure that Medicare payments are not being paid to New South Wales doctors for illegal abortions in New South Wales?

The Hon. J. P. HANNAFORD: The honourable member raised a large number of issues. I did not get a note of them all, but I think the

important issue is the decision of Mr Justice Newman of the Supreme Court on 18 April in the matter of *CES and Anor v. Super Clinics Australia Pty Limited and Ors.* I have received a briefing on that decision. The plaintiff made a number of allegations in that matter of failure to diagnose a pregnancy on several visits to the doctor.

Mr Justice Newman indicated that he did not find it necessary to resolve the factual disputes that emerged in that trial as to who was telling the truth about what. Mr Justice Newman took the plaintiff's case and her allegations at the highest level that she made them and applied the plaintiff's case, at its best position, to the law. The decision of the District Court in *Regina v. Wald* and the Victorian decision in *Regina v. Davidson* were applied by Mr Justice Newman. Those decisions indicated that certain criteria had to be achieved in order to find that a criminal offence arose under the Crimes Act in connection with an abortion.

His Honour found that there was no suggestion in the evidence called by the plaintiff that at any relevant time there was any danger to her physical health. He found also that the evidence called on the plaintiff's behalf did not establish that her reaction to her pregnancy was such as to require treatment by a psychiatrist and, therefore, that the plaintiff's pregnancy did not constitute a danger to her mental health. His Honour's decision does not represent a departure from the law as it is stated in this State. The evidence before him clearly established that had the plaintiff sought an abortion at the relevant time, there would have been no grounds for the abortion to have been carried out lawfully.

His Honour then decided in accordance with High Court authority that the common law does not categorise the loss of an opportunity to perform an illegal act as a matter for which damages may be recovered. It may therefore be taken that Mr Justice Newman has adopted the Victorian decision in *Regina v. Davidson* and the Wald decision as representing the law in New South Wales as to when an abortion may be lawfully carried out. As I read the decision it clearly enunciates those particular principles. His Honour was saying that any departure from those principles would render an abortion unlawful and, therefore, no one can claim damages arising out of the failure of a person to carry out an illegal act. That is the reason for the plaintiff's failing to succeed in her damages claim in this matter. The Government has absolutely no intention of reviewing the law or altering the law as it stands. The law is very clearly established in New South Wales. It will continue to apply and be enforced as it now stands and as it is now clearly enunciated in this case.

BLUE MOUNTAINS CITY COUNCIL BOMBING

The Hon. JAN BURNSWOODS: My question without notice is addressed to the Attorney General. Is he aware that his Liberal Party colleague the Hon. J. F. Ryan, M.L.C., has admitted to members of the Opposition that the voice on the taped message received at the *Blue Mountains Gazette* on 16 June 1993 was in fact the voice of the member for Blue Mountains? Does the Attorney agree with the honourable member?

The PRESIDENT: Order! The Attorney General will answer the question.

The Hon. J. P. HANNAFORD: The observations made by the honourable member are quite outrageous. So far as any honourable member of this House is concerned, the question of whether a person's voice on a tape is that of another person is a matter that is the subject of expert evidence. The matter is being investigated by the police. The honourable member's views on verballing people are well known. She has tried to drop people into it on a number of occasions without success, and she has done it again.

Later,

Earlier in question time the Hon. Jan Burnswoods asked me a question concerning an alleged comment by the Hon. J. F. Ryan to members of the Opposition. At that stage I made some disparaging remarks of the Hon. Jan Burnswoods that I reiterate at this time. The Hon. J. F. Ryan has indicated to me that he has not spoken to members of the Opposition concerning this particular matter. He has not made any comments to members of

the Opposition concerning a voice on a taped message, nor has he made any comments to the Opposition which would associate the voice of the honourable member for Blue Mountains with the voice on a taped message.

I make one very clear statement: in relation to this matter the Opposition has sought to use the Parliament to make allegations and has sought to try to disparage various members of the Government in making those allegations. Those allegations have been denied on the occasions when they have been made. Here we have a clear attempt by the Opposition to try to verbal a member of the Government and, by implication, to besmirch him and his character in relation to this particular matter. Members of the Opposition ought to start asking themselves what is the game being played by their leadership in relation to this issue and to what extent will they be able to place any reliance on any comments being made by any of their leadership team in relation to this or other related matters.

I think exactly the same question can be raised in relation to the press gallery, which is prepared to accept at face value allegations made by the Opposition in this Chamber or in the other Chamber. On this particular occasion the Opposition has been clearly caught out and the suggestion of crying wolf could very well be applied to it. Somebody made the comment "scurrilous scumbag" in relation to someone else. It may well be applied in relation to the question that was asked in this House today.

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NORTH HEAD SEWAGE TREATMENT PLANT UPGRADE

The Hon. R. T. M. BULL: Will the Minister for Planning and Minister for Housing advise the House of initiatives the Water Board is taking to upgrade North Head sewage treatment plant?

The Hon. R. J. WEBSTER: I thank the honourable member for his question and observe the strong performance that has been put in by all of the Government members on the Joint Select Committee upon the Sydney Water Board. For the public record, I thank those members. Obviously the North Head sewage treatment plant is one of the important initiatives that the Water Board is undertaking. I know that the operations of that plant are of vital interest to all honourable members of this Parliament. The Government has already dedicated a considerable amount of taxpayers' funds towards the upgrading of the plant, and the upgrade will continue.

The North Head sewage treatment plant treats wastewater from a 47,000-hectare catchment that covers Sydney's northern and northwestern suburbs. The catchment area contains about 1.2 million people. The daily waste flow is approximately 320 megalitres, which is enough to fill 140 Olympic swimming pools. During and after storms this flow may double or triple. North Head sewage treatment plant is designed to handle 1,050 megalitres a day. The board's North Head upgrade project is a long-range solution designed to complement and protect the deep water ocean outfall. It is a huge project, which is already producing results.

Over the past four years improvements have been made in the composition of wastewater leaving the treatment plant. The solids capture rate has increased from 10 to 33 dry tonnes a day. In 1989-90, 3,367 megalitres of sewage was bypassed, but in 1992-93 this was reduced to only 15.4 megalitres, which is a massive improvement. In addition, the board is planning to install four new sedimentation tanks at a cost of around \$20 million to increase the capture of grease and sludge. The board anticipates that when these are installed grease and solids capture will increase from 35 per cent to 50 per cent.

In several ways the North Head upgrade is the most important pollution control and construction project the board is carrying out. Five of the most advanced fine screens are being installed at a cost of \$17 million to filter out coarse solids. The screens are installed 60 metres underground. They will catch more floatable materials and will dramatically improve the condition of beaches. Over the past four years other improvements have been made to ensure optimal plant performance, reliability and effectiveness. In addition, the refurbishment of equipment will reduce process interruptions.

A project is being planned for mid-year which will provide for overall control and monitoring of the main and auxiliary plant systems and allow the board to assess the plant's performance in detail. As well, the operations of the plant have improved dramatically through the introduction of standard operating procedures that tighten process control. The board is also looking at ways to substantially reduce the number of sludge truck movements that occur at North Head. The preferred option is a sludge pelletiser, costing approximately \$15 million, and the board is now confirming its technical feasibility.

An alternative sludge treatment called N-Viro is now being used at North Head, replacing the incinerators that we used previously. N-Viro soil is chemically stabilised sludge that can be reused beneficially in agriculture. The cost of this process is approximately \$5 million a year. There are a number of substantial improvements under way at the North Head sewage treatment plant which will further enhance the condition of Sydney's northern beaches. I want to commend the Water Board for its initiatives in this regard.

ANREPS AND UNLICENSED REAL ESTATE AGENTS

The Hon. ELISABETH KIRKBY: My question is directed to the Minister for Planning and Minister for Housing. In reference to questions I asked last week regarding consumer protection available to people dealing with Anreps and unlicensed real estate agents, is the Minister in a position to assure the House that consumers have the protection of the compensation fund?

The Hon. R. J. WEBSTER: The Hon. Elisabeth Kirkby has a continuing interest in this matter. Her question without notice was as much about the activities of a company called Anreps as it was about agents seeking to avoid licensing. I should like to make it clear that under the regulatory system run by the Real Estate Services Council agents must be licensed because for consumers to deal confidently in real estate they must have the certainty that the agent knows his or her legal obligations.

Also, consumers dealing with a licensed agent receive protection in a number of areas if things go wrong - for example, the availability of access to the council's compensation fund, to which all licensed agents contribute, in the event that the agent steals funds held in trust; access to the review of fees and commissions charged where the consumer feels the cost is too high; mediation between agent and consumer where there has been a breakdown in the agency relationship between the two; and, most important, in cases where the agent has breached his duty the council will, as part of its consumer protection role, seek to have the court disqualify a licensed agent. It has been successful in this regard.

I would not support therefore any move by agents to avoid their licensing responsibilities simply on the basis that they think the only licensing aspect is control of trust funds. The agency relationship is much more than that. It is a fiduciary relationship between principal and agent - one where at all times the interests of the principal must be put ahead of the

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interests of the agent. Members may have gathered from my comments, therefore, that the role of Anreps and similar organisations is somewhat at odds with the licensing and regulatory scheme managed by the Real Estate Services Council. Stated simply, Anreps and others help property-owners sell their homes privately. Some organisations do this by selling to private vendors a do-it-yourself kit.

Anreps provides a kit, for sale signs, a telephone answering service, help with contract preparation, access to legal advice, et cetera. Anreps may also provide assistance if the private vendor holds open house days for intending purchasers to inspect the property. This is a new scheme, and I am not aware of any organisation previously putting together such a package. It also seems that the scheme has limited appeal. Whilst it is relatively cheap - about \$1,600, I understand - it appears few people want to be bothered with the personal effort and emotion of selling their own homes privately. Most people prefer to arrange for a real estate agent to take care of it, safe in the knowledge that if things go wrong they can appeal for help from the Real Estate Services Council. If things go wrong with a private sale, the vendor or the purchaser has to live with the problem or resort to expensive civil law remedies.

Members may be aware that the Property, Stock and Business Agents Act is very old legislation, having been initiated in 1941 and variously amended since then. It is not very helpful in determining whether organisations such as Anreps should be licensed; it was not framed with those types of services in mind. Some in the mainstream real estate industry believe the best way to address what they consider to be unfair competition is for the council to prosecute Anreps for unlicensed activity. As I indicated earlier, this is not so easy, because essentially the company is assisting private vendors to sell privately. Furthermore, the Real Estate Services Council has no legislative authority to enter unlicensed premises, so gathering facts to support a prosecution is difficult.

No consumer complaints have been received. In this context I dare say the Hon. Elisabeth Kirkby will be pleased that the few people who have sold their homes with the assistance of the Anreps system appear to be satisfied customers. Finally, if it were possible to mount a prosecution against the company, I have real doubts that it would be seen as being in the interest of consumers. On the contrary, it is likely that Anreps and its supporters would claim the council was being the servant of the real estate industry in an endeavour to stifle competition.

There has already been ample criticism from Commissioner Dodds in his report on the Building Services Corporation and by Mr Mant in his report on the Real Estate Services Council about these government agencies being subject to industry capture. Other inquiries have been similarly critical. For these reasons the general manager of the Real Estate Services Council, Mr Grahame Knight, has decided not to proceed with prosecution, and I support that decision. However, I remain concerned about whether organisations such as Anreps should be brought within some form of regulatory scheme. As I mentioned in this Chamber on 13 April, the Government is watching the operation of Anreps closely.

I have therefore asked the Chairman of the Real Estate Services Council to have the council provide policy advice to me on whether the operations of organisations helping individuals sell their homes privately should be regulated in some way. As I indicated earlier, the Property, Stock and Business Agents Act is very old legislation. I have asked the council to consider formulating a new Act, and it may be possible to consider the Anreps question in the context of new real estate consumer protection legislation. I will take the council's advice on this matter, together with the general question about regulating Anreps or similar organisations before any further decisions are made.

I assure the Hon. Elisabeth Kirkby that I share her concerns about licensed agents seeking to avoid the licensing scheme and about the activities of Anreps. I also assure honourable members that it is not the Government's intention to take pre-emptory action against innovative competition by the likes of Anreps. By the same token, I will ensure that the policy implications are fully and exhaustively considered with appropriate consultation amongst consumers, advocates, real estate industry associations and other interested parties to ensure that the interests of consumers are protected at all times.

SENTENCING ACT EFFECT ON PRISON POPULATION

The Hon. R. D. DYER: I ask the Attorney General and Minister for Justice a question without notice. Has the President of the Law Society, Mr David Fairlie, written to the Minister suggesting that an unintended effect of the Sentencing Act 1989 has been to add to overcrowding in the State's prisons, in that prisoner numbers have increased from about 3,500 in 1983 to about 6,500 in 1993? Is the Attorney General aware of Mr Fairlie's opinion that judges are tending to sentence as they did prior to the Sentencing Act rather than impose somewhat shorter sentences on the basis that a greater proportion of the sentence is now required to be spent in prison? What is the view of the Attorney General about the Law Society's suggestion that the Government should consider an amendment to the Sentencing Act requiring prisoners to spend two-thirds of their head sentence in prison rather than three-quarters as at present?

The Hon. J. P. HANNAFORD: The honourable member's question reflects the attitude of the Labor

Party to the whole issue of sentencing. When the Labor Party was in government it endorsed the concept of remissions, which brought the sentencing process in this State into total disrepute. Public confidence in sentencing in this State was completely undermined by the policy of the Labor

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administration. The Hon. R. D. Dyer was a member of the former Government when that occurred. The honourable member's reference to the Law Society's letter in this House can only be interpreted as indicating that he is disposed towards the society's views; otherwise he would immediately repudiate its approach. When this Government introduced truth in sentencing it wanted to ensure that measures were in place by which the community could be certain of the period that a person would spend in prison. The Government clearly indicated the approach that should be taken to the minimum period that a person should spend in prison. The Law Society's approach is to reduce the minimum period that people should spend in prison.

I can only say to the Labor Party and the Law Society that the Government has no intention of watering down truth in sentencing legislation. I indicate also that the courts will continue to apply the law in relation to sentencing, a matter which would be impeded only by interference from government. One hopes that the Labor Party has learned its lesson from its period in government, and I hope it will not interfere in the judicial process. From time to time statements have been attributed to the shadow attorney general that suggest that if he was Attorney General, he would take an active role in the sentencing process. His comments give rise to an inference that he would be prepared to interfere in the judicial process. I have publicly and categorically rejected that approach, and I hope all honourable members will reject it also.

Members of the Opposition should be made aware of the number of people who are detected and charged with serious crime by the police. During the last calendar year an additional 9,000 people were arrested and charged by the police for serious offences. Any increase in the number of people in gaol reflects of course on the number of people being brought before the courts and on the work being done by the courts to significantly reduce the backlog of criminal trials. I have said that in the past couple of years the backlog of criminal trials has decreased from approximately 5,000 to 2,400. There is a tendency on the part of some courts to increase the length of sentences being imposed.

As I read public opinion, and as it is conveyed to me as I move around electorates, the community supports an increase in the length of sentences. The fact that the honourable member asked this question indicates that he supports the letter written by the Law Society. We can only infer from that that the Labor Party does not support the approach taken by the judiciary. The Labor Party believes that the length of sentences being imposed by the judiciary should be decreased. That will undermine the approach to law enforcement in this State being taken by the courts and the police.

ABORIGINES IN JUVENILE DETENTION CENTRES

The Hon. Dr B. P. V. PEZZUTTI: My question without notice is directed to the Attorney General, Minister for Justice and Vice President of the Executive Council. An article in the *Sydney Morning Herald* this week written by Reverend Harry Herbert referred to the high number of young Aboriginal people in juvenile detention centres. Will the Minister inform the House what the Government is doing to try to keep young Aboriginal people out of detention centres? What specific programs are provided for young Aborigines once they have been sentenced to detention?

The Hon. J. P. HANNAFORD: I thank the Hon. Dr B. P. V. Pezzutti for his ongoing interest in juvenile justice and Aboriginal issues, particularly on the North Coast. I read with interest the article written by Reverend Harry Herbert. Although the aim of Reverend Herbert is to ensure that people are sent to gaol only as a last resort, the fact remains that the Government must continue to protect the public and make accountable for their actions those who steal from, injure, or kill innocent people. The Government will never be soft on justice; potential criminals must realise that they will be punished if they commit a crime. The onus should not be on the Government to forgive them once they have committed a crime. It is a case of "Offender beware of the impact of your actions".

The Government has clearly stated that crime in New South Wales will result in punishment. The sentences that are handed down will be the sentences that are served. People must be made aware of the penalties likely to be dealt out for the commission of particular crime. The same could be said for juveniles. They should be warned that any crime committed by them will be seriously considered. Our approach to juveniles is to stress that they will be held accountable and responsible for their actions. This Government has in place a number of diversionary measures designed to keep juveniles out of detention centres, except as a last resort. The specific needs of Aboriginal children, who make up 1.8 per cent of the total juvenile population, are also taken into consideration when we are looking at diversionary programs and at Aboriginal children who have been detained.

The juvenile justice system in New South Wales strongly favours the principles of diversion, decarceration and last resort sentencing. At each stage of the juvenile justice process there is advocacy on behalf of a young person to bring about the most suitable outcome of minimal severity. Every effort is made to address the problems and the needs of a young person. To date most intervention programs in place in New South Wales operate in relation to select groups of relatively chronic young offenders. We are not interested in exposing less serious young offenders to more experienced and more violent detainees. The Office of Juvenile Justice has made and continues to make concerted efforts to reduce overrepresentation of young Aboriginal people in the juvenile justice system, particularly in detention centres.

Seventy-nine of the 93 recommendations of the Royal Commission into Aboriginal Deaths in Custody have been implemented; nine are being implemented; one requires no further action; and four are currently

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being reviewed by the department. Aboriginal communities have had a hand in the development of culturally appropriate services for Koori kids in custody. The maintenance of family and community links is being encouraged and fostered. At present I am in the process of appointing an Aboriginal co-ordinator for New South Wales community justice centres. His responsibility will involve statewide liaison with Aboriginal communities. In effect, this will involve Aboriginal communities in all aspects of community justice centre processes and will also involve family group conferences. This co-ordinator, who will be based in Sydney, will travel to all key regions to ensure that the needs of Aboriginal communities are met.

I will appoint also an Aboriginal family co-ordinator, with similar statewide responsibilities, to focus on facilitating family dispute resolution and family mediation. This initiative is part of the Government's commitment to the International Year of the Family. The Office of Juvenile Justice is in the process of piloting an Aboriginal juvenile bail support scheme for Dubbo and Wellington - a scheme to assist Koori juveniles who have allegedly committed minor offences and who are likely to be refused bail on the basis of homelessness or a lack of suitable accommodation. If extended family networks cannot help with accommodation for a Koori juvenile, alternative placement within the juvenile's local community will be considered. By encouraging community involvement in the care of Aboriginal young people the proposed scheme aims to reduce the number of Aboriginal juveniles in custody on remand.

The Aboriginal juvenile bail support scheme, which will complement existing successful diversionary programs for Aboriginal juvenile offenders, will include the Taree community justice council diversionary program for Aboriginal juvenile offenders and Aboriginal juveniles at risk of offending. That scheme, which is very successful, is funded by the Office of Juvenile Justice with assistance from the Aboriginal and Torres Strait Islander Commission and the South Sydney court support and pre-release program, which has a majority of first offender Aboriginal clients. I have also appointed Aboriginal community program officers in the northern and western regions for a period of six months. They have the specific responsibility to assist communities to develop viable local juvenile justice programs for the Aborigines in those communities.

A large number of Aborigines are coming into juvenile detention centres and receiving attention from the juvenile service. As I indicated to the House last week, during the next week the department will be calling for expressions of interest for the re-establishment of a bail hostel for Aborigines in the Sydney metropolitan area. This hostel will replace the Jaapalpa bail hostel, which closed because of financial problems. It is obvious that

the Government is doing all it can to keep juveniles out of detention centres. The figures I received and outlined today indicate that Aboriginal kids who are placed in detention centres are there for serious crimes against the community. The majority of kids are detained for crimes such as murder, armed robbery, grievous assault, break enter and steal, and sexual assault - they are there for major crimes, not for minor incidents.

While I can relate to the Reverend Harry Herbert's concerns, there are very few options open to magistrates but to detain young people who have committed such serious crimes. A number of initiatives have been put in place to deal with the specific needs of these kids once they have been detained. These initiatives include visits from Aboriginal agencies such as Aboriginal legal and medical centres, Aboriginal chaplains, and folk dance and art presentations. Several of the juvenile justice centres employ Aboriginal education officers who help with arts, crafts and education of Koori culture. The Government is doing more than any other government for the welfare and benefit of Aboriginal kids in custody. While the Government is more than happy to work with Reverend Harry Herbert on these issues, I would defy any member of the Opposition to criticise the Government on this subject, because that would be taking the element of hypocrisy to new heights.

