

## **LEGISLATIVE COUNCIL**

Thursday, 7 December 1995

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**The President (The Hon. Max Frederick Willis)** took the chair at 11.00 a.m.

**The President** offered the Prayers.

### **ROADS AMENDMENT (STREET VENDING) BILL**

### **STATE REVENUE LEGISLATION FURTHER AMENDMENT BILL**

### **PERIODIC DETENTION OF PRISONERS AMENDMENT BILL**

### **WASTE MINIMISATION AND MANAGEMENT BILL**

### **WORKCOVER LEGISLATION AMENDMENT BILL**

#### **Bills received.**

**The Hon. M. R. EGAN** (Treasurer, Minister for Energy, Minister for State Development, Minister Assisting the Premier, and Vice-President of the Executive Council) [11.04]: I move:

That these Bills be read a first time, printed, Standing Orders suspended on contingent notice for remaining stages and the second reading of the Bills be set down as Orders of the Day for a later hour of the sitting.

**The Hon. J. P. HANNAFORD** (Leader of the Opposition) [11.05]: I move:

That the question be amended by omitting the words "a later hour of the sitting" and inserting instead "five calendar days ahead".

The Minister has brought before the House the Roads Amendment (Street Vending) Bill, the State Revenue Legislation Further Amendment Bill, the Periodic Detention of Prisoners Amendment Bill, the Waste Minimisation and Management Bill and the WorkCover Legislation Amendment Bill. A number of those bills were rammed through the other House yesterday, without previous notice, and with six or seven hours at the most for that House to deal with them. In respect of the WorkCover Legislation Amendment Bill, which is a very substantial amending bill, no more than several hours notice was given for consideration and it was rammed through the lower House yesterday. The same procedure was followed for the State Revenue Legislation Further Amendment Bill. To the best of my knowledge, the Roads Amendment (Street Vending) Bill followed the same procedure. However, I acknowledge that the Periodic Detention of Prisoners Amendment Bill and the Waste Minimisation and Management Bill have been available for a couple of days.

Members of the other House were given no more than a few hours to consider these bills, but that should not occur in this House. Someone other than the Minister should at least have the opportunity to find out what the bills are about and then have the time to talk to some of the interest groups about them.



This motion is the clearest example of the sort of railroading of the Parliament that was common practice under Labor administration prior to 1988. Bills were rammed through the lower House in a matter of minutes and brought to this House on a motion to be dealt with at a later hour of the sitting. The Government then tried to bring the bills on for debate at a time that was convenient to it and least convenient to honourable members of this House, but guaranteed that no members of this House would ever have the opportunity to consult any organisation.

The Government must understand that at least in this House honourable members expect to have time to deal with bills. The minimum amount of time should be the five clear days that are normally available for any Chamber to deal with bills. My amendment to the motion is to delete the words "a later hour of the sitting" and to propose that the second readings of the bills stand as orders of the day for five calendar days ahead. This House would at least then have the opportunity to determine what the bills are about with some modicum of convenience to the public - because we are supposed to be passing legislation for the benefit of the public.

**The Hon. M. R. EGAN** (Treasurer, Minister for Energy, Minister for State Development, Minister Assisting the Premier, and Vice-President of the Executive Council) [11.07], in reply: The Government is delighted to agree to the amendment moved by the Leader of the Opposition. The Leader of the Opposition would have the House believe that the motion I moved is some attempt by the Government to ramrod legislation through the House. This motion is simply one of the procedural motions that was handed to me by the Clerk, who was doing his job. Before I came into the Chamber today I had no knowledge that the motion was to be moved. For the procedural convenience of the House the Clerk prepared the motion that I moved. However, if the Leader of the Opposition is going to carry on with this hypocrisy, I will accede to his amendment. But I want all honourable members of the House to know here and now that they should cancel all their engagements for the week before Christmas.

**Amendment agreed to.**

**Motion as amended agreed to.**

**Bills read a first time.**

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## **PARLIAMENT OF NEW SOUTH WALES JOINT SERVICES**

### **Annual Report**

**The President** tabled the first annual report of the Joint Services of the Parliament for the year ended 30 June 1995.

**Ordered to be printed.**

## **PETITIONS**

### **Marijuana Prohibition**

Petition expressing concern about legal changes that could increase or encourage the distribution or availability of soft drugs such as marijuana, and praying that the House take no measures that could extend the social problem of drug use, and oblige those who are promoting marijuana or similar drugs to prove without doubt that such drugs are harmless before any legislation or decriminalisation of their use is introduced, received from **Reverend the Hon. F. J. Nile**.



## **Sexual Offence Damages Bill**

Petition praying that the Parliament support the Sexual Offence Damages Bill, received from the **Hon. Elaine Nile**.

## **Summer Hill Creek**

Petition praying that the current water flow conditions and the riverine environment in Summer Hill Creek near Orange be preserved, and that the removal of effluent/water from that catchment to the Cadia Gold Mine near Orange be prohibited, received from the **Hon. R. S. L. Jones**.

## **SELECT COMMITTEE ON HOSPITAL WAITING LISTS**

**Debate resumed from 16 November.**

**The Hon. Dr B. P. V. PEZZUTTI** [11.14]: I will recap on the contributions I have made over the last month or so. There is clear evidence of a solemn promise by the Australian Labor Party to reduce by 25,000 the number of people waiting for elective surgery. That promise was confirmed by Bob Carr on 14 March. On 20 March he said:

It is an ironclad guarantee, I'll sign it in blood if you want to extract that guarantee.

There have been claims and counterclaims about whether or not this promise has been kept. I draw to the attention of honourable members an article written by David Humphries in the *Sydney Morning Herald* of 30 October this year. The article stated:

Critical to this question, then, is whether the figures - against the March 31, 1995 starting point of 44,707 - is a comparison of "apples with apples" or whether the definitions and techniques for counting waiting lists have been manipulated for political ends.

Those are the main reasons I moved a motion to establish a select committee. People need to understand what members of political parties and others are talking about. They need to be able to determine whether or not the claims stack up. There are many ways in which to collect statistics. I draw attention to page 886 of yesterday's questions and answers paper in which the Deputy Premier, Minister for Health, and Minister for Aboriginal Affairs replied to a question asked by the honourable member for Gosford concerning the number of people on waiting lists. I will not burden the House with numbers, but it is obvious that some of the people who were included on waiting lists are no longer included. The Minister said:

Patients who require dental, endoscopy, bronchoscopy and other medical procedures are included on the Area's overall waiting list and are admitted to hospital for treatment in accordance with their clinical need. They are not included in elective surgery waiting list counts.

He went on to state that the number of people who are not being included has almost doubled. I draw attention also to the waiting list production program and to the impact that program will have on the health care system. On 20 September a meeting was held at Concord Hospital between members of the Australasian College for Emergency Medicine and the Minister. The meeting reported the statements of the Minister as follows:

He explained that the Premier's promise on waiting lists had made elective surgical waiting lists top priority so far in his administration. However, he expressed a desire to change the focus to elective surgery waiting times rather than lists, and stated that this, together with E. D. waiting times, would be major priorities for the future.



I hope that the committee I am proposing will encourage people in the community to follow the Minister's lead and look at waiting times rather than waiting lists. The committee should be able to establish why these figures are kept and why some people are on the waiting lists for as much as a year. A patient who elected to have a caesarean section could be on the waiting list for seven or eight months, which is when the baby would be ready to be born. I want to have on the public agenda statistics regarding patients' needs and priorities. This proposed committee will assist in that regard. The Deputy Premier, Minister for Health, and Minister for Aboriginal Affairs, when responding to questions asked at the estimates committee, referred to category 4 patients, in other words, patients waiting for surgery who were not included on waiting lists. I will not burden the House by reading the Minister's answers, but it is obvious why some people have been listed as category 4 patients.

Some people listed as category 4 patients are not being included on the waiting lists. The community must be able to come to grips with these statistics and it must be able to establish whether or not the Government is acting reasonably in this regard. If such an inquiry were conducted we would be able to obtain information from bureaucrats, area health services and hospitals which is not available to us at present. The Minister promised to provide members on the

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crossbenches with up-to-date information and he promised to create an ombudsman's office. The Government walked away from that promise. There is no ombudsman and there is no public accountability process. The Minister has not provided information, either because he cannot or because he does not want to. We could obtain accurate information from health care services in this State within the protection of a parliamentary inquiry, which would enable us to assess health needs in various parts of the State.

I do not believe that the Minister has given out that information as clearly as he might. I have spoken previously about the need for open accountability, and I was hopeful that the *New South Wales Public Health Bulletin* issued by the Department of Health's epidemiology department would be the focus for that. Although we were promised regular updates in May, there have yet to be any follow-ups, and so far as I am aware no follow-ups are planned. Inquiries the committee makes will answer a lot of questions, not only about this promise but about what might be done in the future. I hope that, with mature consideration by four members of the Government, two members of the Opposition and the Hon. Elisabeth Kirkby, the committee will be able to solve many of those issues and help put health care services back on a bipartisanly supportable basis. I believe that is possible. I commend the motion to the House.

**The Hon. R. D. DYER** (Minister for Community Services, Minister for Aged Services, and Minister for Disability Services) [11.34]: On 19 May the Premier and the Deputy Premier launched the Government's waiting list reduction program, which was set up to improve the quality of life of patients by reducing hospital waiting lists by 50 per cent. As at 31 March 44,707 patients were included on New South Wales hospital waiting lists. The aim, therefore, is to reduce the waiting lists by 22,354 patients. Since that time the Government has regularly reported on progress toward achieving this target. The Government does not support the establishment of a select committee to monitor the implementation of the waiting list reduction program for two reasons.

Firstly, the information on the issues proposed for inquiry by the select committee is readily available and has been provided to honourable members. Secondly, valuable staff time that should be spent on implementing the waiting list reduction program would be, in the view of the Government, inappropriately redirected to servicing the committee. The Government has not fiddled the figures on waiting lists. The definitions used in the waiting list reduction program were developed by the Australian Institute of Health and Welfare and nationally agreed. These national definitions were developed early in 1994 and were progressively implemented in New South Wales during that year.

The definitions have remained unchanged to the present time, and have been published in



departmental publications. The Government remains committed to publishing information on the epidemiology of waiting lists in the *New South Wales Public Health Bulletin*, as indicated in the May 1995 edition. The October edition of the bulletin, which is currently being printed, includes information on September 1995 waiting list data. For those reasons the Opposition does not support the motion of the Hon. Dr B. P. V. Pezzutti to make a reference to a select committee dealing with the waiting list reduction program.

**The Hon. ELISABETH KIRKBY** [11.36]: When the Hon. Dr B. P. V. Pezzutti first introduced this motion and requested my support, I was inclined not to support him. I should put on the public record why I have changed my mind. As honourable members will be aware, for some 30 years I have been closely involved with the medical profession in New South Wales, and I still have many contacts within the profession. It has been explained to me in some detail that some of the procedures the Government has dropped from the waiting list deal with conditions that may be life threatening. Exploratory examinations known as cystoscopies, colonoscopies and gastroscopes are procedures used to discover whether an individual has a tumour, which could show that the person has cancer; as a follow-up to a cancer diagnosis; or after cancer treatment to ensure that the treatment has worked, that no secondary cancers have developed and that the cancer is under control. Something has to be done to safeguard the health, and possibly the life, of the patient.

If such procedures are being excluded from the waiting list, as has been pointed out by the Hon. Dr B. P. V. Pezzutti and has not been denied by the Government, the Minister for Health or his departmental officers, there is every possibility that the lives of patients may be put at risk. I believe that, in the best interests of patients, this House should establish such a committee, with a majority of government members. A select committee will have the ability to call for documentation to find out exactly how many people are on the waiting list and for how long they have been on that waiting list; to have those statistics broken down into types of procedures that are waiting to be done; to decide how many patients are awaiting routine procedures in respect of which the waiting period does not matter because there is no possibility of damage to the individual, and how many procedures are acutely necessary and therefore should be dealt with.

I am not going to attack the Government over the problems with the delivery of health care services in this State. If blame is to be laid at anybody's door, it should be laid at the door of the Federal Government and the Federal Minister. Even if the only thing this committee can do is establish that the delay with some of these procedures is life threatening for some patients, the numbers and the cost would be able to be assessed. I am informed that most of these procedures are day-only procedures - they do not require the patient

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to be in hospital for any length of time. If that information were available, the Government might be in a much stronger position in the run-up to next year's budget to demand greater funding for health services in this State. I do not believe that the Federal Government, in the run-up to an election, will be too miserly with the dispensation of funds, because obviously it is very anxious to be re-elected.

One of the biggest election issues federally will be the future of health service delivery in Australia. It attracts a great deal of discussion and is the subject of differences in philosophy among all political parties involved. When I received further information about problems that would arise if these procedures were removed from the waiting list and what might happen, I decided it was necessary for me to support the motion of the Hon. Dr B. P. V. Pezzutti. Therefore, if a division is called on this matter, I shall vote with the Opposition, and I urgently request other members on the crossbenches to consider the health of the people of this State and the possible danger to human life if there is a delay in administering some of these procedures.

**Reverend the Hon. F. J. NILE** [11.41]: The Hon. Dr B. P. V. Pezzutti has moved this motion to establish a select committee on hospital waiting lists. It is a comprehensive motion, which requires the proposed select committee to provide an interim report to the House by 31 January 1996 for the period



ended 30 September 1995, with a comparison as at 30 September 1994 and 31 March 1995. I assume that the Hon. Dr B. P. V. Pezzutti can still reach that target?

**The Hon. Dr B. P. V. Pezzutti:** I think we will have to let that one go. We would not be able to reach it in the time available. We have been waiting for several weeks.

**Reverend the Hon. F. J. NILE:** That is right. A further report is to be presented by 30 April 1996. We have discussed this with representatives of the Government, the Department of Health and Dr Refshauge's office. They have provided us with detailed reports on waiting lists, and we thank them. I am in a dilemma. It is most unusual that a Minister should make such a clear-cut promise to reduce waiting lists and, if unsuccessful, to resign. I understand that the Minister for Health promised to resign. I am not sure that Mr Carr promised to resign.

**The Hon. R. T. M. Bull:** Mr Carr said he would go and take his Minister for Health with him.

**Reverend the Hon. F. J. NILE:** I recollect that at a press conference Mr Carr linked himself with the promise. That is a unique situation. How will we know if the promise has been fulfilled? The Government, reporting on itself, says the promise is being fulfilled. I understand also that the Minister for Health promised, as part of that arrangement, that an ombudsman would make a final report on whether the promise had been kept. That commitment has been broken because no ombudsman or other outside person is acting as an umpire to confirm the Government's claims. The proposed select committee, opposed by the Government, should assist the credibility of the Government by confirming its statements. The Government should have nothing to fear from the proposed committee, which would merely confirm the figures the Government has been supplying to honourable members. If the committee found that the waiting list figures were not correct, the Government would be placed in a weak position.

At this stage I am not saying that that is the case. If the motion is carried, the committee would have the task of conducting a thorough investigation. I accept, as the Minister for Community Services said, that departmental staff should not be directed away from their duties and tangled in red tape. The Minister for Health, a doctor, would be well aware of that danger. The committee would not abuse or unnecessarily burden the resources of the Department of Health and area health services by demanding information beyond that normally provided by those bodies in reporting waiting list figures to a central point. On that basis Call to Australia supports the motion to establish the committee. However, an umpire is needed. If an ombudsman is not appointed, the committee seems to be the next best option.

**The Hon. PATRICIA STAUNTON [11.54]:** I move:

That the question be amended by omitting paragraph 2(2) and inserting instead:

"(2) That the Chairman be nominated by the Leader of the Government."

If the committee is to be successful in its task, it should not be frustrated by having as chairman an Opposition member. As the Minister said in speaking to the substantive motion, if the motion is supported, the committee will not be able to achieve its objectives as it will be effectively frustrated by having as its chairman a member of the Opposition. If there is to be cooperation and if the committee is to be successful and able to call for necessary information in a full and proper way, that will happen only if my amendment is supported.

**The Hon. ELISABETH KIRKBY [11.55]:** The Hon. Patricia Staunton has raised a very important point, but regrettably I cannot agree with her. She appears to take the view that unless the committee is chaired by a Government member it will not be able to gather all the evidence it would need to carry out a full investigation. I could not possibly support that view. A committee might have a majority of



Government members, but it is up to the committee, not the Government, to elect a chairperson. In recent years many Senate select committees have deliberately chosen a crossbench member as a chairperson. My colleagues Senator Vicki Bourne, Senator John Woodley and Senator

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Siegfried Spindler have chaired such committees. It has never been suggested that those committees could not work because they were chaired by a member of the Democrats. On other Senate committees a member of the Opposition has been the chairperson. The Government has to accept that if the Legislative Council is to be a true House of review it must be able to establish committees. The Government should not assume that every committee should have a Government chairperson.

**The Hon. R. D. Dyer:** The committee will not have the opportunity to nominate a chairperson.

**The Hon. ELISABETH KIRKBY:** The Minister has just interjected, as the Hon. Patricia Staunton said in her speech, that according to the motion the committee will not be able to nominate a chairperson. The Government could, if it wished, introduce a further amendment that the committee will elect its own chairperson. But I cannot support the proposition that if the committee does not have a government chairperson it will not be able to do its work.

**The Hon. ELAINE NILE** [12.00]: I move:

That the question be amended by omitting paragraph 2(2) and inserting instead:

"(2) That the Chairman be elected by the Committee at its first meeting."

**The Hon. J. P. HANNAFORD** (Leader of the Opposition) [12.01]: I foreshadow the following further amendment to that moved by the Hon. Elaine Nile:

That the question be amended as follows:

1. From paragraph 2(1)(a), omit "four" and insert instead "three".

2. Omit paragraph 2(1)(b) and insert instead:

(b) three Opposition members - Dr Pezzutti, Miss Gardiner and Mr Lynn; and

The purpose of the amendment is to supplement the words of the Hon. Dr B. P. V. Pezzutti. The Opposition would be happy for the committee to be responsible for electing the chairman. It is proposed to have three Government members, three Opposition members and one crossbench member on the committee and for the committee to exercise its judgment on the appointment of the chair. That is not inconsistent with the numbers in this House, which are relatively balanced between the Government and the Opposition. On the numbers proposed, there would be one crossbench member out of seven committee members; crossbench members form one-sixth of the members of this House.

This committee is important to the body politic of the State. It is of significant concern to the community that there be honesty and integrity in the delivery of services. To ensure a balance in the body politic, there must be a balance in Government, Opposition and crossbench members. The committee will therefore carry out investigations without political bias. The committee will make a decision on the chairmanship, and the appointed chairman will be responsible for the investigations of the committee to ensure that the community benefits from the outcome. Provided my amendment is acceptable, the Opposition supports the amendment of the Hon. Elaine Nile.

**The Hon. ELISABETH KIRKBY** [12.04]: I support the amendment proposed by the Leader of the Opposition to adjust the number of Opposition members on the committee and still retain a crossbench member. I also support the amendment moved by the Hon. Elaine Nile, if she is willing to accept the



Opposition amendment. As the Leader of the Opposition pointed out, this will give the committee a greater balance. It would be a good precedent for the committee to elect its own chair. I do not wish to rake over what happened in the past, but it has not gone unnoticed that a certain reference to a committee that had a Government majority resulted in an unfortunate whitewash of a very important matter. I do not believe Government members on the committee wanted that to happen; they had to fulfil other duties on behalf of their party. A repeat of that occurrence must be avoided.

**The Hon. M. R. EGAN** (Treasurer, Minister for Energy, Minister for State Development, Minister Assisting the Premier, and Vice-President of the Executive Council) [12.07]: The amendment of the Leader of the Opposition would mean the committee would consist of three Government members, three Opposition members and one crossbench member, namely, the Hon. Elisabeth Kirkby. That would effectively give non-government members a majority on the committee, as well as chairman of the committee. I can assure anyone who thinks that this Government believes that the Hon. Elisabeth Kirkby is even-handed that it does not. She is well and truly on the side of the Opposition.

**The Hon. Elisabeth Kirkby**: On a point of order: Mr Deputy President, I request you to ask the Leader of the Government to withdraw that remark and to look at my voting record. I am not a member of the Liberal Party, I have never been a member of the Liberal Party, nor do I vote Liberal on every occasion. I request that the remark be withdrawn.

**The DEPUTY-PRESIDENT (The Hon. D. J. Gay)**: Order! I do not uphold the point of order. The comments of the Leader of the Government are within what members have come to expect in the normal cut and thrust of debate in this Chamber. However, I ask the Leader of the Government to be a little temperate in his references to other members, particularly to the Hon. Elisabeth Kirkby.

**The Hon. M. R. EGAN**: For the reasons I have given, the Government clearly will oppose the amendment.

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**The Hon. Dr B. P. V. PEZZUTTI** [12.10], in reply: I speak to the amendments. I chose the wording of the motion deliberately. I was trying to produce a reasonable balance to ensure that the Government has the numbers on the committee, which would ensure fairness in the writing of its report. I deliberately named myself, an Opposition member, as chairman to ensure that the timetable is adhered to by providing the necessary leadership, push and oomph. Equally, the Opposition or crossbench members could have been given the numbers on the committee - in other words, three Opposition members, three Government members and one Independent member, leaving the Independent member to be the arbiter of fairness and reasonableness. We could have done that, but I, together with my colleagues, decided that the wording of the motion would best ensure fairness and transparency and that the other committee members would provide the adequate push to make sure the committee worked.

**Question - That the amendment of the Hon. Patricia Staunton be agreed to - put.**

**The House divided.**

**Ayes, 16**

Mrs Arena	Mr O'Grady
Dr Burgmann	Mr Shaw
Ms Burnswoods	Ms Staunton
Mr Corbett	Mrs Symonds
Mr Egan	Mr Vaughan
Mrs Isaksen	
Mr Johnson	<i>Tellers,</i>



Mr Macdonald	Mr Obeid
Mr Manson	Ms Saffin

**Noes, 21**

Mr Bull	Mr Mutch
Mrs Chadwick	Mrs Nile
Mr Cohen	Rev. Nile
Mrs Forsythe	Dr Pezzutti
Mr Gay	Mr Ryan
Dr Goldsmith	Mrs Sham-Ho
Mr Jobling	Mr Rowland Smith
Mr Jones	Mr Tingle
Miss Kirkby	<i>Tellers,</i>
Mr Lynn	Miss Gardiner
Mr Moppett	Mr Kersten

**Pairs**

Mr Dyer	Mr Hannaford
Mr Kaldis	Mr Samios

**Question so resolved in the negative.**

**Amendment negatived.**

**Question - That the amendment of the Hon. Elaine Nile be agreed to - resolved in the affirmative.**

**Amendment agreed to.**

**Question - That the amendment of the Hon. J. P. Hannaford be agreed to - put.**

**The House divided.**

**Ayes, 22**

Mr Bull	Mr Lynn
Mrs Chadwick	Mrs Nile
Mr Cohen	Rev. Nile
Mrs Forsythe	Dr Pezzutti
Miss Gardiner	Mr Ryan
Mr Gay	Mrs Sham-Ho
Dr Goldsmith	Mr Rowland Smith
Mr Hannaford	Mr Tingle
Mr Jobling	<i>Tellers,</i>
Mr Jones	Mr Corbett
Mr Kersten	Mr Mutch
Miss Kirkby	

**Noes, 15**

Mrs Arena	Ms Saffin
Ms Burnswoods	Mr Shaw



Mr Egan	Ms Staunton
Mrs Isaksen	Mrs Symonds
Mr Johnson	Mr Vaughan
Mr Manson	<i>Tellers,</i>
Mr Obeid	Dr Burgmann
Mr O'Grady	Mr Macdonald

#### **Pairs**

Mr Moppett	Mr Dyer
Mr Samios	Mr Kaldis

**Question so resolved in the affirmative.**

**Amendment agreed to.**

**Motion as amended agreed to.**

#### **QUESTIONS WITHOUT NOTICE**

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#### **CHARITABLE ORGANISATION INDEMNIFICATION**

**The Hon. J. P. HANNAFORD:** My question is directed to the Attorney General. Is it a fact that charities and community organisations are refusing to take workers from the courts' community service order system because convicted criminals are starting to sue them? Is it a fact that the charity and community groups using these offenders are not indemnified against claims of negligence for injuries on the job? Will the Minister assure the House that the community service order program is not under threat? Will he, as the Minister responsible, draw up legislation to protect from liability the parties involved in the scheme?

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**The Hon. J. W. SHAW:** I am sure that the system of community service orders enjoys bipartisan support. I am sure I am correct in assuming that all members of the House agree that there are circumstances in which a community service order ought to be used by the court in lieu of incarceration. In other words, community service orders are a valuable alternative to imprisonment. I hoped that there would be a cooperative attitude to support that scheme and to address any difficulties with it. I have not been apprised of any immediate or pressing difficulty in relation to charities or other community groups supporting the scheme or threatening to withdraw from it.

I will certainly make urgent inquiries about that because it would be a matter of general concern if there were some threat to the viability of the scheme. I understand that the previous Government received advice from the Crown Solicitor that from time to time charities are sued for alleged negligence by persons engaged in community service order work. That has been a live issue for some time; it has not suddenly emerged. Although there is no evidence that the previous Government had any effective remedy to the problem, I undertake to review the matter and to address the concerns of charities or other bodies to maintain the viability of community service orders in our criminal justice system.

#### **PROPOSED PARKES INLAND MARKETING**



## CORPORATION

**The Hon. I. M. MACDONALD:** Will the Treasurer outline the progress of the Inland Marketing Corporation proposal at Parkes?

**The Hon. M. R. EGAN:** Yesterday I met a delegation of country mayors, a visit that was organised by the Hon. I. M. Macdonald. The purpose of that deputation was to discuss the proposals for an Inland Marketing Corporation. I met with Mr Alex Ferguson, Director of the Inland Marketing Corporation; Mr Ian Shaw, Mayor of Forbes; Mr Robert Wilson, Mayor of Parkes; and Mr Tony Hewson, Mayor of Young. Although I had previously heard some details of the proposal, probably from the contribution of the Hon. I. M. Macdonald to the budget debate, I was not as fully aware of the proposal as I am now. As I am the Minister for State Development, many people come knocking on my door with you-beaut ideas. Those ideas often do not stand up to much scrutiny or evaluation; the silly ideas become obvious from the start.

The idea of an Inland Marketing Corporation is one of the best concepts that has been put to me as Minister. After reading the material provided to me and speaking with the deputation yesterday, I am extremely excited about the potential of the concept. As a result, I am delighted to announce that I have approved funding for the next stage in the evaluation of an international freight airport at Parkes in the central west of New South Wales. The Government will spend \$138,000 to analyse the environmental impact of upgrading Parkes airport to accommodate 747 jumbo jets. Obviously the Government will fund the preparation of the environmental impact statement. As I said earlier, I met with representatives of the central west economic development group, who are keen proponents of the airport proposal and the complementary proposal, the Inland Marketing Corporation. Some honourable members will be aware that the concept is for the corporation to coordinate the production, marketing and transport of high-value rural exports to Asia. The concept is supported by some 50 -

**The Hon. D. F. Moppett:** You want to talk to your Federal mates about keeping the railway line going. There was nothing mentioned in the annual report about it.

**The Hon. M. R. EGAN:** Does the honourable member not support the Inland Marketing Corporation?

**The Hon. D. F. Moppett:** Yes, I do.

**The Hon. M. R. EGAN:** I am sorry that the Hon. D. F. Moppett is so negative about the proposal. I assure the House that the Government believes the idea of an inland airport has merit and is prepared to fully investigate its financial and environmental viability. The Government has already spent some \$60,000 to develop a business plan for the airport, a preliminary airport design study and a financial assessment of the viability of the Inland Marketing Corporation. Some funding had previously been approved by my colleague the Minister for Small Business and Regional Development, Mr Carl Scully.

Honourable members will be aware that Parkes is already a rail and road transport hub and has a sizeable regional airport that I understand began life as a Royal Australian Air Force base. The airport proposal holds the promise of giving New South Wales primary producers a direct export link to Asian food markets. The project's proponents envisage five jumbos each week touching down in Parkes bringing manufactured goods for Australian markets and leaving laden with high-value perishables such as meat, fruit, flowers, wine, fish and vegetables. Food leaving Parkes will get to Asian consumers three or four days earlier than it does at present. The produce will be fresher, and this will strengthen Australia's growing reputation as the world's leading producer of clean, high-quality food.

**The Hon. R. T. M. Bull:** It should be at Narrandera. Have a look at Narrandera as well.



**The Hon. M. R. EGAN:** I hope that this concept does not result in an outbreak of parochialism, as indicated by the interjection of the Deputy Leader of the Opposition, who wants the corporation to go to Narrandera. One of the tragedies of regional development in this State over past decades is that regional areas of New South Wales have been at each other's throats. The value of this proposal is that 50 councils are prepared to work together. I will not see this important proposal killed at the start by disputes within the National Party. The Hon. D. J. Gay supports Parkes, which is the location for the proposal, but the Deputy Leader of the Opposition and Leader of the National Party in this place is behaving in a parochial way. The people of country New South Wales have had enough of the National Party; they know what its parochialism did to regional New South Wales in past decades. This sensible proposal has been advanced by a number of regional and country councils acting in concert rather than parochially, as the Leader of the National Party has attempted to do. The Government has had nothing to do with the attempt to divide rural New South Wales. The Government will proceed with this proposal.

#### **TOTALIZATOR AGENCY BOARD TAX CONCESSIONS**

**The Hon. R. T. M. BULL:** Is the Treasurer and the Leader of the Government aware that the Chief Executive Officer of the Totalizator Agency Board, Mr Allen Windross, has indicated that a reduction of wagering taxation of 3 per cent would provide an optimum return to the Government and the racing industry? Is the Minister prepared to meet with representatives of the TAB to discuss a reduction in wagering taxation rates in this State?

**The Hon. M. R. EGAN:** I am prepared to meet with anyone.

#### **FAMILY SUPPORT SERVICES FUNDING**

**The Hon. ELISABETH KIRKBY:** Is the Attorney General aware that the Department of Community Services can no longer service the lower north shore family support service to enable it to work with families with children in stress or crisis? Is it correct that the Department for Women and the Attorney General's office are trying to discover whether funding can be obtained for the continuation of this important service, which is a court support project for victims of domestic violence? Will the Attorney assure the House that his department will be able to find funding to allow this service to continue?

**The Hon. J. W. SHAW:** I assure the honourable member that I will investigate any problem on the lower north shore relating to support services. I will work cooperatively and constructively with the relevant Minister in the Legislative Assembly to achieve an optimal result and to rectify any problems.. I certainly take on board the comments made by the honourable member.

#### **SYDNEY OLYMPIC GAMES 2000 DEDICATED TRAFFIC LANES**

**The Hon. D. J. GAY:** My question without notice is directed to the Treasurer, Minister for Energy, Minister for State Development, Minister Assisting the Premier, and Vice-President of the Executive Council, representing the Minister for Public Works and Services, Minister for the Olympics, and Minister for Roads. Was an undertaking included in the contract signed by the New South Wales Government to hold the year 2000 Olympic Games to provide a dedicated lane each way - that is, two lanes - for members of the Olympic family to travel to and from the main Olympic sites of Homebush Bay and Darling Harbour? Does the Government intend to honour its commitment to the International Olympic Committee to provide those dedicated lanes? What are the Government's current plans to fulfil this commitment? Does one of the options involve using Parramatta Road from Five Dock to Strathfield? Would this option create traffic chaos? Is there an option to join the M4 with the city west link? Does this option involve substantial reclaiming of private property? If so, what funds have been set aside for this purpose?



**The Hon. M. R. EGAN:** I am not aware of the answer, but it is an interesting question. The Hon. D. J. Gay might inform the House whether he has some inside information because the former Government was in office when the contract was signed. I would be fascinated to ascertain whether the information that he has divulged to the House is correct. Were all those provisions in place in the contract that the former Government signed?

### **KINGS CROSS STRIP CLUBS**

**Reverend the Hon. F. J. NILE:** I direct my question without notice to the Attorney General, and Minister for Industrial Relations. What are the Government's plans in regard to strip clubs at Kings Cross? What action will the Government take to remove the criminal elements from Kings Cross and to tighten up liquor laws?

**The Hon. J. W. SHAW:** With all due respect to Reverend the Hon. F. J. Nile, the Premier made a statement yesterday in the Legislative Assembly relating to that matter. All I can do is affirm that that statement represents the plans of the Government in that respect.

### **FEMALE GENITAL MUTILATION**

**The Hon. PATRICIA FORSYTHE:** In view of the absence of the Minister for Community Services, Minister for Aged Services, and Minister for Disability Services, my question without notice  
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is directed to the Leader of the House, representing the Deputy Premier, Minister for Health, and Minister for Aboriginal Affairs. In view of the statement made by the Minister for Health in a media release and policy document on 8 February 1994, while shadow minister for health, that Labor's policy on female genital mutilation would include an education program concerning the physical and psychological after-effects of female genital mutilation, and in view of the bipartisan support for the legislation and the proposals received for a long-term multifaceted education program, will the Minister outline whether this Government is undertaking any of these programs?

**The Hon. M. R. EGAN:** I will refer the honourable member's question to my colleague the Minister for Health.

### **POLICE RESIGNATIONS**

**The Hon. ELAINE NILE:** I direct my question without notice to the Attorney General, and Minister for Industrial Relations, representing the Minister for Police. Did more than 250 lower ranked police officers resign in the past year, many leaving to join the force in Queensland? Have resignations increased by almost 25 per cent, from 242 in 1993-94 to 320 in the year to 30 June 1995? Was this increase in resignations a result of limited career opportunities with 7,000 senior constables vying for 130 to 140 sergeants' positions each year? What is the Government doing to retain promising police officers and to reduce this alarming resignation rate?

**The Hon. J. W. SHAW:** I am sure all honourable members have a sense of sympathy and support for honest - and, as the honourable member puts it, promising - members of the New South Wales Police Service. The Police Service has obviously been put under great scrutiny in the last year or so. We are all aware that there are many honest and decent members in the Police Service. As the honourable member implied in her question, it is important for them to have reasonable career opportunities. I will raise this matter with the Minister for Police. I am sure he will conscientiously consider whether anything should be done to ensure that police officers who, as I have said, are honest and hard-working satisfy



their legitimate aspirations for promotion in the New South Wales Police Service.

## **HOME BUILDING INDUSTRY**

**The Hon. C. J. S. LYNN:** My question without notice is directed to the Attorney General, and Minister for Industrial Relations. Has yet another project home building company, Dainton-Gough Homes Limited, collapsed, leaving 70 homes from Sydney to Newcastle in various stages of construction? Has this industry crisis, which is due to a dramatic decline in home building as a result of union wage claims, fuelling higher housing costs, threatened the viability of hundreds of small businesses across the State? What steps will the Attorney General take to ensure that union wage claims are not maintained? What plans does the Attorney General have to combat this dramatic drop in business in the New South Wales building industry?