APPRENTICESHIP INVOLVEMENT WITH GOVERNMENT CONSTRUCTION CONTRACTS

The Hon. J. W. SHAW: I direct my question to the Minister for Planning representing the Minister for Public Works. Does the Minister acknowledge a Public Works Department requirement for all government construction contracts exceeding \$250,000 and involving at least 2,000 hours of trade labour that contractors and subcontractors must maintain a ratio of at least one registered apprentice to every four tradespersons? Does the Minister acknowledge that there has been substantial non-compliance with this requirement, including at the Olympic site at Homebush Bay, until the issue was raised recently by the Construction, Forestry, Mining and Energy Workers Union? Will the Minister tell the House what measures the Government is pursuing to ensure compliance with this contract requirement as to the employment of apprentices, which is no doubt designed to provide jobs and skills for young people?

The Hon. R. J. WEBSTER: I will seek an answer from my colleague.

SALE OF CIGARETTES TO MINORS

The Hon. R. S. L. JONES: I ask the Attorney General and Minister for Justice, representing the Minister for Police, whether he is aware of allegations in last Wednesday's *Daily Telegraph Mirror* that Sharon Sultana of Revesby reported to police that a shop-owner had sold cigarettes to her 13-year-old son, and that she has heard nothing from the police since then. Will he confirm that his Government is serious about enforcing the law against selling cigarettes to minors, and will he ensure that this particular case is prosecuted to the full extent of the law?

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The Hon. J. P. HANNAFORD: I confirm that the Government is adamant that the law in relation to the sale of cigarettes will be enforced. The honourable member might recall a recent report issued by the Minister for Health directly related to this issue which indicated that a program - initiated when I was the health Minister - is proving to be successful. As to the particular matter raised by the honourable member concerning Sharon Sultana, I will draw that matter to the attention of the appropriate Ministers for investigation and response.

WATER BOARD COMMUNITY SERVICE OBLIGATIONS AND DIVIDEND PAYMENTS

The Hon. D. J. GAY: My question is directed to the Minister for Planning and Minister for Housing. Will the Minister advise the House of the Water Board's 1993-94 dividend payment following reimbursement of its community service obligations?

The Hon. R. J. WEBSTER: My friend and colleague has asked yet another intelligent question. As honourable members would be aware, the Water Board is a commercial government trading enterprise, GTE, and as such provides a commercial return to its shareholder - this Government and the people of New South Wales - on the equity invested in it. The dividends paid by the board are recommended by its appointed board and are consistent with this Government's financial distribution policy. The board will comply, for the first time, with the Government's notional tax regime in the current financial year. Consequently, the board's 1993-94 financial distribution to the Government will comprise two payments: 39 per cent of the previous year's operating result in the form of a notional tax payment, and 50 per cent of the after-tax operating result in the form of a dividend.

In money terms this equates to a notional tax payment of \$47.7 million and provision for a dividend of \$37.3 million. This is a total of \$85 million. Before this figure is taken out of context, which it usually is with the Water Board's dividend payments, Treasury's reimbursement of the board's community service obligations - or CSOs - needs to be considered. CSOs are activities that the Government directs a GTE to undertake which have specific social objectives and would not normally be undertaken by the GTE on a commercial basis. Two examples of CSOs that the board undertakes are granting pensioner rate rebates to assist low income customers, and exempting charitable and benevolent institutions from service availability charges.

After it is reimbursed by Treasury for its CSOs, the board's net payment to consolidated revenue in 1993-94 is estimated to be about \$18 million. The Opposition and, it seems, Dr Peter Macdonald - if one can believe his press release - do not seem to want cost-effective government trading enterprises. This Government turned the Water Board from an antiquated bureaucracy with no environmental program which cost the taxpayers of New South Wales money, into a cost-effective, environmentally responsible organisation, delivering a better service to its customers and to its shareholder, the State Government and the people of New South Wales. That makes for a better deal for the people of New South Wales.

I have heard some of the things said by Dr Peter Macdonald at his press conference in relation to the Water Board report. A net dividend benefit to the Government of \$18 million this financial year is a far cry from the rhetoric of Dr Macdonald and the Opposition, that is, hundreds of millions of dollars. I hope that fact will be well reported because it is about time that the incorrect rhetoric of the Labor Party and the Independents was exposed for what it is. There is no giant rip-off of funds from the Water Board. This financial year there will be a net dividend to Treasury of \$18 million from an organisation that is worth billions. That is not an unreasonable expectation when the Water Board's capital expenditure alone will be in excess of \$400 million. I hope that the fantasies and inaccuracies, and political sledging that is very much a part of this Water Board report and part of the rhetoric from the Opposition, are exposed for what they are.

LICENSING OF DEMOLITION CONTRACTORS

The Hon. A. B. MANSON: I direct my question without notice to the Minister for Education, Training and Youth Affairs, representing the Minister for Industrial Relations and Employment. Does the Minister recall the death of an 18-year-old construction worker at Easter and the critical injuries sustained by another when an overloaded scaffold collapsed on a Sydney demolition site? Will the Government legislate for the licensing of demolition contractors so that only bona fide and properly qualified contractors perform the highly dangerous work of demolition, and to ensure that safety risks to construction workers and the public are minimised? If not, why not?

The Hon. VIRGINIA CHADWICK: The honourable member's question raises an interesting matter. Regrettably I do not have the answer to it, but I am sure my colleague in the other place does. I shall seek from him a detailed response.

SEVEN WONDERS OF NEW SOUTH WALES TOURISM CAMPAIGN

The Hon. HELEN SHAM-HO: My question is directed to the Minister for Education, Training and Youth Affairs, Minister for Tourism and Minister Assisting the Premier. Will the Minister inform the House of the success of the Seven Wonders of New South Wales advertising campaign? What national recognition has the campaign received?

The Hon. VIRGINIA CHADWICK: The Hon. Helen Sham-Ho has asked an important, positive and constructive question. Some of my colleagues may realise from the media reporting of yesterday evening and today that yesterday in Seoul, Korea, the Seven

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Wonders of New South Wales campaign was awarded the gold medal for an advertising campaign at the Pacific-Asia Travel Association - PATA - Conference. While I have had the pleasure of reporting in this place and elsewhere month by month the financial success of the campaign, the award gives much pleasure to me and the Government, as well as to officers of the New South Wales Tourism Commission, who have worked tirelessly for months putting the campaign together and driving it through, gaining co-operative advertising from the private sector. They have worked extremely hard to develop co-operative marketing strategies so that the Seven Wonders of New South Wales campaign is now strong interstate, as well as in Sydney and elsewhere in New South Wales.

Using the themes of the campaign, in co-operation with private industry we have been able to promote many regions and facilities in New South Wales. Some that spring to mind include areas such as Port Macquarie, Port Stephens and the Blue Mountains. It is always good to be recognised in one's own industry by one's peers. Though no monetary reward is involved in the awarding of the gold medal, it is a reason for some pride and celebration for tourism in New South Wales that the major organisation, the Pacific-Asia Travel Association, which is having its conference in Korea, should make this award. The good news has been formalised, and New South Wales also won the marketing prize for its strategy for the Olympic bid. Two major awards have been made to New South Wales, both of which were richly deserved. The credit must go where it is due, and that is to the officers of the Tourism Commission and the board. I am pleased that the head of the board and the head of the commission were present in Seoul to receive the awards on behalf of the State.

DEATHS IN CUSTODY

The Hon. ELISABETH KIRKBY: My question without notice is directed to the Attorney General and Minister for Justice. Will the Minister confirm that there have been 17 deaths in custody since 1 January this year? Is it a fact that 10 of those deaths were in prisons, including five in New South Wales. Will the Minister inform the House what action he intends to take to ensure that this appalling record of deaths in custody in our gaols is rectified? Will the Minister introduce further measures to ensure the safety of prisoners, as a matter of urgency? If not, why not?

The Hon. J. P. HANNAFORD: I am able to inform the House that a number of deaths have occurred in New South Wales gaols since the beginning of 1994. However, I am unable to say whether 17 deaths occurred nationally. The number of deaths in custody varies from year to year. Though the level of deaths in custody is not satisfactory, one must not always assume that the report of a death in gaol means that there has been a suicide or that a person has died following an assault. All deaths in custody are referred to the coroner. Until he brings down a final report on the cause of death it is not possible to attribute with certainty the cause of death. To the best of my recollection the majority of deaths that have occurred in custody have been the result of natural causes. The most recent one I recall was the death of the murderer Mr Trotter, who died of lung disease which spread to the rest of his body. That was a death from natural causes.

I caution members about jumping to any conclusion when they read of the number of deaths in custody that there have been a number of suicides or that the deaths were related to suicide. I am concerned that suicides do occur in our institutions from time to time. That is why last year a former State Coroner, Mr Waller, undertook a comprehensive study of measures being adopted in the State prison system to minimise the

incidence of suicide. A number of his recommendations are being implemented; others require major resource commitments. I have proposed that Treasury allocate funds to undertake those major capital programs. The honourable member can be assured that to the extent to which her question may have adverted to suicides in gaols, I am cognisant of that issue. That is why I followed it up last year with an independent study. That report is in the process of being implemented.

TEENAGE SUICIDES

The Hon. FRANCA ARENA: I ask the Minister for Education, Training and Youth Affairs and Minister for Tourism a question without notice. Is she aware that one of the peninsula high school principals, Mr Paige of Cromer High School, has called upon the Government to ban heavy metal music, which he believes promotes violent suicide among teenagers? As Australia has one of the highest teenage suicide rates in the world, is the Minister prepared to ask her department to run a campaign in schools to make teachers and young people aware of the danger of heavy metal music in that it promotes self-destruction and violence and can have a very negative effect on young people?

The Hon. VIRGINIA CHADWICK: Though I have not read the comments of the principal of Cromer High School to which the honourable member alludes, I have nothing but respect for school principals and the sincerity of their views regarding heavy metal music and a range of other issues. I take this matter seriously. I am aware, informally rather than from any research documents, of articles and comments that have appeared from time to time in relation to teenage suicide suggesting that there may well be a link with some heavy metal bands, not so much with the music. From what I have seen of the performances and heard of the lyrics of some songs it is not surprising to me that people might suggest a link between the attitudes, actions and methods of those bands and their effect upon impressionable young people.

Reverend the Hon. F. J. Nile: The actions of the band leaders.

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The Hon. VIRGINIA CHADWICK: Yes. I can well imagine why there has been fairly regular comment about the possibility of a link between the two. I would need a fair bit of persuasion that it is the total responsibility of the Department of School Education to take the lead in this, particularly if we are moving more on perceptions rather than on any research. However, given that the Standing Committee on Social Issues is currently working in the area of juvenile violence, not only violence within schools, I most certainly will not pre-empt the view of my colleague the Hon. Dr Marlene Goldsmith or that of the committee. There appears to be a link between the current terms of reference of that committee and this matter. I am happy to undertake to have discussions as soon as possible with my colleague to seek her views on whether there is a possibility of linking the matters.

Though I believe that our public education system is not value free, certainly we have a responsibility as co-parents, to use a loose and almost colloquial term, to take responsibility for the actions and attitudes of young people, particularly on something as important as the possibility of suicide. I would like to be reassured that we had some research base and community support for that. Perhaps the Standing Committee on Social Issues is the suitable vehicle, and I will discuss the matter with my colleague. I have taken note of the supportive comments by way of interjection from Reverend the Hon. F. J. Nile and the Hon. Elaine Nile and I will advise them of the outcome of my discussions with the Hon. Dr Marlene Goldsmith.

The Hon. J. P. HANNAFORD: In view of the time, if any members have any more interesting questions, I suggest that they put them on notice.

JUDGES' PENSIONS (AMENDMENT) BILL

SUPREME COURT (AMENDMENT) BILL

CRIMINAL APPEAL (AMENDMENT) BILL

Formal stages and first readings agreed to.

JOINT SELECT COMMITTEE UPON THE SYDNEY WATER BOARD REPORT

Adjournment (S.O. 13)

Debate resumed from an earlier hour.

The Hon. JENNIFER GARDINER [5.6]: Earlier I was referring to the majority report upon water treatment plants. Government members take issue with the report on that matter and supports the important submission from the former administration of the Sydney Water Board, headed by Messrs Wilson, Harley and Moore - the former managing director, the former chairman and the former Minister of the Water Board - who supported the construction of the water treatment plants. They warned of the need to detect giardia and cryptosporidium. They noted that the Sydney Water Board had had to increase alum and chlorine dosing in an inefficient manner and this was becoming a matter of considerable concern to the board. They invited the private sector to assist in funding and developing solutions to the problem of drinking water quality. They were undertaking investigations of water treatment plants to ensure the protection of the health of the people of Sydney.

Government members of the committee share the views of Messrs Wilson, Harley and Moore, authors of the document, "Doing the Vision Thing", that there can be no compromise on the issue of high health standards for this city. With respect to demand management, the majority of members on the board were not interested in the water wise campaign, which the Government has had in place for a number of months and which has received wide publicity. Evidence is available of a reduction of 10 per cent in demand last summer compared with water usage the previous summer when climatic conditions were similar. The majority report also downplayed evidence from other authorities of the impact on demand of pricing reform. By ignoring a main plank in the demand management strategy, it was relatively easy for the majority of committee members to imply that demand management is not being taken seriously by the Government and by the board. That is not true.

Similar comments can be made about catchment management. There is a persistent claim throughout the majority report that the board was not interested in catchment management until recently, namely, last year. In fact, catchment management has been conducted for decades as a matter of course by the Sydney Water Board. An even worse claim is that the necessity for water treatment plants is caused by catchment deterioration. The majority of committee members ignored all other possible reasons for introducing treatment for water. The board's ability to provide a consistently safe, reliable water supply depends on the performance of the whole system. [*Time expired.*]

The Hon. R. S. L. JONES [5.9]: I was somewhat shocked to be ambushed today by the Hon. J. F. Ryan, whom I regarded as a very hard-working member of the Joint Select Committee upon the Sydney Water Board. In fact, we made sure that the honourable member was always present during deliberations. Sometimes meetings were delayed to ensure that he was able to be present. For the many months and endless hours of discussion on this matter I was of the view that the committee was progressing quite well. Towards the end we were a little rushed, but during those many months of deliberation virtually every word of the report was considered and many of the recommendations were adopted, particularly those of the Hon. J. F. Ryan and the Hon. Patricia Forsythe.

At one time we thought the report would be unanimous or that we were getting towards that point, but in the last week or so we seemed to go slightly off the rails during a major rush. If we had had another
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six months to prepare this enormously complex report, perhaps we would have got closer to consensus. Given the amount of work undertaken by all members and the pressure they were under to bring out a report, the report was probably not quite as unanimous as it could have been under other circumstances. I am upset with some of the language used in debate on the report. About 67 per cent of the recommendations - that is, 29 of 43 - are supported by the Government. That estimate may not be accurate as it is based on a rough count. It would be worth while spending time at a later stage - not necessarily today, as I have only 15 minutes under Standing Order No. 13 to debate this matter - to discuss it in greater depth.

I am surprised by the Hon. J. F. Ryan's comments about raking compost. I do not think he has ever had the opportunity to use a composting toilet or see one in action. Numerous types of composting toilets are used, especially in rural areas. I use one fairly frequently myself. I have used different types of such toilets, including a hole in the ground with a roof on top. The newer ones with aerating roof systems do not need to be raked or even touched. After many years the material is turned into compost and can be shovelled out and used on the garden. At that time the compost is just like ordinary soil, and no one could tell the difference. Hysteria about compost toilets is unfounded.

The tenor of debate on this issue, particularly from the Government side, has been to discredit the whole report on its treatment of composting toilets, which was the subject of one minor, hesitant recommendation amongst 43 other recommendations. We tried very hard to accommodate Government concerns on the report. We were able to do that in many cases, but in other cases it was not possible. I wish to traverse briefly some of the recommendations in the report. Mention was made of filtration plants and the reason for establishing them, in particular the question of cryptosporidium and giardia. I was the member of the committee who raised this subject most often in the hearings.

The Department of Health assured us this was not a problem, that I was getting hysterical and expressing far too much concern about cryptosporidium and giardia. I was raising the issue most but was accused of being a little alarmist about it. The Department of Health said that there was no problem at all. Yet in comments by Government members on page 100 of the report the statement is made that in late 1992 two dangerous gastroenteritis-causing protozoa and the parasites giardia and cryptosporidium were discovered in Water Board storages. The report states that the levels of cryptosporidium discovered were similar to those which caused public emergencies in the United States of America and the United Kingdom in which thousands of people fell sick and a number died. I did not receive any evidence, nor was I aware that the committee received any evidence, to support that statement by Government members that appears on page 100 of the report.

The Hon. J. F. Ryan: That is a direct lift from the Water Board submission.

The Hon. R. S. L. JONES: Obviously there is a conflict between the Sydney Water Board and the Department of Health. I had not seen that comment until it was made by Government members. That comment does not accord with evidence given by the Department of Health to the committee. I was surprised to read that comment by Government members, who were part of a minority. The question is what happens to the water once it leaves the filtration plants. Water travels a long distance between a filtration plant and a tap. I suspect that, unfortunately, much of the water reaching the tap will be not all that different from the water which went into the filtration plant. Many different problems occur between the filtration plant and the tap.

Of the water going into the filtration plants, at enormous cost, 99 per cent is not used for ingestion either by cooking or drinking. That 99 per cent is used for washing, watering the garden, hosing down pavements or leaves off pavements. We are trying to stop such water usage. Alternatives to filtration plants are used by many people, including personal filtration plants such as Brazilian earthenware filtration plants or reverse osmosis plantation plants. Alternatives exist. Perhaps a better course, rather than signing expensive long-term contracts, would have been to consider whether supplying subsidised personal filtration plants to those concerned about possible problems associated with cloudy water would be worth while. That might have been

a much cheaper course than providing expensive filtration plants, which will never be owned by the Water Board or the people of New South Wales.

Catchment management was raised by the Hon. J. F. Ryan. I am glad that Government members support recommendation 29A that the boundary of the Hawkesbury-Nepean Catchment Management Trust should be extended to cover the whole catchment into which the two rivers drain. I hope the Minister for Planning will take on board at least the 29 recommendations supported by Government members, and ensure that course is followed swiftly. Undoubtedly, with proper catchment management of the whole catchment, and not part of it, water quality would be improved though perhaps not enough to warrant not having personal filtration plants in homes.

The Hon. J. F. Ryan was adamant that the Clean Waters Act should be watered down, particularly for the Picton and Karuah plants, but he did not seem to be cognisant of the fact that it is possible to have sewage treatment plants that would not breach the Clean Waters Act. Watering down the Clean Waters Act would be akin to going to the lowest common denominator and would allow pollution outside the provisions of the Act. We should be looking at Memtec final membrane water filtration, a step which would not necessitate the Clean Waters Act being watered down. Members should realise I could not prepare my speech as I was ambushed in this Chamber today. I expected to be talking about these matters in the next two or three days. I am lucky that I brought my report here in time to talk about it.

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Government members have spoken about input into sewage treatment plants of mercury, organochlorines, and so on. But what is more important is that inputs can be disguised and made at night when they are not being looked for. Outputs are more important than inputs. On page 11 of the report - the Government does not agree with this - is an extrapolation from EPA licensed compliance reports on increases in some outputs. On extrapolation, although inputs supposedly have decreased, outputs do not seem to accord with that, and enormous increases are indicated. I accept that much more research is needed to be done. The chart is probably only a preliminary one, and more research is probably needed on inputs and on outputs.

The Hon. J. F. Ryan also spoke about not wanting to dictate to the public. Regrettably, members of the public, if asked which course they want to choose, by and large will not put their hands into their pockets. Recently, a meeting was held in Castlecrag attended by Peter Collins and Bob Carr. We asked those at the meeting whether they wanted to have better public transport, and they said yes. We asked if they wanted to pay for it with an increased petrol tax, and they said no. People want better outcomes but do not want to pay for them. A common problem of government is that people want better water but not necessarily to pay for it. Sometimes people have to be told. Sometimes governments might have to take the path of Denmark.

The Hon. R. J. Webster: Are you not aware of what the Pricing Tribunal says?

The Hon. R. S. L. JONES: Yes, I have been reading the recommendations.

The Hon. R. J. Webster: Are you going to impose massive costs on people?

The Hon. R. S. L. JONES: We have to go down that track eventually. We have to pay for this. We have to have better outcomes. We know that the Water Board would love to be able to double or triple its charges but it is unable to do so.

The Hon. R. J. Webster: That is not true.

The Hon. R. S. L. JONES: Yes, it would. I talked to Paul Broad the other day. He would love to go the way of Denmark and charge four times the current price of water if he were able to get away with it, and then we could have decent outcomes. I am not suggesting we do that. Eventually someone has to pay for these better outcomes. There is no question that the public are demanding cleaner waters, not necessarily to

drinkable standards in every river, but they are demanding better outcomes and we have to provide that. The Government cannot necessarily go the public, cap in hand, and ask how much they are willing to pay. They have to be told that the Government is adopting a certain course - and maybe it would risk losing government over the matter, though I do not believe that would happen. The Government might go to the people with a levy program. The \$80 levy did not cause any public outcry or odium from the public. The public supported that levy.

The Hon. Patricia Forsythe: What if we did not tell them? What if we raise the standards and then they -

The Hon. R. S. L. JONES: If you take them into your confidence and say that you will clean up the beaches and waterways and stop the overflows, but that it will come at a cost of X, I believe people would be prepared to pay that. Some people would not be able to pay and there may be community service obligations for those who cannot pay, but I believe that most are prepared to pay.

The Hon. R. J. Webster: Did you hear what I said about dividends at question time?

The Hon. R. S. L. JONES: Yes, I heard that. The question of separate metering is dealt with at page 53. There has been some argument here and some toing-and-froing and mainly blaming the honourable member for Manly for what he said to the residents of Manly. As it says on page 53, there are some 350,000 residential flats in Sydney, and about 58 per cent are owner-occupied. Many of these blocks of flats have only one water meter. It is obvious that unless we get some very benign strata management system whereby they can actually determine how much water is used by each flat, it is impossible to accurately monitor water use and charge appropriately to those residential flats.

People should be able to have their flats metered independently, although this should not be forced upon them. I am not suggesting that we should do this by force and charge those people hundreds of millions of dollars, but those who wish to have separate metering should be able to have it. In that regard they should be assisted by the Water Board, and the Water Board should be able to charge for that over, say, a 10-year period. Page 22 refers to a moratorium for new connections to the northern Sydney ocean outfall system. The document states:

The Sydney Water Board should report upon the feasibility of a moratorium being placed upon the addition of new sewage connections to the NSOOS in 1995, other than connections within existing serviced areas.

I am glad that Government members actually support that moratorium. On the question of corporatisation, the committee did not come out against corporatisation, but raised a number of questions about it. In this regard I refer to the evidence given at page 67 by Mr Jeff Angel of the Total Environment Centre. That organisation opposed corporatisation of the Water Board because it did not believe that such public resources should be under the control of a narrowly based organisation with a narrow commercial objective. Jeff Angel believes that a public resource should be managed in terms of meeting the public interest, both present and future.

The committee itself had reservations about whether the corporatisation of the board would mean a strong focus on commerciality and free market principles and whether the social environment and other underpriced benefits may be overlooked. That is the problem with corporatisation. Would a

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corporatised Water Board have the same vision as under the previous Minister and the previous administration of the Water Board. That is the main problem. I do not think committee members were, by and large, opposed to corporatisation as such, provided it could be corporatised in such a way to ensure that the Water Board was still in charge and running the clean waterways program. [*Time expired.*]

Reverend the Hon. F. J. NILE [5.24]: In my contribution to this debate concerning the report of the Joint Select Committee upon the Sydney Water Board dated April 1994, I wanted to make some general remarks about the report and the joint select committee itself. Mr President, I am very concerned, as I am sure

you would be as a presiding officer, that the joint select committee report that has been presented to this House and to the other place has been strongly criticised by the Government members. This is an unusual situation in that the report contains dissenting reports by Government members in relation to each section of that report. In addition, there is a separate report stating the views of Labor Party members.

Leaving aside the content of the report, the background to the operations of the committee and the production of the report are serious matters. When the committee was established and its terms of reference were set, many honourable members were concerned that it appeared to be starting off more from a partisan political point of view than as a genuine inquiry into this State's needs for water supply and for the disposal of sewage. Many of us were concerned that it would be a waste of taxpayers' money. I would say on the basis of this report and what has been stated here today by the members of the committee that that is the case. Tens of thousands of dollars have been spent on a joint select committee and it could be strongly argued that it has been a waste of taxpayers' money.

The Hon. R. S. L. Jones: You have not read the report.

Reverend the Hon. F. J. NILE: Talk about the Water Board wasting money! People such as the Hon. R. S. L. Jones and the honourable member for Manly have wasted the taxpayers' money. It is not Government money, or Opposition money. It is taxpayers' money -

The Hon. R. S. L. Jones: Why do you not read the report?

Reverend the Hon. F. J. NILE: I have read the report.

The Hon. R. S. L. Jones: You could not possibly have done that.

Reverend the Hon. F. J. NILE: I have been sitting here reading through it and I have been making some pertinent comments from the report for the honourable member's information, because I doubt whether he knows what is in the report, despite the fact that he was a member of the committee. Perhaps the honourable member wrote the report? He probably wrote it in co-operation with the honourable member for Manly. This exercise has been a waste of taxpayers' money as well as a waste of the time of all those members who attended committee meetings. If the report does not have genuine support across the parties, there will not be consensus. With most parliamentary committees the majority of members have been able to come to some consensus. If members have not attempted to do that, then they have virtually sabotaged the work of the committee and ensured that the report is not implemented. In that case it is a waste of members' time to attend committee hearings. It is a waste of taxpayers' money, members' money, and the time of staff of the Parliament.

Parliamentary staff are already clearly heavily overloaded with the multiplication of the committees that have been formed. There has been a great expansion of committees, not so much in this Chamber but in the other place. From discussions I have had with members of the staff, and in spite of their best efforts, they are stretched to the limit coping with the work involved with committees. It is sad to think that this report may not have value. The Hon. R. S. L. Jones said - and I do not know whether it was a comment or a threat - "The Government could lose the election on this issue". I believe that the Australian Democrats and the ALP see this as an election issue and have been endeavouring to use it in that manner. It has happened before.

The Hon. R. S. L. Jones: On a point of order: Reverend the Hon. F. J. Nile has just accused me of something I did not say in this House today and I ask him to withdraw that.

The DEPUTY-PRESIDENT (The Hon. D. F. Moppett): No point of order is involved.

Reverend the Hon. F. J. NILE: Over the past few weeks in this Chamber there have been a number of false allegations made about a dramatic increase in charges to consumers for water supply. The Government has shown that that is not the case and that in fact there was a decrease in those charges. If the Government followed the direction of the report and supported the Water Board's increasing water rates to \$1,000 a person a

year, there would be a massive outcry by the community. The Labor Party and the Australian Democrats would then attack the Government for imposing high water charges and would use that as a political issue. The most obvious approach to take would be to use it against the Government. I am concerned, as are other honourable members, I am sure, that what has occurred in this committee may be a blow against the processes of joint select committees of the Parliament and will make it more difficult for committees in the future to achieve their purpose.

I support parliamentary committees; we must have them, but they must be genuine, open inquiries, and all the members attending them must hear the evidence with open minds. The committees must operate under the chairmanship of a member who is

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without bias or prejudice, which may be hard to achieve. A powerful Independent was instrumental in setting up the Joint Select Committee upon the Sydney Water Board and became chairman of it. That probably helped to torpedo the value or purpose of the committee because he has his own agenda. I mentioned elections -

The Hon. J. H. Jobling: It is called re-election.

Reverend the Hon. F. J. NILE: The honourable member is pre-empting my remarks. It is alleged that Dr Macdonald is concerned about his own re-election in the seat of Manly - and rightly so. Dr Macdonald is well aware that the water supply, beach pollution and sewage have made Manly one of the most sensitive electorates. He acknowledges in the report that water issues were probably one of the main reasons he was elected; he used them skilfully in his election campaign. Dr Macdonald has done himself a disservice, and the evidence is in the report. I had the luxury of reading the report while listening to the contributions of other members. A summary of recommendations appears in the introduction to the report on pages ix and x.

I have served on a standing committee and on other committees of this Parliament, including the Joint Select Committee upon the Process and Funding of the Electoral System. All those committees were careful to ensure that anything contained in their reports had been discussed by the committee and agreed to by the committee. The following acknowledgment appears in the summary of recommendations in the Water Board report:

The following abridgment of the recommendations has been prepared by the Chairman. It should be noted that the Committee actually voted on the unedited recommendations which appear at the end of each Chapter. These abridgments are in no way intended to alter the detailed recommendations.

That obviously means that the chairman, by his own authority, has inserted them. It also means there may be some variations between what is in the abridgment and what the committee has recommended in its full recommendations. There is nothing wrong with having an edited set of recommendations, but they must be agreed to by the committee.

The Hon. J. H. Jobling: That is the way it should work.

Reverend the Hon. F. J. NILE: That is how it should work. I am concerned that if this sort of high-handed action is taken, the whole committee system will be undermined and brought into disrepute, making it harder to work in future.

The Hon. R. S. L. Jones: What a load of garbage!

Reverend the Hon. F. J. NILE: Joint select committees are established by the Parliament and follow certain processes and conventions. It is sad that the Hon. R. S. L. Jones, by his interjections, is unaware of those conventions. One of the conventions is that committees should try to achieve a bipartisan result. That is one of the main purposes of a joint select committee. The Parliament is set up to have an adversarial and confrontational approach between the Government and the Opposition. The purpose of committees is to take the heat out of that situation in an endeavour to bring both sides of the Parliament together to hear evidence and

find some areas of agreement. However, if that conflict is transferred from the Parliament to parliamentary committees, the committees become pointless and a waste of money. It seems this has happened in this situation.

I am pleased that other joint select committees have been able to operate in a genuine bipartisan way to hear evidence, with members arriving at a consensus. Sometimes a Liberal Party member and a Labor Party member of a committee will disagree with the majority. That should be encouraged to occur, with members of the committee hearing evidence but retaining the right to dissent.

The Hon. Ann Symonds: You have dissented in committee reports.

Reverend the Hon. F. J. NILE: I agree with that; I have done it. I am referring to one or two members, but not Government members dissenting as a block. If they disagree as a block the desirable bipartisan approach to a complex issue has not been achieved. If the Hon. R. S. L. Jones does not understand that, there will be continuous problems in the future. The bipartisan approach of the Joint Standing Committee upon Road Safety, the Joint Select Committee upon the Process and Funding of the Electoral System and other committees should be the model, rather than the Joint Select Committee upon the Sydney Water Board. That committee would have to be put down as a sad, wasted exercise, and we will have to start again to find the way ahead. I trust that this committee's report will not set a dangerous precedent, or the whole system of parliamentary committees will be undermined and will cease to have a purpose in the future.

When a committee comprises Government and Opposition members, Opposition members might disagree with some of the recommendations made by the majority of Government members. In this case the whole committee structure is reversed, but it is an important principle that a select committee should always endeavour to find this area of agreement between the Government and the Opposition and that the Opposition should try to work with the Government to reach bipartisan agreement. That would apply whether the Liberal Party-National Party or the Labor Party are in government. The views of the Government that has been elected by the people must be given due weight in the committee structure. That was not done in this case, but was used to attack the Government.

The functions of a committee must be conducted openly and fairly. I gather from some of the remarks that have been made that there has been some manipulation by the consultant, who apparently played

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a major role in drafting recommendations and parts of the report. That person is outside the committee structure, and this presents a danger of manipulation of the committee itself. That sort of manipulation cannot take place, nor can there be the appearance of manipulation. The committee has fallen down because it appears to have been manipulated. I do not know the consultant. He may have been sincere and there may not have been any manipulation, but there is the appearance of it, and that undermines the committee's report.

The chairman of the committee wherever possible must do all he can to reach consensus and agreement on recommendations. There may always be some dissent by one or more members, but never by all Government members or all Opposition members. That undermines the direction of the committee. I note in the report on pages 23, 46, 54, 75, 100, 124, 148, 158, 175, 186, a dissenting report by the Government members, which discredits the report. [*Time expired.*]

The Hon. J. F. RYAN [5.39], in reply: I thank all those honourable members who participated in the debate. I thank my colleagues the Hon. Patricia Forsythe and the Hon. Jennifer Gardiner for their comments on the concerns that caused me to bring this important matter before the House. Members of the Joint Select Committee upon the Sydney Water Board looked forward to improving the quality of tidal waters and rivers in the Sydney Water Board catchment area. The Hon. A. B. Manson and the Hon. E. M. Obeid attempted to put the case for the Labor Party, but any objective listener to the debate would have come to the conclusion that their remarks were not particularly convincing.

Whilst on the topic of the Labor Party I wish to refer to the fact that the Labor Party appended to the end of

the report a series of comments. I am not too sure what to make of those comments, given that they are part of the report. I do not know why they believed it was necessary to include additional comments. Perhaps they did not completely support the recommendations for which they voted. They, like Government members on the committee, must have had some reservations about the report. Labor Party members of the committee criticised the process of the inquiry and referred to the apparent reluctance of the Sydney Water Board to provide information equally and openly to all members of the joint select committee. They stated:

It should not escape comment as we believe such an attitude may be indicative of the corporate culture currently in place at senior levels of the Sydney Water Board administration.

In my experience that was not the case. Any information that I was given by the Water Board was available to all other committee members had they cared to ask for it. The Water Board went to the trouble of appointing to the committee Dr Bronwyn Kelly, a distinguished member of its staff. It was her brief to answer any questions and to gather any documents that members wanted. Opposition members forget that the committee consultant spent hundreds of hours with Water Board staff questioning them and inquiring about water issues. If members of the committee were not prepared to go to the Water Board for information, they could have asked the consultant to provide them with that information.

The Water Board made no attempt to hide any information. It made every effort to supply committee members with whatever information they required. Let me illustrate that by saying that attempts were made in another place to table commercially sensitive material which was part of the contract negotiated for drinking water treatment plants. One of the last pieces of correspondence that the managing director of the Water Board sent to the joint select committee referred to the fact that the Water Board sought to accommodate all inquiries made by Opposition members and by Labor Party committee members concerning drinking water treatment plants. The managing director of the Water Board offered to give a blow-by-blow description of the commercial details of the successful tenderer for the drinking water treatment plants. He offered to compare that item by item with an internal tender that had been prepared by Water Board staff and to give all that detail to committee members.

Unfortunately, by this stage members of the Labor Party had lost all interest in the issue. They rejected an opportunity that Government members thought they would have valued highly. A few of the comments made by Opposition members require some response. I draw attention to the allegation made by the Hon. A. B. Manson that the Environment Protection Authority was obsessed with details and starved of resources and that it had an educative rather than a regulatory role. It is a pity that the Hon. A. B. Manson, a member of the Australian Labor Party, raised this issue concerning the resources of the EPA. When the Leader of the Opposition, Mr Bob Carr, the honourable member for Maroubra in another place, was the Minister responsible for the State Pollution Control Commission, in the dying days of the Unsworth Government he cut its budget. He starved the commission of resources for air quality monitoring. Since then we have discovered - in particular residents of western Sydney have discovered - that that was an important project. That project has been resumed by the current Government.

The EPA was established by this Government to replace the somewhat inadequate State Pollution Control Commission. Since this Government came to office it increased the budget of the EPA by 20 per cent. Millions of dollars have been poured into environment protection in this State. Staff numbers have been increased enormously. This Government has not shirked from its environment commitment. In fact, it has set standards that future governments will find difficult to meet. It is simply nonsense for Opposition members to suggest that the EPA has been starved of resources. That allegation has enabled Government members to draw attention to the bad resourcing of environmental programs by the previous Labor Government and the then Minister responsible for water issues.

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There has been a lot of talk about consultants used by the Water Board. Government members were convinced that the Water Board adopted the prudent policy of hiring expertise when it was needed. It did not

attempt to incorporate that expertise into its staff. If it had done so it might have found it necessary to provide work for those consultants. Government members on the committee believed that the use of contractors in the Water Board was correct. They implemented phenomenal projects. The computer program, which I had the opportunity of seeing, enables the Water Board to predict the effect of various sewage outflows into our rivers. That program, which was not available to the Government prior to this, was developed by a consultant and handed to the Water Board, which continues to maintain the software and the monitoring plan.

A great deal of progress has been made in the environmental area because the Water Board chose to use consultants. One of the criticisms made in the document "Doing the Vision Thing" was that the Water Board tended to focus on engineering issues and buildings and did not have much expertise in the environment. There seems to be a level of consensus about that conclusion. Do Opposition members expect the Water Board to spend hundreds of millions of dollars employing an equivalent number of permanent environmental scientists or consultants? It would be much wiser to hire experts on a short-term basis and to hire other people as they were needed to achieve the best environmental outcome. The Water Board's key program is the clean waterways program. That program has been successful because of the high level of expertise on the Water Board. Recently consultants were engaged by the Water Board to ensure that that program was as good as it could possibly be.

That is a far cry from the situation that existed when Bob Carr was Minister for the Environment and was cutting funds for environmental monitoring projects. I have not had the boudoir experience of the Hon. R. S. L. Jones in regard to composting toilets. I have to accept that he is more experienced in the use of such receptacles. The committee should have considered all the information it received. The majority report should have acknowledged alternative viewpoints so that members of the public who read the report would be aware of the complexities of debate on issues such as whether or not the use of composting toilets would assist in cleaning up our waterways. I thank Reverend the Hon. F. J. Nile for his comments. I share his disappointment. Committee members, through a bipartisan approach, could have solved the problems of our waterways. They could have made other members of Parliament aware of this complex problem. They could also have pointed out that the clean waterways program that the Government has embarked upon is an exciting proposal.

I regret that much of that opportunity has been lost because members of that committee, the chairman and the members of the ALP have chosen to rake over what might be called old compost of former political debates and tried to use the committee as an opportunity to score political points. Finally I express my thanks to the staff of the water board committee, a sentiment endorsed by all members of the committee. The committee also thanks Ronda Miller, Kendy McLean and Catherine Watson, who have done an outstanding job in servicing the committee and trying to come to grips with the difficulties that faced them, particularly the difficulties of compiling the report, which Government members have documented before.

It is appropriate to thank Mr Michael Mobbs at least for the enthusiasm with which he approached the task. I do not agree with his conclusions. I was disappointed that he chose to write the report before the committee had heard the evidence. Nevertheless, I give credit for his enthusiasm. Although I believe he was misguided, at least he showed an appropriate level of dedication to the task. As a colleague has pointed out, Mr Mobbs was prepared to search the world for information that he thought might be relevant to the report. It might have been better for him to read the submissions before the committee and to ensure that they were properly dealt with in the majority report that he drafted for the committee.

Motion, by leave, withdrawn.

MINES RESCUE BILL

Second Reading

The Hon. R. J. WEBSTER (Minister for Planning, and Minister for Housing) [5.52]: 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 repeal the outdated Mines Rescue Act 1925 and to reconstitute the Mines Rescue Board so that it can meet its responsibilities into the 21st Century.

The Mines Rescue Act 1925 was enacted to provide for rescue operations in coal and shale mines. It catered for an identified need with a corps of trained and equipped rescue personnel to service the coalmining industry. The identification of that need arose from a number of disastrous events resulting in considerable loss of life.

That Act authorised the establishment of District Committees responsible for the operation of Rescue Stations in each of the State's coal mining districts. There are currently four Rescue Stations - at Singleton covering most of the Hunter Valley, Newcastle, Lithgow for western mines and Wollongong for southern mines.

In 1972 the Act was amended to create the Mines Rescue Board. At the same time the Central Mines Rescue Fund was established. This Fund was established by the Board and financed entirely by contributions from the coal industry. The Board allocated funds to District Committees. However, the Committees were not responsible to the Board and the Minister had no power of direction over the Committees.

The existing structure of the Board and District Committees is far from efficient. There is no power for the Board to employ staff. The Board's expertise in underground mines rescue and related matters, for example, repair and calibration of gas detection instruments, has been sought by industry not only in New South Wales but also in other States and overseas. The 1925 Act does not contain powers for the Board to provide such services.

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Following negotiations with industry and the unions involved in the coal mining industry, agreement was reached to repeal the 1925 Act.

The Bill now before the House will reconstitute the Mines Rescue Board. The Board will be a statutory body representing the Crown. As such it will be bound by such Acts as the Ombudsman Act, Freedom of Information Act, Public Finance and Audit Act, and the Annual Reports (Statutory Bodies) Act. I spell this out because, in the past, some members of the Board have been of the view that, as the Board is financed entirely by industry, little regard needed to be given to the powers and indeed the limitations of the Act which established it.

The Bill provides for a Board of 7 directors.

Three directors, of whom one will be the Mine Manager, will be nominated by the New South Wales Coal Association to represent the interests of mine owners. Three directors will represent mine employees. Of these, one will be nominated by the Australian Collieries' Staff Association and two by the United Mine Workers' Division of the Construction, Forestry, Mining and Energy Union. The seventh director will be a person nominated by the Minister. The Minister's nominee will be Chairman of the Board. In line with Government policy, the Bill spells out the core functions of the Board. These are those services the Board must provide for underground coal mines. The Bill also provides for additional discretionary functions in respect of rescue services for open-cut coal mines and any metalliferous mine.