**The Hon. J. W. SHAW:** I said to the House yesterday that it is somewhat simplistic to blame all the problems in the housing sector, or a substantial number of them, on union wage claims. There is a difficulty in drawing some simple causal connection between union wage claims and the difficulties in the industry. After all, it has always been a volatile industry. Entrepreneurs in the industry have always had financial difficulties which have often led, tragically, to unpaid wages and other consequential financial difficulties. Obviously, the Government will continue to monitor this industry carefully and do what it can to maintain stable industrial relations. The honourable member should be wary of becoming fixated with the idea that wage claims - which, after all, are occurring in every industry at the moment - are the basic cause of the financial problems of various companies.

## **TWEED SHIRE ENDANGERED FAUNA**

**The Hon. R. S. L. JONES:** I direct my question without notice to the Attorney General, and Minister for Industrial Relations. Did the Director-General of the National Parks and Wildlife Service issue a licence, pursuant to sections 92B and 120 of the National Parks and Wildlife Act 1974, to Ray Group Proprietary Limited? Does this licence permit Ray Group to take or kill endangered fauna for clearing works for the residential subdivision known as Searanch, south of Hastings Point, in the Tweed shire? Does this development, Searanch, fall within the Government's guidelines for the protection of our coastline? What assessment has been undertaken by the National Parks and Wildlife Service of the loss of endangered species as a result of the licence issued by the director-general? Has this same group, Ray Group Proprietary Limited, put forward a proposal to develop 150 house blocks on the dunes at South Golden Beach? Has the director-general ascertained any impact of this proposal on endangered wildlife and 7(b) habitat areas?

**The Hon. J. W. SHAW:** I regret that the detail and specificity required by the Hon. R. S. L. Jones is beyond my present knowledge or information. I shall certainly refer the honourable member's question to the Minister for the Environment, who, I am sure, will provide an appropriate answer.

## **DEPARTMENT OF HOUSING HOUSE FIRES**

**The Hon. J. F. RYAN:** My question without notice is directed to the Treasurer, Minister for Energy, Minister for State Development, Minister Assisting the Premier, and Vice-President of the Executive Council, representing the Minister for Housing. Does the Minister remember a question I asked a few weeks ago concerning fires in Department of Housing homes? Is the Minister aware that since I asked that question and made

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comments in the adjournment debate there have been four additional fires in Department of Housing houses, two of which resulted in fatalities? Has the Minister received an answer from the Minister for



Housing as to whether the Government will consider a general inquiry into these Department of Housing house fires to determine whether trends can be addressed to prevent them and to assist people escaping when these houses are on fire, or to determine whether smoke alarms will play a major factor in preventing deaths?

**The Hon. M. R. EGAN:** I have not received a response from my colleague, but I will follow it up.

#### **PAPAYA FRUIT FLY**

**The Hon. I. COHEN:** My question is addressed to the Attorney General, and Minister for Industrial Relations, representing the Minister for the Environment. Is the Minister aware of farmer and community concerns about the use of toxic chemicals and application practices to combat the papaya fruit fly? Is the Minister investigating less toxic and more environmentally friendly methods of dealing with the problem if the fruit fly arrives in New South Wales? Further, have there been any contamination problems with fruit produced in north Queensland coming into New South Wales?

**The Hon. J. W. SHAW:** I shall refer that question to the relevant Minister for a reply.

#### **SOUTHERN HIGHLANDS RAIL SERVICES**

**The Hon. D. J. GAY:** I ask the Treasurer, Minister for Energy, Minister for State Development, Minister Assisting the Premier, and Vice-President of the Executive Council, representing the Minister for Transport, and Minister for Tourism, a question without notice. Is the Treasurer aware that prior to the last State election the Labor Party promised from day one to provide through rail services from the Southern Highlands to Central Railway Station? Is he aware that this most important service still has not been provided, nine months after day one? When, if ever, will this service commence? Is not this yet another broken promise of the Carr-Egan-Scully Labor Government? Will this day-one promise be met before or after the next resignation of the Minister for Transport?

**The Hon. M. R. EGAN:** I will refer the question to the Minister for Transport.

#### **AUSTRALIANS AGAINST FURTHER IMMIGRATION**

**The Hon. HELEN SHAM-HO:** My question without notice is addressed to the Treasurer, Minister for Energy, Minister for State Development, Minister Assisting the Premier, and Vice-President of the Executive Council, representing the Premier, Minister for the Arts, and Minister for Ethnic Affairs. I refer the Minister to an article that appeared in the *Sydney Morning Herald* of 2 December about the anti-immigration and anti-multiculturalism group Australians Against Further Immigration. Is the Minister aware that members of the ethnic community - including the Hon. Franca Arena, the Chairman of the Ethnic Communities Council of New South Wales, Angela Chan, and me - consider this to be a racist group? Is it true that one of the members of this racist group is a former Australian Labor Party member for Balmain, Peter Crawford? Is it also true that he is a confidant of the Minister? If so, can the Minister explain to the House how he is committed to multiculturalism and ethnic affairs and what his creditability is in the eyes of the ethnic community?

**The Hon. M. R. EGAN:** I will refer the question to the Premier.

#### **WOMEN AND MEDIA AWARDS**

**The Hon. PATRICIA FORSYTHE:** My question without notice is directed to the Leader of the



House, representing the Minister for Fair Trading, and Minister for Women. Will the Minister advise whether the Women and Media Awards, which recognise and encourage diverse and positive images of women in the media, will be presented in 1996? If so, when will nomination forms be made available and the awards publicised?

**The Hon. M. R. EGAN:** I will refer the question to the Minister.

#### **TARONGA PARK ZOO BLACK COCKATOO POPULATION**

**The Hon. I. COHEN:** I ask the Attorney General, and Minister for Industrial Relations, representing the Minister for the Environment, whether he can inform the House precisely how many black cockatoos are kept captive at Taronga Park zoo, having been seized from dealers? How many of these cockatoos are glossy black cockatoos, which are worth up to \$50,000 on the black market? Precisely when will these black cockatoos be rehabilitated and released back into the wild, or does Taronga Park zoo intend to trade in these seized birds?

**The Hon. J. W. SHAW:** The candid answer is that as presently advised, no, I cannot inform the honourable member of those facts. But I will refer the matter to my colleague.

#### **SYDNEY SHOWGROUND SITE DEVELOPMENT**

**The Hon. J. F. RYAN:** My question without notice is directed to the Treasurer, representing the Premier. Why is the report by merchant bank BZW into the rental agreement for the showground good enough for Bob Carr to quote from in Parliament but not good enough for public consumption? What is the Government trying to hide by refusing to table the report?

**The Hon. M. R. EGAN:** I have answered a virtually identical question on two or three occasions.

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#### **SUMMARY OFFENCES ACT REVIEW**

**The Hon. R. S. L. JONES:** I ask the Attorney General, and Minister for Industrial Relations, representing the Minister for Police, a question without notice. As members of the Police Service frequently use the Anglo-Saxon colloquialism for fornication, and other common swear words, as has been made clear from evidence before the royal commission, will the Minister now consider removing the use of offensive language from the Summary Offences Act?

**The Hon. J. W. SHAW:** Yes, I will consider that.

#### **RURAL SUICIDE**

**The Hon. D. F. MOPPETT:** Is the Leader of the Government and the Treasurer aware that rural suicide rates in New South Wales are the highest of practically any country in the world? Is he also aware that the Standing Committee on Social Issues brought down a report on this subject that had wide-ranging recommendations involving almost all government departments? In view of those wide-ranging recommendations will the Minister indicate to the House when the Government's response is likely to be made known and what steps will be taken to overcome this very serious problem?

**The Hon. M. R. EGAN:** The Hon. D. F. Moppett has asked an intelligent and important question. I was not aware of the statistic he gave to the House, but I take his word for it. It is an alarming statistic. I



will take the matter up with my ministerial colleagues, who are more closely involved with responsibility for these areas, and I will provide the House with an answer as soon as I can.

### **BUNDANOON POLICE STATION OPERATIONS**

**The Hon. D. J. GAY:** My question is addressed to the Attorney General, and Minister for Industrial Relations, representing the Minister for Police. Will the Attorney indicate to the House when the Government will honour Mr Whelan's promise made prior to the last State election to reopen the Bundanoon police station 24 hours a day?

**The Hon. J. W. SHAW:** That is a very specific matter which I will refer to the Minister for Police for an answer.

### **ADOPTION INFORMATION PRIVACY**

**The Hon. HELEN SHAM-HO:** My question without notice is addressed to the Minister for Community Services, Minister for Aged Services, and Minister for Disability Services, but as he is not here I will address my question to the leader of the Government. Is the Minister aware of the concerns of the Adoption Protection Privacy Group in relation to releasing information about adoptees and their relinquishing relatives when the adoptee is less than 18 years of age? Is it a fact that the Adoption Privacy Protection Group has written to the Minister's office three times seeking information about amendments to the Adoption Information Amendment Act, but has not received any reply yet? Why was this group not consulted and why has the Minister not yet replied? How does the Minister propose to protect the privacy of adoptees who do not want their personal information made available?

**The Hon. M. R. EGAN:** The group to which the honourable member referred has certainly not written to me three times, and I resent any suggestion that I have not responded to someone who has written to me three times.

**The Hon. Helen Sham-Ho:** The group has written to the Minister for Community Services.

**The Hon. M. R. EGAN:** I will refer the question to the Minister.

### **BORAL TIMBER SUPPLY CONTRACT**

**The Hon. R. S. L. JONES:** I ask the Attorney General, and Minister for Industrial Relations, representing the Minister for Land and Water Conservation, whether in the light of the supposed move from old-growth forests into regrowth and plantation forests, the Minister will be renegotiating the Boral timber supply contract in order to ensure fairer distribution of supplies to small sawmill companies.

**The Hon. J. W. SHAW:** I will refer that question to my colleague for an answer.

### **CORPORATIONS LAW**

**The Hon. J. P. HANNAFORD:** Is the Attorney-General aware of a constitutional challenge in the Federal Court to the Corporations Law and to the scheme for coordinating Commonwealth and State court proceedings in corporations matters? Is the Minister also aware that already parties are avoiding taking cases to the Federal Court to avoid potential problems, thereby increasing backlogs in New South Wales courts? Will the Minister assure the House that he has a contingency plan to deal with this problem? Will he inform the House what the contingency plan involves to reassure all potential litigants



before the Federal Court?

**The Hon. J. W. SHAW:** I am aware of some contention in the Federal Court about the constitutionality of the Corporations Law. I am not aware that it is causing any current or pressing problems for the New South Wales court system, although I will raise that matter and investigate it. On all the advice I have received, the Corporations Law is likely to survive any constitutional change. It would be premature to work out contingency plans, given the cooperative arrangement between  
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the States and the Commonwealth to have a uniform Corporations Law and the fact that there is no serious question mark over the validity of that legislation.

#### **YOUTH DRUG EDUCATION STRATEGY**

**The Hon. PATRICIA FORSYTHE:** I direct my question without notice to the Attorney General, and Minister for Industrial Relations, representing the Minister for Education and Training, and Minister Assisting the Premier on Youth Affairs. In view of widespread and ongoing community concern arising from the recent drug-related deaths in Sydney, what strategy does the Government propose to target young people outside the school education system, such as those working as apprentices, or even simply those outside the reach of any educational institutions?

**The Hon. J. W. SHAW:** That question is obviously of social importance and raises a significant point for honourable members to consider. There are some opportunities, one would assume, for TAFE to deal with drug education for apprentices. I believe that this Government has taken important initiatives in regard to drug education within the school system. The honourable member asked what can be done about young people who are apprentices or secondary school students. She might accept that her question is easier to pose than to answer. I will refer it to the appropriate Minister and ask him to consider what programs or strategies might be adopted in response to her question.

#### **YOUTH DRUG EDUCATION STRATEGY**

**The Hon. PATRICIA FORSYTHE:** I ask a supplementary question. Does the dismantling of the Office of Youth Affairs mean that the task of developing a strategy will be made more difficult?

**The Hon. J. W. SHAW:** I am disposed not to think so, but I will refer that additional question to the Minister for Education and Training.

#### **REEF BEACH**

**The Hon. R. S. L. JONES:** I direct my question without notice to the Attorney General, and Minister for Industrial Relations, representing the Minister for the Environment. When will the Minister move to free Reef Beach and other beaches for nude bathing, and will it be in time for summer?

**The Hon. J. W. SHAW:** I will refer that question to my colleague for an answer.

#### **BROKEN HILL RAIL SERVICES**

**The Hon. M. R. KERSTEN:** I address my question without notice to the Treasurer, representing the Minister for Transport. Will the Minister give a guarantee that a passenger train service to Broken Hill, announced by the Government in September, will be introduced permanently?



**The Hon. M. R. EGAN:** I will refer the question to my colleague.

#### **MAITLAND ELECTORATE ROAD FUNDING**

**The Hon. D. J. GAY:** My question without notice is addressed to the Treasurer, Minister for Energy, Minister for State Development, Minister Assisting the Premier, and Vice-President of the Executive Council, representing the Minister for Public Works and Services, Minister for the Olympics, and Minister for Roads. During the election campaign Mr Tony Keating, the Australian Labor Party candidate for Maitland, gave commitments that a Labor Government would improve access to and across the New England Highway and get more money for local roads and the local councils. What has the Minister done to fulfil this promise? Is this going to be another broken Labor promise, or is this just another Keating lie?

**The Hon. M. R. EGAN:** I will be happy to refer the question to my colleague.

#### **RAVE PARTIES**

**The Hon. R. T. M. BULL:** Is the Attorney General aware that there is widespread community concern over the proliferation of rave parties, some promoted by drug interests and some held at secret locations? Is the Government investigating some sort of licensing or regulation of these parties to ensure that proper conduct prevails?

**The Hon. J. W. SHAW:** I regret that until fairly recently I did not have great knowledge about so-called rave parties. More recently I have received information, and at the risk of being characterised as conservative I think there is cause for concern. The Government would approach with reluctance the question of interference in private social activities. In a free society people are entitled to take part in legitimate activities in their homes and at other venues. But I think it would be appropriate for me to consider what changes in the law, if any, are necessary or appropriate in relation to functions of this kind.

#### **FORENSIC EVIDENCE ADMISSIBILITY**

**The Hon. S. B. MUTCH:** My question without notice is addressed to the Attorney General. Is he aware of a call for the establishment of guidelines for courts about how to assess forensic evidence presented at trials? Has there been a call for the establishment of a different approach to the admissibility of forensic evidence and the removal of these issues from a jury for resolution before the  
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final evidence is put before a jury? Is the Attorney General reviewing the law regarding the use of forensic evidence before the courts? When might such a law be brought before the Parliament?

**The Hon. J. W. SHAW:** There are no immediate plans to review the way forensic evidence is dealt with in our criminal courts, although I am aware that it is a matter of some controversy. Indeed, forensic evidence can take much of a jury's time in a criminal trial. All honourable members will remember the extensive detailed scientific debates about the forensic evidence tendered in the Lindy Chamberlain trial, which at the end of the day, according to Justice Morling who conducted an inquiry into that process, was unconvincing and was part of the reason that that conviction had to be overturned. At a more exotic level, honourable members who followed the O. J. Simpson trial in the United States will know of the heated arguments about the validity or otherwise of the forensic evidence introduced about that defendant. My predisposition is to think that, despite the scientific, detailed and technical nature of forensic evidence, it is still better at the end of the day for a jury to determine whether the evidence is sufficient to make out a case beyond reasonable doubt against a defendant. My mind is not entirely closed to other alternatives, although I have not had any particular representations, nor have I felt the



need for a fundamental review of that process. However, I will continue to monitor the situation.

### **DINGO PROTECTION**

**The Hon. R. S. L. JONES:** I ask the Attorney General, and Minister for Industrial Relations, representing the Minister for the Environment, a question without notice. When will the Minister for the Environment move to provide adequate protection for our native dog, the dingo?

**The Hon. J. W. SHAW:** I acknowledge the honourable member's longstanding and publicly demonstrated interest in dingoes. All honourable members appreciate the sincerity and competence with which he has pursued that cause. I will refer his question to the Minister for the Environment for an answer.

### **BRODERICK HOUSE SPECIAL SCHOOL**

**The Hon. J. F. RYAN:** I address my question to the Attorney General, representing the Minister for Education and Training. Will the Minister obtain an answer as to what arrangement the Department of School Education will make for students who currently attend the Broderick House special school at Lakemba, following a decision by the Northcott Society, formerly the New South Wales Society for Children and Young Adults with Physical Disabilities, to withdraw its involvement in that school from the beginning of the year.

**The Hon. J. W. SHAW:** I will refer the honourable member's question to the Minister for Education and Training for a reply.

### **UNIVERSITY OF WESTERN SYDNEY STRUCTURE REVIEW**

**The Hon. Dr MARLENE GOLDSMITH:** My question without notice is addressed to the Attorney General, representing the Minister for Education and Training. Is the Minister aware that the committee appointed to review the structure of the University of Western Sydney recently recommended that the university retain its federated structure? Is the Minister further aware that the Board of Governors of that university unanimously supported that recommendation? Will the Minister give a public commitment to support the ongoing federation of the University of Western Sydney, especially in view of destructive comments made by his colleagues earlier in the process which led to the dreadful dissension experienced by the university this year?

**The Hon. J. W. SHAW:** I am personally aware of the results of the inquiry presided over by Mr Andrew Rogers and of the conclusions reached by that inquiry. I hope all honourable members take an active interest in the future of the University of Western Sydney. I have met with the dean of the law school of that university and with other members of the faculty. I have resolved, so far as is practical, to take a personal interest in the wellbeing of the law school in particular, but of the university generally. Obviously it is a vexed question within the corporate structure of that university as to whether it ought to remain together. I am sure the Minister for Education and Training will deal with that debate in a sensitive and positive way. I will refer the question to him for a more detailed reply.

### **HONG KONG CRIMINAL GANGS**

**The Hon. HELEN SHAM-HO:** My question without notice is directed to the Attorney General, representing the Minister for Police. Is the Minister aware of rumours that criminal gangs, particularly in the drug trade, operating in Hong Kong are moving their activities to Australia because of the impending handing over of Hong Kong to China in July 1997? Will the Minister increase the number of police



vigilantes in this area? Will the Minister increase the strength of Task Force Oak, established by the coalition Government, and report progress to the House?

**The Hon. J. W. SHAW:** I will refer that matter to the Minister for Police for a considered reply.

#### **MINISTERIAL CREDIT CARDS**

**The Hon. D. J. GAY:** My question is addressed to the Attorney General. Does the Attorney remember my question earlier in the week about whether he uses a credit card to pay tolls that the Labor Party promised to remove? Has the Attorney General been able to ascertain whether he uses a tollway credit card?

**The Hon. J. W. SHAW:** Not yet.

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#### **MINISTERIAL CREDIT CARDS**

**The Hon. D. J. GAY:** I have a supplementary question. The Attorney General is such a bright, alert and capable Minister that he would surely have noticed whether his driver puts a piece of plastic into the toll slot as the car goes through or whether he puts his hand into his own pocket and produces a coin to allow him to go through the toll gates. Has he noticed what happens?

**The Hon. J. W. SHAW:** I regret that it has not been the highest issue on my priority list.

#### **DISTRICT COURT COUNTRY SITTINGS**

**The Hon. J. P. HANNAFORD:** My question without notice is directed to the Attorney General. Has the Chief Judge of the District Court discontinued sittings of the court in approximately 30 centres in country New South Wales? Will the Attorney General allocate sufficient resources to the court so that hearings can be maintained in those centres? If not, why not?

**The Hon. J. W. SHAW:** As the Leader of the Opposition is well aware, the allocation of sittings of the District Court is very much a matter within the prerogative of the Chief Judge. Judge Blanch has determined that there should be changes in the sitting arrangements of that court in order to better allocate court resources for the disposition of cases. He has provided me with details of the calendar of District Court sittings for 1996. I informed the House earlier of those details, but in response to the question I will summarise the matter. There are to be 16 additional weeks of criminal sittings of the District Court in Sydney, compared to the figures for 1995. Apart from an additional week at Parramatta, there is to be no variation in the civil sittings of the District Court for the Sydney west region.

The Chief Judge has considered it a more efficient use of the courts resources to significantly reduce the combined civil and criminal sittings of the District Court in country areas of New South Wales and to replace those lists, wherever possible, with either dedicated criminal or civil lists. When I refer to country areas I exclude Gosford, Newcastle and Wollongong. I will continue to liaise with the Chief Judge, although I acknowledge that it is his decision, about the allocation of resources and sittings within the State. I understand that his decision not to sit at particular places is based on the view that there is too much unproductive judge time in having the District Court sit at particular towns. I appreciate that practitioners and citizens of some towns might regret that the District Court will not sit in their area but obviously these resources have to be allocated in a rational and effective way, and it is a matter for the court to determine where it should sit.



[Interruption]

I am sure honourable members of the sophistication and knowledge of the Hon. Virginia Chadwick would not suggest for a moment that I should issue some direction to Judge Blanch as to where he should allocate judges. I assure honourable members of the House that reasonable levels of resources will continue to be allocated to the court so that it might perform its useful functions. I do not want to pre-empt the Executive Council, but I anticipate announcing at least one additional appointment to the court in the near future.

### **SALES TAX ON SCHOOL COMPUTERS**

**The Hon. Dr MARLENE GOLDSMITH:** My question without notice is directed to the Attorney General, representing the Minister for Education and Training. The Attorney might recall that some months ago in the House I directed a question through him to the Minister for Education and Training regarding taxes paid on computers in New South Wales schools. I Would be very interested to receive an answer to that question. I am extremely concerned about our school system paying taxes on computers when that money could be put to better use. Will the Attorney give me a response to that question or direct the Minister to give me a response to that question? As I recall, the Leader of the Government in this House also expressed an interest in the question at the time.

**The Hon. J. W. SHAW:** I recall the question of the honourable member. If, as she says, it has not been answered, I will chase the matter up with the Minister. Obviously questions of taxation are, firstly, likely to be complicated and, secondly, likely to concern Commonwealth law and practice. As the parent of one child who is doing computer studies in one of our secondary schools, I know of the great interest in studying computers in secondary schools. I note the importance of the question. I will raise it again with the Minister for Education and Training to see if a reply can be provided.

### **WITNESS EXPENSES**

**The Hon. I. COHEN:** Is the Attorney General, and Minister for Industrial Relations aware of a recent court case in the Bellingen Local Court regarding the vicious attack on members of the North East Forest Alliance by Anthony Cuthel, Kelvin Young and Derrick Ellum, three logging contractors from Dorrigo? The three men were found guilty of affray under section 93C of the Crimes Act. The magistrate, Mr Geoff Lyndon, fined the three \$200 and placed them on a \$1,000 bond to be of good behaviour for 18 months, and granted costs of \$46. In view of this fact, is the public expected to pay for the costs of six prosecution witnesses? Given the political nature of the attacks, would not it have been better for the offenders to have been ordered to pay witnesses' expenses -

**The PRESIDENT:** Order! Will the honourable member ask his question?

**The Hon. I. COHEN:** I ask that the offenders be ordered to pay full costs of proceedings and compensation to the victims.

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**The Hon. J. W. SHAW:** I regret that I am not aware of the decision of the magistrate to which the honourable member refers. However, it would obviously be inappropriate for me to seek to interfere in any court proceedings of that kind, and I would not contemplate doing so. No doubt the parties have appeal rights to the District Court and they should explore those rights.

### **PENSION FINANCIAL TRANSACTIONS TAXES**



**The Hon. J. P. HANNAFORD:** My question is directed to the Treasurer. Is it a fact that financial institutions are required to deduct the State bank account debits tax from the income of pensioners which is compulsorily deposited into their accounts? Will he review such tax to exempt it from the income of pensioners?

**The Hon. M. R. EGAN:** The Leader of the Opposition may be aware that some time ago I announced that the financial institutions duty and the appropriately named BAD - bank account debits - tax would be reviewed. Both of them are hopeless taxes from many points of view, including economic efficiency. The BAD tax is particularly bad as it is a regressive tax. I am sure that the Leader of the Opposition is aware that the difficulty is that those two financial transaction taxes provide a significant part of the Government's revenue.

**The Hon. J. P. Hannaford:** It's a big burden on pensioners.

**The Hon. M. R. EGAN:** Yes, I know, and that is why I announced the review. But it has to be done in conjunction with the other States because we get into difficulty if we get too far out of kilter with the other States.

**The Hon. J. P. Hannaford:** It is another opportunity for New South Wales to show its leadership.

**The Hon. M. R. EGAN:** We have taken the leadership on that. We are trying to get the other States to see our point but that is proving difficult. In particular, Queensland does not have a financial institutions duty, partly because until recently it had the highest growth rate, including the highest growth in employment. Queensland was also the beneficiary of unfair financial arrangements between the Commonwealth and the States, under which Victoria and New South Wales effectively not only subsidised Queensland but subsidised some of the smaller States. While I agree with the Leader of the Opposition about the nature of the BAD tax, I am not optimistic that there is an easy way out.

In view of the time, I suggest that honourable members place any further questions on notice. At the beginning of question time I omitted to inform the House of the absence of my colleague the Minister for Community Services, Minister for Aged Services, and Minister for Disability Services, although all honourable members will have noted his absence. He is representing the Government and the Parliament of New South Wales at the Premier's senior citizens Christmas concert.

**Questions without notice concluded.**

## **BUSINESS OF THE HOUSE**

### **Precedence of Business**

**Suspension of standing and sessional orders agreed to.**

**Motion for the suspension of standing and sessional orders by the Hon. M. R. Egan agreed to:**

That the Standing and Sessional Orders be suspended to allow a motion being moved relating to the conduct of the Business of the House that Government Business take precedence for the remainder of the day.

**Motion by the Hon. M. R. Egan agreed to:**

That Government Business take precedence of General Business for the remainder of the day.



[Mr President left the chair at 1.03 p.m. The House resumed at 2.30 p.m.]

## **JOINT STANDING COMMITTEE UPON ROAD SAFETY**

### **Report: Staysafe 28: Sleep Disorders, Driver Fatigue and Safe Driving**

**The Hon. A. B. Manson**, on behalf of the Chairman, tabled the report of the Joint Standing Committee upon Road Safety entitled "Staysafe 28: Sleep Disorders, Driver Fatigue and Safe Driving", dated December 1995.

**Ordered to be printed.**

## **WESTPAC BANKING CORPORATION BILL**

### **Second Reading**

**The Hon. J. W. SHAW** (Attorney General, and Minister for Industrial Relations) [2.32]: I move:

That this bill be now read a second time.

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

**Leave granted.**

Mr President, the object of this bill is to enable the Westpac Banking Corporation to exercise powers of a modern corporation which are available to companies incorporated under the Corporations Law.

The Westpac Banking Corporation, formerly the Bank of New South Wales, was established as a joint stock banking company during the first half of the nineteenth century and was incorporated by the Bank of New South Wales Act 1850.

Joint stock companies were originally an expansion of partnerships entered into for business ventures. Their capital was divided into shares like modern companies.

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The purpose of the Bank of New South Wales Act 1850 was to incorporate the company, limit its liability, set out its powers and ensure that the financial affairs of the company were disclosed to shareholders.

The rules set out in the legislation for the operations of the bank are supplemented by the deed of settlement, which sets out matters such as how share transfers take place, procedures for annual general meetings, and the appointment and obligations of auditors.

The Act has been amended on ten occasions but has not been consolidated. The Bank of New South Wales (Change of Name) Act 1982 changed the name of the bank to the Westpac Banking Corporation.

Since the last amendment to the Act, the Corporations Law has been introduced, and substantial revisions of company law have taken place. The Corporations Law does not generally apply to the bank of its own force, because the bank is incorporated under a State Act and is not registered as a



company under the Corporations Law.

However, provisions of the Corporations Law, including those which deal with takeovers and the securities and futures markets apply to the bank, in its capacity as a 'body corporate' and a 'corporation'. The Corporations Law also contains provisions specific to Australian banks.

The object of the bill is to provide for the application of additional provisions of the Corporations Law to the Westpac Banking Corporation.

Clause 4 of the bill enables regulations to be made, applying provisions of the Corporations Law and corporations regulations to the bank as if it were a company, subject to any modifications specified in the regulations.

Clause 5 sets out the modifications which will apply to provisions of the Corporations Law and corporations regulations which will apply to Westpac, to take account of Westpac's status as a company incorporated under the law of New South Wales.

The applied provisions will have effect despite anything in the legislation currently governing the bank.

Of course, any regulations made under the new legislation will be tabled before the House in the usual way and members will have an opportunity to review them if they wish.

The bill will enable the Government to modernise the rules which currently apply to the bank, while subjecting the bank, as far as possible, to the same rules as those applying to companies.

I commend the bill to the House.

**The Hon. J. P. HANNAFORD** (Leader of the Opposition) [2.33]: I am pleased to support the Westpac Banking Corporation Bill on behalf of the Opposition. The Westpac Banking Corporation has for a long time complied with the Corporations Law and the Corporations Regulations in its reporting and operational practices. However, the bank was established under the Bank of New South Wales Act 1850 and it does not operate within the meaning of the Corporations Law. The bank, therefore, has been operating under a number of restrictions which have prevented it from competing on a level playing field with other Australian banking institutions.

This proposed legislation will enable the Minister to apply the Corporations Law and the Corporations Regulations to the operations of the Bank of New South Wales. Once those regulations are activated the Westpac Banking Corporation will be brought completely under the control of the Australian Securities Commission and under the management of the Corporations Law and the Corporations Regulations. Therefore it will be able to pursue its investments and other management matters on the same level playing field as other banking organisations. I believe that that is good for Westpac and that it will eventually improve the economic climate of this State and the nation. The Opposition supports the bill.

**Motion agreed to.**

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

## **COURTS LEGISLATION FURTHER AMENDMENT BILL**

### **Second Reading**

**The Hon. J. W. SHAW** (Attorney General, and Minister for Industrial Relations) [2.36]: I move:



That this bill be now read a second time.

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

**Leave granted.**

Mr President,

The Courts Legislation Further Amendment Bill seeks to amend various court legislation to provide for minor reform of certain court procedures and administration.

The proposed amendments are minor in nature and have arisen primarily in the course of discussion with the respective jurisdictions on improving the administration of the courts.

The bill will:

- (i) amend section 64 of the District Court Act 1973 to permit a subpoena for production to specify a place other than the court, as the place of production;
- (ii) amend section 95 of the Supreme Court Act 1970 and section 85 of the District Court Act 1973 to more clearly define the existence and circumstance for the exercise of the power to award interest on the amount of taxed costs;
- (iii) repeal section 19(3) of the Coroners Act 1980 so that the Director of Public Prosecutions is no longer obliged to inform the Attorney General as to whether or not the director intends to proceed with criminal charges against the person concerned;
- (iv) amend the Local Courts Act 1982 to provide for the delegation of the Minister's authority to the Director General of the Attorney General's Department, to appoint a person to act temporarily in the office of Clerk of the Local Court;
- (v) amend the District Court Act to provide that if two registrars are appointed for a particular place, each will be the registrar for the entire jurisdiction of the court, each having the functions specified in the ministerial order permitting the appointment of two registrars.
- (vi) amend a number of statutes relating to the jurisdiction of the Court of Appeal and the Court of Criminal Appeal as follows:

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- (a) rationalise existing leave to appeal provisions;
- (b) introduce a leave requirement in certain appeals relating to caveats under the Real Property Act 1900 and winding up under the Corporations Law;
- (c) rationalise provisions relating to appeals to the Court of Appeal from the district and the Dust Diseases Tribunal to create essentially uniform provisions governing appeals from tribunals of co-ordinate status;
- (d) make a minor amendment to the Land and Environment Court Act 1979 to require leave to appeal from costs orders made by that court in class 4 matters;
- (e) amend section 171F(4) of the Legal Profession Act 1987 and section 34(1) of the Veterinary Surgeons Act 1986, to limit the right to adduce fresh evidence in appeals from the Legal



Services Tribunal and the Veterinary Surgeons Disciplinary Tribunal;

- (f) amend section 46A of the Supreme Court Act 1970 to allow benches of two judges of appeal to deal with applications for leave to appeal, and applications involving questions of practice and procedure in appeals and other matters in the court which cannot be dealt with by a bench constituted by one judge;
- (g) amend section 22 of the Criminal Appeal Act 1912 to increase the powers of the court when constituted by a judge sitting alone; and
- (h) amend section 18(3) of the Criminal Appeal Act 1912 to make it clear that the justification for an order that time served pending determination of an appeal to the court is not to count, is confined to the deterrence of unarguable or frivolous appeals and to remove from it references to substituted sentences.

Section 64 of the District Court Act

It is proposed to amend the District Court Act to allow subpoenaed documents to be delivered to a location other than the District Court. This proposal involves only minor legislative amendment and is confined to the District Court for the present to allow the District Court to test new procedures in a pilot study.

In 1994 a review of court services was conducted. A discussion paper was released for comment on various proposals for reform arising from the review. One proposal was for reform of the subpoena process. The reform proposed involves the issue of a subpoena requesting the holder of the documents to provide photocopies of the material directly to the person who requested it, upon payment of sufficient conduct money to meet the reasonable costs of that photocopying. This would mean that instead of the original documents being forwarded to the court registry to be photocopied at that location, the photocopying will be conducted without the intervention of the registry.

The present procedure places a significant burden on all parties concerned, including the court. Having regard to the low incidence of objections to access orders being made, the fact that most of the material subpoenaed is photocopied by the parties, and that much of the material subpoenaed is not tendered in evidence, this proposal will limit the involvement of the court in the inspection of documents and material required in court proceedings to those occasions where intervention is clearly required. An additional benefit will be that the occasions on which a solicitor will be required to attend court to obtain access to subpoenaed material will, in most cases, be reduced.

In the event that the holder of the documents should object to the photocopying of the subpoenaed material (for example, the holder does not have the facilities to photocopy the material, or the material is too bulky) it will be open to that person to make alternative arrangements directly with the solicitor concerned, for example, to view the documents on the premises of the holder of the documents.

In the event that a claim for privilege is to be made, the document holder would communicate that intention directly to the solicitor who issued the subpoena. If the solicitor intended to pursue obtaining access to the material subject to the claim, it would then be incumbent upon the issuing solicitor to file a notice of motion to list this matter before the court for the claim of privilege to be determined. A copy of this motion would be served on the holder of the documents, who would then attend court to argue the claim of privilege. It is noted that statistics obtained from the District Court reveal that a claim for privilege or an objection to access is made in relation to only 5% of subpoenas issued.

To allow such a scheme to be piloted, the District Court Act needs to be amended to permit the delivery of documents to locations other than the District Court.



Section 95 of the Supreme Court Act and section 85 of the District Court Act.