In line with modern practice the day-to-day running of the Board will be the responsibility of the chief executive of the Board. The chief executive will be appointed by the Governor on the nomination of the Board.

The Bill authorises the Board to employ such staff as is necessary.

The Board, in the case of every underground coal mine, will be required to determine the number of mine personnel to be made available

to the Board. Such persons, and others appointed by the Board, will comprise the New South Wales Mines Rescue Brigade.

The Board is responsible for training Brigade members in such matters as the use of breathing apparatus and other mine safety equipment, mine safety procedures, the work involved in rescuing persons who may become trapped in a mine, or who may otherwise need to be rescued from dangerous situations occurring at or in a mine, and the procedures involved in sealing an underground coal mine and reopening such a mine.

Mine owners must release members of the Brigade to attend emergencies and for training. This accords with long standing practice.

The Bill contains a provision requiring the Board to prepare a corporate plan for each financial year. The plan is to specify the objectives of the Board, the policies of the Board necessary to meet those objectives, and criteria that will enable the Board's performance to be appraised and audited.

All moneys received by the Board are to be put into the Mines Rescue Fund. The Board's functions will be financed by contributions levied on coal mine owners. Honourable Members will note that the contributions are payable by owners of all coal mines and not only underground coal mines. This arrangement has been included at the request of the coal industry. Payments received from the Board's consultancy work will be paid into the Mines Rescue Fund.

The members of the Mines Rescue Service have a long and proud tradition of service to their fellow workers. They are most professional in their approach to training. A number of generations of coal miners have now served as volunteers. I know how prepared for an emergency they always are. I hope, of course, that they never get called out for a serious accident.

This Bill will enhance the management of the Board's functions which will, in turn, mean an even better trained and equipped Brigade. The Bill has the support of both industry and the relevant trade unions. I commend the bill to the House.

The Hon. R. D. DYER [5.54]: The Opposition supports the Mines Rescue Bill. The matter of safety in the coalmining industry and the mining industry generally is one of great importance, particularly when one has regard to coalmining tragedies that have occurred over the years. The types of incidents that occur are mainly instantaneous outbursts of coal and gas, which can cause much outburst material and the release of massive amounts of gas. Outburst events can cause miners to be either buried beneath outburst material or injured or buried by displaced mining equipment, that is, equipment displaced by the effect of the explosion. I well remember before I came into this House in September 1979 I was on the personal staff of the Hon. Ron Mulock.

The Hon. R. J. Webster: He was a good man.

The Hon. R. D. DYER: A very good man, who at one time was the Minister for Mineral Resources. The Appin Colliery disaster occurred on 23 July 1979, a few months before I entered the House. I well remember 14 men were killed in the disaster at the Appin Colliery. The Hon. Ron Mulock travelled to the mine head on the evening in question and stayed there virtually all night. The men were so touched by his gesture of concern on that occasion that they invited him to the annual memorial service in subsequent years, which he attended, to commemorate that sad event.

The mines on the southern coalfields are well known, not to say notorious, for being gassy mines and other events of that type have happened since the Appin disaster in 1979. On 24 July 1991 an outburst occurred at the South Bulli Colliery, resulting in three fatalities. As recently as 25 January a miner, Malcolm Butt, was killed at West Cliff Colliery, also on the southern coalfields. If one refers to the Tahmoor Colliery in that same area, owned by Kembla Coal and Coke Pty Limited, a subsidiary of CRA Limited, no less than 89 outbursts were recorded to April 1992 out of a total of 393 incidents in the entire southern district. However, despite the large number of incidents, only one fatality occurred. I do not wish to minimise that one fatality. Obviously it was a tragedy when a 32-year old driver, Mr Mick Penny, was asphyxiated during an outburst in June 1985.

Clearly these events illustrate the need for mine safety. I am pleased to note that as a result of the Appin disaster and other incidents to which I have referred, an active program of drainage of methane gas is occurring in the southern coalfields. Mine deaths on a world basis regrettably are not rare. Between 1960 and 1970

throughout the world approximately 3,200 men lost their lives as a direct result of explosions in coalmines. In some countries the safety record is far less commendable than it is in Australia.

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The Hon. R. S. L. Jones: South Africa.

The Hon. R. D. DYER: South Africa is one example; the United States of America is another, particularly in non-union mines. In a recent court case in the United States Costain Coal Company pleaded guilty to 29 criminal charges stemming from the deaths of 10 mineworkers who were killed in a 1989 explosion at the non-union William Station mine in Kentucky. During the court proceedings arising out of that incident, the United States District Court learned that mine managers had kept a secret set of books that showed that the mine was plagued, almost constantly, by dangerous levels of methane gas for at least six months before the explosion occurred on 13 September 1989.

I am not suggesting that anything of that sort happens in this State, but it serves to illustrate that it is necessary to maintain vigilance, an appropriate level of mine safety and provision for an adequate and efficient mines rescue service. The objects of this bill are twofold: to provide for a rescue service capable of responding to, and dealing with, emergencies arising at underground coalmines in this State; and to enable the Mines Rescue Service to be used in connection with emergencies at other mines, that is at metalliferous mines as opposed to coalmines. Coalmines are more prone to incidents where rescue services are needed, because coal is a much softer mineral than other minerals to be found in various parts of the State, for example, in silver, lead, zinc and copper mines. Nonetheless, cave-ins and collapses of roof supports can occur in metalliferous mines.

It is important to note that rescue services that will be established by the bill will be able to be used at metalliferous mines as well as at coalmines. Opposition members have had meetings with the United Mineworkers Federation and the Collieries Staff Association. Those organisations believe that new legislation is required to replace the principal Act, the Mines Rescue Act 1925. Initially concerns were held about certain aspects of an earlier version of the bill that came before the Parliament. In subsequent consultations and discussions those concerns have been resolved. I am pleased that the Government has moved to accommodate the problems raised by the industrial organisations representing employees in the mining industry.

Part 2 of the bill establishes the Mines Rescue Board of New South Wales and provides for its constitution, functions and management. Part 3 deals with staffing matters. Part 4 relates to financial matters, and in particular the establishment of the Mines Rescue Fund. Part 5 establishes the New South Wales Mines Rescue Brigade, which is the crux or focal part of the bill, and provides for safety and rescue services. Part 6 deals with miscellaneous matters. Safety in the mining industry is regarded as a matter of great importance - and rightly so - by those engaged in the industry.

Regrettably, over the years substantial numbers of deaths have occurred in mines. Happily, in recent years there have been far fewer deaths than occurred earlier this century. It was as a result of the very poor safety record earlier this century that the first Mines Safety Board was set up and the principal Act was enacted in 1925 during the first Lang Labor Government, under the Secretary for Mines, the honourable Jack Baddeley. Various struggles occurred at that time but they led to the setting up of the Mines Rescue Service and effective mines safety legislation. Those days of considerable danger passed, but a danger still exists. However, the services to meet the danger are better than they once were. With those few words the Opposition warmly welcomes the legislation.

The Hon. R. S. L. JONES [6.2]: The Australian Democrats also warmly welcome the proposed legislation. Unquestionably, mining is a hazardous occupation. I, for one, would not wish to be a miner and go underground and face all the risks and problems associated with mining. As South Africa moves towards its first genuine democratic election it is appropriate to recall that 68,000 South African mineworkers have died and more than one million workers have been permanently disabled in accidents since 1900. In 1989, 735 died and more than 10,000 were injured; and in 1990, 677 mineworkers died and 9,852 were injured. They are appalling

statistics.

The Hon. R. J. Webster: Are they official figures?

The Hon. R. S. L. JONES: Yes, I understand they are. I hope that the South African mineowners will ensure that the number of deaths and injuries that occur in mines will be reduced. I suspect that at the moment in South Africa black lives have less value than white lives. I hope that will end in the next few days and that those horrendous figures will be reduced to reasonable levels.

Reverend the Hon. F. J. NILE [6.4]: The Call to Australia group is pleased to support the Mines Rescue Bill, the objects of which include:

- (a) to provide for a rescue service capable of responding to, and dealing with, emergencies arising at underground coal mines in New South Wales; and
- (b) to enable that rescue service to be used in connection with emergencies at other mines.

We are pleased that the bill has been drafted following negotiations with industry and the unions, especially those involved in the coalmining industry. Agreement has been reached to support the objects of the legislation and to repeal the 1925 Mines Rescue Act, which is now out of date and should be replaced with more modern legislation. The bill will achieve that aim. It will reconstitute the Mines Rescue Board, which will be a statutory body representing the Crown and as such will be bound by Acts such as the Ombudsman Act, Freedom of Information Act, Public Finance and Audit Act and Annual Reports (Statutory Bodies) Act.

Concern has been expressed that because the board will be financed entirely by industry, there may be less openness in its operations to meet the concerns of the mining unions. Because of the way the board

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will be constituted, those fears are not justified. It will be required to provide information under the provisions of the disclosure Acts to which I referred. The bill provides for a board of seven directors. Three directors, one of whom will be the mine manager, will be nominated by the New South Wales Coal Association to represent the interests of mineowners; three directors will represent mine employees, and of those one will be nominated by the Australian Collieries Staff Association and two by the United Mine Workers Division of the Construction, Forestry, Mining and Energy Workers Union. The seventh director will be a person nominated by the Minister, and will be chairman of the board.

The bill spells out the core functions of the board, which are that the services of the board must provide for underground coalmines. The bill provides also for additional discretionary functions in respect of rescue services for open-cut mines and metalliferous mines. Other honourable members have mentioned the tragedies that have occurred with the loss of life in the mining industry. I have never been involved with the industry directly, but I am sure that everyone is deeply moved when they read headlines of a tragedy having occurred in a mine where men have been carrying out their work obligations in what is a difficult and hazardous occupation. Not too many people would choose to be in that environment.

Anything that will give members of the various mining unions who work underground a greater sense of security and hope of rescue should be welcomed. Quite often when an explosion occurs in a mine there is sad and tragic loss of life among the men closest to the site of the explosion and other miners who are not directly in the vicinity of the explosion but in another part of the mine might still be able to be rescued. No money should be spared in attempting to rescue such workers. They should have an assurance that all possible energy and expertise will be used if required. I hope that such incidents will not occur but, if they do, those workers should have access to the best possible mine rescue facilities that will save as many lives as possible. For those reasons we are pleased to support the bill.

The Hon. R. J. WEBSTER (Minister for Planning, and Minister for Housing) [6.9], in reply: I thank all honourable members who have contributed to this important debate for their support of the legislation. I

commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

CRIMES LEGISLATION (UNSWORN EVIDENCE) AMENDMENT BILL

Second Reading

Debate resumed from 13 April.

The Hon. B. H. VAUGHAN (Deputy Leader of the Opposition) [6.10]: I speak to the Crimes Legislation (Unsworn Evidence) Amendment Bill. I inform the Attorney General and the House that on 13 April Mark Ierace, Public Defender, John Jacobsen, Chairperson of the New South Wales Council of Intellectual Disability, and Megan Scannell, Principal Solicitor of the Intellectual Disability Rights Service, wrote to the Attorney General. It is quite a long letter and I imagine that he recalls most of it. However, the paragraph that suits my purposes is the second paragraph and I remind the Attorney General that in that letter those signatories wrote as follows:

It appears from your [the Attorney's] press release and from comments made by you in recent media interviews that the dock statement will be abolished in all circumstances; that is, regardless of any disability that an accused may have, and regardless of the likely impact of that disability on the reliability of the accused's evidence. It is also now clear that your intention is that the dock statement will be abolished before the NSW Law Reform Commission completes its reference relating to intellectual disability and the criminal law.

Mr Deputy-President, if you will bear with me it is my desire to repeat that last sentence.

It is also now clear that your intention is that the dock statement will be abolished before the NSW Law Reform Commission completes its reference relating to intellectual disability and the criminal law.

At the last count the organisations that I am aware are in favour of retention of dock statements are the New South Wales Bar Association, the Law Society of New South Wales, the Council for Civil Liberties, the Redfern Legal Centre, the Aboriginal Legal Service, the New South Wales Society of Labor Lawyers, and the persons whose letter I have just read. Many honourable members would be aware that the criminal justice system in this country has been one of evolution. No longer do we decide the innocence or guilt of accused persons by seeing whether they sink or float, or how soon the wound heals, by jousting, or some other trial by ordeal.

Prior to the glorious revolution, as it was called, in 1688, magistrates in Britain examined the accused in court, but it was not upon oath and so did not result in sworn evidence by the accused. Furthermore, the accused was not entitled to be represented by counsel on charges other than misdemeanours until 1695, when that right was extended to include treason cases and, in 1836, all felony cases. The harshness of the law was slightly mollified by the fact that the accused was able to answer the charge "in his own words", and the first recorded use of an unsworn statement was in 1804. The practice was formalised by virtue of section 1(H) of the British Criminal Evidence Act 1898. However, the fact that dock statements emerged to fill a particular need in the British criminal justice system does not mean that dock statements do not have a place in the current system.

The right at common law to make a statement not on oath and not subject to cross-examination was instituted in New South Wales by section 470 of the Criminal Law Amendment Act 1883. This was re-enacted in 1900 by section 405(1) of the Crimes Act. Several slight amendments relating to asserted facts which are unsupported by evidence and in relation to

a complainant's prior sexual history in sexual assault cases have impinged slightly, but only slightly, on the use of unsworn statements. The relevant section of the current Crimes Act states:

Every accused person on his trial, whether defended by counsel or not, may make any statement at the close of the case for the prosecution, and before calling any witness in his defence, without being liable to examination thereupon by counsel for the Crown or by the Court and, after the prosecutor has addressed the jury or has declined to address the jury, may, personally or by his counsel, address the jury.

That right would be terminated by this bill. This is a matter of principle, and unsworn statements remain as an important plank in defending three key criminal justice principles. They are, first, that one is innocent until proven guilty; second, that the accused does not have to prove anything, but, rather, the Crown has to prove guilt beyond reasonable doubt; and third, that every effort should be made to avoid convicting innocent people. As long as those basic tenets of our judicial system remain, this Parliament, of which we are part, ought not be party to the removal of the rights of a defendant.

Dock statements are just one of the range of protections for what people describe as the less able or the disadvantaged in society. There is considerable anecdotal evidence to suggest that people with less than average education or literacy levels, that is, people lacking a complete command of the English language or those with mild intellectual disability, completely confused by their surroundings, may feel some pressure to inappropriately agree with skilful prosecution, thereby incriminating themselves. Therefore, if accused do not give sworn evidence, their sole means of expressing themselves to a jury is lost. As Mr Justice Isaacs explained in *Rex v. McMillan*:

The accused may be a nervous or weak type of person who may be easily overborne by a strong cross-examiner into saying things which may put an adverse complexion on his evidence.

An innocent person, therefore, may give the impression of lying as a result of nervousness or ignorance. This also applies to Aboriginal Australians. Indeed, linguists, social workers and criminal barristers will all attest to the fact that many Aboriginal Australians feel almost a cultural obligation to agree with people asking questions - and I have certainly seen that myself. This can plainly, and particularly, disadvantage a defence case. It is something that is of particular relevance to this group of people in the community because of their extraordinarily high rate of imprisonment - which impinges greatly upon Aboriginal people. Indeed, as of June 1993, 10.7 per cent of those in full-time custody in New South Wales were Aborigines, despite the fact that Aborigines represent just 1.1 per cent of the population in our State.

Following the abolition of dock statements in Western Australia and Queensland, the Aboriginal Legal Services Commission and the Western Australia Legal Aid Commission stated that abolition had clearly disadvantaged some Aboriginal defendants. In a 1985 New South Wales Law Reform Commission report into this matter some of the arguments in favour of the retention of dock statements were put explicitly: first, the unsworn statement "is one, and sometimes the only, means whereby the accused can actually participate in his or her own trial basically on his or her own terms"; the unsworn statement "gives every accused his day in court, and allows him to speak his piece, however likely it is to be accepted by the jury"; it also reinforces the principle that "an accused need not answer a single question unless he chooses".

Second, the usual techniques of cross-examination operate to restrict the accused in the way he or she would wish to present evidence. Recently I heard a most articulate, obviously well-read and extremely well-spoken person speaking to Andrew Olle on radio station 2BL about the problems of the disadvantaged in the making of unsworn statements. That person said, "Look, I chose to make an unsworn statement because I had something to put to a jury and I did not want some smart alec barrister interfering with my right and capacity to do so". Third, an unsworn statement is a recognition of the personal worth of the individual matched against the full majesty of the State. That is a phrase I have heard often in my legal career. I think it is not so much the majesty of the State but the awesomeness of the State which affects a person in the dock.

Fourth, there may well be legitimate reasons for not submitting to cross-examination. For example, there

may be matters unrelated to the alleged offence which the accused would prefer not to disclose; or the accused may not wish to admit facts that could destroy reputations or valued personal relationships. That could well evince the dobbing-in principle. Mr Peter Hidden, President of the Criminal Bar Association of New South Wales, and Murray Tobias, President of the Bar Association, put their arguments explicitly to me. They reiterated the concern of practising barristers in relation to Aboriginal Australians and the culturally and educationally disadvantaged. Mr Hidden said that many of our citizens, for cultural or social reasons, are unable to do themselves justice in answering questions.

There is so much talk about balancing the rights of victims and the accused. I know this topic is an emotional one, but I would be less than frank if I did not point out that there is no balance, nor is there supposed to be, between the accused and what is now called the victim or complainant, because the accused's liberty is at stake. As a consequence of that, it is a principle of our great legal system in Australia that the accused gets a little start, if I could put it that way, because the accused is the person on trial; the accused is the person whose liberty is at stake.

Unfortunately, the legal system has no method of consoling or rehabilitating the victim, the complainant. But there are means by which such a complainant may be compensated. That is another feature of our legal system. The dock statement is not an unchecked process. A trial judge can confine

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the statements to relevant material, and has always been able to do so. Mr Hidden and Mr Tobias finally put to me that any suggestion that unsworn statements create delays in litigation is absolute balderdash, and the facts support that. The President of the New South Wales Council for Civil Liberties echoed the points made by his colleagues and also quoted extensively from *Cross on Evidence*, a tome that every lawyer is familiar with. I quote from that work:

The accused, in a modern trial, is still at a disadvantage . . . He is seated in a place apart, in custody of court warders, he is referred to in the proceedings as the 'prisoner' or the 'accused', and even if his name is used, it is very often without the normal courtesy which is afforded to other witnesses. Indeed, the whole atmosphere is adverse to him.

The President of the Council for Civil Liberties also addressed a professed concern of the Attorney General stated:

It is true that there will be people who will abuse the right to make a dock statement, but in our society there are always people who abuse fundamental rights, but the opportunity for such abuse [in the case of unsworn statements] is limited and likely to rebound on the accused because judges can and do tell juries to ignore matters of which there is no evidence and by so doing reflect on the accused's veracity.

I emphasise that in 1991 only 1.4 per cent of people charged with criminal offences in New South Wales were tried by jury and thus had the option of making a dock statement. Most criminal charges are dealt with in the Local Court. Furthermore, I cannot conclude from the few remarks made by the Minister in his second reading speech that any case has been demonstrated for the abolition of this right. The Australian Law Reform Commission noted that the abolition of dock statements in Western Australia and Queensland had not had any appreciable effect on the conviction rate; that is, unsworn statements do not allow the guilty to go free.

Surely, therefore, the answer is to improve the current position. I suggest that to improve the current position, it is demanded of any legislation on this issue that judges be allowed to make fair comment on an unsworn statement made in a court. I suggest that the Crown, which is the community, and we are talking about the community versus Brown or Jones though we say the Crown - in America they call it the People - ought to be able to make appropriate comments on an unsworn statement. I also suggest that the trial judge ought to be able to stop a dock statement, an unsworn statement, if it goes on and on and on, or if it is absolutely vexatious.

Standing orders prevent my moving amendments in this regard. However, I propose to move that the legislation be referred to a select committee. I must say that in the event of this being unsuccessful, there is no

reason or point in our continuing in this Chamber; we shall withdraw at the appropriate time. But I must say that this fight will be fought, perchance more successfully, in the other place. This afternoon, the President of the Bar Council sent a fax to the parliamentary Leader of the Opposition in New South Wales. I intend to read it into the *Hansard*. This came at noon today:

Re: Dock Statement

1. Mr Maurice Stack, President Elect of the Law Society, has forwarded to me a copy of his fax to you dated 18 April, 1994 concerning the above subject. I am aware that he has forwarded a copy of his submission to the Shadow Attorney, the Independents and the Attorney-General.
2. The views expressed by Mr Stack accord with those of the New South Wales Bar Association. Accordingly, this Association supports the objection of Mr Stack to the abolition of dock statements for the reasons that he eloquently and persuasively exposes. It also agrees with the compromise amendment to which he refers but only as a last resort. The Association's preferred position is that the matter be referred back to the Law Reform Commission for further consideration and report.

The documents indicate that a copy of that was sent to the Attorney General and Minister for Justice, as well as to the honourable member for Ashfield, the honourable member for Manly, the honourable member for South Coast and the honourable member for Bligh. It is a sad day when one should even have to deal with this matter, but deal with it we shall. I move:

That the question be amended by the omission of the words "now read a second time" with a view to inserting instead:

(1) Referred to a Select Committee for consideration and report.

(2) That the Committee report in particular on the appropriateness of abolishing the right of an accused person to give unsworn evidence or to make unsworn statements in criminal proceedings.

(3) (a) That such Committee consist of seven Members comprising:

(i) 4 Government Members;

(ii) 1 Opposition Member;

(iii) 1 Australian Democrat Member; and

(iv) 1 Call to Australia Member; and

(b) That the Members of the Committee are to be nominated in writing to the President by the Leader of their respective parties.

(4) That the Committee have leave to sit during the sittings or any adjournment of the House; to adjourn from place to place; to make visits of inspection within New South Wales and other States and Territories of Australia; and have power to take evidence and to send for persons, papers, records and things; and to report from time to time.

(5) That should the House stand adjourned and the Committee agree to any report before the House resumes sitting:

(a) the Committee have leave to send any such report, minutes of proceedings and evidence taken before it to the Clerk of the House;

(b) the documents shall be printed and published and the Clerk shall forthwith take such action as is necessary to give effect to the order of the House; and

(c) the documents shall be laid upon the Table of the House at its next sitting.

(6) That the Committee report by 19 July 1994.

[The Deputy-President (The Hon. D. F. Moppett) left the chair at 6.36 p.m. The House resumed at 8.30 p.m.]

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The Hon. R. D. DYER [8.30]: Last week when the Attorney General made his second reading speech introducing the Crimes Legislation (Unsworn Evidence) Amendment Bill, he made what can only be described as remarkably brief comments in expounding the need for this legislation. One would have thought, having regard to the controversial nature of the measure, that it might have deserved some greater exposition than it received from the Minister. This evening I want to concentrate my comments on aspects of unsworn statements from the dock relevant to the rights of people with intellectual disability and also people suffering from forms of mental illness. Before I do that I was to refer in passing to some matters referred to by the Attorney in his second reading speech.

The Attorney asserted that, "In the context of a modern trial the right to make dock statements is both anachronistic and anomalous". That might be the Attorney's view. The Opposition takes the view that the dock statement needs evening up by some measures being put in place. If those reforms were put in place, there would be no need for the Attorney to characterise this existing right as anachronistic and anomalous. The Attorney remarked that the abolition of the right to make a dock statement will place the accused in no different position from that of any other witness. If that statement is limited to the rights of the accused to give evidence, as compared with the rights of any other witness to give evidence, that statement can be regarded as relatively true. However, what the statement overlooks is that it is the accused who is on trial and whose liberty is in jeopardy. That is not a circumstance that attaches to any other witness, to use the Attorney's phrase.

[Interruption]

The Hon. Dr B. P. V. Pezzutti will find that I will get through my remarks with much greater facility if I continue with my thought stream rather than divert to respond to whatever might come into the rather extraordinary mind of the honourable member. The Attorney also said:

In abolishing the right to make dock statements, it is aimed to remove the existing unchecked process whereby an accused can make unchallenged allegations and attacks on the character of witnesses and victims.

Earlier today the Opposition had in mind, if the standing orders so permitted, to move a suitable amendment in this Chamber to place a dock statement on a more even keel than might presently be the case. The Opposition intended to formulate and move an amendment that would have entitled not only the trial judge but also a Crown prosecutor to have a wide facility to respond to statements made by accused persons in the form of an unsworn statement from the dock. Sometimes people have characterised the unsworn statement as being made from a coward's castle. As unfair as that statement might be on many occasions, nonetheless circumstances have arisen where a statement has been made adverse to a particular witness, or other person, that has amounted to a scathing attack. Members of the Opposition prefer that rather than adopt the attitude of abolishing the dock statement this countervailing facility be vested in the hands of the trial judge and the Crown prosecutor.

The Attorney has said that one of the principal arguments used in support of the retention of the dock statement is that illiterate, poorly educated accused people or those from different cultural backgrounds, particularly Aborigines, may be seriously disadvantaged by the abolition of the right to make an unsworn statement from the dock. In responding to that argument he has said that difficulty is cured by virtue of the fact that most people are represented by lawyers. In these days of legal aid that is usually the case. But the fact that legal representation exists does not remove the perceived disadvantage if the person can be seen to have failed to give evidence when an expectation could reasonably arise that he or she might have done so. That disadvantage can partly be allayed by the facility available at the moment for an accused to make an unsworn statement from the dock. An accused is then in a position of at least articulating a response to an accusation.

The final matter to which the Attorney General referred in his second reading speech, brief as it was,

related to a dock statement perhaps being confusing to the jury in terms of the weight to be accorded to it and its status in relation to the evidence of other witnesses who have given evidence on oath or affirmation and been subjected to cross-examination. He added that under the current law no comment can be made on the accused's refusal to give sworn evidence, and the fact that the accused has the option to give sworn evidence is not revealed to the jury.

The Opposition had in mind to develop an amendment to give the judge and the Crown prosecutor the right to comment on that matter. The Opposition would have proceeded along those lines were it not for advice from the Parliamentary Counsel to the effect that the ambit of the bill does not permit us to do so. For that reason my colleague the Deputy Leader of the Opposition has moved, by way of amendment to the motion for the second reading of the bill, that the bill be referred to a select committee - on which the Government would have a clear majority and the Opposition would seek to have only one member - to report to the House on the bill. Far from that being a delaying tactic, the Opposition amendment seeks a short period in which the committee should report to the House, by a date in June. It cannot be suggested that the Opposition is seeking to stall the matter, even for a period of six months or any longer period as might be seen to amount to a defeat of the bill. The Opposition merely wants to have the bill examined in a context whereby appropriate amendments can be suggested.

The outcome of such a select committee inquiry might be that, the bill having been inquired into, the committee would report that it should proceed in another form. When making remarks about the form of the bill I should say that it is rather surprising, to say the least - it could be termed a pre-emptive

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strike - that the Attorney General has seen fit to present the bill dealing with this single issue, excised from a general consideration of matters that are equally relevant to the giving of evidence, particularly by people with an intellectual disability, that will be taken into account by the forthcoming Evidence Bill. The Opposition, and I believe interest groups in the community, had assumed that it was the intention of the Government to deal with dock statements within the context of the Evidence Bill. That intention is borne out by correspondence I received dated 14 April from the New South Wales Council for Intellectual Disability. I shall read on to the record that organisation's short letter, which is addressed to me. It states:

Council is seeking your most urgent action on the issues raised in the enclosed letter to the Attorney General, the Hon. John Hannaford. The issue of concern is the proposed intention to abolish the dock statement - the only opportunity of an accused to present to the jury without being cross-examined.

The abolition of the dock statement will then leave the Crown open to cross-examine the accused if they appear in the witness box. The effects of this on people accused with intellectual disability will be disastrous. It will potentially lead to their exploitation, and to inappropriate and unreliable responses.

We are further asking that you propose an amendment to the Evidence Bill 1993 (if this is the correct course of action) to retain the right of people with intellectual disability (and also people with a mental illness) to a dock statement.

Council awaits your response.

It is clear from the content of the letter that that peak body and interest group had an expectation that dock statements would be considered in connection with the Evidence Bill. To be totally fair, in an attached letter from Mr Mark Ierace, Public Defender, endorsed by Ms Megan Scannell and Mr John Jacobsen, principal solicitor of the Intellectual Disability Rights Service and chairperson of the New South Wales Council for Intellectual Disability respectively, reference is made to the fact that the exposure draft of the Evidence Bill 1993 contains what the writers describe as valuable reforms that will allow more intellectually disabled people the option of giving evidence by the relaxing of the competency rules in clause 12. The letter points out also that the reliability of the evidence of intellectually disabled witnesses will be enhanced by the trial judge's discretion to disallow leading questions where the witness has, inter alia, an intellectual disability, and to make orders as to the presence and behaviour of persons in connection with the questioning of witnesses. The giving of evidence in chief in narrative form is also of benefit to such witnesses.

It may well be the intention of the Government at a subsequent stage to address, partially at least, the particular needs of people having intellectual disability. That makes it all the more surprising that the Government has seen fit in what I have described as a pre-emptive strike to remove the right of a person to make an unsworn statement from the dock. The letters to which I have referred are not the only correspondence I have received expressing concern about the abolition of unsworn statements from the dock. Earlier today I received a copy of a letter dated 19 April from the Mental Health Co-ordinating Council Inc. to the Attorney General. That letter, which is quite short, should also be placed on the record. It reads:

The Council is aware of the Government's proposal to abolish the dock statement and wishes to draw your attention to the implications of this for people with a psychiatric disability.

Some people with a psychiatric disability have particular difficulties in giving evidence in criminal trials. The process of cross examination, difficult as it is for every one who is subjected to it, may be extremely stressful and could exacerbate a mental illness. A person may be taking medication which makes it difficult for him/her to concentrate on complex proceedings; he/she may be very nervous and unable to articulate an appropriate response to questions. A jury may not be aware of the reasons for this.

The Council considers that the abolition of a dock statement in these circumstances would disadvantage persons with a psychiatric disability and urges you to reconsider your proposal to abolish the dock statement in toto and grant an exemption for certain categories, including those whom we represent.

Yours faithfully,
Yvonne Shipp
Chairperson.

On the one hand concerns have been expressed by a peak body representing the intellectually disabled and, on the other hand, by a peak body representing those suffering from mental illness, regarding the consequences if dock statements are abolished, having in mind the particular needs of those categories of people. I should deal briefly with a matter I had intended to raise earlier. Apart from having in mind to move amendments that would give Crown prosecutors and presiding judges the right to comment on dock statements and allegations made in them, the Opposition intended also to meet an objection raised by the Attorney General, by moving an amendment to deal with a particular form of mischief to which he referred - not in his second reading speech but at an earlier stage. I understand he mentioned a specific trial in which an accused abused the forms of the court by making a dock statement that extended over many days.

If that were the case it would seem to me to be an abuse of the court process. The Opposition, having considered that particular remark of the Attorney General, would intend, if permitted by the forms of the House - and unfortunately it cannot do so - to move an amendment to the effect that the trial judge should have the discretion to terminate a dock statement where it assumes an undue length or where, indeed, it becomes vexatious. That would seem to cure the mischief referred to by the Attorney General regarding that particular form of abuse.

The advice I have received on the incidence of intellectual disability, a borderline disability or a mental illness in the criminal justice system in the sense of dealing with trials is that in approximate terms one in 10 accused come within one of those categories, that is, they have an intellectual disability, a borderline disability or a mental illness. I must say

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that over the years I have been a member of Parliament, and even before, I have made it my business to visit prisons from time to time. It is apparent that a substantial number of people in prisons undoubtedly suffer from intellectual disability - and mental illness in some cases, although I feel less comfortable in diagnosing those people.

However, it is clearly the case that many such people pass through the criminal justice system and that due account needs to be taken of their special needs. The Public Defender, Mr Ierace, along with the New South

Wales Council for Intellectual Disability, in correspondence addressed to the Attorney General of 13 April, made an assumption that the Government's move regarding unsworn statements from the dock would occur in the context of the proposed evidence bill. That clearly is an ill-founded assumption, as events have turned out. The Public Defender also, quite justifiably, noted that it is now clear that the Attorney's intention is for the dock statement to be abolished before the New South Wales Law Reform Commission completes its reference relating to intellectual disability and the criminal law.

I should have thought that that is putting the cart before the horse and that at the very least the Government ought to have awaited the final outcome of that reference and inquiry by the Law Reform Commission before it embarked on what I have described more than once during these remarks as a pre-emptive strike to abolish the unsworn statement from the dock. The Attorney has referred to this right as having been abolished in various other jurisdictions in Australia and also in the United Kingdom. I understand that in the State of Victoria abolition occurred a little more than 18 months ago.

I was asked by another honourable member immediately prior to the dinner adjournment whether any studies were available about jurisdictions where the right to make an unsworn statement has now been abolished and the impact that has had on people who hitherto had the right to make an unsworn statement from the dock. It appears to be the case that no such follow-up studies are available, so this Legislature is groping in the dark in trying to determine what the impact might have been. It is highly regrettable that honourable members do not know the consequences, adverse or otherwise, of the abolition that is contemplated in this State. I should have thought that the argument would be much more sound if that material were available.

In England the right to make an unsworn statement has been abolished. I am advised that English legal practitioners commonly advise accused in criminal cases to maintain their right to silence, given that they can no longer give unsworn statements from the dock and that they do not wish to subject themselves to the giving of sworn evidence and subsequent cross-examination. In that circumstance it is more than reasonable to state that an adverse inference is often drawn from the failure of such a defendant to give that evidence. Defendants who suffer from an intellectual disability or a mental illness or defendants from a disadvantaged social background - Aborigines are a prime example - are not verbally competent and cannot cope with cross-examination. I know from my work as a member of the Board of Governors of the Law Foundation, representing the Leader of the Opposition -

The Hon. Dr B. P. V. Pezzutti: Are they making dock statements?

The Hon. R. D. DYER: No.

The Hon. Dr B. P. V. Pezzutti: What does that have to do with dock statements?

The Hon. R. D. DYER: If the honourable member would remain silent for just a moment, he might find out. An academic at the University of New England is proposing to carry out a study of the extent to which Aborigines verbalise themselves in court and are capable or incapable of communicating in a formal environment. We are led to believe - although the grant has not been made in final form to date - that Aborigines suffer unusual impediments when compared with mainstream society.

The Hon. Dr B. P. V. Pezzutti: What a racist thing to say!

The Hon. R. D. DYER: It is not racist at all.

The Hon. Dr B. P. V. Pezzutti: It is so.

The Hon. R. D. DYER: Not at all.

The Hon. Dr B. P. V. Pezzutti: Some Aborigines might, but it is not a racial thing, surely.

The Hon. R. D. DYER: Many Aborigines, other than those who are highly educated, such as Charlie Perkins, find great difficulty in coping with the giving of evidence.

The Hon. Dr B. P. V. Pezzutti: Charlie Perkins is on radio all the time. He never shuts up.

The Hon. R. D. DYER: I am not going to be confused by the inane interjections of the honourable member. I am conceding that Charlie Perkins is an intelligent and well-educated person, but I am saying that many Aborigines are not in that fortunate position. They cannot cope with cross-examination or with verbal communication at a relatively high and formal level. That is the only point I seek to make in that regard. Mr Ierace said also in regard to Aborigines and people with intellectual disability:

Some people with an intellectual disability are notorious for responding to authority figures in a way that they think the questioner wants them to respond, regardless of the truth. A barrister in full regalia would certainly be interpreted by them as an authority figure.

That is a matter of concern.

Mr Hannaford: It does not argue prohibition of wigs and gowns, does it?

The Hon. R. D. DYER: I think we have enough on our plate without embarking on serious matters such as wigs and gowns. I shall not go into such a matter of grave controversy. I should confine

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myself to relatively simple matters such as unsworn statements from the dock. I will get into deep water if I start dealing with wigs and gowns. I ask the Attorney General and the Government to take into account the particular needs of people with intellectual disabilities. Mr Ierace made the point in his correspondence to the Attorney General that intellectual disability is not within the everyday experience of most people. However, it is certainly within my experience as shadow Minister for Community Services because I deal with disability groups all the time and I can recognise intellectual disability by and large. Most people do not have that sort of week-to-week contact with it.

My purpose in making that comment is that a jury might well not recognise the signs and might not realise the disadvantage affecting a particular person, so that extreme nervousness, hesitancy in answering questions, sweating, the use of very simple language and similar signs might not be recognised by a jury as being consistent with intellectual disability. A jury might be much more capable of believing that these are signs of guilt or defensiveness rather than signs of the actual intellectual condition of the accused. Even if some special provision is made in the forthcoming evidence bill for intellectual disability, the Opposition would still retain a concern about borderline cases, those who are somewhat above the point below which a person can in truth be said to be, in a formal sense, suffering from an intellectual disability. I conclude by putting on the record the penultimate paragraph of Mr Ierace's letter:

There is a grave responsibility on lawmakers to ensure that legislation which is intended and designed for people falling within the norm does not impact with gross unfairness and injustice on the significant minority of accused persons who are at the lower end of the intelligence spectrum. The proposed removal of the dock statement would be a devastating setback to the cause of justice for these people. I urge you to recognise that the Evidence Bill reforms will not overcome the difficulties for these people, to therefore retain it for them at least on an interim basis, and to expand the NSW Law Reform Commission's current reference to explore the various issues outlined above as part of its current report.

I feel deeply that we have a special responsibility to act in the true interests of people who have such a disability. Their special needs must be taken into account. The Opposition, were it in a position to do so, would move amendments to the bill, if permitted by standing orders, to give a right of comment on the contents of dock statements to both judges and crown prosecutors. The Opposition would also seek to give judges the right to exercise discretion in terminating a dock statement when an abuse of process of the court is occurring. However, it is not open to the Opposition to do that this evening. In lieu of that, the Opposition's fall-back position is to refer the matter to a select committee and recommend a short reporting date. If the Opposition fails in that regard in this place, it foreshadows that it will seek to do something similar in another place by

referring the bill to a legislative committee. If the Opposition fails here, it may well succeed in the other place.

The Opposition is not seeking to obstruct the Government, but there is a grave responsibility on all honourable members in regard to this matter. It is not good enough to say that dock statements have been abolished in various other jurisdictions. New South Wales is the largest State in the Commonwealth of Australia. This State has more than 50 per cent of trial work in the higher criminal courts. That being the case, we have a public duty to ensure that trial procedures in this State are the best and fairest that we can possibly make them.

The Hon. S. B. MUTCH [9.5]: I wish to speak briefly on behalf of the Government to the Crimes Legislation (Unsworn Evidence) Amendment Bill. The venerable Deputy Leader of the Opposition moved that a select committee should be established. However, I suggest that the honourable member should include Fiji, South Africa and Eire on the agenda for that select committee - and perhaps I might be included in its membership - because those are the only countries that come to mind that have retained unsworn dock statements. Dock statements were abolished in Queensland in 1975, in Western Australian in 1976, in the Northern Territory in 1983, in South Australia in 1985 - when John Bannon was Premier - and in Victoria and Tasmania in 1993. The Labor Party has produced its Jurassic Park of eminent lawyers. Last year I briefly visited the House of Lords, where members refer to a Queen's Counsel as "my learned and honourable colleague". I have actually preceded my learned and honourable colleague, the Hon. J. W. Shaw, in this debate. I shall be as interested to hear his dissertation on the subject, as I was that of the Deputy Leader of the Opposition.

I give credit to the Deputy Leader of the Opposition for having read some classic textbooks. The Parliamentary Library has produced excellent briefing notes, one of them entitled "Unsworn Statements of Accused Persons - the Case for and Against Abolition", by Gareth Griffith. These notes could be tabled almost as a brief. I could table arguments for abolition, the honourable member opposite could table those against, and we could all go home. The 1956 fifth edition of Plunkett's *Concise History of the Common Law* is referred to in the Parliamentary briefing note. I presume that the Deputy Leader of the Opposition read the first edition, but he is arguing for an anachronism in the face of the overall move by the Government to streamline judicial and litigious processes. The Government wants to increase the efficacy of trials but also to protect the interests of all involved. Eminent people have expressed views against dock statements. For instance, Mr Justice David Yeldham said:

The real problem with unsworn statements is that the scales of justice are unevenly balanced. They are unevenly balanced against the victim, against the community, against the Crown and in favour of the accused.

The Government believes - and is prepared to put its money where its mouth is - that the right and unfettered ability of an accused to make unchallengeable attacks on the character of witnesses and victims has outworn its usefulness. The

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Government has proposed a number of changes to the rules of evidence, and that proposal must be seen in context. I do not wish to take up the time of the House. I anticipate that the Hon. Elisabeth Kirkby will be speaking at length on this issue for she has indicated to me that it is of interest and concern to her. A select committee has been proposed. Save us, please, from another committee that we do not need. There is plenty of time for the House to debate this matter in detail and for the Committee of the Whole to consider its details. I am sure the Opposition will come forward with appropriate amendments as it sees fit.

To propose the establishment of another committee just adds to the interminable process of committee upon committee, which is starting to hamstring the workings of this Parliament. Someone should help us. If the Lower House establishes a legislation committee, that will make it even worse. If Opposition members have concerns about the bill, I implore them to move amendments and use this House as a House of review to convince honourable members of the merits or otherwise of their arguments. I support the bill.