In the case of *McWilliams Wines Pty Ltd. v Liaweena (NSW) Pty. Ltd.* the then Chief Judge of the Commercial Division of the Supreme Court, Justice Rogers, proposed that the Supreme Court Act be amended to allow the court to order an unsuccessful defendant to pay interest on a successful plaintiff's costs from the date upon which such a plaintiff paid the amount in respect of costs to his solicitor.

At present, a litigant claiming damages in a division of the Supreme Court, other than the common law division, cannot obtain interest on monies paid to solicitors on account of costs. The litigant may have paid a sum of money on account of costs to his/her solicitor at a time distant to an order for costs being made and the eventual receipt of a taxed bill. In such circumstances, that litigant will be out of pocket for what may be a matter of years. Under section 95 of the Supreme Court Act there is currently no power in the court to compensate such a litigant by allowing the court to order interest to be paid on the money held on account of party/party costs.

It is proposed to amend the Supreme Court Act and the District Court Act to confer on the supreme and District Courts a discretionary power to order that a party against whom a party/party costs order is made also pay interest on such costs to the party in whose favour the order is made. The power will be available on the basis that:

1. It is exercised only where the special circumstances of the case warrant the making of such an order.
2. Interest should accrue from the time when the party, in whose favour the order is made, had made payment(s) to his solicitor in respect of work done or disbursements paid.
3. The entitlement to interest should not be dependent upon taxation or assessment under the Legal Profession Act.
4. The rate of interest should be equal to that prescribed from time to time pursuant to section 95(1) of the Supreme Court Act.

#### Section 19 of the Coroners Act 1980

Section 19 of the Coroners Act 1980 provides inter alia, that a coroner may terminate an inquest or inquiry where the coroner is of the view that the evidence establishes a prima facie case against any known person for an indictable offence related to the death or the fire or explosion, the subject of the inquiry. Section 19(3) requires the director of public prosecutions (the DPP) to furnish a notice to the Attorney General advising him of a determination to proceed with the matter.

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Section 28(2)(ii) of the 1960 Coroners Act provided that where a coroner was of the opinion that a prima facie case was established against a person, the Coroner was required to forward the matter to the Attorney General together with the details of that person and the particulars of the offence. As the Attorney General at that time had the sole responsibility for filing indictments, the attorney would examine the evidence taken by the coroner and make a decision as to whether to proceed with the matter.

When the 1960 Coroners Act was replaced by the 1980 Coroners Act, section 19(2) of the new Act reproduced the requirement to forward this material to the Attorney General. In 1986, at the time of establishing the office of the DPP under the director of public prosecutions Act, section 19(2) of the Coroners Act was amended to remove the reference to "Attorney General" and to insert instead a



reference to "Director of Public Prosecutions". At that time section (3) was also introduced which required the DPP to indicate to the Attorney General whether he intended to proceed with criminal charges against the person concerned.

It is not considered necessary for the Attorney General to be advised of these matters in this manner. The DPP does provide in his annual report, statistical details of "no bill" applications including the number of applications granted and the general reasons for granting the applications. The annual report also provides details of matters referred to the DPP by the Coroner pursuant to section 19(2) of the Coroners Act.

#### Delegation of authority

Section 10(4) of the Local Courts Act 1982 provides authority for the Minister to appoint a person to Act temporarily in the office of Clerk of the Local Court. As this authority cannot be delegated, the Minister must approve all occasions of staff acting in these positions. This is an administrative process which could be streamlined. It is, therefore, proposed to amend the Act to permit the Director General of the Attorney General's Department to approve the appointment of acting clerks of the Local Courts.

#### Registrars of the District Court

At present, section 18G(4) of the District Court Act provides that if two registrars of the District Court are appointed for any proclaimed place, one is to be the registrar of the court in its civil jurisdiction for the place and the other is to be the registrar of the court in its criminal jurisdiction for the place. This amendment removes this distinction between the two jurisdiction. If two registrars are appointed to a particular place, each will be the registrar for the entire jurisdiction of the court, each having the functions specified in the ministerial order permitting the appointment of two registrars.

At present section 18H of the District Court Act provides that a registrar for a proclaimed place can exercise certain prescribed functions. Section 18J provides that an assistant registrar for a proclaimed place has such functions as may be specified in the civil procedure rules or the criminal procedure rules.

These amendments clarify that a registrar for a proclaimed place may exercise functions only in respect of that proclaimed place. However, the amendments do not apply this limitation to the exercise of functions of any registrar or assistant registrar appointed for Sydney. Such a registrar or assistant registrar may exercise his or her functions in respect of any place.

#### Court of Appeal and Court of Criminal Appeal

##### a. Rationalise existing leave to appeal provisions.

Section 48 of the Supreme Court Act defines specified tribunals from which an appeal to the Court of Appeal lies as of right. Other non-specified tribunals may appeal to a division of the Supreme Court and then may, by leave of the Court of Appeal (under section 101 (2)(h), (i), (j) of the Supreme Court Act), appeal to the Court of Appeal. It is proposed that section 101 (2) (h), (i), (j) be repealed and replaced with a single provision which will apply to all appeals to the Court of Appeal from a decision of the Supreme Court arising in turn from an appeal or review of a decision of a court or tribunal other than those from a specified tribunal.

Such a provision would cover appeals to the Court of Appeal from judgments or orders in the Supreme Court granting or refusing prerogative or declaratory relief in relation to proceedings in the Local Court, the Licensing Court, the Residential Tenancies Tribunal, the Commercial Tribunal, the Mental Health Tribunal and any other court or tribunal which currently exists or is hereafter created. It will also mean that s.101(2) will be applicable to other tribunals when they are created unless subsequent legislation



determines otherwise.

- b. Introduce a leave requirement in appeals relating to caveats under the Real Property Act 1900 and windings up under the Corporations Law.

It is proposed that leave be required to appeal from decisions made in a division of the Supreme Court (usually the equity division) from judgments or orders under sections 74K, 74MA and 74O of the Real Property Act 1900 which respectively deal with: the extension of the operation of caveats; the withdrawal of caveats; and the lodgment of successive caveats.

It is also proposed that leave to appeal be required from judgments or orders (usually in the Equity Division) made under the Corporations Law which relate to: setting aside demands under section 459G; restraining the presentation or advertising of presentation of a winding up petition; and making a winding up order.

The rationale for these amendments is that although the relevant orders are final in form and therefore attract an appeal as of right, they are interlocutory in substance and, therefore, fall within the intent of s101(2)(e) which requires leave to appeal from interlocutory judgments or orders made in the court.

- c. Rationalise provisions relating to appeals from the District Court and the Dust Diseases Tribunal to create essentially uniform provisions.

It is proposed that sections 127, 128, and 130 of the District Court Act 1973, which deal with appeals to the Supreme Court and which are unnecessarily complex, be repealed and replaced with one provision. The proposal does not alter the policy underlying the existing sections. Appeals from erroneous directions to juries are preserved and a provision will be retained, analogous to s128(5b), which prevents a litigant, once a hearing has commenced, from seeking leave to appeal from an interlocutory order, thereby disrupting the trial.

Currently, the Dust Diseases Tribunal Act 1989 fixes a \$5,000 threshold for appeals as of right to the Court of Appeal. It is proposed that this be raised to allow a right of appeal where \$10,000 or more is involved, and that otherwise, appeals from the Dust Diseases Tribunal be as proposed for the District Court.

- d. Amend the Land and Environment Court Act 1979 to require leave to appeal from costs orders made by that court in class 4 matters.

Currently, a general appeal on fact as well as law lies from orders or decisions in class 4 proceedings, and in the case of interlocutory orders or decisions the right to appeal is by leave only.

The Court of Appeal has received a number of appeals as to party/party cost in class 4 cases. At present, such appeals lie as of right. It is proposed to amend the legislation to require leave to be granted in such cases.

- e. Limit the right to adduce fresh evidence in appeals from the Legal Services Tribunal and Veterinary Surgeons Disciplinary Tribunal.

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Currently section 171F(4) of the Legal Profession Act 1987 which was inserted into the principal Act by the Legal Profession Reform Act 1993 provides that appeals to the court from the Legal Services Tribunal shall "be by way of a new hearing and fresh evidence, or evidence in addition to or substitution for the evidence received at the original hearing may be given".



Section 171F(4) re-enacts section 164(4) of the 1987 Act. The hearings are *de novo*, not re-hearings. The proposal is that the appeal be changed to a re-hearing.

Experience indicates that parties use the hearing before the tribunal as a "dry run". Adducing fresh evidence or putting a different case before the Court of Appeal wastes resources. It is also argued that such an appeal is an anomaly. Appeals from other tribunals which discipline members of professions such as medicine and dentistry are not treated in this manner.

It is proposed to repeal section 171F(4) and allow section 75A of the Supreme Court Act to operate in appeals from the tribunal. This would mean that hearings would be by way of re-hearing and fresh evidence could only be received in special circumstances.

Section 34(1) of the Veterinary Surgeons Act 1986 allows for appeals to the Supreme Court from the Veterinary Surgeons Disciplinary Tribunal, and by sections 48(1)(a)(vii) and (2)(f), such appeals are assigned to the Court of Appeal.

Sub-section (3) creates an appeal which is a hybrid of an appeal by way of re-hearing and a hearing *de novo*, in that it provides the appeal shall be by way of a new hearing (*de novo*), but that new evidence may only be adduced if the court is satisfied that there were good reasons for its not having been adduced before the tribunal (an element of a re-hearing).

Repeal of section 34(3) will allow section 75A of the Supreme Court Act to operate so that hearings are by way of re-hearing and fresh evidence can only be received on special grounds.

f. Amend section 46A of the Supreme Court Act to allow benches of two judges of appeal to deal with applications for leave to appeal, applications involving questions of practice and procedure in appeals, and other matters which cannot be dealt with by a single judge.

Section 46A, which was inserted into the Supreme Court Act in 1994, allows the Court of Appeal constituted by two judges to hear appeals on the quantum of damages in cases arising out of death or personal injury where no contested matter of principle arises.

Where the court so constituted is equally divided, there is a re-hearing before a bench constituted by three judges of appeal, with the costs of the hearing before the two judge bench being paid from the Suitor's Fund.

It is proposed that section 46A be amended to allow two judge benches to deal with applications for leave to appeal, and applications involving questions of practice and procedure in appeals, including interlocutory appeals and other matters in the court which cannot be dealt with by a judge sitting alone.

This proposal would result in a more practical use of judge time on application days in the Court of Appeal. The United Kingdom and Queensland have permanent Courts of Appeal and powers such as those proposed are exercised by benches of two judges. The proposal is conservative, and comparable with those in other jurisdictions.

g. Amend section 22 of the Criminal Appeal Act 1912 to increase the powers of the court when constituted by a judge sitting alone.

Section 22 of the Criminal Appeal Act lists the powers of the court exercised by a judge of the court sitting alone. Where applications made by an appellant under section 22 are refused there is an automatic right of appeal to the court constituted by three judges. It is proposed that the following be added to this list:

- the power under section 12(a) to order the production of any document, exhibit or thing concerned



with the proceedings;

- the power under section 12(b) to order the attendance of persons before the court for examination;

- the summary dismissal of appeals for want of prosecution;

- the power under section 18(3) to order that where an appeal or application for leave to appeal is abandoned, time spent in custody is to count towards the sentence imposed.

In all cases it is proposed that the existing right of an appellant to appeal to the Court of Criminal Appeal constituted by three judges be preserved.

h. Amend section 18(3) of the Criminal Appeal Act 1912 to clarify the basis upon which an order may be made that time served pending determination of an appeal to the court is not to count.

Section 18(1) of the Criminal Court of Appeal Act provides that an appellant not admitted to bail pending determination of his appeal shall be treated in such manner as directed by regulations made under Acts relating to prisons.

Sub-section (3) provides that if a person in custody pending a determination of an appeal is specially treated, in the absence of an order to the contrary, time spent in custody shall not count, and an original sentence shall resume, or a substituted sentence shall begin to run, from the date upon which the appeal is determined.

Most appellants in custody are "specially treated". It is understood that the policy behind s18(3) was the deterrence of unarguable or frivolous appeals.

It is proposed to amend the sub-section to make it clear that normally the exercise of the discretion provided in section 18(3) will involve an order that time count except where the appeal was unarguable or frivolous.

**The Hon. J. P. HANNAFORD** (Leader of the Opposition) [2.37]: The Opposition supports the Courts Legislation Further Amendment Bill. On this occasion the Opposition will move into Committee to move an amendment to item [7]. New section 64(1A) reads:

A subpoena for production of a document or thing may authorise compliance with the subpoena by the production of the document or thing:

(a) at any hearing of the action or of proceedings ancillary to the action, or

(b) to any specified person at a specified place.

Legal practitioners of this State have been concerned about this matter for a considerable period. The courts proposed to the rules committee that this proposal be dealt with by way of a change of the rules, but the legal profession opposed that proposal, and for a very good reason. As the Opposition interprets the legislation, as a solicitor I could issue a subpoena requiring the production of documents at the office of the solicitor for the other party. In compliance with that subpoena papers for which privilege would normally be claimed could be delivered to the solicitors for the other side, which would be detrimental to the interests of any party. The legal profession says that the subpoenaed party should have the right to take documents to the court, rather than hand them over to the other side.

If there is an argument about the documents, at least the court has possession of them and will



decide whether they will be released. That opportunity is not available under the proposed new section. Just as scary is the requirement to produce in response to a subpoena original documents to the office of the solicitor representing the opponent with no assurance that the documents will be secure. Significant primary evidence could form part of those documents, which, if lost or damaged, would be disastrous for the party concerned. I do not believe that that was the intention of the provision. Solicitors would prefer the legislation to provide an option, when such important material is subpoenaed, to deliver the material to the court to be kept under security, or to the other party.

The provision obviously intends to facilitate the delivery of subpoenaed documents. I agree that there should be a better system. The law currently requires all subpoenaed documents to be delivered to the court. The present cumbersome process requires solicitors to attend court to inspect the documents and to ask for them to be copied. I think the legislation intended that the person receiving the subpoena would arrange for them to be copied and produce the copies to the person issuing the subpoena. That would ensure that the original documents could be produced to the court. That is sensible management practice and it is my recollection of the original intention of the legislation. The proposed section, however, does not achieve that objective. The Opposition, therefore, proposes to move an amendment in Committee to delete new section 64(1A) and insert instead:

(1A) A subpoena for production of a document or thing may authorise compliance with the subpoena by the production of the document or thing to a specified person at a specified place. However, the person who is required by the subpoena to produce a document or thing can still elect to produce the document or thing at the specified hearing of the action or of proceedings ancillary to the action.

The choice should be available for persons to deliver the documents to the solicitor's office or to the court, whichever is the most appropriate to secure the documents and to comply with the subpoena. That approach is logical and sustainable. The Opposition commends those changes to the Minister.

**The Hon. J. W. SHAW** (Attorney General, and Minister for Industrial Relations) [2.42], in reply: I am grateful for the general support of the Opposition for this bill, which is obviously a series of practical and constructive suggestions for court reform. The particular difficulty raised by the Opposition can be debated in Committee.

**Motion agreed to.**

**Bill read a second time.**

### **In Committee**

#### **Schedule 1**

**The Hon. J. P. HANNAFORD** (Leader of the Opposition) [2.45], by leave: I move the following amendments in globo:

No. 1 Page 7, Schedule 1 [6], lines 21-26. Omit all words on those lines.

No. 2 Page 7, Schedule 1 [7], lines 29-34. Omit all words on those lines. Insert instead:

(1A) A subpoena for production of a document or thing may authorise compliance with the subpoena by the production of the document or thing to a specified person at a specified place. However, the person who is required by the subpoena to produce a document or thing can still elect to produce the document or thing at the specified hearing of the action or of proceedings ancillary to the action.



On 30 November the Law Society of New South Wales wrote the following letter to the Attorney General:

I refer to paragraph 7 of Schedule 1 of the above mentioned Bill dealing with amendments to section 64 of the District Court Act 1973 concerning subpoenas.

The proposed section - 64(1A)(b) creates a situation where documents and/or things are produced to any specified person at a specified place. This amendment will permit the production of documents etc to a place outside the court and at the convenience of the issuing party. Such a procedure is antithetical to the entire philosophy of subpoena procedures.

It is feared that such a procedure may be abused and other parties required to attend only at the convenience of the issuing party. Secondly, third parties are comfortable with producing documents to the court knowing that their documents will be safeguarded. Such parties will be most apprehensive of producing their valuable documents to a party to litigation even though the subpoena is obtained with the sanction of the court.

There is also the problem of sensitive material, trade secrets etc contained in documents. It would be unfair to expect a party to hand over such documents to anyone but a court official.

The Litigation Law and Practice Committee of the Law Society is completely opposed to this amendment. Cost saving measures of this nature without comprehensive examination of the disadvantages it creates works to the detriment of the judicial system and creates more community hostility to the legal system generally. The Committee requests that this amendment be withdrawn.

I do not support the demand of the Law Society that the amendment be withdrawn. A mechanism should be put in place that controls the production of subpoenas. I may have been amongst the parties that initiated a practice that subsequently led to criticism from the courts. Subpoenas could be issued for the production of documents but, in order to meet the convenience of all parties, copies were given to the other party or the documents were made available to the party issuing the subpoena for analysis, thus reducing delay in the courts. It appears that some years later that practice got out of hand. Consequently, the court ruled that subpoenas were orders that documents be produced to the court and it was therefore improper for parties to enter

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into arrangements to deliver documents to the subpoenaing party without the documents ever reaching the custody of the court.

Although all practitioners recognised that the management practice the parties had agreed to was sensible, the court said that the production of documents under subpoena was a matter that should be under the control of the court and, therefore, all documents were to be delivered to the court. This legislation provides that documents required to be produced under a subpoena are to be produced to the court or some other specified place. It does not enable parties to determine easily whether documents should be delivered to that other specified place. If a subpoena were issued requiring the production of documents at my office and a person wanted to challenge that subpoena, depending upon the rules of the court he would have to request that the subpoena be varied to enable documents to be produced to the court. There could be an argument about whether those documents should be made available. That procedure is expensive and unnecessary, and it would lead to confusion.

A mechanism is required that will enable a subpoena to be issued requiring documents to be produced to the offices of the party issuing the subpoena. If the party being issued with the subpoena does not like that arrangement, for whatever reason, the documents could still be produced to the court and left in the security of the court. Any argument about the production of those documents could occur at the appropriate time. I referred earlier to the tension that exists concerning proposed section 64(1A). Unfortunately, lawyers are saying, as they are prone to do that the provision is not clear and, that there will be arguments about it. They want the provision amended so that is made clear. The amendments



will clarify the position and ensure that there can be no arguments concerning the provision. The amendments will also improve management systems.

**The Hon. ELISABETH KIRKBY** [2.52]: The arguments of the Leader of the Opposition concerning these amendments are compelling. I trust that the Government will agree to them without too much argument or discussion in Committee. After all, the bill was introduced to effect a series of procedural amendments and to assist in reducing court delays. I do not believe that those court delays will increase if the amendments moved by the Leader of the Opposition are accepted by the Government. Unfortunately, court delays are a fact of life in this State. I am sure that the Attorney General, who is in the Chamber, is well aware of statements made in the annual review of the Supreme Court, which devoted 16 pages to the plight of the Court of Appeal.

It is the view of judges that the Court of Appeal is desperately undermanned and underresourced. The introduction of such minor amendments as these is only tinkering at the edges of the problem. If the Government wishes to reduce court delays it should appoint more judges. It is interesting to note that, although additional judges were appointed by the previous Government, the Australian Labor Party, which has been in office since March this year, has not appointed one additional judge. Court delays are continuing; if my information is correct, they are increasing. The Leader of the Opposition referred to the necessity for documents produced under subpoena to be kept safe. I support the amendments moved by the Leader of the Opposition.

**The Hon. J. W. SHAW** (Attorney General, and Minister for Industrial Relations) [2.55]: The Government does not accept the amendments moved by the Leader of the Opposition. They are antithetical to the legislative change the Government is seeking to effect. I will refer to the provision as it stands in the bill. It states:

A subpoena for production of a document or thing may authorise compliance with the subpoena by the production of the document or thing:

- (a) at any hearing of the action or of proceedings ancillary to the action, or
- (b) to any specified person at a specified place.

In other words, the draftsman of the subpoena may specify that either the document is to be produced at the court during the course of formal proceedings or it may be produced more informally to a particular person at a particular place. The whole idea behind the amendments is that the person or party issuing the subpoena should be able to specify whether the documents are to be produced to the court or whether they are to be produced more informally at some other place, such as a solicitor's office. The amendments moved by the Leader of the Opposition will lead to everything being left to the recipient of the subpoena. The solicitor acting on behalf of, say, a defendant would be able, under the amendments, to elect to produce documents at a hearing of the action, that is, to the court.

There are resource problems in that proposal. The court registries will be the recipients of vast quantities of documents which could more efficiently and effectively be exchanged between the parties. These amendments fundamentally undermine the intention of this efficiency reform to our court system. These amendments will enable solicitors either for defendants or for other individuals to determine where they will deliver documents, either to the court or to a specified person. They will be able to do this regardless of whether they wish to object to access. In other words, there may be no issue concerning privilege. There may be no objection to the production of documents or access to those documents.

Nevertheless, solicitors acting for the recipients of a subpoena will be able to say, despite the attraction of giving over these documents in an informal situation, that they insist on the documents being produced in the court. My department had in



mind a pilot project to deal only with those matters in which a party objected to access being granted to the documents going to the court. In other words, in an ordinary case when there is no controversy, the documents would simply be exchanged between the parties. But that could be subverted by a provision whereby the recipient of the subpoena could say that he or she insists on the documents being produced in a formal way, that is, to a court. That has obvious resource implications. It is estimated that about 5 per cent of subpoenas result in claims for privilege, that is, an objection to the documents being produced.

There would appear to be no reason for the remaining 95 per cent of matters continuing to go to court when there is no rational reason for the documents to be produced at the court. As I said, that has resource implications. As to the question of the safety of documents, under this proposal the parties will not be producing original documents; they will be producing photocopies. Original documents can remain safely in the custody of their owners. When these proposals were put to the Law Society by my predecessor, who is now the Leader of the Opposition, the Law Society wrote to him, in a letter dated 12 December 1994, setting out the recommendation which is relevant to the matter now being debated. It set out the recommendation in these terms:

That after a party issues a subpoena he/she be permitted to receive photocopies of subpoenaed documents directly from the holder of a document without the further intervention of a court and without requirement for notification of the opposing party.

The Law Society then commented, "The committee is in agreement with the broad thrust of the proposal." The letter contains other material, but I do not think it is pertinent to the matter in contention. Perhaps I ought to read it so that I cannot be accused of taking the matter out of context. The letter from the Law Society continued:

. . . however, it submits that it is crucial that opposing parties should be notified of the issue of the subpoena. This is essential to ensure that other parties have sufficient time to make any objections they see fit.

You may be aware that the Supreme Court is considering changes to subpoena procedure which are somewhat similar to the ones contained in the Discussion Paper. It is submitted that uniform procedures wherever possible should be introduced in all jurisdictions.

Another suggestion is that where photocopying is impractical, an alternative informal examination of documents at the place of business and at the convenience of the producing party should be considered. This is particularly useful for examining bank ledgers, account books etc, held by banks and other large organisations.

That is the total response from the Law Society in respect of this suggestion or recommendation. It is fair to say that the Law Society acceded to that suggestion. Certainly, to use its words, it is "in agreement with the broad thrust of the proposal". I shall briefly recapitulate the difficulty the Government has with the amendments. They would allow solicitors acting for those who receive subpoenas to undermine the proposal by saying, either in all cases or in a large number of cases, that it would suit their convenience to produce the documents to the court. That is contrary to the spirit and the intention of the micro-economic reform which we propose for the court system.

**Question - That the amendments be agreed to - put.**

**The Committee divided.**

**Ayes, 19**

Mr Bull

Mr Mutch



Mrs Forsythe	Rev. Nile
Miss Gardiner	Dr Pezzutti
Dr Goldsmith	Mr Ryan
Mr Hannaford	Mrs Sham-Ho
Mr Jobling	Mr Rowland Smith
Mr Kersten	Mr Tingle
Miss Kirkby	<i>Tellers,</i>
Mr Lynn	Mr Jones
Mr Moppett	Mrs Nile

#### **Noes, 17**

Mrs Arena	Mr Manson
Dr Burgmann	Mr Obeid
Ms Burnswoods	Ms Saffin
Mr Corbett	Mr Shaw
Mr Dyer	Mrs Symonds
Mr Egan	Mr Vaughan
Mrs Isaksen	<i>Tellers,</i>
Mr Johnson	Mr Cohen
Mr Macdonald	Ms Staunton

#### **Pairs**

Mrs Chadwick	Mr Kaldis
Mr Samios	Mr O'Grady

**Question so resolved in the affirmative.**

**Amendments agreed to.**

**Schedule as amended agreed to.**

**Bill reported from Committee with amendments, and report adopted.**

#### **DISTINGUISHED VISITOR**

**The DEPUTY-PRESIDENT (The Hon. Dr Marlene Goldsmith):** I draw the attention of members to the distinguished presence in the President's Gallery of the Rt Hon. the Lord Fraser of Carmyllie, QC, Minister of State, Department of Trade and Industry, Great Britain.

#### **WITNESS PROTECTION BILL**

##### **Second Reading**

**The Hon. J. W. SHAW** (Attorney General, and Minister for Industrial Relations) [3.11]: I move:

That this bill be now read a second time.

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



**Leave granted.**

Mr President, this Government has an absolute commitment to improving law and order in this State.

There are a number of ways in which this objective is being pursued. One of these is to ensure that persons committing offences are brought to account and prosecuted for their crimes.

To do this we rely on information provided to the authorities, and the testimony of prosecution witnesses.

Mr President, it is a sad reflection on our society that the lives of witnesses who seek to assist the authorities are sometimes put at risk because of what they know and are prepared to tell.

The intimidation, coercion and subversion of prosecution witnesses, if left unchecked, would undermine our system of justice.

It is therefore crucial that we are in a position to offer reassurance to those who come forward, that they can be protected from harm.

In short this means having an effective witness protection program in operation.

Mr President, it is no secret that the police service has operated a witness protection program in new south wales for a number of years.

In the absence of legislation, this program has been run under administrative guidelines and has had to rely on co-operative arrangements with various agencies, particularly when giving witnesses new identities.

Witness protection programs have also been conducted on a similar basis in a number of other states, and at the Federal level.

Mr President, in 1988 a Joint Commonwealth/State steering committee was convened to consider a report on witness protection prepared by the Federal Parliamentary Joint Committee on the National Crime Authority.

That committee formed the view that each jurisdiction should continue to operate its own witness protection program, but that a network of complementary legislation should underpin those programs.

Statutory regulation of witness protection was seen as the way to import greater operational regulation and guidance into programs. It also gives force of law to co-operative arrangements that must otherwise be relied upon.

Importantly, statutory regulation also provides the opportunity to extend across state boundaries the capacity to prevent disclosures concerning protected witnesses.

The steering committee assisted the Commonwealth Attorney General's Department in drafting the bill that was to form the first link in the proposed network of witness protection legislation.

On the 18th of April this year that bill came into operation as the Commonwealth Witness Protection Act.

Mr President, the Commonwealth legislation is structured to encourage all States and Territories who run witness protection programs to pass complementary legislation within twelve months of the



Commonwealth Act commencing.

In this way it is hoped that by April 1996 a national network of complementary witness protection legislation will be in place.

The bill now before the House provides the complementary legislative framework to regulate witness protection activities in this State.

However, the introduction of complementary legislation is not the primary purpose of the bill.

Mr President, we should not forget for a single minute that ultimately this bill is about providing the means to secure the safety of witnesses and their families, who are placed at risk because of their involvement with prosecuting and law enforcement authorities.

The focus of consideration on the bill should therefore be to ensure that it provides a framework for the operation of an effective witness protection program.

Mr President, contrary to what Hollywood would have us believe, life as a protected witness is neither exciting nor glamorous. It is stressful, it is difficult and it restricts freedom.

Whether protection is to be long term or for only a short period, normal life is disrupted, activities are curtailed, and there is suddenly a set of restricting rules governing life.

In the worst case scenario identity is lost, and contact with the past and everything familiar is severed.

The decision to include a witness on the program should therefore only be made where the witness or the information that they are able to provide is vital to a prosecution, and the level of risk faced by the witness leaves no other option open.

Mr President, witness protection is not something that can be unilaterally imposed upon someone. It can only be effective with the co-operation of the witness.

Mr President, the provisions of this legislation are reasonably self explanatory. I would, however, briefly like to draw attention to some of the more significant aspects of the bill.

Part 2 of the Act will provide the guidelines under which the Police Service will be required to operate the witness protection program in the future.

Direction is given as to what must be taken into account when deciding whether to admit a person to the program. The conditions that must be satisfied before a person enters the program are also set out.

One of the conditions of entry to the program is the signing of a memorandum of understanding.

Mr President, the memorandum of understanding is a very important document. It provides a comprehensive statement of the arrangement that has been made between the Police Service and an individual witness.

This ensures that there is no misunderstanding of the detail of the arrangement and that respective expectations and responsibilities are clear.

Under the terms of the legislation certain matters must be covered in the memorandum of understanding, and others can be included according to the individual needs and circumstances of a witness.



The compulsory clauses include a statement of the basis on which a person is placed on the program. This will include reference to the assistance that the witness has agreed to provide that has consequently placed them at risk.

Other compulsory terms are a statement that breach of the memorandum of understanding can result in withdrawal of protection, and advice that at any time the witness has a right to complain to the ombudsman about the conduct of any police officer in connection with the program.

Mr President, part 2 of the Act also makes reference in broad terms to action that police are authorised to take in order to protect the safety and welfare of a witness.

To work effectively, a witness protection program must be flexible. It must be capable of responding to an infinite variety of circumstances in which a person must be protected.

For this reason no attempt has been made to exhaustively list the action that may be taken under this act in order to protect a witness.

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Mr President, part 2 also deals with another area of fundamental importance and that is the removal of witnesses from the program.

Just as there must be careful consideration to including a witness on the program, there must be good reason for terminating protection arrangements.

As I have said, it is not easy living as a protected witness and some witnesses find that they are unable to come to terms with the lifestyle.

As I have also said, a protection program can only be effective if witnesses are prepared to co-operate.

Consequently, where a witness decides that they no longer wish to participate on the program this will be grounds for termination of protection.

A second ground for termination arises when the risk to a witness ceases to exist.

A third ground arises from breach of the memorandum of understanding, a fact that is emphasised to a witness in the memorandum itself.

The final ground for removal from the program is where a witness threatens to breach the security of the program itself.

Under this bill police have a duty to protect the welfare and safety of witnesses. This duty extends to ensuring that a participant on the program does not act in such a way that the overall security of the program is compromised, and other participants are put at risk as a result.

Mr President, if a person is removed from the program other than at their own request, an internal right of review is provided.

Mr President, the greatest danger to a witness is for their identity and whereabouts to be known. Parts 3 and 4 of the Act are therefore perhaps the essence of witness protection.

Under part 3, provision is made for an order to be sought from the Supreme Court authorising a witness to be given a new identity, and provided with essential documents in their new name.



Other provisions in part 3 are directed at protecting a person's new identity, and allowing a witness to use their new identity as if it were their only identity.

It is not always possible for a person who has taken a new identity to erase all links with their past, and it is not intended that re-identification should in any way be used to avoid responsibilities.

Hence there are also provisions in part 3 that allow management of the affairs of a reidentified witness that allows their obligations to be met without disclosure of their new identity.

Mr President, preventing the disclosure of personal details of protected witnesses is obviously a primary concern of any agency providing witness protection services.

It is therefore one of the great benefits of placing witness protection on a legislative basis that offences carrying substantial penalties can be created to discourage such disclosures.

It is of even greater benefit when identical offences are contained in complementary witness protection legislation in other jurisdictions.

Mr President, as a result of this bill and its counterpart in other jurisdictions, it will be an offence in this State for any disclosure to be made that compromises the safety of a participant in any witness protection program.

Similarly, a person on the NSW witness protection program will be provided with extended protection as it will now also be an offence under the laws of other participating states for disclosures to be made about them.

Finally, I draw to attention the provision in part 4 that restricts the issuing of state identity documents for protected witnesses in other jurisdictions.

This provision mirrors section 24 in the Commonwealth Act and is the linchpin for all States and Territories operating witness protection programs to introduce complementary legislation.

Mr President, to work effectively any witness protection program requires the ability to obtain both Commonwealth and State identity documents.

At the Commonwealth level tax file numbers and passports may be required, and at a State level birth certificates, driver's licences and educational qualifications may be required.

By restricting access to such documents to jurisdictions that have complementary witness protection legislation, the incentive is created that allows the benefits of a network of legislation to be realised.

The Government is committed to open and accountable public administration. It is also committed to law enforcement and protection of the individual and the community. This bill reflects all of those commitments.

**The Hon. J. P. HANNAFORD** (Leader of the Opposition) [3.12]: I support the Witness Protection Bill. The Opposition will not divide the House on the second reading of the bill but will move amendments to the bill because it is essential that New South Wales has the strongest possible witness protection measures. The concept of witness protection is not new. For many years different forms of witness protection have been in place throughout Australia. Agreement was finally reached between State and Commonwealth police authorities to move towards uniform witness protection legislation. In 1994 the Parliament of the Commonwealth of Australia passed the Witness Protection Bill. The bill before the House is consequential on that legislation and is part of a mirror scheme throughout the



country that will allow State and Commonwealth police to work together, as is necessary, to provide protection to witnesses. The levels of protection needed by witnesses will vary depending on need.

The demand for witness protection has increased dramatically in New South Wales. New South Wales is not alone in seeking to meet this demand. In April of this year I had reason to investigate the problem when I was in Hong Kong. The Legislative Council of Hong Kong established an ad hoc group to study organised and serious crime. The group also examined the Organised and Serious Crime Bill and the Criminal Procedure Amendment Bill of Hong Kong. The issue being addressed at that time in Hong Kong was appropriate levels of witness protection. All the papers that were confidential to that committee have now been released to me by the Attorney General of Hong Kong. As the first law officer of Hong Kong, he recognised that witness protection was a major tool in the drive to arrest serious crime. Recently Hong Kong has experienced an increase in serious crime, most of it ethnically oriented. There have been instances of intimidation of witnesses. The

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establishment of the ad hoc group arose directly out of a key witness failing to give evidence in a murder trial in Hong Kong in 1994. The witness was no longer able to remember the incidents of the case.

That is not unusual even in New South Wales. In the past few years, particularly in cases involving allegations against accused from certain south-east Asian communities, a number of witnesses at trials have ceased to be able to remember the incidents. That became such a concern that the Director of Public Prosecutions spoke to me about the issue. Trials of serious criminal offences were collapsing because witnesses either did not turn up or, if they did so, no longer recollected the incident. The clear inference drawn by all investigating officers was that, although it was difficult to prove, the witnesses had been intimidated.