The Hon. J. W. SHAW [9.11]: I support the Opposition's amendment to refer the bill to a select

committee. The difficulty about the course suggested by the Hon. S. B. Mutch is that the sorts of qualifications that the Opposition would think it appropriate to impose upon the continued right to make a statement from the dock are not the sorts of matters, as the Opposition understands it and as it is advised, that could be dealt with by amendments to this bill. It is overwhelmingly likely that they would be regarded as matters outside the scope of the bill. Because of that, it seems to the Opposition that a committee ought to look at the question to see whether there ought to be certain restrictions and qualifications or additions to the power of judges that should be inserted, combined with the continued existence of the right to make an unsworn statement from the dock.

It can hardly be said that this matter is urgent. The issue has been the subject of political debate for decades. The Liberal Government in 1974 sought to eliminate or abolish the right of an accused to make a statement from the dock, and that move was successfully opposed in the Parliament. I want to put a short argument in favour of the retention of the unsworn statement from the dock but accept that there may well be a need to strengthen judicial discretion in order to curb or eliminate any abuse of that right. It is obvious that this is a longstanding component of the criminal justice system in New South Wales.

My colleagues the Deputy Leader of the Opposition and the Hon. R. D. Dyer have referred to the history and the nature of this right. It seems obvious then that the Government, in seeking to abolish this longstanding right, needs to make out a case for its abolition; that is, it needs to demonstrate that it is not a useful and appropriate part of the criminal justice system in New South Wales. It seems to me that the Government has failed to do so. What we are dealing with is simply the right of a defendant who is in jeopardy of conviction and penalty to address the jury. That is a separate and distinct right from the right to give evidence on oath and the right to silence. We are dealing here with a separate and distinct right. The case has to be that it is that right that is in some way damaging to or out of kilter with the principles of the administration of criminal justice in New South Wales.

What is the Government's case? First of all it says that the right is an old one, it is an anachronism. That is a neutral proposition. What is old may be good or bad. It seems that the Liberals, the modern Tories, want to take away many institutions that are traditional safeguards of freedom and equality in this society, without there being any real case for that sort of radical change. To say that something is old is irrelevant. It is not even the beginnings of a case that dock statements ought to be abolished. After all, the right of silence is similarly old. Many aspects of our democratic society are ancient, but that is no sort of basis for the abolition of those rights. Second, it is said that the right to make an unsworn statement from the dock does not exist in many other places. So what? If it were a bad practice, a bad institution, it should not worry this House that it was a widespread phenomenon; if it is a good thing, a useful thing, it is irrelevant that it is rare or not found in many other countries.

The Parliament's task is to formulate a criminal justice system that works well in New South Wales, to consider what is appropriate for our needs and not to be swayed unduly by what exists or what does not exist in other jurisdictions in Australia or elsewhere in the world. Third, the Government says that this right helps guilty people to be acquitted and that it gives them some sort of free kick in the criminal litigation process. One problem for that argument - and naturally there are many problems with it - is that the empirical material simply does not bear it out. A research paper has been circulated amongst members today written by an experienced solicitor in the office of the Director of Public Prosecutions - Janice Spacey. In her research paper she deals with the statistical material concerning statements from the dock in District Court proceedings. She concludes:

There was no significant difference in the conviction rate of accused persons who gave sworn evidence in the Sydney District Court in 1992, and those who made unsworn statements.

In other words, the data simply does not bear out the proposition that the giving of an unsworn statement from the dock in some way unduly advantages a defendant in a criminal trial. My investigations indicate that defendants who make irrelevant, scurrilous or silly addresses to the jury tend to persuade the jury that they ought to be acquitted. Experienced defence lawyers strongly advise defendants not to say untenable or scurrilous things to the jury because it is counter-productive. There is the real problem that the Hon. R. D. Dyer specifically addressed of uneducated and inarticulate people where the defence rightly takes the view that it

would be

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dangerous and perhaps catastrophic to put people like that in the witness box and have them cross-examined by the Crown prosecutor. This is a residual right which particularly deals with the problems of such people.

The Aboriginal Legal Service sent out a statement today, and Mr Paul Coe, the chairman of the service remarked upon the notion of the unsworn statement from the dock in so far as it assists Aboriginal defendants. I shall not quote the whole of his statement. He said, in part, "the confusion of an Aboriginal person confronted by a skilled prosecutor can easily be misconstrued by a jury as an indication of guilt". If, as is presumably the case, there can be abuses of this right, those abuses should be dealt with by judicial discretion. The judge ought to have the right to terminate an excessively long unsworn statement from the dock. The trial judge, I believe, should have the right to give a reasonable and guarded direction to the jury explaining the legal position.

I do not mean that the judge should make an inflammatory statement or a statement that would be unduly prejudicial to the defendant who chooses to take up his legal right. However, I do think that the trial judge ought to be able to explain clearly and objectively to the jury the exact position and the fact that the defendant had the right to give sworn evidence but elected, as was his or her legal right, to make a statement from the dock. That will be no more than the objective fact, and I think that if that needs legislative amendment or reinforcement, it would be perfectly appropriate for the Government, and or this Parliament, to place those sorts of propositions in the legislation. This matter was studied in great detail by the New South Wales Law Reform Commission, which reported on the question of unsworn statements of accused persons in October 1985.

The commission was chaired by the Chairman of the New South Wales Law Reform Commission, Mr Keith Mason, the present Solicitor General. Many eminent and experienced people participated in that extremely thorough review of the right of a defendant to make an unsworn statement from the dock. Members of this House would do well to consider carefully that detailed report of the Law Reform Commission. I want to quote only one aspect of the conclusions of the Law Reform Commission that appear at page 35 of the document. The commission says that it had concentrated its attention upon whether the present rules constituted a fair balance - fairness in this sense being measured against the principles referred to earlier. The Law Reform Commission said it considered the position to be somewhat unsatisfactory in a number of respects - some of which I have mentioned - where it was regarded as not proper for the judge to explain to the jury the legal position about a statement from the dock. The Law Reform Commission continued, in paragraph 4.3 on page 35:

. . . we are unanimous in concluding that an accused person should retain the right to present his or her case in a manner that is reasonably free from formal restraint and without exposure to cross examination.

If the Government wants to change that considered view of the Law Reform Commission it should give the current Law Reform Commission a further reference to reconsider the matter. The Parliament should not simply sweep aside the considered view of the commission in this respect. I conclude with a brief reference to the debate which occurred in the Parliament about 20 years ago when the then Liberal Government sought to abolish this right. Our distinguished President of this Chamber, the Hon. M. F. Willis, said in the debate on 27 March 1974:

In my view, although it is an anachronism in the modern context and has been abolished or rendered nugatory in most parts of the English legal world, it does not work any great mischief as I see it. And if to retain it would put at ease those who believe it to be a most valuable right then I personally would retain it.

So said the Hon. M. F. Willis. I do not think anything has happened in the two decades subsequently to reject that acquiescence in the maintenance of the existing right. The late Hon. D. P. Landa made a fiery speech in defence of the right. It is a lengthy speech and, as I read it 20 years later, a very effective speech in defence of the unsworn statement from the dock. It would be easy to quote large slabs of the speech but I simply quote Mr Landa's conclusion. Speaking of the removal of that right, he said:

It will most affect the ill-educated, the poor, the sick, the ill equipped, the stupid and the misguided.

That is right. Perhaps it is unkind to describe some defendants in that way, but in the real world we know some of those labels are appropriate. It is a right which, if removed or abolished, will disadvantage some of the poorer and most ill-educated members of society who simply want to get their point of view over to the jury in a free and uninhibited way. If they overstep the mark, if they launch untoward attacks upon witnesses, overwhelmingly the jury is likely to regard that as counter-productive and is likely to convict. Therefore, in the absence of any evidence that this right leads to a significant degree of acquittal of people who are otherwise clearly guilty, the right should remain; albeit qualified in the way that I and other Opposition speakers dealt with earlier.

The Hon. ELISABETH KIRKBY [9.23]: On behalf of the Australian Democrats I oppose the Crimes Legislation (Unsworn Evidence) Amendment Bill. I am supported in my opposition by all the learned legal bodies in this State. As has already been mentioned by the Deputy Leader of the Opposition, it is opposed by the Bar Association, the Law Society, the Council for Civil Liberties, the Australian section of the International Commission of Jurists, of which I am a council member, and the Redfern Legal Centre; and, of course, it has received very strong opposition from the New South Wales Council for Intellectual Disability. I was also interested to hear what the Hon. J. W. Shaw said about the attempts that were made in 1974 to abolish the unsworn dock statement.

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It is a tragedy for this House, and a tragedy for the Opposition, that they are not in a position to call on the wisdom of the late Hon. D. P. Landa. It is possible that if they were, they would not be taking the stand on this legislation that they are taking at the moment and attempting to fudge the issue by moving an amendment to refer this legislation to a select committee of this Parliament. Perhaps if the Hon. Paul Landa were still with us, they would have opposed it outright, which they very well know they should do. I am convinced that all members of the Opposition who are lawyers know that is what they should be doing. I place on notice now that when the Opposition moves its amendment to refer this legislation to a select committee, I shall not support it.

The issues raised by the bill are complex, but it is essential that we separate emotive arguments and purely rhetorical statements from the heart of the matter. I see the unsworn dock statement as the means by which an accused may put himself directly before a jury in a manner which is not controlled by either defence or prosecution counsel. This function is an important one because there are many imperfections in our system of justice and many ways in which an accused may be disadvantaged during the so-called normal functioning of the criminal justice system. The unsworn dock statement continues to perform a most valuable function precisely because it has gone beyond its historical origin. I do not believe, as the Attorney General has argued, that it is an anachronistic criminal privilege.

If the bill is passed, an accused person will have only two options: either to remain silent during the trial or to give sworn evidence which will be subject to cross-examination. There are many valid reasons why the accused will not take up either of those options. The foremost of those reasons is that he or she may be overawed by the cross-examination. As the Deputy Leader of the Opposition has already pointed out, Justice Isaacs, in *Rex v. McMillan*, argued that the accused may be a "nervous or weak type who may be easily overborne by a strong cross-examiner into saying things which may put an adverse complexion on his evidence".

The New South Wales Law Reform Commission notes that misunderstandings arise during cross-examination due to the use of legal jargon, ambiguous words and expressions. This misunderstanding has an impact particularly on people of non-English speaking backgrounds, who may not have an adequate grasp of the English language and may be more easily intimidated. There is also the important issue of the impact of cross-examination on Aboriginal people. This is something that I could not ignore. Particular difficulties that members of the Aboriginal community have with the legal justice system have been extensively documented by Dr Diana Eades in her book *Aboriginal English and the Law*. Dr Eades argues:

Often it seems that the Aboriginal person thinks that if they agree with whatever the non-Aboriginal person in authority is suggesting, then they will get out of trouble more quickly. The agreement is made regardless of either an understanding of the question or a belief about the truth or falsity of the proposition being questioned. Thus, it does not necessarily mean that the Aboriginal person agrees with the proposition.

During hearings before the Royal Commission into Aboriginal Deaths in Custody anthropologist Chris Anderson commented:

My observation was that it was the rule rather than the exception that witnesses misunderstood questions.

I am genuinely concerned that the abolition of the unsworn dock statement will affect the most disadvantaged in our society. Many arguments have been put forward by the Attorney General in support of abolishing the dock statement, but I am not convinced by them. I have already said that I do not accept that the unsworn dock statement is an anachronism. I do not accept also that we should abolish it simply for the sake of uniformity. It is also dubious whether documents cause delays, as the majority of them are very brief. I would go further and say that I believe that the Australian States that have abolished dock statements might well consider reintroducing them. This was made clear to me in a letter dated 13 April addressed to the Attorney General as the Minister responsible for corrective services, which I received today from the Public Defender. That letter states in part:

It appears from your press release and from comments made by you in recent media interviews that the dock statement will be abolished in all circumstances; that is, regardless of any disability that an accused may have, and regardless of the likely impact of that disability on the reliability of the accused's evidence. It is also now clear that your intention is that the dock statement will be abolished before the NSW Law Reform Commission completes its reference relating to intellectual disability and the criminal law.

The letter continues that the Public Defender seeks to bring to the attention of the Attorney General "some consequences of the abolition of the dock statement for those accused who have an intellectual disability". Again I quote:

Over recent months you have frequently justified the proposed abolition of the dock statement by stating that it has already occurred in most other jurisdictions, notably in England. Of course the implication is that abolition has done no harm to the cause of justice in these other jurisdictions.

Communications by me with English practitioners over the last few days indicate that in England, when a barrister has a client who is considered vulnerable (that is, one who is likely to be unfairly pressured during cross-examination as a result of mental illness or intellectual disability), the client is regularly advised that he or she would actually be better off not to give evidence and simply remain silent before the jury, as damning as that might be.

The letter continues:

What sort of justice is this that we are to follow, when in the case of many intellectually disabled accused, they're damned if they do give evidence, and they are damned if they do not?

The letter also states:

As for the abolition in the Australian jurisdictions, it appears from inquiries that the volume of criminal trial work in NSW probably exceeds that of all the territories and other states combined. Given that the dock statement was

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abolished in Victoria relatively recently (approximately 18 months ago), it could hardly be said that there exists a body of local experience as to the consequence of abolition for vulnerable people. Inquiries made by the NSW Intellectual Disability Rights Service over the last few days have revealed a complete absence of research on how intellectually disabled accused elsewhere in Australia have fared since the abolition.

In view of the English experience, the absence of any research, and the following three major problem areas, it is inappropriate to assume that the abolition of the dock statement elsewhere has not impacted adversely on such accused people.

Firstly, as noted above, in England, accused people with an intellectual disability are often advised to remain silent. This course in Australia, however, will impede their option of relying on the expert evidence of psychologists and psychiatrists, which may be relevant to issues such as whether questions asked by an interrogating police officer could have been understood by the accused, whether the accused had the intellectual capacity to understand the right to silence and whether the accused's disability makes available various defences, such as the M'Naghten defence.

To the extent that such evidence is based on the history gathering, skilled questioning and the administration of tests by the expert in conference with the accused, it is necessary for the accused to formally state to the court that what has been said to the expert is the truth. At present this can be done either during a statement from the dock or during the course of sworn evidence. Without that verification, the expert's evidence would be withheld from the jury, because the history would be inadmissible hearsay and the opinion would thus be of no weight.

So if the accused cannot make a dock statement and does not enter the witness box, he or she is effectively abandoning the defence, or challenge to the confessional evidence, even though it is in fact unreliable. If he or she does go into the witness box to formally prove this evidence by giving sworn testimony, then cross-examination at large is open to the Crown, which leads to the second concern.

The intellectually disabled person might not be able to cope with it. I would like also to place on record that those who may be affected are not only of non-English speaking background and not only members of the Aboriginal community. They may also be people who have dementia, as do, regrettably, some of the older people in our community nowadays, people who suffer from brain injury, people who suffer some mental illness, or people with borderline intellectual disabilities. A letter I have from Mr Ian Barker, President of the Criminal Bar Association, states the matter cogently. He talks about people who are most disadvantaged in these words:

Often such a person may have a good defence but would have difficulty in effectively articulating it.

I believe all those matters should be taken into account. The one argument to which I had to give much thought was that which suggested that the unsworn dock statement is "an unchecked process whereby the accused can make unchallenged allegations and attacks on the character of witnesses or victims". The process is not unchecked, as section 409C of the New South Wales Crimes Act already provides that there is a limitation on dock statements in certain sexual offence proceedings. Section 409 states that where an accused person makes an unsworn dock statement, he may not make reference to the complainant's prior sexual history except to the extent that evidence on that subject would have been admissible had the accused given evidence on oath. If the accused breaks this rule the judge shall tell the jury to disregard the prohibited matter. That is to be found in section 409C(2), which states:

Where a person has made reference, in a statement made under section 405, to a matter which would not, by virtue of section 409B, be admissible if given on oath, the judge shall tell the jury to disregard that matter.

It is already possible under the Crimes Act for victims of sexual assault to be protected if the perpetrator of an assault wishes to attempt to blacken a victim's character by making totally unfounded statements. Nevertheless, it is true that the unsworn dock statement is still often used to attack the character of witnesses. Of course, this usually occurs in sexual assault cases. Why judges are not taking advantage of section 409C(2) of the Crimes Act is something that perhaps the Attorney General might further investigate. If that happened, perhaps we would have no need for this legislation.

The argument put forward in favour of abolition is that the rights of the victim are sacrificed to the rights of the accused, since the victim must undergo cross-examination whereas the accused does not. Some women's groups also argue that even under section 409C the judge may only intervene after the accusation has been made. Obviously I agree wholeheartedly that it would be distressing and is distressing for women to have

comments made in open court about their character. However, I feel that political mileage is now being made of their distress. We must separate emotiveness from the principles at stake. I believe that Dr Jocelyne Scutt, who is well known as a feminist lawyer, did an exemplary analysis of the situation in a minority report she issued as part of the 1985 report "Unsworn Statements in Criminal Trials" by the Law Reform Commission of Victoria. On page 31 of that report Dr Scutt argued:

If the unsworn statement were abolished it would not mean that a defendant would have to give evidence and be cross-examined. He could remain silent - whilst the woman victim continued to be harshly treated through cross-examination. Suggestions that the woman is lying, that she is "sexually loose" or promiscuous could continue to be made . . . The women's movement (and the general community) might even be more affronted if the defendant remains silent altogether, while the victim witness is questioned. The victim witness will be stringently cross-examined whether or not the defendant gives an unsworn statement, a sworn statement, or remains totally silent.

Further on in her minority report Dr Scutt continues:

This is not a problem about unsworn statements or defendants who are not subjected to cross-examination. It is a problem of traditional attitudes and the conduct of cross-examination of victim witnesses, the failure of the prosecution to object to irrelevant questioning, and the failure of judges to control irrelevant questioning and inadmissible evidence in their courts. It is also a problem of judges failing to put defendant's character in evidence when he unrelentingly attacks the character of the victim witness, even outside traditional bounds. That a victim witness in a sexual assault or rape case can be stringently cross-examined, in a destructive manner, is not linked to the fact that she is a victim, necessarily, but to her role as a woman.

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I have quoted Dr Scutt extensively because I feel that her arguments strike at the heart of what we are dealing with. Women suffer at the hands of the justice system. Their distress will continue regardless of whether the dock statement is abolished at the expense of accused people who come from the most disadvantaged groups in our society. Dr Scutt also warns that women and other disadvantaged groups may also be the accused and would suffer from not being able to make a direct statement to the jury. Dr Scutt further says:

The warning for those having genuine concerns about persons from disadvantaged groups is to recognise that members of those groups are not only potential victims of crime but may be accused of crimes. Not to acknowledge this will certainly place at risk some members of the group or groups to which they belong, or for which they hold a brief.

There were two women on the 1985 New South Wales Law Reform Commission inquiry into unsworn dock statements: Her Honour Judge Jane Mathews and Miss Deirdre O'Connor, who both rejected abolition. I believe that the problem that faces victims who may be victims because they are accused of a crime is something that should be taken into account by the New South Wales Child Protection Council. On this issue I discovered this statement in the New South Wales Child Protection Council "Newsletter" of March 1984:

The Council's Position Paper on Unsworn Statements (dock statements) identifies the main arguments for their abolition.

...

The Paper says that: "To continue to apply the use of unsworn statements is in the Child Protection Council's view archaic and has no place in a modern criminal trial".

In analysing the current position in NSW, the Paper said: ". . . legislation relating to criminal proceedings presently allows for the continuation of the inequalities of power between the defendant and the child victim which were present at the time of the abuse. The child giving evidence is vigorously examined by the counsel for the prosecution, counsel for the defence, and the bench, as to the content of their evidence and the truth of their testimony. The accused retains the right to silence, the right to give sworn evidence, and the right to provide from the dock an unsworn statement which cannot be challenged by cross-examination. The direction from the bench to the jury cannot question the truth of what the accused has said".

I place on record that the New South Wales Child Protection Council ought to consider the situation where the accused may be a child. Because of the inability to cope with proceedings of the court a child should also have the right to explain simply to the court what the defence is without being harassed by cross-examination. The suggestion that the unsworn dock statement will only help the so-called victim and will be abused by the accused is an argument which we should dispel. I believe also that it is a very great mistake to equate the accused and the victim with two private parties in a civil dispute. As David Brown, Associate Professor in the Law Faculty at the University of New South Wales, points out in an article "Silencing in Court" published in *Civil Liberty*:

The state funds and conducts the trial and calls the prosecution witnesses on its behalf. If convicted, the accused becomes liable to state sanction.

We are not comparing like with like. Professor Brown also points out:

... it is important to resist the tendency to see the interests of accused persons and victims as totally opposed. Such a view feeds into a punitive cycle in which victim groups are recruited to call for heavier penalties, stricter penal discipline, "truth in sentencing", and even the return of the death penalty. But none of these 'solutions' really do anything to address the concerns and needs of victims for compensation, counselling, a voice in the criminal process.