When I raised this issue with the Attorney General of Hong Kong he said Hong Kong was experiencing the same problem. It was his view that, in the drive to clean up major organised crime in Hong Kong, the one essential ingredient was that witnesses had to be confident from the very beginning of an inquiry that they would be protected. He told me how the triads and their Vietnamese equivalents in Hong Kong worked. The triads have a reputation for extreme action: they are quite prepared to kill witnesses, and for it to be known that witnesses could be killed. Therefore it did not matter to witnesses of serious crime whether it was likely they would be killed; they would not come forward and cooperate with the investigators because they knew the reputation of the triads and that those triads could be involved in or associated with criminal activities. That problem was hampering criminal investigations in Hong Kong.

The Legislative Council committee that was considering the organised and serious crimes legislation had to address this issue. The papers from the Legislative Council are worth reading. They direct attention to the incidence of Vietnamese crime in Hong Kong. Members of this House cannot avoid the reality that such an element of criminal behaviour is emerging in New South Wales. In Hong Kong, unless people can be assured of protection from the word go they will never cooperate in the investigation of major crime in their communities.

The final paper that was drawn up by the Legislative Council in Hong Kong, entitled "Witness Protection", addressed a number of matters. It is worth reading some relevant extracts from the last pages of that report so that honourable members understand why I will move certain amendments to the bill. I will comment also on the role of the Commissioner for Police in Hong Kong in the framework of the Hong Kong experience. Under the heading "The Organized and Serious Crimes Legislation" the committee wrote, in a paper prepared by the security branch for the Legislative Council:

To address Members' concern over the witness assurance arrangements for persons who are required to answer questions or to furnish material under section 3 of the Organized and Serious Crimes legislation -



I interrupt to indicate that section 3 of the legislation is not dissimilar to our legislation relating to the New South Wales Crime Commission, the Independent Commission Against Corruption and the Royal Commission into the New South Wales Police Service, where people can be required to attend to give evidence, effectively under duress. The document continued:

- we propose that all persons interviewed under the provision of section 3 will be advised of the availability of witness reassurance measures and a witness protection programme. Any fears that they express on their safety will be addressed and counselled. If they request witness protection, such requests must be referred to the Headquarters Unit of the Police Central Witness Protection Unit, notwithstanding that the Officer-in-Charge of the case does not consider it appropriate.

I emphasise that. Even if a police officer does not think protection is appropriate, information about protection under this scheme must be referred on. The document continued:

The Headquarters Unit will then prepare a threat assessment, and the Director of Crime Investigation will then make a recommendation, which will be submitted to the Deputy Commissioner of Police (Operations) for a decision. The Deputy Commissioner of Police (Operations) will decide in each case whether entry of the witness to the protection programme should be authorised.

In appropriate cases, immediate protection will be afforded to the witnesses whilst the threat assessment is conducted, and prior to the decision of the Deputy Commissioner of Police (Operations) in regard to admission to the programme.

We believe that the above arrangements would be able to assure persons served with a section 3 order as a very senior Police Officer, the Deputy Commissioner of Police (Operations), would decide on whether the person should be admitted to a witness protection programme. The Headquarters Unit of the Protection Unit has already been in place, any requests from persons served with a section 3 order for witness protection can be handled immediately.

Under the heading "Witness Reassurance Measures" the following comment is made:

Experience has indicated that not many witnesses require physical protection or safe accommodation, it is therefore essential that witnesses are reassured and informed of the investigative and prosecution process. The following reassurance arrangements will be provided.

They have an interesting set of measures in Hong Kong. They provide for an officer contact card, and every witness is provided with information about the case officer. The card provides the person with the telephone number of the officer in charge of the investigation and the name of an investigating officer. This ensures that an officer with intimate knowledge of the investigation is available to advise and counsel a person on a

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24-hour basis. All witnesses and victims are provided with an information sheet which explains the rights of crime victims and witnesses. A police notice to witnesses which provides advice, guidance and contact telephone numbers of relevant police officers will be provided to all persons issued with a court summons. This notice is supplemented by an information leaflet entitled "Witness in Court", which explains court procedures to the witness.

Specific reassurance measures will be tailored to the particular needs of each witness. This may require daily contact between the witness and officers, assistance in relocation within Hong Kong and assistance in making arrangements for family members. I emphasise the need for this personal contact. I draw the attention of the House to the next extract from the paper, headed "Appeals against Witness Protection Decisions", which stated:

Any witness who has requested, but has not been offered, protection by the Officer-in-Charge of the



case, can contact the Central Police Witness Protection Unit for re-assessment. Requests from all persons served with a section 3 order under the Organized and Serious Crime legislation, must be referred to that Unit. The Deputy Commissioner of Police (Operations) will decide whether to authorize entry of the person into the witness protection programme.

There will be, as is currently the case, full consultation between the Police and the Attorney General's Chambers in regard to the necessity, and possible implications to the Crown case, of providing protection to a witness. Whenever necessary, case conferences will be arranged to facilitate communication with, and assistance and co-operation from, other government departments and Security Branch.

It is essential to the credibility of the Police in negotiating terms of witness protection agreement with individuals that the final decision rests with the Deputy Commissioner. Quite a number of those afforded protection will have links with organized crime and will be testifying against accomplices and associates. Such persons co-operate usually because of self-interest. It may, therefore, be possible that they will take every opportunity to secure the greatest advantage from the agreement. Less reputable individuals could lodge appeals for improved benefits under the threat that denial would lead to a refusal to testify. Giving in to such unreasonable demands could, in turn, jeopardise a prosecution, because the defence could argue that the witness is prepared to fabricate evidence to secure the generous compensation embodied in his witness protection agreement.

Witness protection is a very complicated matter. No authority is more competent than the Police to assess whether an individual should be offered protection. The Police will have intimate knowledge of the investigation, the motivations of the witness, the importance of a witness to the Crown case and intelligence regarding the level of threat posed by the offenders. The Deputy Commissioner will act in good faith in reaching a decision as to whether, and upon what conditions, an individual should be afforded protection. Ultimately, the consequences for any decision reached will rest with the Commissioner of Police.

That comment in the report to the Legislative Council and adopted by the Legislative Council is important. In subsequent discussions with the Attorney General it became clear to me that this concept of an appeal process and the independence of the scheme was an essential ingredient in engendering community confidence. I emphasise that we are dealing with a Hong Kong system, where it is not too far removed from a police state. The dissension to this appeal process was an appeal within the police system. A separate witness protection unit was established and appeals held within that police system. It became clear to me that the more independent the review mechanism the greater the public confidence that could be developed in the system.

It is interesting to note some of the other comments concerning these measures. In an amendment that I will move to attempt to secure an independent review, I will argue that the review should go to the Ombudsman and that the Ombudsman should deal with these matters within 72 hours. I have not chosen 72 hours at random. The experience in Hong Kong is that the vast majority of these matters are capable of being handled within 72 hours. I shall draw to the attention of the Committee of the Whole the comments in the report on these issues. Under the Hong Kong arrangements high-profile promotion of the schemes was important; a budget was established. All the reports advocated a high level of public acknowledgment and advertising of these schemes. The report dated 14 January stated:

A press release will be issued . . . It will emphasise that the proposed approach will best take forward the recommendations on witness protection . . .

The report dated 29 April stated, under the heading "Publicity":

The Administration is working on a publicity strategy and an education program to inform the public of the witness protection programme and the witness assurance and assistance arrangements. This will



include Announcements of Public Interest on TV and Radio, information leaflets, posters, seminars and talks. The publicity strategy and education programme will be implemented as soon as the witness protection programme and assurance arrangements are finalized.

That publicity is further emphasised by witnesses being given a leaflet advising them of the witness protection program and the way in which witnesses are looked after, so people are encouraged and given the confidence to come forward and give evidence. If witnesses feel that they are not being appropriately dealt with, they know that review mechanisms are in place. All the advice I received showed that this is working. It was the view of the criminal prosecution authorities in Hong Kong that the only way to get round the issue of ethnic intimidation and central crime is through such measures.

I have not raised these matters lightly. Since I first raised them I have received overwhelming support for my proposals from former police Minister Peter Anderson. It would not be unfair to repeat all the concerns he had about witness protection schemes when he was Minister. He was not able to achieve a legislative scheme with absolute review and oversight. While I was Attorney General I tried to get the police Minister

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to pursue a witness protection scheme with independent oversight, but the police did not want to relinquish complete control of these issues.

Since I commented publicly on these issues some months ago, I have received phone calls from people who have been under witness protection. They told me alarming things about the way the police used witness protection. Some suggested that inducements, such as becoming undercover operatives or agents provocateurs in other criminal activity in order to secure family protection, were offered to encourage people to enter witness protection. I do not know whether that is true. How does anyone know whether it is true? But that is what I was told in those phone calls. Mrs Sullivan, the Federal member for Moncrieff, Queensland, on 20 November raised with me a matter concerning a person in witness protection.

This person is a witness in a major criminal investigation. He has been offered a form of witness protection that is not being sustained in accordance with what he believed was the original arrangement. He has moved out of his home, left his job, and he is destitute. He is living under an assumed name in other premises, accumulating debts because he is unable to work. He is living in fear of his life. If honourable members knew the person against whom he is giving evidence, a person who was in goal for many years but is now out and pursuing his trade, they would understand why this person is in fear of his life. I approached the Minister for Police who, naturally, told me to approach the police agency. I approached the police agency but it was not able to achieve anything.

I have now raised the matter with the Ombudsman. The Ombudsman can deal with this matter only as a normal complaint. We are literally weeks down the track but the witness is still living in fear, not knowing whether he has protection. If he has witness protection he is not getting witness support. In this case it appears that the investigating officers made arrangements for this witness and then found that they were doing something beyond their authority. As the person is a witness in a potentially big prosecution he may be tainted, so everyone is leaving him sitting out in the cold. Everyone is frightened to know him. What do we do with such a person?

My description of the case was generous. I have asked the Ombudsman to investigate, but she only has the power to investigate complaints against the police. There is no other mechanism for oversight. The Minister may say that the Commissioner of Police should deal with the matter. I have tried that. The witness is still sitting out in the cold. The only thing I have done is approach the Ombudsman to try to get some protection for this witness. However, the Ombudsman does not have the power I am advocating, that is, the power to read the papers, talk to everyone involved and make a decision within 72 hours. That would allow the person to get on with his life and protect the case.



My amendments will simply give someone the power to review and to decide whether people should be under protection or removed from protection. People should be allowed to get on with their lives, wherever they might live in Australia. The argument against my proposal was outlined in the documents that I read initially. The police should have absolute control over witness protection. The document from the security branch in Hong Kong, which I read openly to the House, stated that we should let the police control the scheme. It is appropriate to let the police in Hong Kong have control because that is the structure and style of government in Hong Kong, with an authoritarian police state.

**The Hon. J. W. Shaw:** Is Hong Kong a police state?

**The Hon. J. P. HANNAFORD:** It is close to it, when one is dealing with the Independent Commission Against Corruption and some of the other authorities in Hong Kong. That is an interesting interjection from the Attorney, because schemes have been established in Hong Kong partly to cope with problems that may emerge post-1997. The people in Hong Kong said, "If you think you have a problem now, can we come and join you in 1997?" There is potential in Hong Kong for corruption after 1997. Government in Hong Kong is trying to put checks and balances in place.

The Ombudsman from time to time investigates complaints about such measures - whether a witness should be put under protection or taken off it. Recently the question of whether to remove a person from witness protection was raised when the well-known criminal Denning was killed. The Ombudsman investigated that matter and brought down a scathing report of the decision of the Commissioner of Police to remove Denning from the witness protection scheme. In my amendments I propose that the Ombudsman will have oversight of the scheme. It is not as if we are asking the Ombudsman to do something that she does not already do, deciding to put someone in the scheme or, after review, deciding to take someone out of the scheme. We will simply be putting in place a legal basis for all of that to be done, and done quickly.

A concern can justifiably be raised that when one is dealing with witnesses in these matters there must be absolute security. It could be said that allowing an outside agency, such as the Ombudsman, to investigate some of these matters undermines security. That can be easily dealt with by management. The Ombudsman could appoint one person to look after these types of reviews. I advocate as part of the witness information program that witnesses be advised that they have a right of review and also be advised of the person to whom that right of review is allocated. The witness then need deal only with either the case officers or, if he is not happy with the decision of the case officers, that one allocated person, who becomes well known

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as the person who reviews these requests. In that way security will not be undermined in any way, shape or form. That is the way the Ombudsman has to deal with a large range of sensitive matters.

An issue was raised as to whether witness protection matters should be dealt with by the Independent Commission Against Corruption or some other authority. I formed the view that this should not be done, because the ICAC is a user of these services and will want to put people in the witness protection program. The Crime Authority uses these protection services, as does the police royal commission which, although we call it a royal commission, on a true reading of the legislation is only another arm of the ICAC. There needs to be an independent authority that is used to dealing with the police and carrying out investigations and that is able to act expeditiously.

I commend the Government for bringing forward this legislation. There has been a need for witness protection legislation in this country for a long time. I advocated such a program very early in my career as a politician. I am pleased that the Government has brought the bill forward and I lament that it was not done by the previous Government. The legislation is in the traditional police framework: that the police know everything, they can be trusted to do everything right, and we should be totally reliant upon the police. I am afraid that today nobody accepts that. We have to put in place measures that will reinforce public confidence in the police.



It is lamentable that the Government has included in the legislation a specific type of appeal mechanism. I remember when the Minister for Police announced with fanfare about two weeks ago that he was going to introduce legislation which would allow people who had been taken off the witness protection program by the police a right of appeal. In the media and on radio I congratulated the Minister for that decision. I spent about 15 minutes talking to Peter Anderson on his radio program saying how great and wonderful the announcement was. But then I received and read the legislation. What is the mechanism for appeal? The Commissioner of Police makes the decision to take somebody off the witness protection program and if that person has a complaint the appeal goes to the Commissioner of Police to review his own decision. That would be the most stupid legislative arrangement of all times.

I can understand that this has been done, for it is consistent with the mind-set that I had to grapple with when I was Attorney General: that the police know everything, do everything and must control everything. I ask the Parliament to break that hold once and for all and to put in place a mechanism whereby every witness in this State will be aware that there is a well-known legislative witness protection scheme that is able to be accessed at all levels - not simply when you think you might be killed but at the moment there is the slightest concern.

The Hong Kong research emphasises that the moment a person has the slightest concern there needs to be a well-established framework by which to articulate the concern, and get reassurance and support. The support should be rendered in a way that will not seek to undermine the credibility of the person's evidence in court. If a problem occurs, the witness should go to someone else to have the matter reviewed. I hope that the structure I have advocated, and the framework which I have circulated with the amendments that I will move in Committee, will enable that to be achieved.

I thank the Hon. Elisabeth Kirkby for bringing this final issue to my attention and I hope I do not steal her comments in relation to it. At the moment New South Wales has no legislative witness protection scheme; it has an ad hoc scheme and payments are made on an ex gratia basis. Clause 5 of schedule 1 to the bill provides:

Anything done before the commencement of a provision of this Act that would, had the provision been in force at the time it was done, have been valid is validated by this clause and is taken to be valid from the time it was done.

That clause tells the courts that no matter what the police might have done over the past decade or two, had this legislation been in place during that time - whether the program was set up in the wrong way or negligently, or somebody might be dead as a result of it does not matter - everything has been validated and any claims have now been dealt with. Members are used to legislation that validates things that have occurred previously, particularly when there has been a legislative scheme to deal with a clear, identified problem: the problem is known to exist, it has been validated, it will be corrected and there should not be any claims.

On this issue I have no idea what the police have done. I can fairly safely say, without fear of it being denied, that the Attorney General, and Minister for Industrial Relations has no idea either. With almost equal and absolute assurance I can say no police Minister, at least in the period I have been a member of the Legislative Council, would have any idea either. We are saying legislatively: you now have clean hands. I do not think that is appropriate. Unless we can be told exactly what this measure seeks to clear up and what are the concerns that the bill seeks to validate, I do not believe this legislation should be passed at this time.

If a problem with a claim arises and there is a justifiable reason to legislate to remove that claim, that can be done. I do not believe in this instance we should be telling the police that we are going to clean the slate for them. It might be that the police justifiably can say that the politicians, the governments of the day, have put them in this position by not drafting legislation. They police would be justified in



saying that, because the legislation should have been brought in a long time ago. I am prepared to say that I and the shadow cabinet will advocate close examination of any issues that may arise that would warrant legislation,

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if there was a need for it. In this case I am not prepared to support this type of validation clause and I understand that the Hon. Elisabeth Kirkby will be moving an amendment to delete it. The Opposition will support any such amendment.

**The Hon. ELISABETH KIRKBY** [3.48]: On behalf of the Australian Democrats I support the Witness Protection Bill. I too have some very serious concerns about the legislation. It is essential that it be amended. The Leader of the Opposition has given detailed information as to why he believes a person on the witness protection program in certain circumstances has a right of appeal to the Ombudsman and that the Ombudsman has the right to hear that appeal and make a decision within 72 hours. This is a necessary provision. It is no comfort for any honourable member in this House to say that certain powers can no longer be left safely in the hands of the police in this State.

The revelations of the royal commission under the chairmanship of Mr Justice Wood that have been so frightening and so encompassing have shown, whatever may have been said in the past and whatever previous Ministers may have wished to believe, that malpractice and corruption is endemic in the New South Wales Police Service. With this knowledge it is not possible to leave the witness protection program under the control of the Commissioner of Police, whoever that maybe. I do not make that statement merely because committees of this House - of which I have been a member - have been critical of the current commissioner. Others have said that it is not the Commissioner of Police who makes the decision but more junior deputy commissioners. However, the commissioner is the overall authority, and the decisions are made in his name. If the decision is wrong, the commissioner must accept responsibility.

It has been said also that if a person under the witness protection program had the right to appeal to the Ombudsman his life might be endangered because more people would learn that he was a witness under protection. However, if decisions are made by junior officers, it is obvious that many people already know the identity of those under protection. It is proper to hand to the Ombudsman the responsibility of any appeal mechanism. It will not create any greater danger than that already faced by the person under protection. If people have been placed under protection believing they will be looked after and the protection is removed without their knowledge or it becomes inadequate because it suited a corrupt police officer to remove it or to make it inadequate that witness is no longer protected and has no avenue of appeal.

I could bring to the attention of honourable members examples of people who have been found dead only a few days after their removal from protection. It is not pleasant to admit that fact, but it must be accepted. When the New South Wales Police Service has been completely reorganised and new procedures are in place, further amendments could be made to the witness protection legislation. Detailed information is always coming to hand about problems associated with the program. The Leader of the Opposition mentioned the amendment I propose to move to schedule 1, part 2, clause 5, "Provisions consequent on enactment of this Act". The clause deals with validation and reads:

Anything done before the commencement of a provision of this Act that would, had the provision been in force at the time it was done, have been valid is validated by this clause and is taken to be valid from the time it was done.

This clause is totally retrospective and has no time limit. If it were given the loosest interpretation, it would validate all kinds of shonky arrangements possibly going back to the time of the Rum Corps. We do not know how far back this validation is supposed to stretch. Suggestions have been made that in the past police have done strange things behind closed doors, such as creating fake identities by issuing fake driver's licences, birth certificates and so on. Some of these practices have been revealed at the police



royal commission and, therefore, one must accept that they have taken place.

It is wrong to deal with witness protection in this fashion. Spies are not coming in from the cold; we do not live behind the Iron Curtain or in the environment of the Cold War when American espionage agents defected to Russia or other places where their anonymity was protected and Soviet spies who defected to the West were protected in the United States or a European country. Blanket validation cannot be permitted. I requested the Parliamentary Counsel to draft the amendment I shall move in Committee. During that process my research staffer had a lengthy conversation with the deputy Parliamentary Counsel about problems inherent in my amendment and possible alternatives.

The Parliamentary Counsel advised that the Government would not agree with the amendment and would argue the importance of retaining the provision because those currently under the witness protection scheme seek the comfort and knowledge that legislation validates their position. It is proper that those witnesses have some degree of security. Unfortunately, that degree of security cannot be given to them by this validation clause. Blanket validation of everything - I stress everything - that has happened in the past must be avoided. It is important to avoid validating the types of police deals that possibly still continue; certainly those activities of the past, such as the issuing of fake birth certificates, should not continue.

Legislation cannot validate past situations when witnesses believed they were under protection but were dumped from the scheme by police and then died in unusual and strange circumstances. It is more desirable to remove this clause that may validate a bad thing than to retain it merely to validate a scheme that has worked in New South Wales in one form or another for the past 150 years. I fully support and understand the needs of

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witnesses under protection to feel some degree of security under legislation. I am willing to consider any alternatives that the Government might put forward, but, until those alternatives are forthcoming, I must move my amendment. I trust the Government will understand my reason for so doing.

**The Hon. D. J. GAY** [4.00]: I join other honourable members in supporting the Witness Protection Bill. I congratulate the Government on its initiative. I also support the foreshadowed amendments of the Leader of the Opposition and the Hon. Elisabeth Kirkby. I cannot emphasise enough to the Attorney General the importance of those amendments. One of the amendments had its genesis in my personal knowledge of and concern about these matters. However, the original suggestion was made by the honourable member for Davidson, a member of the Liberal Party in the other place. I congratulate him on that suggestion. I was interested in the comments of the Leader of the Opposition on his visit to Hong Kong earlier this year. Is the Attorney General aware that the prized prisoner in the fortified Independent Commission Against Corruption building in Hong Kong is the Assistant Director of Public Prosecutions? The Assistant Director of Public Prosecutions in Hong Kong, a man of high office, has been arrested for corruption and the deputy head of the ICAC has been removed from office.

It bodes well for probity that the Opposition will move amendments at the Committee stage to give participants in the witness protection program a second change on entry and exit. The Leader of the Opposition pointed to the farce of people having a right of appeal only to the Commissioner of Police. It would be silly to say that the operation of this program is satisfactory. The late Raymond John Denning was a classic example of a person removed from the witness protection program too soon. People must be able to appeal against these decisions. A few years ago I was Chairman of the Select Committee on the Police Regulation (Allegations of Misconduct) Amendment Bill 1988, which produced a report after conducting inquiries over a 12-month period. When that committee sought documentation from the office of the Commissioner of Police, it was told that the most sensitive computers in the Police Service - those in the commissioner's office - had mysteriously crashed and that there was no backup system. That was hard to swallow. Given the lack of evidence, the committee had no option but to accept that it was a coincidental accident.



As I have said, there must be an appropriate avenue for appeal to a professional department that is used to handling such matters. The Office of the Ombudsman, which has carriage of the Police Regulation (Allegations of Misconduct) Act, has the expertise. The Opposition is not seeking to transfer responsibility to the Independent Commission Against Corruption or a similar body. That would be like Caesar judging Caesar. The Leader of the Opposition referred earlier to the concerns expressed by his Queensland colleague Mrs Kathy Sullivan. On 22 November, Mrs Sullivan, a Federal member of Parliament, in her contribution to debate on the second reading of the Australian Federal Police Amendment Bill, said:

As things stand, without witness protection legislation state police forces can - and do, to my knowledge - treat ordinary citizens in an utterly unconscionable manner. There are now just too many stories of law-abiding citizens who have endangered their own lives in order to assist law enforcement agencies, only to find themselves destitute because they cannot pursue their previous livelihood from hiding - whether because cases are waiting to be heard in the courts or because police have bungled the operation - and because they have no entitlement to stop-gap financial support for them and their families. For example, my constituent has even had his car repossessed because he could not maintain the payments and the New South Wales police - having used him to the hilt for their own purposes - are now just turning their backs on him and refusing to ensure that even the basics are provided for him and his family.

Honourable members should support the amendments foreshadowed by the Leader of the Opposition and the Hon. Elisabeth Kirkby. Under the legislation as it now stands, any improper conduct relating to witness protection that came before the Wood royal commission could not be followed up. Clause 5, which relates to validation, states:

Anything done before the commencement of a provision of this Act that would, had the provision been in force at the time it was done, have been valid is validated by this clause and is taken to be valid from the time it was done.

I urge honourable members to support the foreshadowed amendments.

**The Hon. J. W. SHAW** (Attorney General, and Minister for Industrial Relations) [4.07], in reply: I thank honourable members for their general support of the Witness Protection Bill. There seems to be a consensus and a general meeting of minds that the witness protection program should have a statutory base, which it has not had for almost the past decade. As honourable members have said, there are differences about the precise model that ought to be adopted and the checks and balances that should be incorporated in the model. I will make a few specific points in replying to various comments made in debate on this bill. In reply to the matter raised by the Hon. Elisabeth Kirkby, I am informed that a person cannot be removed from the witness protection program without being advised of that removal. The view is taken that this is a cooperative program. It must have the necessary commitment from both sides to work effectively.

There was also a general critique, particularly by the Leader of the Opposition, of the idea that police should administer the program. I am informed that in other jurisdictions - and the Leader of the Opposition accepts that Hong Kong is one - there is police administration of the system. I am informed that that is also the case in the United States of America, the Commonwealth of Australia, Western Australia and South Australia. Obviously,

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one cannot apply to all those jurisdictions the derogatory epithet "police state". Whether Hong Kong is a police state is a matter for debate. From what I know, I take a contrary view. It is not appropriate to label as a police state every political system that has a witness protection program of this kind and that places it in the hands of the police. Nevertheless, obviously the matters raised by various honourable members warrant further debate and, indeed, further consideration. That can occur at the Committee stage. But, I apprehend that honourable members generally are saying that the bill ought to be read a



second time, and I commend it to the House.

**Motion agreed to.**

**Bill read a second time.**

### **EDUCATION REFORM AMENDMENT (SCHOOL DISCIPLINE) BILL**

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

**Suspension of standing orders agreed to.**

**The Hon. J. W. SHAW** (Attorney General, and Minister for Industrial Relations) [4.11]: I move:

That the second reading of the Bill stand an Order of the Day for a later hour of the sitting.

**The Hon. J. P. HANNAFORD** (Leader of the Opposition) [4.11]: I move:

That the question be amended by omitting the words "a later hour of the sitting" and inserting instead "five calendar days ahead".

This is another piece of legislation that was rammed through the other Chamber in a matter of hours. The usual five days procedure to allow honourable members to familiarise themselves with the bill and to acquaint community groups with the bill was not afforded honourable members. This bill is of significant concern, as honourable members know, to a number of community organisations, not the least of which are private schools. Yet the Government, on 7 December 1995, when a large number of private schools have closed down, is attempting to ram the legislation through this House, as it was rammed through the other Chamber, without giving honourable members the opportunity to examine it, to consult with community groups, or to allow community groups time to consult with the Government. I understand there has been no consultation with the Government. I believe that honourable members should allow themselves appropriate time to consider the bill and that this House should not be seen as the rubber stamp of the other Chamber. The Government may ram through bills with the use of the gag and the guillotine in the other Chamber, but members of this Chamber should not deprive themselves of the opportunity to consult with the community.

**Amendment agreed to.**

**Motion as amended agreed to.**

*[Pursuant to sessional order business interrupted at 4.15 p.m. The House continued to sit.]*

### **INDUSTRIAL RELATIONS BILL**

#### **EMPLOYMENT AGENTS BILL**

#### **Second Reading**

**Debate resumed from 6 December.**

**The Hon. R. T. M. BULL** (Deputy Leader of the Opposition) [4.15]: I wish to raise a number of concerns about the impact of this legislation on rural industries. It is obvious that the legislation is the big payback to the union movement following its generous contribution of \$2 million to the Australian Labor Party campaign. It is on the record that the union movement was expecting the changes and the reforms



that are being offered under this legislation in return for its most generous support of the Australian Labor Party at the last election. However, that is what one would expect, and it is being delivered. I do not propose to debate that matter any further because everyone is aware of it.

The rural community is concerned about a number of issues, such as enterprise agreements, common law actions, rights of entry and so on. But there are four specific areas that I want to address. The definition of employee is of major concern. It seeks the exclusion of spouses and persons employed by their parents from the definition of employee so that the employment of such family members can continue to occur without regulation by the main body of industrial relations legislation. The factors supporting this include the difference between the reasons and remuneration for which such family members work for one another and those for which other employees work. In particular, farm family members work not in exchange for immediate reimbursement for their efforts but in exchange for eventual ownership of the family farm.

It is inappropriate and detrimental to import master-servant rights and obligations into an employment arrangement between relevant family members. Recognition is given in other areas to the specific nature of farm family relationships - for example, by the Federal Government in the assets test and by the State Government in stamp duty requirements. Another section to which I would like to refer is maximum ordinary hours of employment and the continued exemption of rural industries from the maximum number of ordinary hours able to be worked under a rural award to allow for the working of more than 40 ordinary hours per week averaged over a 52-week period. The rural industry needs different treatment because the hours required to be worked are largely outside human control, being dictated by the weather and the nature of and treatment required by rural produce; the special and close working relationship that most rural employers have with their employees; and most of the industry has operated for many years in excess of 40 hours per week.

Another concern is clauses 5 and 22, which, if combined, could increase the rate of failure of family farms. Most farms operate in excess of 40 hours a week, the operators usually being the

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farmer, his or her spouse and their family members. The farming community seeks relief from the combined effect of the two clauses. It suggests that the documents to be lodged with the Industrial Registrar be restricted to a list of members who operate in New South Wales. The rural industry also seeks the retention of the current dictionary explanation of "employed in rural industries".

I turn to the definition of "employee". Both the Industrial Arbitration Act 1940 and the Industrial Relations Act 1991 excluded spouses working for one another and persons working for a parent from the definition of "employee". This means that those provisions of the 1940 and 1991 Acts which applied only to employees did not apply to the employment of spouses or persons working for a parent. The bill does not exclude spouses working for one another or persons working for a parent from the definition of "employee". The rural community seeks the insertion into proposed section 5 of the bill of the exclusion contained in the 1991 Act. Although the National Party considers that the exclusion should be further extended to the employment of parents and siblings, the following references to "family" are intended to be restricted to the extent of the exclusion contained in the 1991 Act.

Employees in general need minimum protection. However, when an employee is a spouse or a family member, the protection provided by the bill for employees becomes inappropriate and will prove detrimental to the very things for which the employee is working. This is because work is done in exchange for a right to own, not for immediate reimbursement for effort. The reasons family members work for one another and the remuneration for which they work are very different from the reasons and remuneration for which other employees work. Unlike most employment arrangements, the employment of a spouse or family member is not an arms-length transaction. Spouses and family members will work for one another, not in exchange for the standard working conditions and immediate reimbursement for their efforts but rather for reasons born out of their familial relationships.



In the rural industry family members will begin working for one another for a variety of reasons, for example, for the survival of the family farm, because of a parent's or sibling's illness or incapacity, or to become one of the team. They might receive some cash remuneration, almost always get free board and lodging, and usually receive other benefits such as free fuel and the use of a motor vehicle. However, at one stage or another part of the reward for work done becomes the vesting of a right to the capital and future income - in other words, the inheritance - of the family farm. There is widespread support for the inheritance of the family farm, and the taxation measures incorporated over the last 12 months by governments of both persuasions confirm that.

The situation of most small businesses is the same. The reward of family members for work done does not take the form of standard wages and working conditions. Rather, it takes many different guises and usually ultimately takes the form of a right to the business. In most cases a spouse will have an immediate right to the business in the event of his or her spouse's death. The National Party believes it is inappropriate and detrimental to import master-servant rights and obligations. Master-servant rights and obligations such as those contained in the bill were moulded to suit arms-length employment arrangements and not those where there is a familial relationship between the parties. The result is that it is simply inappropriate to foist any master-servant rights and obligations on an employment arrangement between family members.

For example, the bill means that such an arrangement would require the employing spouse or parent to keep time and wages records and allow inspections of such records by third parties. These requirements would be particularly onerous and absurd if the farmer did not employ anyone other than his or her spouse or son or daughter, which, given the drought, is commonplace. This in turn necessitates a distinction between the need to protect from exploitation an employee who is working in exchange for immediate and full reimbursement, and the employment of a family member who is working in return for a stake in the capital and/or future earnings. The protections required by and provided to the former would not fit into, and could indeed damage, the latter. The immediate and long-term methods used by a farmer to reward his or her working spouse or son or daughter for his or her efforts are not the sorts of conditions customarily provided by industrial awards.

Indeed, a large part of the longer-term reward is of necessity reinvested in the family business. It would be detrimental to the future of the farming enterprise and the very prize for which that spouse or son or daughter is working to require reimbursement for that work to take the form of standard award conditions. That is because the future ability of the family business to be viable, to reimburse for work done, and to employ other people is inextricably linked to the ability of the business to reinvest rewards for the efforts of family members. The majority of any monies generated by the business needs to be reinjected into the business. The business and the family workers' rewards will be retarded if they are not. The National Party believes recognition is given in other areas to the special nature of farm family relationships. Legislation in many areas recognises the special treatment required for arrangements between family members.

For example, relief is given by the Federal Government in the assets test, where the closest relative has in the past performed work which is not rewarded by a wage or cover or otherwise usual award conditions. This important and well-used

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concession recognises customary methods, and is used by farmers to reward family members for work done. It allows the value of a family member's forgone wages to be taken into account as consideration in the event that a farmer transfers his farm to that family member for anything less than its market value. The detailed recognition given to these arrangements is evidenced by the acknowledgment that free board and lodgings is a customary method of partial reward, and by the discounting of forgone wages to account for such a benefit. Detailed mechanisms used for calculating wages forgone and the acceptance of forgone wages can be increased to take account of the working of longer than standard hours, higher hourly rates for hazardous, difficult or unpleasant work, and increased responsibility. The other area is relief from payment of stamp duty for intergenerational transfer of a family farm. I should like to read



from a memorandum of advice received from Mr P. Kite this month on the issue of identifying the term "employee". Members on the Government benches would be familiar with the work done by the professionals in the Frederick Jordan Chambers building. The advice stated:

The Government has introduced in the Legislative Council the Industrial Relations Bill 1995 ("the Bill"). It is the intention that the proposed legislation will replace the Industrial Relations Act 1991 ("the 1991 Act") which is to be repealed.

Of central concern to the present advice is the definition of the term "employee" in the Bill, particularly when compared to the definitions contained in the Industrial Relations Act 1940 ("the 1940 Act") and the 1991 Act. For convenience, the relevant parts of the definitions are set out hereunder:

The advice says of the 1991 Act:

- 5(i) In this Act, "employee" means a person employed in any industry, . . . and any person who is, under this Act, taken to be an employee for the purposes of the Act. However, "employee" does not include a person employed by his or her spouse or a member of a family employed by a parent.

In relation to the 1940 Act the advice says:

"Employee" means a person employed in any industry, . . . and includes any person who is, pursuant to any provision of this Act, deemed to be an employee for the purpose of this Act, but shall not include a member of the family in the employment of a parent, . . .