I wholeheartedly support the arguments of Professor Brown. Abolishing unsworn dock statements is a simplistic response to some very real problems. It is also simplistic to rely on the argument that because the unsworn dock statement has been abolished in other States of Australia and in Great Britain that is a reason for it to be abolished in New South Wales. Abolition of unsworn dock statements will not stop the abuse of victims or of witnesses in trials. There is no evidence that the abuse of the unsworn dock statement, though distressing to the victim, leads to an acquittal. In 1985 the New South Wales Law Reform Commission argued:

... we are not convinced that those accused persons who make, in an Unsworn Dock Statement, unfounded or scurrilous attacks on prosecution witnesses or false claims of innocence do in fact thereby obtain unjustified acquittals. Such devices will frequently be effectively dealt with by skilled and experienced Crown Prosecutors in their final address. Experience, the submissions we have received, and such information as is available suggest that no greater rate of conviction would be achieved following the abolition of the Unsworn Dock Statement. This implies that juries may not be deceived by those accused who use the Unsworn Dock Statement in the manner described.

It should be taken into account that in 1991 only 1.4 per cent of people charged with criminal offences in New South Wales courts were tried by jury; therefore only 1.4 per cent of people charged could make an unsworn dock statement. I am sure that the Attorney General knows well that most accused enter pleas of guilty. It has been said that no official statistics are available on the incidence of unsworn dock statements. However, I also received the correspondence from the New South Wales Society of Labor Lawyers to which reference was made earlier by the Hon. J. W. Shaw. I shall quote from the press statement issued today by the society under the heading "Startling New Evidence about Dock Statements":

"Sydney Prosecutor Janice Sposi has disproved claims that dock statements cause unjustified acquittals" the Secretary of the New South Wales Society of Labor Lawyers ... said today.

In ground breaking research, Sposi read 200 DPP criminal trial files in 1992 to ascertain whether defendants who gave dock statements were acquitted more often than defendants who gave sworn evidence. Her research establishes conclusively they are not.

This research has never before been conducted in New South Wales. Until today, politicians have been in the dark about the effect of dock statements on the outcome of trials. Understandably, they have been misled by anecdotes about unjustified acquittals. Sposi's research now disproves them.

One favourite furphy was that the dock statements were prevalent in child sexual assault cases. What Sposi finds is the contrary - that only in a minority of such cases do defendants give statements from the dock. In most cases they give sworn evidence.

Attached to her research is a pie chart that shows that in child sexual assault cases 54 per cent gave sworn evidence, 23 per cent remained silent and only 23 per cent relied on an unsworn dock statement. The press release continues:

The dock statement protects the many criminal defendants who have limited language and intellectual skills. The experience of criminal lawyers over many years is that juries do not take kindly to defendants who are obviously capable of giving sworn evidence not doing so. On the contrary, the dock statement gives the right to speak to persons who otherwise would stay silent, for they could never be called to give sworn evidence because of their limited skills.

The statement ends with the following remark:

Abuses of the dock statement can easily be cured by the prosecutor exercising his or her right of reply and by giving judges the right to comment adversely on defendants doing so. These are simple legislative amendments which can be achieved without trespassing on common law rights.

It would appear that the use of the unsworn statement is declining, simply because juries are becoming more sceptical about those accused who will not give sworn evidence. There are more meaningful and less dangerous ways of dealing with this problem. Comments have been made by judges and by the New South Wales Law Reform Commission about the unsatisfactory nature of section 407(2) of the Crimes Act. Under that section a judge may not comment on the failure of an accused to give sworn evidence, except when comments are made by a co-accused about that fact. In *Regina v. Greciun-King* this prevented a judge from letting the jury know, in response to a query by a jury member, about the options open to an accused, even when the judge made it clear that no adverse conclusion should be drawn from the fact that the accused decided to make a statement rather than give evidence.

A far more proper course of action for the Attorney General to have taken would have been to amend section 407(2) of the Crimes Act rather than attempt to abolish the unsworn dock statement. Clearly, much work can be done on the sort of statement that a judge can make to a jury. In *Jackson v. The King* it was decided that the jury may properly be told that an unsworn statement was evidence in the same sense as a statement made by witnesses on oath and that it was not subject to cross-examination. Furthermore, judges should pay more attention to section 409C of the Crimes Act, which allows them to confine material in the unsworn dock statement to exactly what is relevant.

Finally, it has been suggested already by the New South Wales Law Society and Professor David Brown that mechanisms should be available to support the victims of crime. Professor Brown has suggested that victims of crime and witnesses could be given the opportunity to tell their story unfettered by cross-examination. The Law Society suggests that the rights of victims of crime should be recognised at every stage of the criminal process and that there should be a thorough and comprehensive system to support victims of crime. A last resort would be to allow the accused to make a sworn statement that was not subject to cross-examination. However, I believe that many other meaningful avenues of reform could be pursued. I cannot understand why the Attorney General has not thought of them or why, almost 20 years to the day afterwards, he seems determined to go down a path taken by one of his predecessors who introduced legislation that was soundly defeated.

If the information I have been given is correct, the proposed legislation caused a degree of dissension within the Liberal Party in 1974 when it was introduced, resulting in the temporary resignation of members from the executive of the Liberal Party. It seems remarkable that after the experience with that legislation the Government should be attempting to reinvent the wheel by introducing these measures at this time. I have had conversations with the Attorney General on this matter in which he suggested to me that he would amend the Evidence Bill to protect the intellectually disabled, Aborigines, nervous and inarticulate people and people of non-English speaking background. I should have been much more convinced and happy if he had introduced the amendments to the Evidence Bill before bringing in this legislation to abolish the unsworn dock statement.

We cannot support abolition until we are absolutely certain that adequate protection will be put in place at a later date. It will be much too late for the disadvantaged in our community if this legislation is passed at this time and it is then discovered that the amendments to the draft Evidence Bill are not sufficient to protect those people who may need protection. I have considered this matter in some detail. I have taken legal advisings from lawyers - not only those aligned with the New South Wales Society of Labor Lawyers but those on the conservative side of politics - and judges. The advice I received was unanimous: that this is flawed legislation and should be opposed. Whatever the Australian Labor Party may be constrained to do for political purposes, it is the intention of the Australian Democrats to oppose the legislation.

The Hon. Dr MEREDITH BURGMANN [10.0]: I shall be extremely brief because of the hour. I believe that the so-called dock statement has, in the past, given valuable protection to those in the community who have been unable to endure the rigours of cross-examination. Those to whom I refer, of course, are people of non-English speaking background, some of whom find court proceedings difficult; people of Aboriginal background; and, in many cases, women. In a letter to the editor of the *Sydney Morning Herald* today, Ian Barker, Q.C., made the following point:

By its wretched, so-called "truth in sentencing" legislation, the Government has managed to increase the prison population from 4,000 to about 6,500 in less than five years. The Government's ultimate aim seems to be to set some sort of world record for the percentage of the citizenry behind bars. The abolition of the dock statement is part of the process.

Why has the Government introduced this bill separately from the draft Evidence Bill? It would appear that the protection given to the accused under
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the draft Evidence Bill will not be possible with the abolition of the dock statement. In a letter dated 13 April 1994 to the Attorney General, Mark Ierace, Public Defender, made the following point about those with intellectual disability:

It is also now clear that your intention is that the dock statement will be abolished before the NSW Law Reform Commission completes its reference relating to intellectual disability and the criminal law.

Mr Ierace went on to say:

I therefore seek to bring to your urgent attention some consequences of the abolition of the dock statement on those who have an intellectual disability.

Over recent months you have frequently justified the proposed abolition of the dock statement by stating that it has already occurred in most other jurisdictions, notably in England. Of course, the implication is that abolition has done no harm to the cause of justice in these other jurisdictions.

Communications by me with English practitioners over the last few days indicate that in England, when a barrister has a client considered vulnerable (that is, one who is likely to be unfairly pressured during cross-examination as a result of a mental illness or intellectual disability) the client is regularly advised that he or she would actually be better off not to give evidence and simply remain silent before the jury as damning as that may be. What sort of justice is this that we are to follow, when in the case of many intellectually disabled accused, they are damned if they do give evidence and damned if they don't?

Previous commissions and committees of inquiry have considered the issue of the dock statement. In fact, in 1985 the New South Wales Law Reform Commission published its comprehensive "Report on Criminal Procedure: Unsworn Statements of Accused Persons". The commission was unanimous in its view that the right to make an unsworn statement should be retained. In 1987 the Australian Law Reform Commission in its "Report on Evidence" also considered the issue and recommended retention of the right. One wonders why this legislation has come before the House now as a separate bill dealing with the dock statement and not as part of the draft Evidence Bill. Many speakers have mentioned that the dock statement has been abolished in other States of Australia and that, somehow, that has been a good thing. However, statistics compiled in Victoria do

not suggest that the conviction rate of accused persons who gave sworn evidence is significantly different from those who made unsworn statements. In Queensland and Western Australia, where the right has been abolished, experience has failed to show any significant increase in conviction rates.

Finally, it is often put to us that dock statements should be abolished because of the way they are used in trials for sexual offences and often they are used to blacken the name of the victim. I refer honourable members to comments of Mr Ken Horler, Q.C., who said that juries are able to make distinctions between sworn and unsworn statements, that making an unsworn statement certainly does not make one's chances of acquittal any greater. I believe it is a protection. It is also a protection for women in certain circumstances. Some women who have made an unsworn statement have been involved in provocation cases - women who have killed or injured their husbands. It is important that they retain the right to make an unsworn statement so that they are not subjected to cross-examination along the following lines: "How do we know he hurt you? Why did you not leave your husband earlier if he was bashing you?" Women make up one community group that, in the past, has found criminal proceedings very difficult and confusing. I believe that the retention of the dock statement is important for many groups in the community, including women.

The Hon. ANN SYMONDS [10.7]: I, too, would like to make a brief contribution to the debate. I acknowledge the fact that the substantial issues have been well and truly canvassed by my colleagues, and I support their concerns. I agree with my colleague the Hon. Elisabeth Kirkby that Paul Landa would have been quite fierce in his argument for the retention of the dock statement; but, on the other hand, I find no difficulty in supporting the proposition put to the House by my colleague the Deputy Leader of the Opposition that this matter be referred to a committee. It would actually be beneficial to some people who seem to operate on prejudice rather than information if they could examine these issues more closely.

For example, honourable members received only today the report by Janice Sposi, a solicitor with the Director of Public Prosecutions. It would be wise for honourable members to examine her study. It shows that defendants who give sworn evidence are just as likely to be acquitted as are those who make dock statements; most defendants in child sexual cases give sworn evidence and do not make dock statements, as has been asserted by some people in arguing for abolition of dock statements; in fraud cases as many defendants give sworn evidence as make dock statements or stand silent; and in sexual assault cases almost equal numbers give sworn evidence as dock statements. There have been numerous committees of inquiry and commissions into this matter. I would like to refer to the argument used for the retention of the dock statement that was part of the select committee of the Legislative Council in South Australia in 1981, the Sumner Committee. That committee recommended the retention of the dock statement with reform. It rejected outright the abolition of the dock statement because it:

... was convinced that to remove the unsworn statement altogether would mean that the particular needs of some defendants, who may be peculiarly disadvantaged in cross-examination because of cultural or personal factors, irrespective of guilt or innocence, would not be able to be taken into account by the court.

My colleague the Hon. Franca Arena ought to acknowledge that this is not a patronising remark that people are offering in expressing concern about people who may have some difficulties with the language; it is a real concern about questions of justice operating in English-speaking courts. The South Australian report provides the best argument for the retention of the dock statement. I refer to the statement made by Dr J. J. Bray, who states:

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Logic may be against it, but history and humanity are for it. I think it would be a sorry day when every person in the dock of a South Australia court charged with a major crime had only the stark alternative of saying nothing or getting into the witness box and rendering himself open to cross-examination. If the prosecution could make out a prima facie case and the exculpatory facts were within the knowledge of the accused alone, he would be forced into the box, otherwise the jury would have no inkling of his real defence. Too much, it seems to me, would then turn on his appearance, his composure, his demeanour and his powers of self-expression. The plausible, the suave, the glib, the well-spoken and the intelligent would be unduly favoured as compared with the

unprepossessing, the nervous, the uncouth, the halting, the illiterate and the stupid. Most people in the dock of a criminal court fall into one or more of the latter classes: many people in the dock have something to hide, even if innocent of the crime charged, and the consciousness of that may give a misleading appearance of shiftiness. It may be said that this applies to all witnesses. The very knowledge of the consequences at stake is likely to multiply the chances of a bad performance . . . I would view with revulsion the prospects of his being unable to put his version of the facts before the jury in any form unless he went into the box.

It has been noted that people have been arguing for change in this area, change based on spurious arguments about the anachronism of dock statements and so on. There must be more justification for proposing changes to criminal procedure where the changes may have direct and profound implications on the liberty of individuals. After all, this is an argument of principle. It has been stated as follows:

Abolition of the unsworn statement would, in the words of the Council of the New South Wales Bar Association, strike at the principle, embedded in the criminal law, "namely that from the moment an accused person falls under suspicion and until the conclusion of his trial he need not answer a single question unless he chooses". Abolition would have the practical effect in many cases of forcing an accused person into the witness box to give evidence and answer questions in cross-examination.

I support the concerns of my colleagues about the abolition of dock statements and I support the amendment before the House.

The Hon. I. M. MACDONALD [10.14]: I shall speak briefly despite provocation from some honourable members opposite. The Minister is not in any way, shape or form supportive of this particular change. I am sure the Minister will look at the evidence over the next few days and will realise that the glib statements he made in his second reading speech on this issue are not supported by the evidence. The only person to have done a systematic study of the issues relating to unsworn statements has concluded that unsworn statements do not make any difference to the outcome of trials. In fact, the prior convictions of individuals before the Sydney District Court is one element that does make a difference to the outcome of trials, not whether an accused person chooses to make an unsworn statement as opposed to giving evidence and being cross-examined. The Minister asserts that change is necessary because unsworn statements were being made by many people, leading to fewer convictions. That is not supported by the evidence. The Minister's statements in support of the change were predicated on the fact that in some way unsworn statements were an escape route to avoid a conviction.

The Hon. Dr B. P. V. Pezzutti: You are saying they make no difference, so what is the problem?

The Hon. I. M. MACDONALD: I am saying that there is no evidence to support the statement made by the Minister.

The Hon. Dr B. P. V. Pezzutti: But if your evidence is that they do not make any difference, what is the point?

The Hon. I. M. MACDONALD: Right. If there is nothing wrong with the way trials are conducted in this State, why change a tradition that has been going on for so many years of how people expect the law to work. The Minister has probably received the report of Janice Sposi, and will read it in the next few days. She has made it clear that there is no statistical evidence to establish that link. Therefore, if accused are making unsworn statements in court without receiving different treatment, why change the law at all?

The Hon. Dr B. P. V. Pezzutti: Because in the middle of it they can slander a whole lot of people. They can hurt people.

The Hon. I. M. MACDONALD: I know the Hon. Dr B. P. V. Pezzutti is a pretty good anaesthetist and has put many people to sleep up around the Lismore area, but it is the fact that on this particular issue the statistics do not support a change to the law. Accused may or may not have abused their rights in a couple of instances, but the judge still has the right to say that it is irrelevant and to stop it. The law does not need to be changed to accommodate that. To equate the situation with that in any other country is ludicrous because other countries have different regimes of innocence and guilt and different ways of evaluating such. To compare

Australia with many other countries is totally irrelevant. In other countries an accused has the right to silence but in many circumstances Australia does not provide that right. One cannot say that abolishing unsworn statements from the dock in some way equates Australia with other countries because other countries have different regimes as to how they evaluate guilt.

For purely political reasons the Government has overreacted on this issue. It has not looked at the evidence, but it is about time it did so. I am sure that the Minister, unlike many of his less intelligent colleagues, would evaluate more carefully the evidence in relation to unsworn statements and would see that the conviction rates do not change according to whether accused persons make unsworn statements or not. In cases involving matters of controversy accused persons do not make unsworn statements any more or less than they do in other circumstances and the end result is that the conviction rate is no different. I share the concern expressed by the Hon. Ann Symonds, the Hon. Dr Meredith Burgmann and the Deputy Leader of the Opposition: I have grave reservations about this bill. I hope the Minister will reconsider and accept the very important amendments made by the Opposition.

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Reverend the Hon. F. J. NILE [10.21]: The object of the Crimes Legislation (Unsworn Evidence) Amendment Bill is to abolish the right of an accused person to give unsworn evidence or to make an unsworn statement in criminal proceedings, commonly known as a statement from the dock. The abolition of an accused person's right to make an unsworn statement will bring New South Wales into line with other Australian jurisdictions. The right to make an unsworn statement was abolished in Queensland in 1975, in Western Australia in 1976, in the Northern Territory in 1983, in South Australia in 1985, in Victoria in 1993 and in Tasmania in 1993. The proposed abolition will not affect the right of a defendant to make any submission on sentencing.

It has been stated by various speakers, including the Hon. I. M. Macdonald, in referring to evidence which may or may not exist, that it does not have any effect on the outcome of the case. I do not consider that as the most important point in this debate. I believe the widespread community concern is due to the trauma and the impact upon victims, their friends, their relatives and their families. I believe there is a very serious issue at stake that appears to have been overlooked by those opposing the bill. I have made some inquiries about recent cases. For example, in Church's case the accused systematically sexually assaulted his stepson over five years. He pleaded not guilty. The boy, then aged 13, had to give two days' evidence in the witness box and undergo cross-examination. In his unsworn statement, the so-called statement from the dock, the stepfather denied the charges. In interviews with a psychiatrist and a psychologist preparing presentence reports he later admitted that he had lied in his dock statement. He cannot be charged with perjury.

In Lowe's case, the accused murdered a 16-year-old boy, Gregory Thompson, in 1989. In his unsworn statement Lowe blamed three other boys, all of whom had to face lengthy cross-examination. After the conviction Lowe admitted he had killed Gregory, ramming his head against a telegraph pole during a fight. In the case of Nurse Wren a man was accused of sexually assaulting the victim on an early morning train on her way to work. He was acquitted after making a brief, unsworn statement to the effect that she had consented. I was surprised that, at the last minute, the Hon. Ann Symonds and the Hon. Dr Meredith Burgmann spoke against this bill. I thought they would speak in favour of the bill.

The Hon. Dr B. P. V. Pezzutti: So did I. If the Hon. Jan Burnswoods was here, I know she would.

Reverend the Hon. F. J. NILE: I have heard so much from those honourable members as to how men have used their unsworn statements against women.

[Interruption]

No, it is not the evidence, it is not the effect of the acquittal, it is the effect on the rape victim. For some reason the honourable members have done a switch and I find it very hard to understand. A very serious case

received prominence in the Sydney newspapers in the past couple of weeks - the Jasmin Lodge case. Beltrame was charged with murder but the jury returned a verdict of manslaughter after Beltrame said in his unsworn statement that he had been threatened with a knife. His contention was not supported by any sworn evidence and it conflicted with his story to his former girlfriend that he had strangled the victim, a prostitute, because he had been dissatisfied with her sexual services. The knife was never found. I think most people believe that the very young, slightly built girl, Jasmin, was never a threat to that character and that there was never a knife involved.

The Hon. R. S. L. Jones: She carried a knife. She carried a knife regularly.

Reverend the Hon. F. J. Nile: Had he been cross-examined it would have been shown that it was physically impossible for a young girl, if she did have a knife, to threaten his life to such an extent that he would have to place rope or other material around her neck and strangle her: he was such a large, healthy, strong person. I am surprised that the Hon. R. S. L. Jones would interject to say that he supports the unsworn statement made by that murderer, supporting the proposition that a knife was used.

The Hon. R. S. L. Jones: On a point of order: I have been seriously defamed in this Chamber by so-called Reverend the Hon. F. J. Nile, who said I supported the unsworn statement of that murderer. I did not say that at all.

Reverend the Hon. F. J. Nile: You did.

The Hon. R. S. L. Jones: What I did say was that she carried a knife. Well, so she did. That was the evidence that was given, that she carried a knife. I am not supporting that unsworn statement and I would ask him to withdraw that statement, so-called Reverend the Hon. F. J. Nile.

Reverend the Hon. F. J. Nile: You should not have interjected.

The DEPUTY-PRESIDENT (The Hon. D. J. Gay): Order! Would the Hon. R. S. L. Jones clarify the point of order?

The Hon. R. S. L. Jones: The point of order is that he is defaming me in this House and I am asking him to withdraw that statement under Standing Orders 80 or 81 - I am not sure which one it is.

The DEPUTY-PRESIDENT: Order! Would the Hon. R. S. L. Jones be more specific about which statement he wishes withdrawn?

The Hon. R. S. L. Jones: The fact that he said that I supported the unsworn statement of the murderer.

Reverend the Hon. F. J. Nile: That she carried a knife. You interjected and said that. I am only repeating the interjection. I want it on the record.