The advice has this to say about the 1995 bill:

- 5(i) In the Act, "employee" means a person employed in any industry whether on salary or wages or piece-work rates.

It can be seen that the proposed definition does not contain an exclusion in favour of persons employed by their spouse or parent. The Minister specifically referred to this change in his Second Reading Speech. He said:

"The legislation broadly defines key terms, though with some alterations to the 1991 Act. For instance, the Bill continues to define the term "employee". However, the Government has decided to delete the spousal and family member exclusion from this definition. It is not the position that the deletion of this exemption will automatically mean that employees will have to pay award wages to their husband, wife and children for helping out in the shop or on the farm. At common law, for an employment relationship to exist, an employment contract must have come into existence.

The High Court has made it clear that where work is performed on a voluntary basis for charitable or family purposes no employment relationship will arise. An example is provided in *Dietrich v Dare* (1980) 30 ALR 407. For an employment relationship to exist, both parties must have intended to enter this form of legal arrangement.

The New South Wales Farmers (Industrial) Association is particularly concerned that the patent change in the definition will result in persons working on the family farm being classified as employees and regulated by the Industrial Relations Legislation, when such a consequence is foreign to the desires of parties to such arrangements. I am asked to advise whether the answer contained in the Minister's speech is or should be sufficient to allay their concerns.

In my opinion the Minister's reference to the need for a mutual intention to enter into a contract of employment, while undoubtedly correct, is not directed to the effect of the definitional change.



Persons who do not fall within the definition, for the reasons referred to by the Minister, do not fall within the definitions under the 1991 Act or the 1940 Act. This is so, not because of the exclusions contained in those definitions, but because the persons were not employees at all. That is to say, under the current and earlier legislation the first issue to be determined is whether a person is an employee. If a person is an employee, the next issue to be determined is whether the exclusion applies. If the person is not an employee, there is no necessity to consider whether the exclusion operates.

It seems to me there are three classes of relationships which might be identified. They are:

- (i) a relationship in which the appropriate family members agree and intend to be legally bound by their agreement, but do not intend or desire that the usual industrial incidents should apply;
- (ii) a relationship in which the effects of the agreement are unclear either as to the nature of the relationship . . . or as to the intention to be legally bound;
- (iii) a relationship in which the parties clearly mutually do not intend to be legally bound.

Those in the first class clearly have a binding contract and (provided it is in the nature of the employment contract) the person employed would fall within the definition of employee in the 1940 Act, the 1991 Act and the Bill. If the exclusions in the 1940 Act or the 1991 Act applied, i.e. there was an appropriate family relationship, that person would not, however, be an employee for the purposes of the industrial legislation. There being no exclusion in the Bill, the person will be subject to regulation under the proposed legislation.

Those in the third class do not fall under the definitions in any of the legislative schemes.

Those in the second class may or may not, depending on the proper construction of the agreement made by the parties. It must be acknowledged that, although the tests are now clearly laid down the application is not always easy: see for example *Stevens v Brodribb Sawmilling Co. Pty. Ltd. (1986) 160 CLR 16*. Were the parties to be in an appropriate family relationship, the need to decide what can be a difficult issue would be obviated.

The fact of a family relationship does not mean litigation will not arise: see *Bradley v Bradley (1978) AR 94*. That case was concerned with claims under s. 88F of the 1940 Act (to which the legislative definition of "employee" has little relevance) but a claim may easily have been brought

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under an award (in which case the legislative definition is fundamental). The exclusion in a definition of employee, based as it is on simple objective and limited criteria, means that such disputes are unlikely to be litigated.

While it is in no part of this advice to enter into the debate about whether particular classes of employees should be regulated under the industrial legislation in this State, there is no doubt that the omission of the exclusion brings within the reach of the proposed legislation a class of employee formerly excluded. It leaves unchanged the reach of the Act in relation to those arrangements, identified by the Minister, which at common law do not constitute contracts of employment. However, the omission of the exclusion does increase the potential for litigation in circumstances where the terms of a relationship are unclear.

It is the Opposition's view that the implications of that advice for farm family employment will, firstly, cover a new category of farm family employment that the Industrial Relations Act 1991 did not cover. Here the appropriate family members agree and intend to be legally bound by the jointly negotiated employment agreement but do not intend or want the usual industrial consequences to apply. Secondly, it will introduce uncertainty into a significant number of other farm family working arrangements. Here one



party will argue that there was no intention to create employment relations, while the other person will argue that there was.

Removal of a previous exemption will invite testing of these principles. Furthermore, although many of these principles are clearly set down, their application can be difficult. In a farm family employment sense uncertain farm family arrangements are commonplace, while intended farm family employment arrangements are not. The Government must have philosophical concerns that make it reluctant to exclude persons in intended farm family employment arrangements from the definition of "employee". To the extent that the Government is concerned to protect such persons, they are likely to have access to various protections irrespective of any inapplicability of the definition of "employee". Those protections may include equitable remedies, such as the specific performance and the unfair contracts provisions of the bill, which may apply whenever there is an arrangement whereby a person performs work, that is, it is not necessary for an applicant to fall within the definition of "employee".

Furthermore, the concerns of the Opposition about not having an automatic exemption for farm family members from the definition of "employee" include the following matters. Retaining persons in intended farm family employment arrangements within the reach of the definition of "employee" will benefit those persons. However, it will do so at the expense of those persons in uncertain farm family arrangements by exposing them to uncertainties about the regulation of their arrangements and to a new risk of litigation. Most of those persons in intended farm family employment arrangements will agree upon conditions to govern their employment relationship which are very different from the sorts of conditions provided by the bill and the industrial awards made pursuant to it.

The sorts of conditions chosen and the reasons why these conditions are chosen are well-known. In summary those conditions may include provision by the employer of free on-farm accommodation, electricity, telephone services, a vehicle, fuel, and the ultimate right to own the farm, as I mentioned earlier. Such conditions are chosen for reasons including the necessity to reinvest any earnings in the family farm and the fact that to do otherwise risks the future viability of the very thing towards which the family member is working. That substantiates the case against the definition of "employee" in terms of the family farm arrangement. There is no doubt the Government must look seriously at amending this provision and ensuring that in proposed section 5, the definition of "employee", some exclusion is available for the family farm situation so that those arrangements can be catered for as they have been in the 1940 and 1991 Acts. I now turn to another issue of major concern to the farming community. That is, the maximum ordinary hours of employment which is in division 2, section 22 of the Act. Proposed section 22(1) and (2) states:

- (1) The number of ordinary working hours of an employee when set by an award must not exceed 40 hours per week, averaged over a 12-week period.
- (2) However, those ordinary hours may be averaged over a period not exceeding 52 weeks in the case of a seasonal employee.

The bill makes the requirements about fixing of hours in awards applicable to rural industries. Both the 1991 and the 1940 Acts exempted rural industries from such requirements. There is no reason why the Government cannot reinsert in proposed section 21 what was in the 1991 Act. Most rural awards allow a maximum of 40 ordinary hours per week. Those which contain averaging provisions do so over a four-week span. In fact, no rural award exceeds the maximum ordinary hours of employment set out in proposed section 21. It might seem, therefore, that the removal of the exemption will not present an immediate problem. However, it will prevent sections of the rural industry from arguing that conditions in their part of the industry dictate that the award regulating their employment of people must allow for the working of more than 40 ordinary hours per week. It removes the legislative acknowledgment of the necessarily different treatment deserved by the rural industry in respect of hours of work.

It will present a problem for existing award conditions if proposed section 21 was subsequently



changed, for example to reduce the maximum ordinary hours to 38 if the proposed 12-week averaging period is removed or reduced to less than four weeks. Why should the rural industry be treated different from other industries in this respect? The hours required to be worked in the rural industry are, in the main, outside human control. They are dictated by the weather, which has been extreme for many farmers over the past two years, and the often perishable nature of, and

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treatment required by, the rural produce - for example, planting, harvesting, picking, milking, feeding or treatment for pests. Indeed, the need to cope with the aftermath of the drought may necessitate some applications for award-based relief from the maximum 40 ordinary hours. These factors have always dictated, and will continue to dictate, the hours that must be worked in the rural industry, and mechanisation has done little to change that.

Farmers have a unique relationship with their employees. Most farmers are small employers. They usually work side by side with their employees, who more often than not reside on the farm. This leads to a close relationship between farmer and employee. It has been the custom and practice for many years in the rural industry to operate a farm in excess of 40 hours per week. The critical nature of those factors has not changed since they gave rise to the exemption in the 1940 Act, and its continuation in the 1991 Act. The combined effect on the rural industry of proposed sections 5 and 21 will lead to an increased rate of failure of family farms, an increase in unemployment, and an increase in the number of farm family members becoming recipients of social welfare payments. Naturally that will also have a consequent adverse effect on the State's economy, because most farms operate in excess of 40 hours per week, even if averaged over a 52 week period.

Those who perform the majority of that excess work are most commonly the farmer, his or her spouse and their family members. In the past the industry has not had to avail itself of its exemption from the maximum 40 ordinary hours provided for in the 1991 Act, because most people working in excess of those 40 hours, being family members, have not been regulated by the award system. The failure of the bill to exclude relevant family members from the definition of "employee" will change that. The industry will require recourse to the exemption from the maximum 40 ordinary hours provision in the 1991 Act, but it will lose that exemption in this bill. The industry will not be in that dilemma if the family exclusions provided in the 1991 Act under the definition of "employee" are retained. Bearing those arguments in mind, the survival of most family farms depends upon the farms operating in excess of 40 hours per week, and upon workers performing excess work without the employer having to pay award rates and to provide award conditions for that work.

Another major concern is the lodging of documents with the Industrial Registrar. Proposed section 278 requires an industrial organisation other than a State organisation to lodge a list of its members with the Industrial Registrar. The New South Wales Farmers Association has suggested that the requirement be restricted to those members whose qualifying industry is situated in New South Wales. That suggestion is made on the basis that the Industrial Registrar will be interested only in members from New South Wales. Another concern relates to the explanation in the dictionary in the bill of "employed in rural industries". The New South Wales Farmers Association wants an explanation of the term "employed in rural industries" inserted in the bill. Section 5(4) of the 1991 Act provides an explanation of that term, as did the 1940 Act. However, this bill does not contain an equivalent explanation.

A large number of rural awards and clauses describing the jurisdiction of most rural-based conciliation committees simply incorporate by reference the explanation of "employed in rural industries" contained in the 1991 Act. It would be much simpler if the explanation contained in the 1991 Act was inserted in this bill. I could give examples of how the provision of a maximum number of ordinary hours will not work in the rural industry or for a rural operation. For example, in a normal operation a wife and husband can work a 60-hour week. During a busy time, such as harvesting, that can increase to 80 hours a week. Remuneration is by mutual agreement. The wife does not receive a salary. She shares the farm accommodation with her husband. She uses all the farm equipment as her own, including the farm vehicles. Her living expenses, ranging from necessities such as food, telephone, electricity, fuel



and clothing to entertainment and leisure, including rare holidays, are met by the farm. Most importantly, she will inherit the farm if her husband predeceases her.

It could be argued that the bill and, in turn, the award covering the industry will regulate the working relationship. The wife must be paid penalty rates for any hours worked in excess of 38 hours per week. The effect of the legislation on people working on farms will be absurd. For example, remuneration will be required under the bill and, consequently, under a State award. A farmer will be required to pay his wife \$900 to \$1,000 per week gross for weeks during which she worked 80 hours, and she will lose a significant proportion of that in Federal income tax. If he continues to provide his wife with all the benefits she currently receives, which he will want to do, the award will not provide any recognition of or offsets for those benefits.

There are numerous examples of the impact of the new arrangements for maximum ordinary hours of employment on individual farms. For example, a farmer will have to keep time and wages records of his wife's work, and he may be fined if he does not do so. However, the farmer will probably only need to be concerned that in the event that he and his wife separate - that prospect will be the only reason that the wife may want to keep a record of her hours of work - the dim prospect of a marriage break-up is not likely to cause records to be kept. If it does, the keeping of records is likely to expedite the decline of the marriage. I could speak ad infinitum on some major concerns of the rural community. Honourable members should be aware of the issues when they consider whether to throw

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the bill out or whether to make major amendments to provide some commonsense exclusions for the rural sector.

Proposed section 20 relates to the conditions to be provided in awards. The capacity for splinter awards is not as great a concern as the capacity for the creation of more than one award covering the same issues in respect of one group of workers. The possible creation of more than one award to cover one group of workers is of particular concern when the work performed is potentially subject to union demarcation disputes. Under the proposed section two separate awards could apply to the same group of workers, so there cannot be demarcation. In the rural industry fruit packing shed workers could be covered by the existing Fruit Packing Houses Employees State Award, an Australian Workers Union award, and an award applied for by the National Union of Workers. The Shearers and Rural Workers Union, which is in competition with the AWU, has achieved recognition in Victoria but nowhere else.

In theory proposed sections 11(2) and 11(3) of the bill will allow the Labor Council of New South Wales to apply for an award on behalf of one of its members who has sufficient interest in the proposed award. It will be noted that eligibility for Labor Council membership is outside the province of the bill. All honourable members know that, because that poor old delegate who turned up at the Labor conference got shown the door, probably by the Hon. J. R. Johnson and his mates, because he was under the Victorian award as a member of the Shearers and Rural Workers Union. These are the sorts of problems with the legislation.

If the Labor Council were to have an unregistered organisation such as the Shearers and Rural Workers Union as its member, it could end up that two State awards would regulate employment in shearing sheds, that is, the Pastoral Employees State Award, an AWU award, and another. This may sound fanciful but given that it is not all within the reaches of the Act, it is possible. Another issue to which I refer is the right of entry. Problems with receiving only 24 hours notice for inspection of records will arise when a bulk of records are at the office of the employer's accountant - a situation which regularly occurs in the bush. I that know people such as the Hon. D. F. Moppett live a fair way from town and are not likely to be able to produce all of these documents at a moment's notice. They are busy with seasonal activities. The Hon. A. B. Manson and his mates would turn up in the middle of harvest and say, "We want to see the books. We don't care what you are doing, we don't care how busy you are. You are only running a farm."



A farmer in the middle of a peak seasonal activity at the time at which notice is given, harvesting a fruit, vegetable, grain or cotton crop, requires all hands on deck irrespective of the size of the farm. On small farms a farmer and his family will be all working outside, and on larger farms office staff will be flat out trying to attend to the administrative and personal needs of a large influx of itinerant workers. Unless the inspection is verging upon the conclusion of a six-year period which limits back payment of wages, delay in application until the completion of the seasonal activity will not prejudice an employee. I have many examples and I am happy to hand them on to my colleagues who I am sure would want to read on to the record some of the absurdities which could occur under the Industrial Relations Bill. The Leader of the Opposition spoke about enterprise agreements. All members should be concerned that the enterprise agreement arrangement in place under the 1991 Act will be partially destroyed by this new Act. Parties will have to run off to the Industrial Commission. Clause 36 states:

**Special requirements relating to enterprise agreements to which employees are parties:**

. . . Before or at the time the employer first undertakes negotiations with the employees for the purposes of an agreement, the employer is to advise the Industrial Registrar in writing of the following:

- (a) that an enterprise agreement is proposed or under negotiation,
- (b) the awards or enterprise agreements that then apply to the employees.

Clearly this is going to bog down the process. There is no reason why these agreements cannot be reached and then registered with the Industrial Registrar; but that will not happen. The Industrial Registrar is going to be involved right from the outset because notification will have to be complied with at the time of the first discussion of an enterprise agreement, when there will have to be notification to the Industrial Registrar. The Minister is quite happy about that and has acknowledged that that is the case. All members realise that good enterprise agreement mechanisms benefit everyone, not only the employee but the employer, in terms of productivity and getting the country going again, increasing exports and decreasing imports. And in terms of rewriting our economy, enterprise agreements are a critical part of future industrial negotiations. One can see in part 2, which deals with enterprise agreements, the hands of the unions: the Labor Council wanting to get its sticky little fingers involved in every negotiation that takes place.

Similarly, members will be concerned about the rights to common law actions during conciliation of industrial disputes. This is one of the most insidious things that can happen in industrial disputes. Although actions in tort - common law actions that can and do occur during conciliation of industrial disputes - will still be available, more hurdles are being put up in this legislation. The whole of this legislation is about putting more hurdles and hoops up for people to jump over or through before any conclusion can be reached; whether common law issues are involved or negotiations for an enterprise agreement: stick a few

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more hurdles up, see if a few more can get tripped up before they get to the wire, just in case at the end of the day they might decide in frustration that enterprise agreements are too hard and the common law actions are getting too complex to worry about too.

I conclude by making reference to preference clauses. There is no doubt that one of the kernels of this legislation is to reinforce preference clauses for union members. No matter which way one reads the legislation regarding the exemption of various people and groups, the New South Wales Labor Council is on record as having said that it hopes that the New South Wales Industrial Relations Bill will allow unions to achieve wage increases confined to employees who are union members. That is one of the prized parts of the bill. Labor's mates are going to be looked after; the poor lagging membership of the unions in this State and Australia will be revitalised; in some way the unions will become in vogue in the industrial relations society once again.



I have news for members of the Labor Party: the Opposition will fight this all the way. This is a fundamental issue. The Opposition believes in the rights of the individual, the rights of people to enter into negotiations, the right to gain employment on merit and the right either to belong to a union or not to belong to a union. I look forward to the Committee stage of this bill when I will be adding more in relation to the effects of this legislation on the farming community.

**The Hon. D. F. MOPPETT** [4.58]: I would be less than honest if I said that the introduction of this bill came to me as a surprise. It was inevitable that an industrial relations bill would be introduced after the March election, particularly in light of the 1991 Industrial Relations Bill which the previous Government introduced. I was surprised at some of the contributions made in this debate. Somebody who did not know where industrial relations have got to in this country might have thought it was a case of the empire strikes back. Members have heard all the slogans and platitudes that they would expect from a militant trade union movement, triumphant at an electoral victory, determined to bring back legislation which had been carried with banners across the countryside. But, of course, that is not the truth of the matter.

I concede that part of the ethos of the Australian Labor Party comes from its founding by the Australian Workers Union - out in the bush amongst the shearers in very different circumstances. Nevertheless, the ALP is justly proud of its history; it is part of Australian history and the Opposition has no argument with that. However, the community has moved to a new era, a new epoch of history and its associated terminology. The mythology of the old tribal movement is not appropriate to the circumstances society faces today. The other day I attended the celebration of 100 years of Carinda Public School.

**The Hon. Franca Arena:** Whereabouts is that?

**The Hon. D. F. MOPPETT:** North-west of Coonamble and between Walgett and Warren.

**The Hon. B. H. Vaughan:** Tell the story about Carinda police station.

**The Hon. D. F. MOPPETT:** I will ask the Attorney General in question time whether the new court schedules provide for extended hearings at Carinda courthouse. He will say that probably they have been transferred to Quirindi. Part of the ceremony for the Carinda Public School centenary was to set in place a time capsule. It was not an elaborate stainless steel capsule buried deep in the ground; it was more like a surplus culvert pipe that contained documents and photos in smaller pipes. The culvert pipe was sealed and set in the ground to serve at least a useful purpose for the time being - a seat for the kids. Hopefully, when that time capsule is opened and its contents are read, it will be a seat of learning.

Listening to this debate was like opening a time capsule and hearing speeches of another era. The Hon. Patricia Staunton spoke about progress over the last decade and claimed it as an achievement of the Labor Party. It is a strange coincidence that Labor is actually in office. Though it might appear on the surface that the Federal Labor Government was committed to the trade union movement, the harsh economic winds of change that sweep Australia and the world have forced it to adopt many of the changes incorporated in the 1991 New South Wales bill. All of the arguments are in the area of polemics and rhetoric. There are some significant matters, but out in the real land people have gone about workplace relationships in their own way: employer to employee making arrangements that suit them.

This overzealous regulation is the reverse of what is happening in the Federal and international scenes. Sadly, almost within the auspice of the Federal Government, various reports say that the rate of micro-economic reform in Australia is too slow. In certain areas, notably ports and the maritime industry, reform has been too slow. I do not suggest that all blame can be attributed to the work force or to the trade union movement; part of the blame has historical origins and part relates to the capital involved in ports and shipping. People more eminent than I am have made the observation that unquestionably the rate of reform of labour practices is causing Australia to slip behind in international competitiveness. No-one would be game to say that in this day and age that can be ignored as if we lived in isolation on an



island.

The Hon. Patricia Staunton spoke about the major achievement of this decade of industrial peace under Labor being the accords and the various marks along the line. Strangely, this was vaunted as a way in which the interests of the worker had been spectacularly advanced, which could not have been achieved in any other way. It would be interesting to hear the comments of an impartial observer.

Organisations such as the Australian

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Council of Social Service - ACOSS - say that the Australian society has fundamentally shifted with the abandonment of the principles of basic wage and wage determinations, which had at the root of their construction some concept of the cost of living. Responsibility has been transferred from industry, basically employers, and commercial avenues to the Commonwealth Government through income supplementation. This trend is to be deplored.

I challenge the presumption of some honourable members and the Government that somehow the Labor Party has a monopoly on the dynamics of industrial relations. I certainly reject the idea that Labor has any monopoly on compassion. The 1991 bill took into account the practicalities of everyday circumstances in the workplace. This bill and some models being used in the Federal sphere are largely illusionary in their effect. The enterprise agreement model being pursued by the Federal Government is the drive behind the provisions of the 1995 Industrial Relations Bill. The essential difference is that the enterprise agreement sponsored by the Federal Government is basically a division within an award. One can see in its origins, within a broad classification award, that certain major employees - for example, Broken Hill Proprietary Company Limited metalworkers - could enter into an enterprise agreement. However, it was a subsection of the award that did not need the recognition of a separate hearing or award decision.

That contrasts with the essential dynamics of what the coalition set in place with a voluntary agreement - that is, basically in a normal, constructive, unrestrained way employers and employees could reach a mutually satisfactory arrangement that could involve trading off certain benefits for increased levels of pay in the interests of the worker and the business. These agreements could be entered into freely and voluntarily, with safeguards and order. The modifications to the system will not improve industrial relations. Employees, particularly in the private sector, acknowledge that the viability of their employer is most important to securing their own future.

When unemployment figures are announced publicly everyone concentrates on the total figure. The most significant aspect of this sad statistic is the length of time an individual is unemployed. Theoretically, it would not be of great concern if the 800,000 people who were unemployed this month all found employment three months later and another 800,000 who left their jobs for whatever reason were registered as unemployed. The number of people who are unemployed in Australia is high because their period of unemployment has lengthened. This reflects the rigidity that has developed in our labour market. People want more flexibility. They should be given an opportunity to enter into meaningful, rewarding and fulfilling work. The productivity of our nation must be increased.

I have said in other debates concerning social problems in Australia that the answer to poverty is prosperity. We must not simply talk about the level of benefits for the unemployed. That is a short-term measure which will not rectify the problems that they are experiencing. We must ensure, with support from the community, that they are treated as active members of our community. They must be able to seek work to improve their financial circumstances. I hope that, during that process, their personalities are not affected. Without an expanding economy the prospect for many Australians is poor. The key to an expanding economy is competitiveness, which requires a flexible industrial relations system able to adapt to every change. If we behave like Luddites time will pass us by; people will be replaced by machines and other processes; and the vital participation of humans in an economic forum will be eliminated.



A symbolic provision in this legislation is the reintroduction and strengthening of what were once called industrial courts. I am harking back to ancient history. That industrial relations system has been superseded in the Federal scene. I could refer to some wonderful examples of industrial relations systems. It was important in that period for anyone embarking upon conciliation or arbitration to get an ambit claim. The essential nature of conciliation and arbitration is to strike a bargain between two extremes - between a reluctant employer who is happy with wage levels, and an ambit claim. I remember somebody once explaining to me how he arrived at the magical figure of 17½ per cent for the holiday loading. I thought the explanation lay in some mathematical calculation which provided for extra leave because people incurred higher expenses and had to make arrangements at home. The claim by the trade union movement was for a 25 per cent loading. The argument on the other side was that that should not be introduced in Australia at that time. After a period Bob Hawke decided on a leave loading of 17½ per cent because, arithmetically, it was somewhere in between.

We are trying to return to the days of the umpire. Instead of being an umpire of last resort the Government wants to be included in the game, which is an unfortunate move. Earlier my colleague the Deputy Leader of the Opposition referred to the preference clause in this legislation. It has been argued that there has never been compulsory unionism in Australia and that the only thing that was ever enforced was the preference clause, which states that, if two applicants are of equal merit, preference should be given to the member of the trade union movement. That clause was included in the award. I know of a few awards where an application was made to include that clause, but the application was refused. In my view this legislation is out of keeping with the national scene and the general industrial relations trend throughout the world.

Obviously, this legislation was one of the ransoms demanded of the Australian Labor Party when presenting its platform to the electorate. The  
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draft bill was much more draconian before community reaction to it was gauged. In the end it will be impossible to determine whether two applicants have equal merit. The decision as to whether they are equal could well require the wisdom of Solomon. Inevitably, coercion will be brought to bear. People will be forced to become members of unions at the time their employment is considered. The Deputy-President, the Hon. J. R. Johnson, would be aware that in the past all that employees required was a ticket at the time of appointment. If an employee did not want to become a member of a trade union he or she would let the membership lapse. It would be paradoxical if someone was appointed after determining their skills or suitability for a job and then being told to pay the money, get a ticket and "away you go", without having regard to their feelings about the trade union movement.

I know that all honourable members are anxious to resolve this matter. The Hon. B. H. Vaughan and I have often traded analogies drawn from Disraeli, in particular, when he looked at the landscape in South America and saw a line of extinct volcanos. This is one of those occasions where we are seeing a puff of smoke from extinct volcanoes. In my view industrial relations should not be forged in this country by way of prescriptive legislation. People in the marketplace are talking to one another. The more flexible our industrial arrangements are the better our nation will be. In my view, this bill is an earth tremor, or a note of alarm for some people. I remind honourable members of a statement made by a former member of this House, the Hon. Lee Serisier. He said, "One thing is for certain. The wheel of politics always turns. You have to ensure that you are not under the rim when it does."

I want to make sure that we are not caught up in a spoils go to the victor cycle and that the ordinary people do not go under the rim - those who are genuinely seeking work and who want to be part of the economic and social fabric of our country through work, as well as businessmen whose capital, lives and ethos are in their businesses and who so often work cooperatively with the work force that they almost merge into a single, social, economic unit. Honourable members should be mindful that they do not become pawns in a political game. I confidently predict that we will revisit this area of industrial relations in the not too distant future and that modifications will be made, probably by a sensitive Federal government that is concerned about the new economic circumstances in which we live. I know that the



Treasurer is listening intently to what I am saying. What has happened is not just part of the deregulation of banking and financial institutions; it is happening everywhere.

The capital that underpins our society is probably 60 per cent owned by overseas people. It is very mobile. It can be shifted. Part of our capital is invested in overseas markets and overseas companies, the majority of which are owned by other people. It is very complex. The Government cannot stand alone in Australia, oblivious to working conditions in other countries, and plod along on its own course because it will sink at its moorings. As I have said previously, changes to industrial relations will be ushered in at the Federal level. Whether there is a new government in Canberra or the present Government is re-elected, economic reform will continue, and part of that must be industrial reform. The Opposition wants to ensure that such reform is sympathetic and enlightened and that it is flexible enough to meet the needs and aspirations of contemporary Australians, not only the tenets of worn-out ideologies of another epoch.

**The Hon. Dr MARLENE GOLDSMITH [5.22]:** Many things that concern me about this legislation have been raised by other speakers during the course of debate, so I intend to speak briefly on one item of particular concern to me. I refer to chapter 5, part 1, clause 211, "No preference to members of employee organisations over non-members without consent or agreement". Those opposite have said that the clause is harmless and that clause 212, allowing conscientious objection to union membership, makes the legislation respectable and above board. I disagree with those assertions, and I take this stand on behalf of a fundamental concept, democracy. What does "without consent or agreement" mean in clause 211? Subclause (2) states:

... an award made with the consent of the parties to the award or an enterprise agreement may confer such a right of preference if:

- (a) the preference applies only between prospective employees for the purposes of recruitment, and
- (b) a prospective employee is not given preference over another prospective employee who has greater merit.

At least we are not going back to the totally closed shop of previous years, so there is a recognition of merit. Yet, when all other things are equal the preference clause remains. It is a total violation of democratic principles. Clause 212, allowing for conscientious objection, has been used in this debate to argue that clause 211 is not a violation of democracy. But honourable members know that we have had such principles in previous legislation and that what supposedly existed in theory did not exist in practice. As a former schoolteacher I was all too well aware of how difficult, how wellnigh impossible it was to get a job as a public school teacher in this State unless one was a member of the Teachers Federation.

**The Hon. Virginia Chadwick:** You couldn't.

**The Hon. Dr MARLENE GOLDSMITH:** The Hon. Virginia Chadwick, the former Minister for Education and Youth Affairs and a former teacher, states that you could not. This is not just my experience, but the experience of many schoolteachers who came to me with the same problem. It was impossible. That is what

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preference clauses and so-called conscientious objection mean. It means nothing. It is window-dressing. In actual fact, this clause takes us back to compulsory unionisation. That is highly significant.

At this point I wish to refer to something as fundamental as a bill of rights. We do not have a bill of rights in Australia. If we did have a proper functioning bill of rights that recognised all democratic principles we would not be having this debate now. But the Americans do have a bill of rights, and the first amendment states - I am excerpting here, but this is precisely relevant to this debate - that Congress



shall make no law abridging the right of people peaceably to assemble. The right of assembly and the right of association carry fundamental reverse rights, associated rights - the right not to assemble; the right not to associate.

Without a bill of rights we do not have protection against laws that trespass upon, that violate, that fundamental democratic principle. An attempt was made to introduce a bill of rights to Australia in the mid-1980s, an attempt that failed, deservedly in my view, because it was a sham. It was introduced by a Labor Federal Government and, surprise, surprise, it omitted the fundamental freedom of association and freedom of assembly. A lot of other freedoms were included in that bill of rights, but for some reason those freedoms were excluded. Why? The reason is obvious. The bill of rights was introduced by a Labor Government.

Had that clause been included in the bill of rights proposed for Australia preference clauses could never have been inserted in industrial relations legislation. They are a violation in themselves without any other reason having to be given, but given the affiliation between Labor trade unions and the Labor Party in this State and Australia, they make democracy a joke. To get a job in a system where there are preference clauses the prospective employee is forced to join the association if he or she wants employment. Yet, to join an association that is affiliated with the Labor Party is to enforce support for the Labor Party, economic support by way of union dues and very often other kinds of support as well.

Freedom of association is the central pillar of a free society, yet honourable members are debating its removal. Were this to happen in any other democracy one could expect a public and media furore. Yet here the media are largely silent. Is it that such economic and political cohesion - "Join the union and support the Labor Party or you can't have a job" - has been part of our culture for so long that it is simply taken for granted? Or is it that the Australian media care only about the democratic freedoms that appear directly to suit their interests, such as freedom of speech? Or is it that big government, big unions and big business have done themselves such a cosy little deal with this legislation that there does not appear to be any conflict in it, and the media are interested only in conflict?

I cannot answer these questions. All that I can say is that this legislation is an attack on a fundamental democratic principle, and only the Opposition seems to care. Ironically, we know from previous experience that such preferences produce results that are not only profoundly anti-democratic but also against the interests of the workers themselves. When unions can count on a captive membership enforced by legislative fiat, they have no incentive to improve their performance in representing their members. I noted with interest an article in the *Australian* on 30 November under the heading "Equal pay for work of equal value - but just who decides?" describing how the union movement is working up a campaign to ensure equal pay for work of equal value. As a woman I would have to say that it is long past time we had such campaigns. But why has it taken until the mid-1990s for the union movement to realise they are necessary?

The fact that union membership has been declining precipitately in recent years is a reflection of the fact that unions in the past have not had to deal with questions like this of interest particularly to women, because union membership was predominantly male, as was union control. At last the unions are realising that this question is an important issue in society. They might have realised that much sooner had there been incentive for them to pursue and court members and to make themselves more appealing to prospective members by offering value for money. The proposed legislation will take us back to the bad old days. People will be dragooned into union membership if they want employment.

This House contains a broad representation of the community. As and when the bill reaches the Committee stage I appeal to honourable members on the crossbenches to look closely at clause 211. It is no more in their interests that this Parliament should legislate to enforce membership of unions with Labor Party affiliation than it is in the interests of democracy itself. If the price of liberty is eternal vigilance, I ask, in relation to the bill and its implications for democracy, where are the vigilant? How much do we as a culture value democratic rights? Where are those who should be the watchdogs of



freedom, namely, the media? In short, what price democracy?

**The Hon. J. H. JOBLING** [5.34]: The explanatory note to the bill makes it sound like a delightfully benign easy-to-live-with measure. The object of the bill is to reform the law concerning industrial relations so as to provide a framework for the conduct of industrial relations that is fair and just - that sounds good; to promote efficiency and productivity in the economy of the State - another motherhood statement; to provide for the conduct of industrial relations at an enterprise or workplace level.

I have spoken with the owners of Horns Transport, a well-known and well-established company that has been in Newcastle for about 50 years. That company has a great deal of

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experience in industrial relations and also in establishing an enterprise agreement. Indeed, Horns Transport found out about the difficulties and problems a company can face in seeking to establish such an agreement. Horns Transport faced industrial strife and union black bans. There was intimidation of the company, their employees and their customers. The company is well aware of that. The Horns Transport Newcastle enterprise agreement is well known in the industrial field. When Jeff Horn made contact with me he expressed a number of concerns about the bill. This evening I wish to place on record his concerns. [*Quorum formed.*]

Mr Horn wrote to the Attorney General, and Minister for Industrial Relations and raised the following points:

Upon seeing an advertisement in the *Newcastle Morning Herald*, on Monday 23rd October 1995, calling for public comment on the Bill, we immediately called "Media and Marketing Services" for a copy of the bill. (We also understand this was the first advertisement calling for public comment, as the exposure draft was only published in October.) The exposure draft of the Bill only arrived at our office on Friday 27th October 1995.

As you would be aware, the Bill is 190 pages, comprising 413 clauses and 6 schedules. The implications of the proposed Bill can only be fully understood by reading them together with the existing *Industrial Relations Act 1991*.

The bill is not a small document. Mr Horn raised the following point on behalf of small business:

We do not understand the rush! It will undoubtedly prejudice the ability of small businesses to provide any meaningful comment on the Bill.

It seems, however, that the bill will proceed and that no notice was taken of that reasonable comment by Mr Horn addressed to the Attorney General, and Minister for Industrial Relations. Horns Transport, with the support of many organisations, conducted a test case before the full bench of the Industrial Relations Commission in an attempt to clarify the level of flexibility provided by enterprise agreements, using the Horns Transport Newcastle enterprise agreement for the purposes of the argument.