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The Hon. R. S. L. Jones: I am not talking about his statement at all.

The Hon. Dr B. P. V. Pezzutti: Withdraw it.

Reverend the Hon. F. J. Nile: I was repeating his statement.

The Hon. I. M. Macdonald: Withdraw it, Fred. You have been asked to withdraw it.

Reverend the Hon. F. J. Nile: In her handbag.

The Hon. I. M. Macdonald: No, he did not say in her handbag. You are being asked to withdraw it and you should withdraw it.

Reverend the Hon. F. J. Nile: I am only repeating what he is saying.

The Hon. R. S. L. Jones: I did not. You are lying.

The DEPUTY-PRESIDENT: Order! Does Reverend the Hon. F. J. Nile wish to speak on the point of order?

Reverend the Hon. F. J. Nile: I was simply repeating the interjection by the Hon. R. S. L. Jones. I want it in *Hansard*.

The Hon. R. S. L. Jones: He was not repeating my interjection at all. He was lying in this House. What I did say was that she carried a knife. I made no reference to the unsworn statement at all.

Reverend the Hon. F. J. Nile: On a point of order: the member, in the clear hearing of all members, has accused me of lying in this House. I ask him to withdraw that accusation.

The DEPUTY-PRESIDENT: Order! Before I rule on the original point of order, I must uphold the second point of order, Reverend the Hon. F. J. Nile's point of order that the honourable member accused him of lying.

The Hon. R. S. L. Jones: In relation to this matter, one is entitled under the standing orders of this House to say that a member is lying.

The DEPUTY-PRESIDENT: Order! The honourable member will withdraw that statement.

The Hon. R. S. L. Jones: I do not withdraw that statement. He lied.

The DEPUTY-PRESIDENT: Order! The honourable member has been asked to withdraw the statement that Reverend the Hon. F. J. Nile has lied whilst I rule on the first point of order.

The Hon. I. M. Macdonald: That should be done *seriatim*.

The DEPUTY-PRESIDENT: Order! I call the Hon. I. M. Macdonald to order. He will cease giving advice to the Chair. Reverend the Hon. F. J. Nile has asked the Hon. R. S. L. Jones to withdraw the statement.

The Hon. R. S. L. Jones: I withdraw.

The DEPUTY-PRESIDENT: Does Reverend the Hon. F. J. Nile wish to speak further to the first point of order?

Reverend the Hon. F. J. Nile: All I was seeking to do was put on record the interjection by the member when he said that the prostitute regularly carried a knife, which was the statement made by the accused in that particular case.

The DEPUTY-PRESIDENT: Order! In that instance there is no point of order. The words used by Reverend the Hon. F. J. Nile were not offensive. The Hon. R. S. L. Jones said the words were inaccurate. The honourable member has the right at the end of the debate to make a personal explanation if he so wishes. I therefore find there is no point of order.

Reverend the Hon. F. J. NILE: I found the Jasmin Lodge case to be emotionally distressing because a great deal of the publicity of that case implied that because she was a prostitute she did not count and that in

some way her life could be expendable. Even though I am opposed to prostitution as an industry, I have sympathy for women who are exploited through prostitution by the prostitution industry. I put on record my sincere sympathy for that young lady in her suffering and for her family. In a case involving Judge and McKinney, in his comments on sentencing six men found guilty by a jury for the second time on charges relating to a shooting which seriously injured a man in the head, Mr Justice Lee said that the unsworn statements accounted for the conscious and deliberate manipulation of the trial process, and that the men claimed police fabrication of their signed confessions and oppressive conduct by the police. In other words, the accused in that case could make accusations under what amounts to the protection of so-called statements from the dock and not have to justify their statements.

My concern is about the impact on the victim or victims and their families, as has occurred in recent days. Often it is stated that the accused made a full statement from the dock but there has been no cross-examination or attempt to prove or disprove that statement. Many victims and their families find that most distressing, in that it appears to them that the law is lacking when it requires them to face intensive cross-examination but does not require the same of an accused person. I have been somewhat surprised by contributions to this debate by those who have experience in the law in which they have made a savage attack upon the process of cross-examination. I am not a lawyer but I thought lawyers valued and respected court process in which barristers seek to ascertain the truth and engage in a search for the truth. Cross-examination by a lawyer is an attempt to find the truth.

I have been surprised at how critical some members have been in this debate of the whole process of cross-examination. There seems to be a double standard. The other double standard that has become evident in this debate is in the Opposition's support for statements from the dock, brushing aside

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actions taken in other States and nations in removing the so-called unsworn statement from the dock. That surprises me because Federal Labor Government policy - in which we have been involved over the past 12 months or so - has been to bring about what that Government calls mutual recognition of legislation of other States. The principle behind that policy is to try to have consistent legislation in Australia. That policy goes to the extent of proposing that a law made with great insight in one State may operate in another State which may not have passed that law. The process of uniformity of the main principles of laws in Australia should be upheld. The object of the bill is to abolish unsworn statements from the dock. Such statements have been abolished under Labor, Liberal and National Party governments.

The Hon. Dr B. P. V. Pezzutti: Which National Party government?

Reverend the Hon. F. J. NILE: I am not sure. A National Party government has been in office in Queensland. Unsworn dock statements were abolished in Queensland under the great Joh Bjelke-Petersen.

The Hon. Dr B. P. V. Pezzutti: That was under a coalition government.

Reverend the Hon. F. J. NILE: I regarded that move as an initiative by a National Party government with a small Liberal Party rump. That may be the reason that the Opposition has not taken a forthright stand to either reject or support the bill and has proposed a diversionary motion to send the bill to a select committee, which would have only two months to collect evidence worldwide and report to the House. Such a committee would have to be one of the best examples of a token select committee. One could conclude that the Opposition does not really have its heart in it. Unsworn dock statements were abolished in Tasmania and Victoria in 1993, in New Zealand in 1966, in Queensland in 1975, in Western Australia in 1976, in the Northern Territory and England in 1983, and in South Australia under a Labor Government in 1985. At that time the South Australian Government was cited as a model government of reform, and such reform would seem to have been justified.

From the background material I have received it appears that the only countries that still permit accused persons to make unsworn statements from the dock are South Africa, Fiji and Ireland. Many members of this House are critical of the South African Government and its laws. I recall the Hon. R. S. L. Jones making a

strong attack on South Africa's mining policy during an earlier debate today, but apparently he is happy with the South African model in relation to unsworn statements from the dock. Many people regard Fiji as a little draconian.

The Hon. R. S. L. Jones: South Africa does not have it. You have got it wrong again.

Reverend the Hon. F. J. NILE: Not only South Africa but Fiji and Ireland have retained this right.

The Hon. Elisabeth Kirkby: Exactly, so why talk about South Africa?

Reverend the Hon. F. J. NILE: I am saying that South Africa still allows accused persons to make unsworn dock statements.

The Hon. R. S. L. Jones: Not South Africa.

Reverend the Hon. F. J. NILE: South Africa has retained the right.

The Hon. R. S. L. Jones: Not South Africa.

Reverend the Hon. F. J. NILE: Yes, it has. I am quoting from the official briefing paper from the Parliamentary Library. Is the Hon. R. S. L. Jones now clear on that point? South Africa has retained the right. I understand that the Australian Capital Territory has drafted legislation that will abolish the right of accused persons to make unsworn dock statements. The support by civil libertarians for the policies of South Africa and Fiji makes this debate a little hollow. I have received letters criticising the bill similar to those received by other members. However, I received one letter out of the blue from the Catholic Women's League, Sydney, signed by the President of the Sydney Archdiocese, Joan Carolan. Mrs Carolan said:

I am writing to you with regard to the legislation due to come before Parliament, which recommends the abolition of "unsworn dock statement."

Members of our executive have had a discussion with many members of the legal profession re the merits of this legislation, and whilst a few lawyers and others hold the view that unsworn statements from the dock should still be legal, the majority are very much in favour of their abolition.

After careful consideration we agree with this latter point of view as we believe that such legislation would be in the best interests of the greater majority of those who come before the courts and indeed of the wider community also.

Therefore, we ask that you will support this legislation when it comes before the Parliament.

That is an interesting letter. Leaving aside the Bar Association and the Law Society, perhaps the most vocal critic of the legislation has been the New South Wales Council for Intellectual Disability. I share the council's concern about the impact of this change on those with intellectual disabilities. I have raised this concern with the Attorney General. In fact the document sent to me by the Council for Intellectual Disability states:

Certainly the exposure draft of the New South Wales Evidence Bill 1993 contains valuable reforms that will allow more intellectually disabled persons the option of giving evidence (by the relaxing of the competency rules in clause 12). The reliability of the evidence of intellectually disabled witnesses will be enhanced by the trial judge's discretion to allow leading questions where the witness has, *inter alia*, an intellectual disability (clause 43) and make orders as to the presence and behaviour of persons in connection to the questioning of witnesses (clause 27). The giving of evidence in chief in narrative form is also of benefit to such witnesses (clause 30).

The council's document continues:

These reforms are particularly useful for those alleged victims of crime who have an intellectual disability -

The Hon. Elisabeth Kirkby: We have not got them yet.

Reverend the Hon. F. J. NILE: The letter continues:

- and who at present are excluded from giving evidence because they do not satisfy the competency test.

The Hon. Elisabeth Kirkby said, by way of interjection, "We have not got them yet". I am well aware of that. The point is whether one believes the Attorney General. Last week I gathered that she did, because I understood that she supported the bill. She has now suddenly made a dramatic speech in which she claimed that the bill was shocking. I find her thought processes hard to understand. However, it is correct that we do not yet have the amendments contained in the New South Wales Evidence Bill. I have raised this matter with the Attorney General and he has indicated that when those reforms are brought before this House in an amending bill, they will provide adequate protection for people with intellectual disabilities. In this Parliament I work on the basis of trusting honest people, and on this occasion I accept the Attorney General's word. Therefore, Call to Australia supports the bill.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [10.45], in reply: I thank honourable members for their contributions to this important debate. A number of issues have been raised by the Hon. Elisabeth Kirkby and by the Opposition in opposing this bill. Those comments warrant a detailed response. The comments are capable of rebuttal and that rebuttal should be put clearly on the record. I thank honourable members who have supported this important legislation, which is about making certain that the justice system is seen to be accountable and is seen to deliver justice to all parties in the legal system. Having regard to the hour, I intend to adjourn this debate until tomorrow to allow me to provide a detailed response to the second reading debate.

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

POLICE SERVICE (COMPLAINTS) AMENDMENT BILL

STATE EMERGENCY AND RESCUE MANAGEMENT (AMENDMENT) BILL

BUSH FIRES (AMENDMENT) BILL

Formal stages and first readings agreed to.

ADJOURNMENT

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [10.46]: I move:

That this House do now adjourn.

PROSPECT, WORONORA, MACARTHUR AND ILLAWARRA WATER TREATMENT PLANTS

The Hon. PATRICIA FORSYTHE [10.46]: Some weeks ago in the other place the Opposition, Dr Macdonald and the aligned Independents employed a rarely used standing order to require commercial in-confidence documents associated with water treatment plants to be tabled. The Government recognised this for what it was: a motion that would place future business with the New South Wales Government in danger. The Government was accused of scare tactics but its concerns were valid, as the following letter indicates. I

want the letter placed on the record so that all honourable members are aware of how the future of New South Wales has been jeopardised by these headline hunters. The letter is from the International Banks and Securities Association of Australia and is dated 6 April 1994. It is addressed to Dr P. A. Macdonald, the member for Manly, but copies of the correspondence were in fact given to all members of the Joint Select Committee upon the Sydney Water Board. The letter reads:

Dear Dr Macdonald

Disclosure of Commercial in confidence information for discussion in Parliament

I wish to express the great concern of my Association at the recent resolution of the New South Wales Parliament requiring the Water Board to provide confidential documents relating to the tenders for the Build Own Operate arrangements in respect of the Water Treatment Plants. These documents undoubtedly contain information which should be treated in a confidential manner to protect the commercial interests of the tendering parties.

The tenders for the water treatment plants aroused considerable interest in the international financial markets and competition for participation in the project was very strong. Public disclosure of the competitive elements of these tenders will undermine future confidence not only of those involved, but those who have been watching the developments with considerable interest with a view to participation in future projects.

Banks and financiers, both Australian and overseas, regard confidentiality of commercial transactions as an essential element of the business process. Forced disclosure of commercially confidential details through the unprecedented use of an outdated parliamentary standing order can only harm the standing of New South Wales government business enterprises (GBE's) which wish to establish commercial arrangements with the private sector.

International financiers which I represent are keen to invest in the future growth of the State of New South Wales. Participation, however, needs to be on the basis of mutual trust and respect between all parties concerned. Future use of Standing Order 54 will, in my view, impair investment and retard future growth as I can see no practical way in which use of the provision can be controlled to prevent disclosure of technological process information as well as confidential financial information. Firms wishing to protect competitively sensitive information will have no option but to refuse to deal with New South Wales GBE's.

Clearly we would accept that there may be extraordinary circumstances where the Parliament may wish to enquire into the commercial arrangements of a government business enterprise. However, we believe that it is absolutely essential that these inquiries do not lead to the public disclosure of any information which is commercially confidential.

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We view this as a most serious situation and appeal to you to amend the provisions of the standing order to protect the legitimate commercial interests of the private sector in dealing with GBE's.

I have sent letters in similar terms to the Premier and the Leader of the Opposition,

The letter is signed "Yours sincerely, John Hall, Executive Director".

AUSTRALIAN CITIZENSHIP OATH AMENDMENT

Reverend the Hon. F. J. NILE [10.51]: I wish to bring to the attention of the House a very important and serious matter relating to the Australian citizenship oath. On 29 September 1993, after some debate in the Federal Parliament, Prime Minister Keating announced the abolition of the Australian citizen oath which had served us well for many years. Mr Keating replaced it with a pledge which excluded "The Queen", our head of state, representing the Crown, and also excluded "Almighty God". Mr Keating made this unilateral and unconstitutional decision despite considerable support for the original oath and opposition to his proposed pledge. This was done without any referendum of all Australian citizens. Support for the original oath is

clearly in evidence in the Federal *Hansard* debate where Mr Keating's new pledge was passed by only two votes in the Senate. In other words, the Senate was divided.

The Senate, as we know, is a democratically elected House, with its members elected from all over Australia. At no point did Mr Keating consult those who conduct the naturalisation ceremonies, nor those being naturalised, having chosen to become Australian citizens under our constitutional monarchy, which acknowledges the "blessings of Almighty God". Subsequent action taken by Mr Keating's Government to prevent the use of the original legal constitutional oath, and even the removal of the authority to conduct the naturalisation ceremonies by some elected local government officials, as has occurred with John Smith, Mayor of Coffs Harbour, must serve as a reminder of the anti-democratic, dictatorial and centralised goals of those espousing the tenets of the republican movement. We are reminded of the historic warning - "Power tends to corrupt and absolute power corrupts absolutely".

There has also been controversy in Darwin, where a Labor member who wished to make political statements on a naturalisation ceremony was stopped by the Mayor of Darwin, and the power of the Mayor of Darwin to conduct naturalisation ceremonies was removed. These ceremonies are becoming political and controversial matters now through the actions of Mr Keating's Government. With this historical precedent in mind, even though the oath can be changed by an Act of Parliament, the basis of the oath is embodied in our constitutions, both Federal and State, and thus cannot be changed without a referendum of the people.

This raises a question which may eventually go to the High Court, that is, whether the new so-called pledge proposed by Mr Keating is legal and whether those who are taking that pledge are legally citizens of Australia. I know that there are constitutional lawyers who are studying that matter now. We support, and I believe many members of this House would support, the retention of the original legal constitutional oath which gives recognition of our Christian heritage under the Queen, and also acknowledges the allegiance to the Queen of Australia and the Crown.

The original oath also recognises the supreme legal authority of our Commonwealth and our State constitutions which clearly acknowledge both the Queen of Australia and Almighty God and cannot be changed or amended by a majority vote in any Parliament. It can only be changed by the voice of the Australian people, as expressed by a legally conducted referendum of all Australian citizens, as well as our national dependence upon Almighty God and Divine Providence, which is emphasised in opening prayers in Federal and State Parliaments as well as in local councils.

Therefore, the legal advisers have produced a new oath which would embody the wording of the new pledge and add to it the wording of the pledge that was brought in under Mr Keating. That results in a combination of the two sets of wording which retains swearing allegiance to Her Majesty the Queen, her heirs and successors. So we are encouraging local councils to combine the original oath of citizenship with the new so-called pledge to ensure that those who are taking part in naturalisation ceremonies are legal citizens of Australia. Consequently, if the High Court challenge is successful, those who have been sworn in since 1993 and the introduction of the new pledge in January 1994 would still be regarded as legal Australian citizens. This is a very important issue. There should be no doubt about the legal status of any person who is sworn in a naturalisation ceremony. We urge all councils to do what I have recommended, that is, to combine the old oath with Mr Keating's new pledge so that all who take part in naturalisation ceremonies can regard themselves as being on a legal, secure foundation. They can be confident that they are legally citizens of Australia.

UNITED NATIONS TREATY ON DESERTIFICATION

The Hon. B. H. VAUGHAN (Deputy Leader of the Opposition) [10.56]: I draw to the attention of the Parliament a matter which has been put to me by a friend, Jim Graham, of "Carinya", Ivanhoe, New South Wales. One of the most constructive roles I have had in this Parliament was to be a member of a select committee inquiry into the Western Division of New South Wales. I was also a grazier in a semi-arid area for nearly 20 years. I am advised that the Australian Government will soon be called upon to sign the United

Nations Treaty on Desertification. I am advised that the treaty emanates from discussions

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in the United Nations concerning the ever encroaching desert in northern Africa, particularly in the Sahara region.

If Australia enters into that treaty we will be on our way to a one-world government, as far as I can see. I say by way of digression that now that the Brussels Parliament has decided what French cheese is made of, particularly brie, we will face a situation in Australia where it is possible - it might not be probable - that sheep ratings on a property in the Western Division of New South Wales will be decided upon and monitored in Manhattan, in the city of New York, in the United States of America. This can easily be ignored. I suggest that the graziers in this Parliament look at this. If someone is down Ivanhoe way, in Bourke, Louth or Tilpa and some bureaucrat in New York city can say how many sheep they can run in a particular paddock in the west of New South Wales - if that sort of thing is likely to happen in this State - it is time we had a much closer look, at governmental level, at the ramifications of a world government-type bureaucracy.

WESTERN SYDNEY MOTORWAYS

The Hon. J. F. RYAN [10.58]: I draw the attention of the House to something that was said by the current Federal member for Werriwa, Mark Latham, about tollways on 16 March 1992. In an article in *Open Road*, a publication of the National Roads and Motorists Association's, he said:

Tollways will damage the economic development of Western Sydney, which already suffers the highest rate of unemployment in Australia with more than 60,000 jobless persons.

He also said that tollways were totally unsuited to working-class suburbs. He also said:

By every test - equity, economic and legal - the State Government should be building freeways, not tollways, in Western Sydney.

We are all aware that those sorts of sentiments eventually resulted in a campaign which cost the Liverpool City Council nearly \$1 million when trying to campaign against the M5 tollway which was constructed by the State Government. I read with some amusement in this morning's *Daily Telegraph Mirror* Mark Latham's response to a decision by the Hon. Laurie Brereton to construct a super tollway through western Sydney and link the M5 with Badgerys Creek. The article stated:

Sydney Labor MP for Werriwa, Mark Latham, said the Minister was "moving decisively to make Badgerys Creek Australia's first privately constructed and operated international airport".

The prospects of private investment in the airport, vigorous competition against Kingsford Smith, private development of transport links . . . will generate tens of thousands of jobs in Sydney's south-west over the next 20 years."

All I can ask of Mr Mark Latham is: what has changed in the past 12 months? The tollway that the Government intended to build evidently would cost thousands of jobs; the tollway that the Labor Party will build to Badgerys Creek will generate thousands of jobs. Clearly those statements are nonsense, and Mr Latham has engaged in an exercise of political hypocrisy. If the proposal to expand western Sydney's road network, particularly the network linking Sydney with the airport at Badgerys Creek by means of privately funded infrastructure that will be funded eventually by tollways, is carefully examined and meets with the approval of the residents of western Sydney, I will endorse the proposal. It is a great way of building necessary roads that would otherwise remain unbuilt for years.

I will not engage in any hypocrisy, as does Mr Latham. I endorse the proposal to construct the roadway. I only wish that my parliamentary colleague in the Federal Parliament had felt the same way when the State Government sought his council's support to construct the M5. The M5 is a terrific road that serves the constituents of southwestern Sydney in a phenomenal way. It has provided an enormous boost to business and

further investment in southwestern Sydney.

Motion agreed to.

House adjourned at 11.1 p.m.