The interpretation of the provisions that Horns Transport contended and that the commission ultimately found were consistent with the announced policy of the Government. It is interesting to note that in this case Horns Transport was opposed vigorously by the New South Wales branch of the Transport Workers Union and the New South Wales Labor Council. I am concerned, as are many others, about a number of new provisions in the bill. They relate to enterprise agreements, unfair dismissal and the restriction on the right of employers to take action against unions at common law. [*Quorum formed.*]

They are concerned, as I am, with the right of union officials to enter business premises. Mr Horn also expressed his concern about preference to union members, a question that has been challenged by some. The point made by small business is valid. The bill would severely curtail the ability of unions to



enter into enterprise agreements. I contend that it is almost nonsensical to apply clause 35(1) to employees who work irregular hours, such as employees in the transport industry, the hospitality industry and many export industries. The bill would render many enterprise agreements little more than glorified over-award payments. Clause 36(1) states:

An enterprise agreement under which employees are a party is not to be approved unless the requirements of this section have been complied with.

It could be considered that clause 36 could make the registrar a tool of the union movement. It could lead to intimidating and confrontational situations at non-union areas if unions were advised of forthcoming negotiations with employees. This sort of confrontation would be totally against the wishes of those employees. I agree with the views Mr Horn has expressed to me. This legislation will affect his business severely. He will be called upon by a number of people for having the audacity to make these suggestions to me, but I believe he will survive because he is a good employer who runs a good business, and the points he raises are absolutely correct.

**Reverend the Hon. F. J. NILE** [5.44]: On behalf of Call to Australia I speak to the Industrial Relations Bill 1995 and the Employment Agents Bill 1995. Call to Australia has some concerns about the legislation and will face problems considering amendments that have been announced by the Government but not yet made available. The amendments may remove some concerns, they may make the bill more draconian or they may raise other concerns. At this stage we feel we are being asked to sign a blank cheque. The coalition has provided pages of proposed amendments, covering about 100 items in the bill, which are simply in the form of headings. I do not know how many amendments the Government proposes, but members on the crossbenches will also move amendments.

Debate will be difficult, particularly at the Committee stage, if the amendments are not available. It creates a dilemma for crossbench members. I was elected in 1981 and was a member of Parliament when there was a change of government in 1988. The coalition Government wanted to introduce legislation to update industrial legislation. That was a major concern, because it would reflect the policy and philosophy of the coalition Government. It is not enough to say the Labor Party represents only unions or that the Liberal Party represents only business, but it is a major focus of concern.

When the coalition introduced its Industrial Relations Bill there was a prolonged battle from 1988 to 1991. The coalition was frustrated in trying to have the legislation pass through the House. There were lengthy delays, and in 1991, with the

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re-election of the coalition Government and changes in membership of the upper House, Call to Australia held what is called the balance of power, but what we call the balance of prayer and responsibility. It held a pivotal position between the two major political groups. At that point the Australian Democrats in the main supported the Labor Party. The two Call to Australia votes enabled the coalition Government to have the Industrial Relations Bill passed. That bill will be repealed by the bill before the House.

The Labor Government claims it has a mandate to introduce the legislation, which perhaps is not as radical as if it had absolute control over both Houses of Parliament. The question must be asked whether the Government's mandate is as black and white as it claims. This important question needs to be evaluated. The Labor Party won 48 per cent of the popular vote and the coalition 52 per cent. The Labor Party campaign in marginal seats may have been honest in some cases, but in others it would appear to have been dishonest. I refer, for example, to the promise to abolish the tolls. Nevertheless, the Labor Party successfully exploited the marginal seat situation and won enough marginal seats to have a majority of one in the lower House in spite of the 48 per cent vote, and to operate in this House with a minority membership of 17 members out of 42. The Government operates in this House with a minority of 17 out of 42 members. That raises the question of whether this new Government has a mandate to introduce and pass such legislation without question. I do not believe that the legislation should be endorsed without question. Even if the Government had a mandate, Call to Australia would still seriously



evaluate the legislation and, where necessary, move amendments.

Obviously the Government wants to introduce a number of reforms as quickly as possible to suit its policies. This Chamber has been swamped with major legislation relating to motor vehicles, the WorkCover scheme, workers compensation, industrial relations and so on. The Industrial Relations Bill is of great importance to the Labor Party. Frankly, not many members of this House will fully understand this complex bill, which contains fundamental changes, unless they have been active in the Industrial Court or have perhaps been an official in an employer association or a union. Honourable members do not understand what the impact of the fine tuning of the legislation, or perhaps only the more radical aspects of it, will be because they do not fully understand the bill.

I realise that perhaps for the first time New South Wales has an Attorney General, and Minister for Industrial Relations who practised as a Queen's Counsel in the Industrial Court. It is probably almost child's play to him to deal with closing down the Industrial Court or combining its activities with the Industrial Relations Commission. But such things are not so clear or so simple to laymen or laywomen. We depend on the advice we have received from affected organisations that have written to us, some indicating support and some indicating concern. I suppose a cynic would question whether the bill will achieve the Government's objectives. According to the coalition speakers, there is not much chance of some of the objects being achieved. The overview of the bill reads:

The object of the Bill is to reform the law concerning industrial relations so as:

- (a) to provide a framework for the conduct of industrial relations that is fair and just,
- (b) to promote efficiency and productivity in the economy of the State,
- (c) to provide for the conduct of industrial relations at an enterprise or workplace level,
- (d) to encourage participation in industrial relations by representative bodies of employees and employers and to encourage the responsible management and democratic control of those bodies,
- (e) to facilitate appropriate regulation of employment through awards, enterprise agreements and other industrial instruments,
- (f) to prevent and eliminate discrimination in the workplace and in particular to ensure equal remuneration for men and women doing work of equal or comparable value,
- (g) to provide for the resolution of industrial disputes by conciliation and, if necessary, by arbitration in a prompt and fair manner and with a minimum of legal technicality.

Few, if any, honourable members would oppose the objects of the bill. The question is whether the provisions of the bill will achieve its objects. That is the challenge. Will the legislation provide industrial relations that are fair and just? The question of whether the bill will produce the Government's intended outcome depends on one's point of view. Will the legislation promote efficiency and productivity in the State's economy? If employer groups believe that some aspects of the bill will be a burden, will not assist efficiency and will act as a handicap, one wonders whether the objectives of the bill will be fulfilled and whether the wording in the objects of the bill is clear.

Call to Australia accepts that the Government's budget plan and its other decisions demonstrate that it is giving priority to the economy. It wants to provide an economy that will attract new business, support existing business and, through that, provide jobs. It was announced recently that more jobs are being created in New South Wales than in the rest of Australia. One could attribute part of the reason for that to the previous coalition Government. Can it be claimed that such a dramatic change has arisen solely



under the new Labor Government, which was elected only in March 1995?

I shall comment on the bill generally. Submissions received from the New South Wales Bar Association and others indicate that a key provision of the bill is the restructuring of the Industrial Relations Commission in such a way that it will occupy a central role in the regulation of  
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industrial affairs in this State. The present Industrial Relations Commission and the Industrial Court will be integrated into a single tribunal. The new commission will conduct its proceedings speedily and in a non-technical way. The functions of the present Industrial Court will be assumed by judicial members of the commission sitting as the commission in judicial session. The Minister has said that the title, status and remuneration of judges of the existing court and members of the present commission will be retained. That is wise. According to rumour, when the Federal Government wanted to remove a particular judge it reorganised an aspect of the commission to enable that to happen, which resulted in a drawn-out dispute.

The term "commission in judicial session" is strange; the Bar Association is not impressed by it. Although a commission in judicial session will be more efficient than the Industrial Court, even if its powers are modified or if the present court is given additional powers to achieve the same aims the commission will have comprehensive power to make and vary awards to suit the circumstances of an individual enterprise or industry. That seems to be a plus in the legislation. The Minister has said that an award will apply for not less than one year and not more than three years, or for a period not exceeding the anticipated life of a project. That will be beneficial; similar provisions in other legislation have been successful. Construction of the Glebe Island Bridge was completed ahead of schedule, and there was not one dispute during construction. It seems that the employer had worked out an agreement with the union; perhaps extra above-award payments were made to employees. I am not sure how early completion was achieved.

**The Hon. J. R. Johnson:** And under budget.

**Reverend the Hon. F. J. NILE:** That is an important factor. The cost of constructing the bridge was below budget. That does not happen often with major projects in Australia. Usually government and private enterprise projects go over budget. The legislation still provides for enterprise agreements but there has been discussion as to whether the provisions for enterprise agreements will make them difficult to achieve. I am not an expert in enterprise agreements, but it has been disappointing that so few were entered into after the proclamation of the Industrial Relations Act 1991 of the coalition Government. The concept of enterprise agreements was one of the main planks of the legislation.

There must have been some obstacle to the interpretation of the 1991 Act. Obstacles have been placed in the way of companies and workers who want to enter into enterprise agreements. Under this legislation enterprise agreements may be made between unions and employers after a secret ballot in which 65 per cent of employees agree to do so. Large organisations will be able to negotiate agreements on behalf of their smaller member organisations. That will simplify major project agreements involving a multiplicity of employers, bearing in mind that the term "industrial organisations" covers both unions and employer associations.

The legislation however will ensure that enterprise agreements will override inconsistent award conditions, and there will be important new safeguards to avoid exploitation. Importantly, all enterprise agreements must be approved by the commission. Call to Australia supports a concept that is often used at both Federal and State levels, that is, that there must be a safety net. There must be basic minimum awards under which no employer can go below. However, if employers and employees can negotiate wages and conditions better than those provided in the basic awards, obviously everyone would be in favour of that. That was one of the main reasons why I supported the concept of enterprise agreements that was contained in the 1991 bill. I regarded that provision as an opportunity for workers to increase their incomes. All members of this House should do all they can to ensure that workers do not receive only the award wage, but are able to negotiate higher wages, perhaps by agreeing to settle a



dispute by conciliation rather than going on strike.

I understand that is one of the objectives of the legislation, and we will have to wait and see if that objective is fulfilled. I suppose some union leaders are a little more fiery than others and are more inclined to call their members out without trying to conciliate the resolution of a dispute while the workers stay on the job. That was one of the big problems with the recent CRA Limited dispute in Weipa. A small number of union members obstructed the whole operation by blockading the port, when 600 or 700 employees were happy with their working arrangements. Those union members should have dealt with the dispute by negotiation rather than by sabotaging the company's operations. I am not talking about the profits of the company but about the ability of the company to meet its deadlines and fulfil its contracts. Japan and other nations should believe that they can rely on Australian companies to meet their delivery dates, et cetera.

If they cannot, our overseas customers will go to other countries such as Canada, South America, the United States or Europe, and will stay right away from Australia. Australia has probably already lost some of its good reputation as a result of that dispute. As I understand that dispute, it involved an argument that union members and contract workers should get the same wages for the same job. Not having read the contracts, I am unaware whether the workers on contracts had given up certain benefits to get more money and those on the award wages had not. It is not a question of a person doing the same job as another; it is a question of a position having the same job and conditions. The bill provides that the commission will be able to reject enterprise agreements even where 65 per cent of the workers have agreed to enter into such an agreement.

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Under the bill the commission is required to establish principles against which all agreements will be tested to determine whether they meet the requirements of the legislation and the appropriateness of the negotiation process. Generally the commission will only register an agreement that meets those principles. The bill contains a provision that an agreement which departs from these principles may still be approved if the commission is satisfied that the interests of the parties have not been prejudiced. The unions may not be directly involved in the negotiation of enterprise agreements, but obviously this legislation attempts to bring them into that arrangement. When the majority of workers have agreed on an enterprise agreement the union may convince the commission to cancel or reject it.

That seems to me to be a very high-handed approach which shows little respect for the intelligence of workers. It is argued that the workers may not realise they are being exploited and they are a little simple-minded in relation to these matters and need help. However, I believe workers in modern Australian society are in the main intelligent enough to understand an enterprise agreement. The 65 per cent or more who agreed to enter into an enterprise agreement would certainly understand. I believe that enterprise agreements should be respected unless there is some serious fault with a particular agreement or some form of exploitation is involved. This bill seems to imply that the workers are not very intelligent, and I believe that the workers of Australia are intelligent.

I saw ordinary workers involved in CSR controversy at Weipa present their case on television in a strong and eloquent way. They did not use technical jargon, but they knew what they were involved in, what they were doing, and they were prepared to present their case. In many areas of society there are workers who are equally as able, because of our education system and other benefits, to argue their case and to make sure that they are not being ripped off by employers. The commission will also be able to deal with industrial disputes, and action will be simplified. The Government has emphasised the role of conciliation. I support conciliation. Every step must be taken in industrial legislation and in conciliation procedures to ensure that the public does not pay the price.

Over the years there have been some nasty strikes. Sewerage workers have gone on strike without regard for the health risks involved. Railway workers and even teachers have also gone on strike.



Where there are grounds for dispute, they must be dealt with through negotiation and conciliation and not by blackmailing the public by putting to great inconvenience and, thereby, blackmailing the Government. The Government says, "How long can we put up with a rail strike? People cannot get to work, we had better give in. How long can we outlast the teachers strike? We had better give in." It is difficult to claim that there should be a law banning strikes, because sometimes they may be necessary. The emphasis should be on conciliation so that industrial disputes do not hurt families or society.

Teachers may be tempted to use children as weapons to try to obtain increased wages or a higher percentage increase than has been offered. The New South Wales Teachers Federation recently threatened the Government with industrial action if its members did not receive a large wage increase. The Teachers Federation knew that this action would embarrass the State and Federal Labor governments and applied pressure to achieve its demands. The anti-discrimination provisions in the legislation specifically address discrimination in gender equity issues. I am pleased that the legislation ensures equal remuneration for men and women. I flag one problem area for the future. I raised this matter in my contribution to the budget debate when I referred to the Beijing United Nations Women's Convention seeking to redefine the word "gender" to cover five types: male, female, transsexual, homosexual and lesbian.

If that definition were widely accepted, care would be needed when discussing gender equity issues to ensure that the gender referred to was male or female. The right of entry to workplaces for union officials is certainly a sore point in some depositions and submissions I have received. Again, not all union officials would abuse this power. The Hon. J. R. Johnson was a union official in the Shop Assistants Union and visited many employer organisations across the State. I am sure he was always a gentleman and no-one would ever have complained about his behaviour.

**The Hon. J. R. Johnson:** No employer will refuse a right of entry unless he had something to hide.

**Reverend the Hon. F. J. NILE:** It is not so much that reason. Sometimes a union representative attends an organisation with a threatening attitude thinking he has the power of a storm-trooper or SS trooper with jackboots. The employer may have nothing to hide, but is angry at the attitude of the union representative.

**The Hon. J. R. Johnson:** Why?

**Reverend the Hon. F. J. NILE:** That person should not have displayed that attitude. He should not have entered the employer's private property with a chip on his shoulder without ascertaining whether there was a legitimate concern.

**The Hon. J. R. Johnson:** The majority of complaints about underpayment of wages are raised with union officials by other employers. They tell the union officials who is robbing the employees.

**Reverend the Hon. F. J. NILE:** Call to Australia accepts that a union official may need to enter the premises, but the power should not be given to a union official alone. The power should be exercised in association with inspectors from the Department of Industrial Relations.

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**The Hon. J. R. Johnson:** You would need 10,000 inspectors.

**Reverend the Hon. F. J. NILE:** If that is the argument, more inspectors should be employed. The union official should be accompanied by an authorised government official to premises where there is a suspicion of abuse or under-award payments in clothing factories and other workplaces. Call to Australia places unions on the same level as any other voluntary organisation. No other organisation has the right or power that unions have accumulated over the years. Right to Life has thousands of members with



deep concerns and its authority could be said to be nil. Doors are slammed shut in the faces of its members. It has no authority to enter abortion clinics to check the records. Festival of Light cannot check on the pornographic industry in New South Wales by entering X-rated shops in Kings Cross and demanding to inspect the activities of that shop, whether they are legal or illegal. It appears that unions have been placed on a level that no other voluntary organisation has been placed, but unions have abused their powers. To reduce the abuse of that power an authorised inspector should accompany a union official on any inspection of an organisation.

**The Hon. J. R. Johnson:** It is impracticable.

**Reverend the Hon. F. J. NILE:** A solution has to be found. Not every company is abusing and threatening its employees. I am only referring to companies where reports of abuse of employees have been received.

**The Hon. J. R. Johnson:** You don't know until you go to a country town and the employers tell you that other employers are underpaying staff.

**Reverend the Hon. F. J. NILE:** The Hon. J. R. Johnson has made the point that the employer tells the union, the union tells the department and requests an inspection as quickly as possible. That would not involve visiting every workplace.

**The Hon. J. R. Johnson:** It does not work that way.

**Reverend the Hon. F. J. NILE:** I know, but I want it to work that way. That procedure should be given the chance to work. Many employers may be happier than having just a union representative standing over them. The 1991 legislation provided that employers be given seven days notice of an inspection. This legislation provides the employer with 24 hours notice.

**The Hon. J. R. Johnson:** I am not happy with that provision.

**Reverend the Hon. F. J. NILE:** The Hon. J. R. Johnson would not give any notice.

**The Hon. J. R. Johnson:** No.

**Reverend the Hon. F. J. NILE:** If an inspector accompanied the union official, no notice would be required. I accept that an inspector accompanying a union official could enter premises without warning. Union officials cannot throw their weight around. If the inspection was a snap visit, perhaps the employer would not have all documents available; I do not mean false documents. It would be easy to ascertain if an employer was abusing its workers. Another major provision in this legislation is the right to join a union. The legislation refers to freedom of association and states that employees will have freedom of association and that membership of an industrial union is voluntary. No person will be compelled to become or remain a member of an industrial organisation. The term "industrial organisation" applies to employer bodies and unions. A person eligible for membership of an organisation may not be prevented from becoming or remaining a member of a union. There will be no legislative basis for compulsory unionism.

However, the new legislation allows limited preference to union members through awards and agreements, but only where employers and unions agree to such arrangements in an enterprise agreement or consent award. The legislation provides that the operation of the preference clause will be limited to the point of engagement. The legislation provides explicitly that the merit engagement principle cannot be overridden. The preference clauses will not apply to persons holding a conscientious objection to union membership. The commission's registrar will issue a certificate of conscientious objection. This provision was omitted from the 1991 legislation. Call to Australia attempted to have it included, but the previous Government argued that as the legislation contained no preference clause



there was no need to provide for conscientious objection in the legislation.

Call to Australia is pleased that this provision has been retained in the legislation. Limited preference is being given to union members. The Hon. Dr Marlene Goldsmith and other members of the coalition parties have argued that this provision takes us back to legislation introduced prior to 1991 when union members were given preference. People had to be members of a union before they could be employed. Employees who did not join would be discriminated against. The Hon. Dr Marlene Goldsmith referred to the education system in which she was employed before becoming a member of Parliament.

Many powerful unions, such as the Teachers Federation, might argue that people are not forced to become members of unions. However, they try to gain membership indirectly. That is one of the dangers of this provision. The Government has softened this provision to such an extent that the Labor Council is not happy with it. The Labor Council says that the agreement of the employer is required. Are we cynical enough to believe that an employer would agree because he does not want to be victimised? Is this provision just a bit of window-dressing? How many employers would get into arguments with a union if it was reported that they were not cooperating with employees who wanted to become union members? Philosophically,

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it could lead to an employer having his arm twisted behind his back. He might believe that he has to give preference to a union member.

**The Hon. J. R. Johnson:** Thousands of teachers are not in the union. A lot of teachers join the union to get the benefits of the credit union.

**Reverend the Hon. F. J. NILE:** Unions have been clever, in that they provide attractive measures to retain or increase their membership. Those who are not in the union feel intimidated and threatened by the union and union delegates. Teachers who are not union members believe that they are being stood over by those in the union, in particular, union delegates. Call to Australia believes that a union member should pay his fees direct to the union. That is why we supported some of the provisions introduced by the previous Government. We believe that union fees should not be deducted by the Government. A year or so ago \$11 million was collected by the Government from all teachers and transferred to the Teachers Federation. An amount of \$11 million was deducted from teachers' pays without any administrative processes or forms having to be filled in and without any office staff having to worry about it. What a terrific system for the unions! This system, which has been changed in New Zealand, has resulted in a decrease in union membership. When union fees are not deducted from members' wages, membership drops to 30 per cent.

**The Hon. J. R. Johnson:** Why put that indecision on it when both parties agree to it?

**Reverend the Hon. F. J. NILE:** When union fees are deducted by employers and paid to the union that tends to become a form of compulsory unionism. People wanting to join a union should be enthusiastic about it, as are members of Right to Life and Festival of Light. All people wishing to join a union should have to fill in a form, apply for membership and renew that membership annually. Unions would have to work very hard to retain their voluntary membership. If there were no compulsory collection of union fees, as is the case with the Teachers Federation, unions would work harder. They would have to do a better job encouraging people to join and to renew their membership. I am sure that three-quarters of all teachers who pay union fees do not worry about it. They sign a form to permit regular deductions from their pay. Other honourable members have referred to the fact that this Labor Government has to meet the demands of the union movement, which is why there is provision in the bill for preference. We will monitor this situation to determine whether people who are not union members are being discriminated against.

I referred earlier to industrial organisations, a term which applies to both employers and employees.



I am pleased that the bill provides for employees. I have received submissions from a body called Brethren, an ad hoc organisation which does not like to be known as such. Its proper name is Exclusive Brethren or Plymouth Brethren - Plymouth being the origin of one of the leaders of this group. Obviously, there are many different groups of Christians throughout the world. The word "brethren", which simply means brothers and sisters, is a word which is used often in the *Bible*. This group, which is represented in 21 countries, is very orthodox in its practice and faith. It maintains the truth of God as contained in the Holy Scriptures. It believes that the *Bible* is the inspired word of God and God breathed through the Holy Spirit. The Holy Spirit inspired and guided the authors of the *Bible*. I understand from information that I have been given by individuals associated with this religious group that approximately 900 Brethren families are living in New South Wales. They are simple people leading simple lives. Most are employed in small family businesses which have both Brethren and non-Brethren employees.

The Brethren live out their lives based on separation from evil in the world. They do not have televisions, radios or computers in their homes or businesses. They do not engage in membership of any clubs, trade associations, public company shareholdings or societies of any kind. Their only membership, which is exclusive, is in the Fellowship of Christ as part of the body of Christ. The principal commitment of the Brethren is to pursue righteousness and show respect for and conform to government ordinances as God-given - as is taught in the *Bible* in Romans 13 - provided they do not contravene the word of God and offend their conscience, which is comparatively rare. The Brethren group covers a wide scope of business activities, including farming, building trades, metal industry, furnishing and furniture, transport, clothing, retail, accounting, printing, plant operators, vehicle repairers, et cetera.

However, none has any involvement whatsoever with any trade union, employer association or organisation, which is different from what the Government has previously sought to achieve through its conscientious objection clause. From what I have already said the clause would obviously apply mainly to small businesses employing five or six employees, certainly not more than 20. The Brethren will not join any employer association but operates individual companies. The Brethren feels, and the Attorney General has received submissions in this regard, that the legislation is an attempt to force them - not that the Labor Government has any intention of doing so - to join an industrial organisation, which they would not do regardless of the consequences.

Unfortunately this group of people has already been in conflict with trade unions. It has been costly and stressful for them because they will not compromise. In recent years there have been a number of cases in which conflict has occurred over these matters. Some sample case histories of individual Brethren refusing to join a union are as follows: Southern Printing, Perth, Western Australia, 1991; Ferro-Clean Industries, Perth, Page 4367

Western Australia; Wodonga Meats, 1991; Chatham Plasterers, Melbourne, 1991; Heritage Landscapes, Melbourne, Victoria; and Concept Products, Perth, Western Australia. In earlier years there were some cases in New South Wales - Mr Robert White, Sydney, 1953-54 and Mr Ken Pickard, Newcastle, 1962.

I asked the Brethren to give this information to me so that I could put on the record some of their beliefs. I know it is a bit hard for people, even those of us who are practising Christians, to sometimes understand how they have interpreted the doctrine of absolute separation. I understand some of the scripture passages that talk about not being unequally yoked with an unbeliever, which most people have interpreted as meaning not to marry an unbeliever. But I understand that the Brethren have interpreted that in a wider way to include not being members of any employer body, union organisation or association whatsoever, other than the fellowship they attend weekly.

I make it very clear that they are not anti-union. I discovered that they would have sympathy with the idea of unionism that came from its founding members, who were very sincere persons, mainly from Methodist backgrounds, angry at the exploitation of workers. Out of that exploitation grew the union movement. There was a need for it in the 1800s. We know that some of the first founders of unions were arrested and labelled as troublemakers, like the Tolpuddle Martyrs whose chapel in the United



Kingdom I visited on our study tour. I saw where they started and where a group of them were arrested and charged by the magistrate as being, almost, revolutionaries. They were deported from Plymouth and some years later returned. A memorial marks the point to which they returned, got off the boat and climbed on to the steps of the wharf at Plymouth.

The Plymouth Brethren in many ways would have sympathy with the Tolpuddle Martyrs because they believe that there must be justice. They were concerned that when capitalism arose it exploited the weak, the poor and the underprivileged. As governments failed to protect people in those days, there was no choice but for individuals to join together, giving rise to the trade union movement. The Brethren respect the role of government: the government as ordained is set up by God, and they believe they must ensure the God-given right of a man to work and the God-given right of employers to employ who they will. They uphold that as a basic principle.

An investigation of those who work in Brethren-owned companies would reveal that they would be better cared for and their needs would be recognised more than perhaps might happen in many other companies. There is no question of these people wanting certain rights so that they can exploit their employees. They do not employ only their relatives or children, or children of Brethren families; they employ non-Brethren as well. I have presented to the Government some draft amendments to try to meet their needs. I admit it is not easy to get the formal words that apply only to them and that cannot be abused or exploited by other groups. I note that in the Clerks (State) Award, section 5.26 refers to the Brethren, recognising this religious group and its beliefs in the same way as we acknowledge the beliefs of other groups. Sometimes they may not be beliefs that we support, such as Jehovah's Witnesses, who will not accept blood transfusions. But attempts have been made to live with their beliefs when trying to save the lives of those who need blood transfusions. The Clerks (State) Award states:

Brethren employers and employees are not trying to save money, they are not trying to save union fees or avoid their responsibilities. They are happy for equivalent funds and membership fees to be paid where required.

*[The President left the chair at 6.41 p.m. The House resumed at 8.00 p.m.]*

**Reverend the Hon. F. J. NILE** [8.00]: Prior to the adjournment I was outlining the concerns and beliefs of the movement variously named the Brethren, Plymouth Brethren, or Exclusive Brethren. Representatives of that group to whom I have spoken are anxious that the names Brethren, Plymouth Brethren or Exclusive Brethren not be included in the bill, but they would like their concerns to be acknowledged in the legislation. However, precedents exist for acknowledging such groups by name, one being the Clerks (State) Award. The Brethren have strong beliefs about conscience and the exercise of it. Members of that group have gone to court and been involved in long drawn-out cases to defend their beliefs and principles. They are an unusual group, and not all Christians would share their opinions. In their submission they acknowledge that conscience is recognised in the bill as it applies to employees. On their behalf I seek to broaden the provisions of the bill to include employers of a small number of employees. In a booklet entitled *Conscientious Objection to Union Membership* published in 1979, Senator Gareth Evans and co-author Keith Marshall offered the following definitions of conscience:

It reflects a moral position . . . "it involves an innate conviction of what is morally right and wrong".

It is compelling in character . . . Barwick C.J. in the Thompson Case refers to the "compulsive quality" of a conscientious belief.

It is durable. A conscientious belief is one that is held with a degree of tenacity and consistency over time . . .

It involves a Subordination of Self-interest.



Man is not the master of his own conscience. The defence of conscience has not been abused in Australia. Statistics show that provisions permitting conscientious objection on religious grounds have been used only by some hundreds of people. Conscientious objection is not popular territory; it takes the kind of courage that springs from moral conviction in persons who are not swayed by what others think of them. The question could be posed:

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why discriminate between the consciences of employers and those of employees? What logical basis could there be for that? If a man's conscience compels him to refuse to join an industrial organisation because of its operating principles, why should legislation compel him to bow to that organisation when he becomes an employer? Such people are sincere, and they have nothing to hide. The persons seeking this provision have no objection whatever to regular inspection of their premises and records by government officers and are willing to pay a suitable fee to cover the cost of such inspection. Are these people seeking favours at the expense of others? The answer is no. The Brethren have small family businesses, mostly with less than 20 employees, most of whom would apply for exemption certificates. What do unions lose by not having right of entry to these premises without a government inspector?

**The Hon. Meredith Burgmann:** The ability to stop bad labour practices.

**Reverend the Hon. F. J. NILE:** This group will give a written guarantee that they will fulfil all industrial requirements. There has been no question of that in the past - and they would probably go the extra mile. Is this Parliament not great enough to act on a bipartisan basis to provide for these people? Surely we have the nobility, the courage and the power to rise to the occasion. I foreshadow an amendment that takes up the concerns of that group. I am perhaps the only member of this House who has produced a final amendment to the bill - I am sure I will be rewarded. My first foreshadowed amendment is:

Page 109, clause 212. After line 4, insert:

- (4) a certificate of conscience of conscientious objection may, without limiting this section, be issued to a person (whether or not an employee) who satisfies the Industrial Registrar that he or she is a practising member of a religious society or order whose tenets or beliefs preclude membership of any organisation or body other than that society or order. In the case of a certificate issued to a person who is not an employee, a reference in this section to relevant organisation of employees is taken to be a reference to a relevant organisation of employers.

The second amendment that I propose to move is as follows:

Page 170, clause 296. After line 17, insert:

- (2) This Part does not confer authority on an authorised industrial officer to enter any premises for the purposes of holding discussions with employees or of an investigation if:
  - (a) the persons employed at that place are employed by a person who holds a certificate of conscientious objection under section 212(4) because of membership of a religious society or order, and
  - (b) none of the persons employed at those premises are members of an industrial organisation, and
  - (c) there are no more than 20 persons employed at those premises.

The Brethren will have to satisfy the registrar. They do not have a blank cheque; they simply cannot make demands. They have to stand up to examination by the registrar. One of the submissions I have received about the bill is from the Chamber of Manufactures of New South Wales. The media have



reported little controversy about the employers' view of the proposed legislation, and the Government could argue that employers are happy with the bill. But companies that have spoken up strongly on these issues are being victimised - not by the State Government but by the Federal Labor Government, almost on the direction of Prime Minister Keating, who bears grudges and does not easily forgive people who cross him. That may be one reason why the debate on the industrial relations issue is not as frank as it should be. In a free society people should be able to express their opinions. However, we have seen what happened to Mr Campbell in Kalgoorlie. The price he paid for expressing his views was expulsion.

The Chamber of Manufactures has indicated that it is concerned that the bills will not positively encourage micro-economic reform, empowerment and attitudinal change by direct industrial parties. The Chamber believes the Industrial Relations Bill will treat employers as if they are in the wrong and should be bureaucratically controlled. It will extend the areas required for employer compliance and impose duties beyond those required in comparable jurisdictions. It is difficult to see how these features of the bill will encourage investment in New South Wales. Perhaps the Government is not taking that into account. If it wants to encourage industry and provide opportunities for employment, it must take into account the views of bodies such as the Chamber of Manufactures, which feels the bill will discourage investment in this State. The Chamber of Manufactures is concerned about some of the provisions in the bill with regard to conditions of employment, the barriers to non-union enterprise agreements and the requirements of part-time agreements. The Chamber of Manufactures is also concerned about what it calls the non-union agreements. It stated:

The barriers to "non-union" agreements are plainly excessive and will act to discourage agreements. The Bill's scheme does not appear to appreciate the point that making agreements locally is an important process in its own right. The measure of an agreement is not just its outcome for terms and conditions of employment.

The approval process proposed by the Bill also misunderstands the reality of communication in the workplace, especially in smaller enterprises.

In the case of part-time agreements, not only are the Bill's requirements opposed by the Chamber but they do not appear to provide the protection sought by unions. As previously indicated the Bill misunderstands the context of part-time agreements generally.

At the Working Party unions indicated a major concern was the alleged misuse of time worked between the ordinary hours specified in the agreement and the ordinary "full time" hours provided in the relevant award.

The Chamber proposes the deletion of subclauses 74(3) and (4) and the addition of a new paragraph 72(3)(c):

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"That time worked in excess of the hours provided in the agreement which fall within the ordinary hours provided under the relevant award shall be:

- (i) subject to overtime provisions of the award; or
- (ii) treated as ordinary time under the award and for purposes of industrial relations legislation until the number of ordinary hours provided by the award is worked; or
- (iii) some combination of the above; or
- (iv) Proscribed."



and the subsequent re-numbering of the subclause.

That proposal by the chamber seems to be a reasonable alternative. I share the following concerns that the Chamber expressed:

The proposed victimisation provisions make victimisation on the basis of membership or non membership of a union unlawful. However, there is no specific penalty for breach and there appears to be nothing unlawful about third party victimisation. For example, there appears to be no illegality in a contractor requiring a subcontractor to impose membership or non membership requirements on the subcontractor's employees.

If this understanding is correct there appears great risk of "no ticket no start" abuse returning to the building industry.

I outlined a number of those matters when the 1991 Industrial Relations Bill was discussed and voted on. I quoted cases of people I knew, young subcontractors trying to start small businesses. They were told when they went onto some building sites that they had to pay \$300 or \$400 to the union or they would not be allowed to drive onto the site. They were simply going to the site to do subcontracting work, and would then leave. I have been asked for the names of those people, but it is not my role to invade their privacy. However, I know them personally and trust their honesty. The reports they have given me are genuine.

The Chamber of Manufactures also proposed a number of other amendments that may be adopted by the Government. Honourable members are in the dark on these bills. The Attorney General, and Minister for Industrial Relations may move amendments, and some of these matters might be picked up by the coalition, which is obviously in closer contact with the Chamber of Manufactures than I am. There is no point going into detail on that, but the document I have received contains a number of proposals and areas of concern. I also have a submission from the Restaurant and Catering Association of New South Wales, which indicates its concern. The document, dated 3 November, stated:

I am writing to you concerning the Industrial Relations Bill 1995, which was released by the Government for public comment on 23 October 1995.

Please find attached a copy of the Association's submission which has been forwarded to the State Government in response to this bill.

I must emphasise that our submission was prepared at somewhat short notice. The Government has only allowed a relatively short period of two weeks for public comment with the Association not being able to obtain a copy of the draft legislation until Friday last week.

That indicates the problem this House faces with the bills. There also seems to be a quietness in the community. Because the whole process has been rushed, perhaps the full impact has not yet registered with employer groups. It takes time to filter down through associations and individual employees and employers, then back. The letter from the Restaurant and Catering Association of New South Wales continued:

It is the Association's view that the introduction of comprehensive changes to the NSW industrial relations system, by their very nature, require greater public consultation than the two weeks allocated by the Government. We appreciate the Government has sought to take into account the views of interested parties through the establishment of a Working Party. Unfortunately however, this process has proven to be exclusive rather than inclusive, with all information regarding proposed reforms confined to those within the Working Party.



This lack of consultation is especially disappointing in the light of the valuable contribution that this Association could make in informing the process from the perspective of small business. The restaurant sector in NSW alone is made up of between 5000 and 6000 restaurants employing 53 000 people. 93% of these restaurants employ less than 20 people.

As you can see from the attached submission, the Association has a number of concerns regarding both the current legislation and the draft bill. If you feel, in your own deliberations over the appropriateness of the Government's proposed changes, that it would be of benefit for us to provide you with a personal briefing on their impact, please do not hesitate to contact me.

We look forward to working with you into the future.

Yours sincerely

JENNY LAMBERT  
**Chief Executive**

The association provided me with a 10-page submission, which I will not read. It expressed concerns on aspects of the legislation. On the subject of enterprise agreements, the association stated:

Despite enormous interest amongst members, its potential in the restaurant and catering sector has not been realised, with only 16 agreements registered. There appear to have been a number of reasons for this:

- The refusal, up until the Horn Transport appeal, of the Industrial Registrar to permit the negotiation of penalty rates for the purposes of an enterprise agreement.
- A lack of administrative resources, resulting in long delays before agreements are registered by the Industrial Registry, (often 2 to 3 months).
- The hospitality industry suffers from a relatively high staff turnover which in many instances makes it impossible for the employees to form a cohesive bargaining unit with which the employer can negotiate.
- Many members, being predominantly small business, have found it difficult to devote sufficient resources (in particular time) to be able to successfully negotiate an agreement.

That is a problem for small companies, such as restaurants, with less than 20 employees that have a high turnover. The association is also concerned about the provisions relating to enterprise agreements. It considers that compulsory notification of a trade union of enterprise agreement

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negotiations is unnecessary. It regards it merely as a recruitment exercise for trade unions. Under the present legislation, whether a trade union should be involved in negotiation of an enterprise agreement is a matter for employees; it should not be imposed on them through legislation. The association is also concerned about the right of trade unions to be heard before the Industrial Relations Commission. The submission stated:

This proposal will put enterprise bargaining beyond the reach of small business, which dominates our own sector with 93% of restaurants employing less than 20 employees.

Most small businesses have only limited resources, and they do not extend to dealing with such matters. Under the proposed legislation, employers will have to take time that they cannot spare to appear in court. The association also expressed concern about the unfair dismissal provisions. The way in which the Federal legislation on unfair dismissals works has caused huge problems. I understand that many



employers are reluctant to employ people. The Federal legislation has had an effect on employment opportunities. Employers in small companies have told me that they will not employ people because they do not know whether under the Federal legislation they can sack a worker if he or she proves to be unsuitable. I am not suggesting that we have gone as far as that in this legislation, but the association has expressed concern. The submission stated:

The Association recognises that in a modern society, legislation is necessary to provide an employee with recourse in cases of genuine unfair dismissal. The aim of such legislation we believe should be reinstatement.

Unfortunately, unfair dismissal legislation as it stands is just not working and is far too heavily weighted in favour of the employee. Members currently face a ridiculous situation where theoretically a state award covered employee may take action against them under both State and Federal legislation at the same time, or if the employee loses their case before the NSW Industrial Relations Commission they could then take action under Federal legislation. Indeed, in the latter case, a member recently had an experience where in an action under State legislation, the employee when learning that the Commissioner was ready to dismiss his application threatened the employer with further action in the Federal jurisdiction if they did not agree to a monetary settlement.

That almost amounts to blackmail against small businessmen, and it is a discouragement to hiring employees. Small businessmen work with a small staff, although they could provide work for more people. The Restaurant and Catering Association is concerned about preference of employment and right of entry. It stated:

When investigating such breaches, a trade union must provide the employer with seven days notice.

The association wants that provision retained. The submission continued:

Additionally, in fairness to an employer's primary interest, that is the running of their business, the seven days notice currently required by the Act we believe is reasonable. This is especially important in a small business sector such as ours.

The association's response to the planned changes to the industrial relations legislation can be summarised as follows:

- The Association does not support proposals for enterprise agreements to be registered by the NSW Industrial Relations Commission.
- The Association does not support the application of the "no disadvantage test when approving enterprise agreements.
- The Association does not support the compulsory notification of trade unions with respect to enterprise agreement negotiations.
- There should be no provision for third parties, such as trade unions, who have not been involved in the negotiation of an enterprise agreement to have standing before the Commission when agreements are registered.
- That Works Committees should be retained to facilitate the negotiation of non-union enterprise agreements . . .

. . . unfair dismissal legislation should be amended to:

- discourage frivolous and vexatious claims.



- tighten the test for accepting out of time claims.
- exclude casuals who have been employed for less than six months.
- exclude probationary apprentices.

### **Preference of Employment**

- The Association is opposed to the re-introduction of preference clauses.

### **Right of Entry**

- The Association believes that current right of entry provisions provide reasonable access for union officials whilst at the same time recognising the commercial realities faced by an employer, and particular, small business.

I also received a submission from the New South Wales Bar Association, to which other speakers have referred. The Bar Association is mainly concerned about the abolition of the Industrial Court of New South Wales, a superior court of record. The submission stated:

This proposal raises important questions of judicial independence.

Of course we want to retain judicial independence. The submission stated further:

The Industrial Court of New South Wales . . . is constituted a superior court of record by s.288 of the *Industrial Relations Act 1991*. By s.292 of that Act each judge has the same rank, title, status, precedence and remuneration as a judge of the Supreme Court.

The Industrial Court was certainly put at the highest level. The submission continued:

The Bill proposes the creation of an Industrial Relations Commission of N.S.W . . . with the functions given to it by the Act . . . including the traditional industrial arbitration functions . . . and judicial functions such as award enforcement . . . the Commission is to consist of a President, Vice President . . .

The Bar Association is also concerned about judicial independence. Its submission stated:

It is a matter of significance to the community at large that the independence of the judiciary be preserved. The various legislative devices which have been adopted in  
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recent years in a number of jurisdictions reflect the tension which develops between the sometimes competing responsibilities of government to:

- ensure the institutions of government are responsive to the needs of the community, and
- maintain the integrity of the independence of the judiciary. . . .

The people of N.S.W., in the recent referendum, reinforced their concern that the judiciary needed to be protected from the decisions of the Government of the day. That protection is not for the benefit of the judges, but for the benefit of the community. No doubt in many cases, decisions will be made for reasons of good government but implementation is restricted or inhibited by reason of the entrenchment of the judiciary. Such limitations are regarded by the community as more important than the flexibility which would otherwise exist.



I am sure that the Attorney General has a copy of that submission dated 30 November. I have met representatives of the industrial division of the New South Wales Farmers Association on a number of occasions. I shall not go through the submission in detail because it has been covered by other speakers, particularly the Deputy Leader of the Opposition. The New South Wales Farmers Association is concerned about the definition of "employee" and the maximum ordinary hours of employment. Regulation by the bill of the employment of spouses and persons working for their parents and restriction of ordinary working hours to 40 hours per week will be detrimental to those workers. The New South Wales Farmers Association gave the example of a wife working for her husband in a cotton farming area. I assume that the Minister has received copies of the submission from New South Wales Farmers Industrial and the submissions dated 14 November 1995 from the New South Wales Farmers Association. The New South Wales Farmers Association repeated concerns contained in other submissions:

The Association is concerned about many aspects of the Bill. However, in view of:-

- (a) the submissions being put by other employer groups covering areas of joint concern (such as enterprise agreements, common law actions and rights of entry); and
- (b) our desire to be as constructive as possible in the tight time frame available;

we limit our submission to four areas. Nonetheless we attach at the end of our submission a summary of other aspects of the Bill which concerns us.

I mentioned one of those, the definition of employee; clause 21, the maximum ordinary hours of employment; clauses 5 and 21- - their combined effect on the rural industry; subclause 278(b) - documents to be lodged with Industrial Registrar; 5. Dictionary - explanation of "employed in rural industries":

We seek the retention of the current explanation of "employed in rural industries."

The association then detailed its concerns and made the obvious point:

The reasons why family members work for one another, and the remuneration for which they work, are very different from the reasons and remuneration for which other employees work.

Unlike most employment arrangements, the employment of a spouse or family member is not an "arm's length" transaction. Spouses and family members will work for one another, not in exchange for the "standard" working conditions and immediate re-imbursement for their efforts, but rather for reasons borne out of their familial relationship.

I believe those are important points and I urge the Government to take note of them. I then received a submission from the New South Wales Farmers Association dated 6 December. I do not know whether the Minister has received it. If not I am happy to pass it on.

**The Hon. J. W. Shaw:** Yes, I have received it.

**Reverend the Hon. F. J. NILE:** I assume that when they send me a copy it is important that the Minister also gets a copy as he is the person introducing the legislation. It was made available for our benefit so we could be aware of the association's concerns. The Government's amendments may take into account some of these concerns but until we see the amendments we do not know. In a further submission the association strongly states its concern about the definition of "employee" in clause 5 of the Industrial Relations Bill. It has taken legal advice, which is summarised as follows:

Our view of the implications of Counsel's advice for farm "family" employment is that the Bill will: -



- (a) cover a new category of farm "family" employment which the *Industrial Relations Act 1991* did not cover (hereinafter referred to as "*intended farm family employment arrangements*") here, the appropriate family members agree and intend to be legally bound by their jointly negotiated agreement, but do not intend or want the usual industrial consequences to apply;
- (b) introduce uncertainty into a significant number of other farm "family" working arrangements (hereinafter referred to as "*uncertain farm family arrangements*"). Here, one party will argue that there was no intention to create employment relations (and/or maybe not even legal relations), whilst the other person will argue that there was. Removal of a previous exemption will invite testing of the principles. Furthermore, although many of those principles are clearly set down, their application can be very difficult.

In a farm family "employment" sense, we believe that *uncertain farm family arrangements* are commonplace, whilst *intended farm family employment arrangements* are not.

This has been covered by previous speakers so I will not quote further. We support the association's concern and believe that the implications of the legislation may not have been intentionally planned by the Government but that is its effect. I received a submission from the National Association of Personnel Consultants, NAPC, that expressed some concern about the Employment Agents Bill 1995. It stated:

Our major concern is to ensure that any Legislative provisions provide appropriate regulatory requirements for the operation of Private Employment Agents. Our experience with the existing licensing provisions is that they have proven ineffective.

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We have proposed a gradual move to self regulation and that licensing requirements be replaced by a Code of Practice.

We have expressed these views in a brief submission (copy attached) to the Industrial Relations Legislation Secretariat. We are uncertain as to whether there has been any modification to the bill since that time.

We believe that the consultation process put in place by the Government has been inadequate and has not afforded sufficient opportunity to the industry to formulate detailed view on the merits of the Legislation.

We would therefore support a motion for the adjournment of the Bill and seek the establishment of a process which allowed sensible discussion on a regulatory scheme which would meet the needs of all the players in the industry . . .

We thank you for the interest and support you have shown in what is a critical issue for our industry . . .

Ruth Levinshon  
NSW President

The association attached media releases and other documents on that were issued. The submission of Horns Transport, dated 5 December 1995, had the support of a wide range of organisations: the Road Transport Association, the Australian Chamber of Manufactures, the Baking Industry Employers Association, the Chamber of Manufactures of New South Wales, the Independent Schools Association of New South Wales, the Motor Traders Association of New South Wales, the New South Wales Farmers Industrial Association, the Registered Clubs Association of New South Wales, et cetera. Horns Transport indicated that it had been working with these other bodies and using the Horns Transport



enterprise agreement for the argument. In a letter to me dated 30 October, Horns Transport stated:

Although independently represented, support was also given by the Employers' Federation of New South Wales. Horns Transport was opposed by the Transport Workers Union New South Wales branch and the New South Wales Labour Council.

The Industrial Relations Commission upheld the Horns Transport case. An appeal was subsequently lodged but withdrawn on the day of the hearing.

It is of concern to us, that although the Full Bench gave a decision in favour of the Horns Transport agreement, the Government will try to use Parliament to ram through legislative changes to overturn this decision for future agreements.

The main problems with the proposed Bill appear to be: -

- the enterprise agreement provisions;
- unfair dismissal provisions;
- the restriction on the right of employers to take action against unions at common law;
- the right of union officials to enter business premises; and
- preference to union members.

. . . We can say however, from my previous experience with enterprise agreements, that the proposed Bill would severely curtail the usefulness of entering these agreements at all . . .

We hold grave fears that this proposed legislation will be anti-growth, anti-employment and anti-business and we would appreciate the opportunity of speaking to you about the proposed Bill at your earliest opportunity.

Yours faithfully

Jeff Horn  
Managing Director  
Laraine Horn  
Company Secretary

Horns Transport was expressing concern about the shortness of time allowed to consider all these matters. I received another submission from the company on 9 November in which it listed additional concerns about the legislation:

Clause 6(h) Not an Industrial matter. Commission is being utilised as a debt collection agency for the Unions.

Clause 6(i) Is this protection for thieves.

Clause 21(1) 40 hours averaged over 12 weeks is unworkable and makes enterprise agreements unworkable. It doesn't take into account seasonal periods in respect to crops, eg. Wheat, sugar cane, holiday periods in the service industries, should be reverted back to 52 weeks

Section 25 Should be a completed year of service for sick leave employees take 5 days and then they can resign placing the employer at a disadvantage in costs.



Part 2 Part 2 - Division 1 is unworkable.

The submission refers to many clauses of the legislation and lists their genuine concerns. I assume that the Government has a copy of the submission from Horn's Transport dated 9 November. The submissions also express some concerns about the Employment Agents Bill. Obviously any industrial legislation will not please everyone. If the unions are happy with it, the employers will not be, and vice versa. It is similar to legislation relating to the forest industry and other legislation that tries to find middle ground. I urge the Government to review the submissions. I hope its amendments will take some of those genuine concerns into account. Those who have made submissions are not trying to wreck the bill or make it unworkable; they have a genuine concern for a positive and healthy relationship between employers and employees in this State. The aim of the bill is to provide a framework for the conduct of industrial relations that is fair and just. I urge the Government to do what it can to fulfil that objective.

**The Hon. J. W. SHAW** (Attorney General, and Minister for Industrial Relations) [8.41], in reply: I thank all honourable members who have contributed to the debate on this important bill. The debate has been of high quality. Honourable members obviously researched their speeches well to make such valuable contributions. I trust I will be forgiven for particularly thanking those who supported the bill. Some of the speeches of those who vehemently opposed the bill, particularly Opposition members, contained hollow rhetoric and attempts to portray the bill as extreme. The opposite is the case. This bill has been well received in the real world of industrial relations. It borders on farcical for Opposition members in this

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House to seek to characterise the bill as untoward or abnormal in its ordinary approach to industrial relations. The Government has approached the issue of industrial relations reform by seeking broad consensus and by formulating legislation that attempts to incorporate a fair balance between competing views and interests. From a technical perspective the bill has been received as a well-constructed and workable piece of legislation. The Law Society submission noted as follows:

The draft bill is a well drafted piece of legislation that is easy to understand in its expression. It appears to simplify the complexities that are evident in the current legislation, and the Law Society does not oppose the draft bill . . . I would like to congratulate the Government on the simple expression and construction of the bill, and the obvious efforts which have been put into ameliorating problems being experienced in practice in various areas.

To equal effect the Master Builders Association of New South Wales commented:

Thank you for the opportunity to comment on the . . . bill which, in the main, we find to be more flexible and user friendly.

Many other submissions were similarly complimentary. I turn to the issues raised by the Hon. Elisabeth Kirkby in her contribution to the debate. She first raised the issue of unfair dismissals and mentioned the nature of the remedy that an applicant can seek and, in particular, the effect of the 1992 decision of the Australian Industrial Relations Court in the case of *Leeds and Northrup v Hull* (1992) 46 IR 11. The effect of the legislation is that it should not be jurisdictionally fatal to an unfair dismissal application that the applicant seeks compensation only or does not specify the nature of the remedy sought. The very purpose of the recasting of the provisions is to address the jurisdictional findings of the commission in the case to which I have referred.

The abolition of the Industrial Court was raised by a number of honourable members, and I make two brief points in reply. First, the New South Wales Bar Association submission is out of date in relation to a number of matters because it examines only the draft exposure bill and not the bill as introduced in Parliament. The bill now addresses a number of concerns flagged in the Bar Association's submission. Second, the Solicitor General, Mr Mason, QC, has provided legal advice that the bill in its present form is



constitutionally valid. The Hon. Elisabeth Kirkby raised the question of the cost of combining the court and the commission and relocating the registry function to the portfolio of the Attorney General. The Government anticipates that there will be no additional cost arising from these measures. Indeed, savings may be made.

I now mention a number of other Government responses to concerns raised during the debate and to foreshadowed amendments. I will deal with the foreshadowed amendments at the appropriate time in the Committee stage. I should like to briefly comment on the concerns that were raised during the debate that will not necessarily be discussed in Committee. Provisions requiring the commission to make awards that provide equal remuneration for men and women doing work of equal or comparable value will not affect junior rates of pay. The equal or comparable remunerations provisions relate to gender-specific disparities in remuneration and working entitlements. They are derived from the International Labour Organisation convention concerning equal remuneration for men and women workers for work of equal value and the ancillary ILO recommendation 90.

Honourable members commented on the jurisdiction of the commission to find that a constructive dismissal may be an unfair dismissal. During the second reading speech I referred to constructive dismissal when dealing with chapter 2, part 7 of the bill concerning protection of injured employees. The issue of constructive dismissal is silent in the 1991 Act and this bill, but was recently confirmed by the decision of the Full Bench in *Alison v Bega Valley Shire Council*. To avoid any doubt, I confirm that constructive dismissal is intended to be included in the legislation in the definition of unfair dismissal. Finally, I refer to the provisions of schedule 1 deeming council public baths operators and supervisors as employees. The Government intends to retain this provision, but will initiate a review after the commencement of the legislation.

The industrial parties in New South Wales do not wish to continue struggling under the unworkable 1991 Act. Any delay in implementing the bill will be to the detriment of parties involved in industrial relations in New South Wales. I invite any sceptics from Opposition ranks to speak to leading representatives of employers in New South Wales to learn of the difficulties they encounter daily. The technicalities, obscurantism and legalism of the 1991 Act are legend. If Opposition members speak to leading employer representatives they will discover that a new, simpler legislative regime is wanted to govern industrial relations in New South Wales, and those representatives are not obstructing this bill. The only people obstructing the bill are the ideologues of the Liberal Party who are wedded to their pet project of 1991 and are so blinkered and, frankly, so ignorant of the real industrial relations world that they simply do not know what is going on. Opposition members do not know the real and practical views of the participants in industrial relations.

The Government has a mandate for this legislation. Overall, the bill represents a balanced package. If this bill is not passed this year, the practical result will be that the legislation will go into abeyance for an indefinite time. It will be consigned to limbo. That is not what employers and employees of New South Wales want. It is not what the community wants. The policy embodied in this legislation was clearly articulated by members of the then Opposition prior to the last election. We did not hide anything. We laid our position fairly and squarely before the electorate. We spelt out  
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these policies. We argued for them and we articulated them with precise detail. All interested parties have been exhaustively consulted in the process leading up to the bill.

**The Hon. J. H. Jobling:** That is not so.

**The Hon. J. W. SHAW:** What example can the honourable member give?

**The Hon. J. H. Jobling:** I gave you one earlier tonight. I do not think you were even in the Chamber.



**The Hon. J. W. SHAW:** What was it?

**The Hon. J. H. Jobling:** Did you not speak to Horns Transport, Newcastle, and all the other people in the industry?

**The Hon. J. W. SHAW:** We have spoken to employers generally.

**The Hon. J. H. Jobling:** Because they wrote to you and objected.

**The Hon. J. W. SHAW:** We called for submissions from all employers. They have been considered.

**The Hon. J. H. Jobling:** They wrote to you and you did not even talk to them.

**The Hon. J. W. SHAW:** I do not pretend that individual employers have not objected to particular provisions in the bill. I am not saying that. I am saying that there is broad acceptance for this package of legislation.

**The Hon. J. H. Jobling:** No, there is not.

**The Hon. J. W. SHAW:** That is undeniable.

**The Hon. J. H. Jobling:** That is nonsense!

**The Hon. J. W. SHAW:** That is undeniable. This bill contains no surprises. It has been available in exposure draft form since 23 October 1995. It has been available in the form in which it has been introduced in this House since 23 November 1995. The matter has been an open, transparent process of consultation. The Government has taken on board all reasonable views, made compromises, and put together a package which has been - even if I repeat myself - well received by the industrial relations community. I move:

That this debate be now adjourned until next sitting day.

**The Hon. J. H. JOBLING [8.52]:** I move as an amendment to that motion:

That the question be amended by omitting the words "next sitting day" and inserting instead "Tuesday 12 December".

It was originally agreed that the House would deal with the matter on 12 December. As I understood it, that was the arrangement that was agreed to. If the debate is adjourned until that date honourable members will have more time to consider the matter and talk to the people. If the Minister for Industrial Relations is reasonable he will happily agree that debate should be adjourned until Tuesday, 12 December.

**Amendment agreed to.**

**Motion as amended agreed to.**

**Debate adjourned.**

## **COURTS LEGISLATION FURTHER AMENDMENT BILL**

**Bill read a third time.**



**POLICE SERVICE AMENDMENT BILL**

**STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (No. 2)**

**POISONS AMENDMENT (THERAPEUTIC GOODS) BILL**

**Bills received and, by leave, read a first time.**

**Suspension of standing orders agreed to.**

**BILLS RETURNED**

The following bills were returned from the Legislative Assembly without amendment:

Classification (Publications, Films and Computer Games) Enforcement Bill  
Presbyterian Church (Corporations) Bill  
Uncollected Goods Bill

**APPROPRIATION BILL**

**APPROPRIATION (PARLIAMENT) BILL**

**APPROPRIATION (SPECIAL OFFICES) BILL**

**GENERAL GOVERNMENT DEBT ELIMINATION BILL**

**MOTOR VEHICLES TAXATION AMENDMENT BILL BUSINESS FRANCHISE LICENCES  
(PETROLEUM PRODUCTS) AMENDMENT BILL**

**ROAD IMPROVEMENT (SPECIAL FUNDING) FURTHER AMENDMENT BILL**

**Second Reading**

**Debate resumed from 6 December.**

**The Hon. R. S. L. JONES** [8.58]: This afternoon I voted in favour of the motion moved by the Hon. Dr B. P. V. Pezzutti to appoint a select committee on hospital waiting lists. I was assailed by the Leader of the House, who said to me, "I regard that as a declaration of war." If the Leader of the House proceeds with that war, it is a war that he will lose. I suspect that the Treasurer is under a good deal of pressure right now. When I spoke yesterday in debate on the appropriation bills I

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referred to a film called *Babe*. I said that I was not sure whether the slogan on the T-shirts to which I was referring had a dual meaning. I do not think it does. I think the slogan is meant to convey the message that people will not eat Babe, or little pigs.

**The Hon. D. F. Moppett:** Can you tell us what has happened to pork bellies on the Chicago market?

**The Hon. R. S. L. JONES:** The Hon. D. F. Moppett wants to know what has happened to pork bellies on the Chicago market. I advise him to sell, not buy, and quickly. They will never come up



again. He should sell right away. The interesting side effects of the film *Babe* will lead to a rapid change in the attitudes of young people and not-so-young people, but not necessarily older people, who are well entrenched in their habits; they will not eat Babe. George Miller made sure that the whole production was incredibly anthropomorphic. He said that the animals were not to be Disney-style characters, but as real as they could be.

I would like to welcome students from the Nicholson Street Public School, Balmain - including my nephew, Peter - who have just arrived in the gallery. They are guests of the Hon. I. M. Macdonald this evening, and they are all carrying roses. After the young people that honourable members see before them in the gallery see the film *Babe* they will never eat pig or ham again in their lives. When they see this small pig, which is like a little human being, the ducks and the other creatures, they will realise that animals are not very far removed from us at all. They are very close to us. As I was saying before this class came into the Chamber, George Miller decided that the animals would be as near to human as possible so that we would realise that they are very much like us. I have had a number of domestic pets. I still have a 12-year-old Himalayan domestic cat.

**The DEPUTY-PRESIDENT (The Hon. Jennifer Gardiner):** May I interrupt the Hon. R. S. L. Jones to acknowledge the presence in the President's Gallery of our guests this evening, pupils from grade 6 from the Nicholson Street Primary School, and their teacher, Margaret Jackson.

**The Hon. R. S. L. JONES:** I hope that some of our guests will consider a parliamentary career after they see how wonderful this Chamber is, how it works, how friendly we are and how well paid we are.

**The Hon. J. F. Ryan:** Speak for yourself!

**The Hon. R. S. L. JONES:** I am very well paid, although on my current salary I could not afford to buy the house that I have had for 30 years. The young citizens from Nicholson Street should understand that honourable members are not usually this happy. Christmas is fast approaching. The closer it is to Christmas the happier honourable members become. Our happiness has nothing to do with alcohol; it is just a feeling of goodwill amongst ourselves. Many members here do not drink alcohol and would not dream of coming into this Chamber under the influence, but on the other hand some do. Over the last 30 years I have had close relationships with domestic animals like cats, dogs and other creatures, including birds in the old days. To my amazement I have discovered that animals have almost entirely the same range of emotions and feelings as we do.

We brought up a dog that was dumped into a ditch. We had to feed it every hour. When its American owner had to go back to America we ended up with the dog again. The dog is called I Claudius. This dog, which was thrown into a ditch when it was one day old and brought up by us and then by other people, was terribly traumatised by its experience. At the age of about one week old it fell down the stairs. For ever after that it would go up the stairs in our house, but it could never come down again. We have had other dogs that we have looked after from time to time that could clamber down the stairs perfectly happily, but this dog stood at the top of the stairs absolutely paranoid.

It could only go up the stairs, but not down. We used to be downstairs making noises and saying, "Here is your food, Claudius", "Please come down for your food, Claudius. The other dogs are having their food." We would pet the other dogs and say, "Good dog, good dog. I wonder where Claudius is?" Claudius was sitting up there really frustrated, in a state of paranoia. I thought maybe food would bring him down, or promises of love, or promises of petting, but none of those things brought him down. In the end I dragged his front feet forward and taught him how to go down the stairs. Just this week, for the first time, he came down the stairs on his own. That animal finally overcame his fear and is now able to come down the stairs.

**The Hon. I. M. Macdonald:** I think you should help Peter Collins.



**The Hon. R. S. L. JONES:** What is the Hon. I. M. Macdonald talking about?

**The Hon. I. M. Macdonald:** He needs to learn how to walk down the stairs.

**The Hon. R. S. L. JONES:** The Hon. Peter Collins is perfectly capable of walking down stairs, even at Christmas time.

**The Hon. J. F. Ryan:** You would have to say this is a very pedestrian argument.

**The Hon. R. S. L. JONES:** Ambulatory - circumambulatory, in fact. I also discovered that when I come down to Sydney from up north and leave the dogs, they go off their food for a day. They miss me. Can honourable members imagine that? They actually miss me! They go off their food and they have to be coaxed back on their food.

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**The Hon. J. F. Ryan:** When you go home we don't miss you.

**The Hon. R. S. L. JONES:** Does not the honourable member go off his food? Animals are capable of love. Honourable members are aware of stickers that say, "Love is an Alsatian", "Love is a German Shepherd", "Love is Polar Bear", or something, and that is true. I used to wonder about those signs on station wagons around town with various dogs in the back. I discovered what they meant. I suspect that dogs are much more capable of loving us unselfishly than we are of loving them. In some cases we treat them abominably. They are capable of love. They are capable of fear. They are capable of feelings of loss. As I went through all the various emotions of these animals I found they were capable of experiencing all the different emotions that we were capable of experiencing.

Animals were not able to make atomic bombs or atomic weapons. That is shocking, is it not? They were not able to create pollution. They were not able to knock down the forests on their own. They were not able to build bulldozers. But apart from all those things with which we manage to destroy on our planet, they live incredible lives. I have discovered that animals are a whisper away from us. One time when I was in Penang, I went to visit an orang-outang, which was not dissimilar to some members of the lower House; in fact, it closely resembled a certain member of the lower House. This young male orang-outang had been put -

**The Hon. Ann Symonds:** On a point of order: I draw your attention to Standing Order 81, which states that no member shall digress from the subject matter of any question under discussion. I am enjoying thoroughly the preface to the honourable member's contribution to the budget debate, but I would ask you to instruct him to get to the subject matter of the debate.

**The Hon. R. S. L. JONES:** On the point of order: I would like to explain how this is germane to the budget. It has a profound impact on our rural industries. I have to warn our cousins, friends, brothers and sisters in rural areas that they have to be aware of the changing attitudes of young people, like those in the President's Gallery, who will no longer be eating pig meat, and the reasons for this revolution. It will also have a dramatic effect on health, as I am about to explain. Our health budget is enormous, but when I get on to the next part of my contribution I will explain how we will be able to save something like \$1 billion per year. I would beg your forgiveness for digressing slightly. I will try to draw all the threads together to explain why this is so important.

**The Hon. I. M. Macdonald:** On the point of order: I know the Treasurer has introduced a complex budget and wide-ranging budget, but I fail to see within that budget any reference to orang-outangs in Malaysia. I would submit that despite the fact that at times the Hon. J. H. Jobling acts beyond the bounds of an orang-outang, even a Malaysian orang-outang, the Hon. R. S. L. Jones should be talking to the budget and not to some extraneous and exotic species which, I am sure, some honourable



members, particularly those down at the other end of the Chamber, might enjoy.

**The DEPUTY-PRESIDENT (The Hon. Jennifer Gardiner):** Order! If the Hon. R. S. L. Jones is able to make relevant those matters to which he has referred, he will be in order.

**The Hon. R. S. L. JONES:** The Hon. I. M. Macdonald still eats meat. He has cattle and actually eats them. He has not allowed himself to develop the awareness that so many other citizens are benefiting from.

**The Hon. J. F. Ryan:** I am going off for a steak.

**The Hon. R. S. L. JONES:** I am needling some members of the Opposition. I was focusing on the effect on our rural industries of the film *Babe* and other films that are on the drawing board. Honourable members should listen carefully because the message in that film will have a major impact in the next century. I have spoken about American futurologists and their prediction of a trend away from the eating of meat. I return to my story about my encounter with an orang-outang and to explain its connection with the budget. The orang-outang stripped my T-shirt off me. The T-shirt had on it the depiction of a harpoon and the words "Save the whale". The orang-outang got me by two hands and a foot, stripped my T-shirt right off me, and then proceeded to put it over himself the right way around - and I have a photograph to prove it. The orang-outang, an endangered species, was wearing a T-shirt calling for the saving of another endangered species. I thought that rather cute.

This story illustrates how intelligent animals are. When I had to leave, I said to the orang-outang, "I have to go now," and he actually handed me back the T-shirt - which was pretty torn by now because his head was bigger than my head; he had torn the T-shirt and had been swinging around the cage on it. He offered it back to me as I was going, but I said, "No, you can keep it." I handed it back to him, and he was very happy with it and went off. Orang-outang means man of the jungle. Awareness about the effects of meat is growing within the community, particularly among the young, fuelled by the film *Babe* and others on the drawing board. People will stop eating meat when they find out that the animals they are eating are highly sensitive. I turn to the second significant part of my contribution to the budget debate, and that is health. My health is affected by pollution in the city. The air down here is nowhere near as good as up at Possum Creek.

**The Hon. Virginia Chadwick:** What about your cat in the country?

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**The DEPUTY-PRESIDENT (The Hon. Jennifer Gardiner):** Order! Honourable members should not divert the honourable member from his speech.

**The Hon. R. S. L. JONES:** The Hon. Virginia Chadwick has accused me of owning a cat in rural Australia. When I first acquired this cat I was in Fairlight, overlooking Reef Beach. I could not put the cat down, so we kept it in at night. The cat is so old now he only moves from one chair to the next and back again, never goes out at night, and never kills anything. I agree with the honourable member. I will never acquire another cat because they damage our wildlife. I had a researcher doing a global computer search of the effects on health of consumption of meat, dairy products and eggs. Before she started her research she was a meat eater. When going through the scientific papers for the last two years only she was so shocked that she became a vegetarian - which I had predicted would happen before she started her work.

I have wonderful references in this material, including about how abattoir workers have a much higher death rate from handling meat and getting Q fever and other diseases, and how supermarket workers suffer an increased rate of cancer and a higher death rate just through handling meat. At the University of Hawaii a researcher named Goodwin found that the Japanese population in Hawaii has



twice the incidence of breast cancer to those on the Japanese mainland, with diet thought to be the major contributing factor. That study appeared in the *British Journal of Cancer*. I am reading from extracts of extracts. I have the full scientific references if any member would like to read them. This is really devastating stuff. I intend at some point to put all this material into a book to show how dangerous eating meat, dairy products and eggs is to health.

It is the number one cause of premature death of people and animals, and it is the number one cause of destruction of the planet. If we were all miraculously to become vegetarians overnight we would reduce the pressure on the planet by about 80 per cent. About 80 per cent of the land now used for growing grain for feed or for grazing cattle and sheep could revert to its natural state as national park. We would all be much better off. Our health would improve, and we would save about \$1 billion a year in health costs. I wish I had time to go through all this material, but I can give only brief references from it.

The Shanghai Cancer Institute published a paper in 1995 by Yuan and Wang, which confirmed that a diet high in fibre, vitamin C and carotene is strongly protective against breast cancer. An article entitled "Ethnicity and Disease 1994", by Zang and Barrett, of the Division of Epidemiology, American Health Foundation, New York, outlined findings that the rate of breast cancer is lower in blacks and Hispanics than in the white population. This suggested that the variation in risk by racio-ethnic background may be in part due to the differences in the ingestion of protective agents. Hispanics eat more beans and blacks eat more fruit and vegetables than do whites. In 1994 an article was published on the first international symposium, in Mesa, Arizona, on the role of soy in preventing chronic disease.

In that paper M. C. Pike, of the Department of Preventative Medicine, School of Medicine, University of California, found that the fundamental epidemiological observation made years ago is that women in Japan have very low rates of breast, endometrial and ovarian cancer. These rates gradually increase as Japanese migrant women become integrated into the United States population. There is a significant change within 10 years of migration. The main difference in the two groups is diet, with the migrants having adopted a western diet high in saturated animal fats and low in fibre. Messrs Landa, Fraga and Tres, of the Oncology Department, Navarra Hospital, Pamplona, Spain -

**The Hon. I. M. Macdonald:** Really!

**The Hon. R. S. L. JONES:** The Hon. I. M. Macdonald does not want to hear this because he might have to give up eating meat when he hears the facts about it. He does not want to know about it. He and the other meat eaters no doubt will try to stop me talking about it.

**The Hon. Virginia Chadwick:** Will they become just like you?

**The Hon. R. S. L. JONES:** They would wear cannabis suits, have long hair, and even get into Parliament. Findings are also available from Qi, Zhang, Wu and Pang, of the Tianjin Medical University, People's Republic of China, and also from Martin-Moreno, Willett, Gorgojo, Banegas, Rodriguez-Artalejo, Fernandez-Rodriguez, Maisonneuve and Boyle, of the Department of Epidemiology and Biostats, Escuela Nacional de Sanidad, Madrid, Spain, that the risk of breast cancer is highest in women who eat a lot of meat products, particularly processed meat, and lowest in those who eat lots of fruit and vegetables, particularly those containing vitamin C. They also discovered that olive oil has protective effects.

Toniolo, Riboli, Shore and Pasternack, of the Nelson Institute of Environmental Medicine, New York University Medical Centre, found a definite increase in the relative risk of breast cancer with increasing consumption of meat. Jain and Miller, of the Department of Preventative Medicine and Biostats, University of Toronto, Canada, together with the National Cancer Institute of Canada, found that consumption of a high fat diet has been associated with poor survival in breast cancer patients. For every 5 per cent increase in energy from saturated fat the risk of dying from breast cancer increased by 50 per cent. The lowest risk of dying from breast cancer is in the women who eat the most betacarotene. The inference is that more attention needs to be paid to premorbid dietary habits in relation to breast



cancer prognosis.

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I wish I had the time to enlighten honourable members with all of this scientific study, but I do not think it would be appreciated at this time of the evening, when so many others wish to speak. I might skip some of those references and make them available to honourable members, or they can read my book when it is released. I now refer to abattoir workers and cancer risks. An article in the *American Journal of Independent Medicine* in March this year by Johnson, et al, from the epidemiology branch of the National Institute of Environmental Health Science in the United States of America found that workers in abattoirs and meat packaging plants have the potential to be exposed to bovine leukaemic virus - BLV - and bovine papilloma virus, which are cancer causing in cattle. The workers also have an increased exposure to the human papilloma virus and certain chemical carcinogens. Excess risk of all cancers combined, cancers of the lung, mouth, pharynx, oesophagus, colon, bladder, kidney and bone was observed. In other words, abattoir workers have a significant risk of cancer. An article in *Carcinogenesis* in April by Skog, et al, from Lund University, Stockholm stated:

There is little doubt that HAAs (heterocyclic amines which are carcinogenic) are ingested and that in this Scandinavian study the data is consistent with human carcinogenicity of HAAs. More studies are needed before any statement on causality should be made.

An article in the *Annals of Medicine* of December 1994 by Giovannucci and Willett from Channing Laboratory, Department of Medicine, Harvard Medical School, stated:

Study suggests that a majority of colon cancer is avoidable if diet is changed to reduce intake of meat, particularly red meat and increase intake of fruit and vegetable and fibre rich foods.

The daily intake of beef and nitrite-containing meats was associated with increased oesophageal cancer. An article by Rogers, Vaughan, et al, from the University of New York Health Science Centre, USA, found:

Consumption of nitrite/nitrate containing foods decrease the risk of upper aero/digestive tract cancers by 52% but consumption of food high in nitrosodimethylene associated with a 79% increase.

These are only a handful of the very many studies. About 50 studies have been carried out over the last two years. They even refer to hot dogs causing an increase in childhood brain tumours, dietary fat causing prostate cancer, and the non-consumption of fresh fruit increasing statistically the gastric cancer rate. If the Department of Health did its job and carried out proper studies, as my researcher has been doing part time, we would discover that meat, dairy products and eggs are by far the greatest cause of death for humans - far above cigarettes. Cigarettes are the second highest cause of death, after meat and dairy products. All these references show that the eating of meat, dairy products and eggs is a significant cause of premature death. This is my eighth budget speech and unfortunately I have not been able to present all the material I have available.

**The Hon. Virginia Chadwick:** You did not mention environmental education.

**The Hon. R. S. L. JONES:** The Hon. Virginia Chadwick, who is a keen environmentalist and has a lovely property just over the border in Queensland, has reminded me that I have not spoken about environmental education. She was the Minister who set up the environmental education unit in the Department of School Education. That was a wonderful move and I appreciate the fact that she did it. We launched it together.

**The Hon. Virginia Chadwick:** You came with me, and it was a grand day.



**The Hon. R. S. L. JONES:** We launched it together, and it was a proud moment for all of us. The former Minister, before the election, had announced increased staffing levels to make sure it was done properly. But what do we find now? It has virtually been done away with altogether. I find that rather distressing. Do we really have a commitment from this Government to proper environmental education?

**The Hon. Virginia Chadwick:** I do not think so.

**The Hon. R. S. L. JONES:** No, I think not. Reverend the Hon. F. J. Nile regrettably reminded me of the legalisation of drugs. I was unable to attend today the launch of a book by Alex Wodak and Ron Owens called *Drug Prohibition: A Call For Change*. The launch was attended by the Federal Attorney-General. He did not necessarily endorse it but certainly attended the presentation. When I opened the pages of this book I found that a Federal Labor member used to be a heroin dealer. I thought that was amazing. Jim Snow, the member for Monaro, used to be a heroin dealer. In the book he tells that in 1953 he sold heroin to a woman, when it was legal. A few weeks later when heroin was banned he found that his customers - who used to buy heroin in drinks to calm their frazzled nerves - turned to crime. They had to borrow, beg and prostitute themselves to pay for their heroin habit.

Before heroin became illegal in 1953 it was not a problem. It only became a problem after it became illegal. These people were ordinary mums and dads and young people. People had been able to buy it legally for hundreds of years. Reverend the Hon. F. J. Nile would think that should not be so, but 50 years ago he probably would not have tried to ban heroin because it was a perfectly acceptable drug. Pressure from overseas caused the drug to be made illegal. This little book gives a clear indication of how the war on drugs not only has failed but has had almost a reverse effect. Every year more land is being used for growing opium poppies for producing heroin and more land is being used for growing cocaine.

**Reverend the Hon. F. J. Nile:** Marijuana?

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**The Hon. R. S. L. JONES:** I do not know about marijuana. It does not refer to more land for marijuana. The white powder is easy to smuggle and people are able to deal with it easily rather than carry around one or two pounds of marijuana, which cannot be hidden on one's person. It is easy to hide a similar dollar value of heroin, cocaine, other white powder or ecstasy, but carrying that much marijuana around would be obvious. There has been a global increase in the production of white drugs. The only success that has occurred has been a crackdown in the growing of marijuana in Australia. It is like pushing down a balloon - if you push down the balloon on one side it comes up the other side. People are now turning to ecstasy, cocaine, amphetamines and heroin. Heroin is coming in so pure that people are dying in large numbers. It has increased from 10 per cent to 80 per cent purity. Almost 450 people died last year from heroin overdoses, mainly because it was totally unregulated. These are the same kinds of people who would have used heroin 40 years ago. They would not have injected it then; they would have taken it in syrups. It had exactly the same effect, but it would have been extremely cheap, because it is cheap to produce.

Tasmania has the third largest legal production of opium poppies in the world, and there is an attempt to crack down on that. People are dying because the purity has increased from 10 per cent to 60 per cent or 80 per cent, because of the global glut of heroin which is easy to smuggle, and people cannot buy marijuana for \$500 an ounce. They have now switched to the drugs of choice, to amphetamines, ecstasy and other drugs that are more hazardous than marijuana. I know that Reverend the Hon. F. J. Nile has moral objections to this, but from a purely practical and crime point of view, it would be good for this Government and other governments to move, as the Northern Territory Government has just done, towards acceptance that millions of people in this country choose to use marijuana, for better or for worse. I am not suggesting that it is good to use drugs; I think it is good not to use drugs, unless one is stressed out or sick. I am not advocating that people should use drugs.



Many people choose to consume alcohol. I have seen members of this House under the influence of alcohol. The growing of cannabis in Queensland is significant to some small country towns. Indeed, it has kept economies of small country towns in New South Wales going. People in small country towns in northern New South Wales benefit from the marijuana trade. They do not use marijuana themselves, but they are happy to have the trade that results from the growing of marijuana. It keeps their businesses open. Some small country towns tacitly accept the marijuana trade. If they did not, half of them would close down. The marijuana trade has existed for many years.

It is a good idea for the Government to legalise the growing of marijuana for personal consumption, the use of marijuana and the possession of small amounts for personal use. That would relieve police officers, who frequently search people illegally at random, of many duties. The police usually pick on people in old kombivans or on motorbikes and those who look poor. The police are definitely biased against young people or those who look a little out of the ordinary. They do not randomly stop Mercedes cars and search them illegally, but they stop kombivans and search them illegally. We must get the police off the backs of young people and educate them about the dangers of using drugs. We must tell young people from the earliest age about the scientific risks of drugs. Young people know when to say no and when to say maybe. We as parents say, "Please don't. For heaven's sake, don't."

I spent a lot of time brainwashing my young son so that he would not use heroin, alcohol or other drugs. When he was seven years old I told him "If you don't smoke I will buy you a sports car when you turn 21", and I reminded him of that every year. When he reached the age of 21 I asked him what sort of car he wanted. He never smoked and he never forgot what I told him. The promise of a sports car was a tremendous incentive for him not to smoke, and he does not smoke now. People do not start smoking cigarettes beyond the age of 21; no-one is that foolish. One way to prevent them from starting to smoke is by providing an incentive not to. My son's life has probably been prolonged by 10 or 15 years because he does not smoke. However, not all parents can provide an incentive because they do not have the resources.

We must educate our young people but we must not fool them. We must not say that everything is equally dangerous, because that is not true. If we drink alcohol in front of young people and tell them "Don't smoke marijuana when you are half drunk." they will probably laugh and go away and smoke marijuana anyway. We must tell them that the effects of cannabis are probably equal to those of alcohol, despite scientific data to the contrary. We do not have any good science on this yet because it has been a taboo subject. We must tell young people the truth about drugs. We must tell them what is okay and what is not okay, what is okay in small quantities, what will get them addicted and what will ruin their lives. Tobacco is probably the number one drug that I would advise them not to use. Heroin is probably number two, alcohol is probably number three, and it goes down the scale.

We tell young people to say no to drugs and to get into a good way of life. Unfortunately, some people are influenced by peer pressure. They may have come from broken homes, they may have been beaten, they may have been raped and they may have been abused. Sometimes they carry this pain with them throughout their lives, and the only thing that gets rid of it is illegal drugs, which is a

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tragedy. Some use valium and other legal drugs to get out of it in the same way. The bottom line is that we must look rationally at the war on drugs, which has failed. Indeed, it has had the reverse effect: it has increased the profits of growers, traders and the police. The police have made millions from the drug trade. I know one police officer who went to Disneyland on his profits from a drug deal.

One tonne of drugs that went missing from the bust in Pittwater in 1988 appeared on the streets one week later - \$30 million worth of drugs run through by the police. A police officer busted a person for possession of amphetamines. Behind the counter of the Frenchs Forest police station was the police officer who sold him the amphetamines - of course, the police dropped the charge. That happens time and time again. The police have been corrupted. The Wood royal commission has just touched the tip



of the iceberg. I stumbled across a major heroin ring in Dural about 12 years ago. I tried to do in the heroin dealers. I asked a Federal narcotics agent whom I knew, who had just resigned because she was under threat of death, what I should do about the drug ring, because heroin is dangerous stuff. My life was under threat as well. She gave me the names of two officers in the Federal drug squad who were straight. Only two officers in that drug squad were straight. She told me that all the New South Wales drug squad was corrupt.

[Interruption]

It was true; she knew what she was talking about. I phoned the two police officers and told them that I had stumbled across a major heroin ring. The drug dealers were importing Turkish heroin. They were big names. Some of their names have cropped up since then. Indeed, some of them are now dead; they were shot dead in the street. One person involved in the drug ring subsequently went to gaol but not for heroin - for marijuana. It was reported on television about three years later that the police had got him. I will not give any names. That person has done his time but he did not go away for heroin. I never busted that drug ring. I was never able to get through to the police because I could not find anyone who was straight enough. The officers I phoned said that they were too busy. I was not going to tell a corrupt police officer about it because I did not want to put my life at risk. I tried to do my duty.

Hopefully we will bust corruption. As was discovered in the United States, the only way to do that is to end prohibition. If there are no profits, there is no corruption. That is why we have legalised brothels. The police can no longer stand over people. There are no profits in brothels for the police. We must remove the profits from corruption. If people want to use a particular substance, for example cannabis, they will use it regardless. The book to which I referred states that there is an endless supply of whatever drug one chooses to use. When honourable members leave here today they can go in any direction and within 10 minutes they will be able to buy ecstasy, heroin, cocaine, amphetamines, marijuana, anything they like if they have the proper connections. Our drug laws are a farce.

**The Hon. Virginia Chadwick:** Who launched the book?

**The Hon. R. S. L. JONES:** The Attorney General was invited to launch the book but he did not endorse it, as stated in the press release. Because the Minister launched the book or was present at the launch does not mean that he endorses it. He cannot endorse it until he has read it. Having read the book the Minister may decide that the proposals make sense - and he probably will. But there must be a whole-of-government approach to the question of legalising marijuana. It is difficult to come to grips with it. The Northern Territory Government came to grips with the question a few weeks ago, as did the Australian Capital Territory Government and the South Australian Government. They have taken tentative steps. I was involved in an opinion poll conducted by *New Idea*. I was asked to explain why marijuana should be legalised. A person from the Salvation Army was asked to explain why it should not be legalised. The opinion poll results came in about three weeks later. Sixty-six per cent of *New Idea* readers who telephoned said, "Yes, legalise marijuana." I am not saying that that is necessarily a representative poll or a poll of all *New Idea* readers.

**Reverend the Hon. F. J. Nile:** No, 72 per cent want it banned.

**The Hon. R. S. L. JONES:** Well, 66 per cent of *New Idea* readers who phoned said they wanted marijuana legalised and 33 per cent said no. I did not phone, by the way, and I do not know anyone who did. People who want marijuana legalised, I suggest, are probably more passionate about legalisation than those who do not want it legalised. It is not necessarily a statistically valid poll.

**The Hon. Virginia Chadwick:** Do you buy the *Australian Women's Weekly* too?

**The Hon. R. S. L. JONES:** Only when it contains an important article. No, I do not. Does the honourable member buy the *Australian Women's Weekly*?



**The Hon. Virginia Chadwick:** No.

**The Hon. R. S. L. JONES:** Why not?

**The Hon. Patricia Forsythe:** Never.

**The Hon. R. S. L. JONES:** Shame! The majority of women do - 1.1 million women per week buy *New Idea* and *Woman's Day*. A number of opinion polls have been conducted over the years, and they have revealed that the majority of people want marijuana decriminalised. A large number of people, perhaps a minority, use cannabis

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every week and sometimes every day. Why should a significant portion of the population be regarded as criminals when those who choose to use, for example valium, get drunk every day or smoke themselves to a premature death are not regarded as criminals? It does not make sense. It is discrimination against a large portion of the population, a very large voting block, I might say. Reverend the Hon. F. J. Nile started me on that trail, and I think it is time I drew my remarks to an end. I am grateful to Reverend the Hon. F. J. Nile for reminding me about that subject.

**The Hon. Virginia Chadwick:** You have not told us about your position on nude bathing.

**The Hon. R. S. L. JONES:** I think honourable members saw my position on nude bathing in the video last night.

**The Hon. D. F. Moppett:** Or your position on seaweed.

**The Hon. R. S. L. JONES:** I just hope that the seaweed was not an endangered species. My final words on the budget are that the Government has to grasp the nettle on a number of issues and make sure that it is only the hand that gets stung, including looking at -

**The Hon. Dr Meredith Burgmann:** What about the seaweed?

**The Hon. R. S. L. JONES:** Grasp the seaweed and take a good hard look at how taxpayers' money is spent. If I were to run this State as a dictator - and I have just noticed the Hon. Jennifer Gardiner fainting on the coalition benches - I predict I would save between \$2 billion and \$3 billion a year of taxpayers' money but end up with the same level of services. I have done that with several businesses, and I could do it with this State. I would probably start by changing all the light bulbs. In my speech yesterday I said we would probably save about \$2 million changing the light bulbs in all government departments. There are myriad ways of saving taxpayers' money.

Parliament should set up a taxpayer's committee to study how their money is spent. The committee could call for input from members of the public and they could look into the way the Government spends their money. The Government wastes \$2 billion or \$3 billion a year of taxpayers' money, which they have a hard time earning. I ask the Treasurer to have a look at cost recovery across all portfolio areas. A good deal of consultation should be taking place. Energy and environmental audits of all government departments should be undertaken. We should try to claw back the money we waste.

**The Hon. D. F. MOPPETT [9.44]:** I speak more in sadness than in anger after listening to a number of the contributions to this debate. Honourable members know that over the years I have been an avid reader of Henry Lawson. Once in a lifetime would one hear the yarn spinning that honourable members have heard tonight. I can almost imagine myself stuck with a drover on the Walgett Plains in the pouring rain, my offsider in the dingbats. I have just read a two-month-old copy of the *Land*, I have nowhere to go and this fellow starts burbling on with irrelevancies.



**The Hon. R. S. L. Jones:** Give us a few of your country yarns.

**The Hon. D. F. MOPPETT:** I will come to those in a minute. The Hon. R. S. L. Jones and the Hon. I. Cohen have made the centrepiece of their budget speeches a call for the legalisation of drugs. That has been uppermost in their mind. Honourable members heard an entertaining speech that put the case for vegetarians and animal liberation but at the end of the day it wound back. The story about the meat workers is a cracked record. The Hon. R. S. L. Jones may have started before my term this time but since I have been in this Chamber in every address-in-reply and budget speech contribution the same obscure references are made to this research. Hansard is troubled all night looking up unpronounceable names and referring to unheard of universities to come up with abstruse information in which no-one has the slightest interest.

**The Hon. R. S. L. Jones:** Ever heard of Harvard?

**The Hon. D. F. MOPPETT:** I have heard of Harvard.

**The Hon. J. H. Jobling:** How is it spelt?

**The Hon. D. F. MOPPETT:** H-a-r-v-e-y World Travel. The honourable members regaled the House with the greatest load of tripe I have ever heard. They rounded off on their speeches with an appeal for the legalisation of heroin, marijuana and so on. That leaves one in some consternation about the real focus of these two honourable members on the budget. The budget was a scam, the appropriation bills we are considering at the same time are an absolute disgrace and the semblance that we have of a Cabinet resource committee could be better described as the fraud squad. I am particularly grateful that you are in the Chair at the present time, Mr President, because I wanted to refer to a recent parliamentary delegation, of which I was honoured and privileged to be a member, that travelled to Japan to celebrate our sister-state relationship with the Tokyo Metropolitan Assembly.

No matter how cynical anyone was about parliamentary trips and how sceptical about the formality that is ascribed often to dealing with particular countries, especially Asian countries and Japan, any fairminded person who observed the just concluded trip to Japan would have to say that it was an outstanding success. Mr President, you are to be congratulated on the way you led that delegation and for the arrangements that were made. I know it would be a vain hope to speak on this subject in the hope of travelling with that delegation again -

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**The PRESIDENT:** Order! I want to hear these remarks without interruption.

**The Hon. D. F. MOPPETT:** This is a matter of direct interest to honourable members. I believe the visit was an outstanding success. I would like to relay to members - I have done so privately but I would like to put it on the record - that if there were ever any doubts they were certainly dispelled when we were officially greeted by the President of the Tokyo Metropolitan Assembly outside the Parliament building. All the members of the Assembly - I perhaps could not say without exception but all who were in the precincts at that stage - paraded outside in a great semicircle. When they saw the first of our cars arriving they began applauding and did not stop until we had all alighted, been greeted and entered the building. The delegation comprised some hard-headed cynics, but I am sure everyone would say that the hospitality of the people in Tokyo and every place we visited in Japan was overwhelming. It can only achieve great things for our relationship with our most important trade partner.

I sincerely congratulate you, Mr President, and your staff on the first-class arrangements. I hope other honourable members will have the opportunity to be part of such delegations. When the Japanese delegation visits Sydney I trust honourable members will bear in mind the importance that Japanese people attach to formalities and will cooperate with the arrangements to meet and greet that delegation.



This Parliament should consider establishing similar relationships with India. Australia has an important relationship with China, and it should look to establishing future relationships. Many articles suggest that greater opportunities exist to develop a commercial relationship with India than in many other markets that have been the subject of public debate.

India has undergone a slight realignment. It maintained neutrality with a slight lean towards Russia, but is now looking to establishing western connections and developments. Australia is uniquely placed to easily relate to India and its people. Our cultural background and form of government is common, and it is easy to speak to the people in our English tongue. We must be mindful of the existing substantial trade relationship and opportunity to increase future trade. Renewed interest in Australia in better cultural and commercial relationships is certainly welcomed. I compliment the Federal Government for proclaiming that while developing other markets Australia should look to the Indian Ocean to develop new partners. South Africa has returned dramatically to the fold not only with football and cricket but with Australia's traditional markets. Australia should look closely to the vibrant economies of its neighbours in the Indian Ocean.

The National Party is at the fore with this debate. Its Federal leader, Tim Fischer, has urged the admission of India into the Asia Pacific Economic Co-operation - APEC - round of negotiations. The Federal Government has not supported that move; it has not based its decision on any ideological or party lines. APEC was the development of the Asia-Pacific. In the early part of this Government's term of office the Treasurer visited America with the Premier. News reports informed us that the American investment community wanted to realign its access because of the interest of the growing economy of India. I stand to be corrected by someone with better knowledge, but it has been quoted to me that American Express has more credit cards in India than in any other country. Despite its massive difficulties of intractable problems in some areas, India has a substantial middle class and substantial companies and business enterprises looking for natural resources, many of which Australia is well positioned to supply. As Australia and particularly New South Wales moves through the business cycle into deeper water, this initiative could be taken.

To set the record straight, I opened my remarks with some straight talking and some caustic criticism of the Government. There was much rhetoric about this Government taking a position of fiscal rectitude and obeying the tenets of economic rationalism, which I know has caused some chagrin amongst Government members. The timing was absolutely perfect. All the reforms put in place by the Greiner-Fahey Government, despite the wailing and gnashing of teeth of the then Opposition, put New South Wales in good stead as it moved through the severe recession. Economic waves have a more severe effect on State finances than on Federal finances because so much of the State's revenue derives from taxes on business activity. This Government was well positioned and those who were critical of some moves undertaken by the previous Government leading up to the elections would have read the signs that Treasury was beginning to receive increased income streams from the improved Sydney economy, particularly as the turnover on stamp duties in the property market was starting to rise.

**The Hon. M. R. Egan:** When was that?

**The Hon. D. F. MOPPETT:** Over the last 18 months or so.

**The Hon. M. R. Egan:** Stamp duties are way below performance.

**The Hon. D. F. MOPPETT:** Twelve months before they were at rock bottom. Everyone would acknowledge the effect of the recession of the late 1980s and the early 1990s on the New South Wales budget. This Government has not been backwards in stepping on that multiplicity of charges, costs and licence fees that generated a strong revenue. Yet the Government is being fairly ruthless in its many cuts. The most notable cut that has affected country people is the ruthless method by which the Department of Agriculture has been deprived of funds. If the Government wanted to reorder the priorities of the Department of Agriculture, it would



have been possible to say that over a three-year period it intended to phase down the extension services.

However, if that was the intention, it should have transferred those resources to increased research. With a planned and well-understood program, those extension services could have been taken up by the private sector; people involved in extension would have been quickly taken up by agricultural consultant companies. New South Wales vitally needs the strongest possible commitment to research to develop its agricultural industries to be competitive with places like California in the United States. The world is competitive. Whatever happens on the one hand to reel back the subsidies in the United States Federal budget, I assure the House that its main agricultural States are pouring money into research and other areas to encourage agriculture to be more than competitive.

I welcome the news that I heard today that France will further curtail its nuclear testing program in the Pacific. I am sure that many honourable members will say that it is not a cessation. However, the program that was curtailed earlier will be further curtailed. The French Government has announced that it will finish its testing early and it will not conduct as many tests. Honourable members have heard all the arguments; I do not disagree with them. I simply say that, whilst I disapprove of this testing, I understand where the French people are coming from. Those who have not experienced three successive invasions of their country over the last century would not understand the position of the French. However, I can relate to their depth of feeling for defence security and the security of their food supplies.

*[Interruption]*

I do not want to enter into a full-scale debate about this matter tonight. I agree with the Government's policies. People with no knowledge of history and who do not address the demands of the future will be poor leaders.

**The Hon. Franca Arena:** Who are they going to throw their bombs at? They will blow themselves up.

**The Hon. D. F. MOPPETT:** Who knows? I am no apologist for the policies of the French. All I am saying is that I have some sympathy for any nation that is invaded, like the Bosnians, but particularly for the French because of their experiences over the past 100 years. All honourable members would acknowledge that those experiences were horrifying. This Government has been disastrous for New South Wales. I am sure that the Hon. Virginia Chadwick, who is listening to the debate tonight, would agree that this Government has really gone off the rails with education. There has been terrific disruption in the Department of School Education and a lack of confidence in TAFE, which has had many changes.

When the Federal Government established the Australian National Training Authority it had implications for people in country areas. It is one thing to talk about the employment needs of major employers such as the Ford Motor Company of Australia Limited, the Broken Hill Proprietary Company Limited or Coles-Myer and say that they need the levels of competency described in the Finn and Myer reports. But garage owners or builders in country areas of New South Wales do not know how they are to train the tradesmen they need in the future.

There is a great deal of disquiet in country areas. This problem has been exacerbated by the decentralisation of facilities that has been necessary to provide adequate training. I believe that the amalgamation of education and training was a great mistake, but I know that the former Minister for Education has a view that is slightly different from mine. Although these two branches of education might be able to share facilities, basically, they have different aims and expectations. Anything that is likely to diminish the outcomes we achieve from our education and our TAFE systems is to be deplored. Those two great programs are in jeopardy. I am aware that the Hon. Virginia Chadwick will follow me in debate on this legislation, so I should move on to the important subject of health. Rural health is a matter



of immense concern to me. It is one of the main focuses of State administration.

There is speculation in the community concerning the likelihood of major changes to the administration of health services in New South Wales. I say to those honourable members who are in the Chamber tonight that people in rural areas are really annoyed. The most substantial reorganisation of any government department was the establishment of rural health boards by the former Government. The word is out that those boards will be reduced to seven or eight. Others are saying that the boards will be reduced to three. There will no longer be local community representation, which will make it impossible for local communities that have been involved in hospital boards and district health boards. Bureaucracy will be centralised, which is the same fundamental philosophy that was used in the education.

The Government will undertake this program at its peril. It will have tremendous ramifications and repercussions at the next Federal election. Country people are fed up with what this Government is doing. Another matter that is of concern to me is the curtailment of work-generating programs - programs that the former Government fostered. Other honourable members referred to the discontinuation of the workplace for youth program, the get started program and the substantial curtailment of the mature workers program. I, like many honourable members, have received representations from people all over New South Wales concerning the severe impact that the curtailment or abolition of these programs has had. The people in Forbes in central New South Wales

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have been staggered by the cuts to the programs. They are now working in larger neighbouring centres such as Parkes and Orange. Forbes, a relatively stable town, but not a growth centre, with a strong community, has had the ground cut from underneath it. People in Forbes are hopping mad.

I am sure many honourable members are aware that people in Forbes have been agitating; they have been marching in the streets. At a time like this while rural employment is at the bottom of the trough this Government has been heartless in cutting off those programs. The worst act of cynicism of all was the Government's failure to honour a promise it made to establish an office of rural communities. I am not familiar with the details of the press release at that time, but I am certain that the office, which was based on a model developed by the Queensland Government, was to look at the effect of broad departmental programs on rural communities to avoid the cumulative effect of a community service office, a TAFE establishment, or a tourism office being moved and the resultant effect on the economy of that area.

None of these things have happened. It was obviously an empty promise. Somebody had obviously become enamoured with the fact that Wayne Goss, the Premier of Queensland, had somehow or other rewritten the book of politics, had all the answers and that the New South Wales Government was going to be styled on its performance. But then came the Queensland election, and that Government is still holding on by its fingernails. The Queensland Government will be sent packing very shortly by the Court of Disputed Returns. It will be a sad thing if, as a result, New South Wales loses this initiative. I have proposed that it will be a major feature of the National Party platform at the next election. Organisations like the Australian Council of Social Service and the Council of Social Service of New South Wales realise that many rural communities have been caught in this downward spiral. We hear a lot of talk about major regional cities, but many other communities have been caught in these service reviews and they have been left on the sideline.

Access to services needed by people who are perhaps disadvantaged or need support in one form or another has become more and more isolated and difficult to access. The Government should be absolutely ashamed of that. On a number of occasions I have spoken about the significance of the east-west railway line through Parkes, out to Broken Hill and on to Western Australia. By way of interjection I questioned the Treasurer, and Minister for State Development when he was talking today in question time about the development of an export centre based on the airport at Parkes. My question seemed to disorient him a little because the remainder of his answer was quite irrational. I questioned



him as to whether he would take up the future of the line with the Commonwealth Government, although it is not directly involved. The Australian National Rail Corporation certainly is involved. The Federal and New South Wales governments are shareholders in the corporation.

The recent annual report of the Australian National Rail Corporation does not mention that controversial rail service. It is controversial because of the construction under the One Nation statement of the alternate standard gauge railway line route through Melbourne and across to Adelaide. That report contains at least 30 mentions of the development of the alternate link and the growth of traffic on that route. The Opposition wants an assurance that considerations other than the sheer economics dictated by the Australian National Rail Corporation will be borne in mind, because New South Wales could be left out in the cold. The budget speech was largely constructed on rhetoric rather than performance. There was a lot of talk about what has been achieved by the Government in its approach to framing the budget, which I believe was a fortuitous wave that lifted the Government along through whatever minor difficulties might have been inherent in the services it inherited from the previous Government.

The Opposition will have to call this Government to order in the months ahead over many of these programs. Country areas are feeling affronted by the cavalier way in which so many services have been cut. I do not want to refer to this matter at length, but it is terribly important that the role of veterinary laboratories be seriously considered. We live in challenging times. All honourable members are aware of the equine virus that struck down the horses in Queensland, and, sadly, affected the trainer and a strapper. Other viruses have developed in both animals and humans. It sounds a little like leprosy, but mad cow disease has developed in the United Kingdom. If New South Wales is to have a competitive animal industry it must be backed up by veterinary laboratories of the highest standard. They have to be placed where they can serve the industry.

For many years everyone has lived in fear of exotic diseases entering this country. I have heard many learned veterinarians say, although I am not passing judgment on their opinions, that it is no longer a matter of being able to maintain our security, it is simply a matter of having adequate preparations for when the breach occurs. Billions of dollars are at stake if the health status of our animal industries is lost. It is cavalier for the Government to close down veterinary laboratories at this stage. If the Standing Committee on State Development looks into this matter I hope it will produce a recommendation that the laboratories be reinstated, and that the Government will take note of it. It will certainly be welcomed by the farming community and people in the rural community generally.

**The Hon. Dr MARLENE GOLDSMITH [10.16]:** I would like to take this opportunity to congratulate the new members of this House on their maiden addresses, their first speeches to the House - I tend to be a bit of a traditionalist in that regard - and welcome them to this Chamber. I enjoyed their contributions. I would particularly  
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like to welcome the two very new members on our side of the House, the Hon. M. R. Kersten and the Hon. C. J. S. Lynn, and to congratulate the Hon. M. R. Kersten on a sterling and memorable first address to the House. In this address on the budget I should like to look briefly at where we have come from in New South Wales. I have before me a document called "Welfare services expenditure data in Australia - A review of existing data sources", published by the Australian Institute of Health and Welfare. It is an interesting document. Although it was published only last year, the most recent data available for use from all States was 1990-91, which was up to three years after the Greiner Government came to power in New South Wales. Page 12 of that document contains "Table 2: State/Territory Government and local government current outlays by purpose and State/Territory, 1990-91".

The section "spending on social security and welfare" reveals that the coalition Government in New South Wales in comparison with governments in other States and Territories spent 7.17 per cent of the total New South Wales budget. That was half as much again as the national average, about three times as much as the Northern Territory average, half as much again as the Australian Capital Territory



average, substantially more than Western Australia, more than half as much again as South Australia, and more than half as much again as Victoria. In other words, New South Wales was leading the way in Australia for expenditure in the social security and welfare area. How things change! Look at where we are today. New South Wales has a Labor Government and a Labor budget. Let us look at just a few of the changes that have occurred in New South Wales under a Labor budget. I will start with Rydalmere. Helen Pitt reported in the *Sydney Morning Herald* on 11 October, the day after the budget was brought down:

At the same time as the Treasurer announced a Budget designed to "set things right", things were definitely going wrong for Ms Mary Ann Terras and her fellow public servants at Rydalmere in Sydney's west.

For Ms Terras, who has worked for the last nine years as a mushroom researcher at the NSW Department of Agriculture's Biological and Chemical Research Institute (BCRI) at Rydalmere, the Budget was an occasion for tears and jeers.

More than 180 public servants at the institute were told yesterday that their workplace would be closed and, if any of them wanted to keep their jobs they would have to leave suburban Sydney.

What do workers such as Ms Terras do if they have just bought a house in Parramatta and they are told they are to be transferred to Griffith? She was to be married next April. How is she to get married when she is to be relocated to Griffith? So much for this Government's promise that no-one will lose a job under the budget. People can keep their jobs, but they have to move to Griffith. There is nothing wrong with Griffith; it is a lovely place. However, it is totally unrealistic in this day and age to expect families, with two partners working - and one of them is going to Griffith - to relocate. Similarly, it is totally hypocritical for the Government to claim that it is not getting rid of jobs when it is closing the Rydalmere institute and offering no hope to its employees. But that was not all. Sydney City Mission reported that budget cuts to State-based employment programs would slash \$3.6 million from the funding of Sydney City Mission, wiping out 15 per cent of its budget for jobs and training programs. The President of the Council of Social Services of New South Wales, the Reverend Harry Herbert, said that if this was a traditional Labor Government it would not have cut a lousy \$10 million from young people's employment programs.

**The Hon. J. R. Johnson:** He would know.

**The Hon. Dr MARLENE GOLDSMITH:** A man in his position should know better than to adopt or accept simplistic stereotypes in his notion that a traditional Labor Government would not cut employment. The Liberal-National coalition Government had been building up Sydney City Mission for seven years. Yet still honourable members hear ignorant, ill-informed stereotyping such as the statement made by the Reverend Harry Herbert and reported, correctly or otherwise, in the newspaper. The notion that Labor cares about workers and the Liberal Party does not has been doubly refuted, in the case of the Liberal Party by its seven-year track record of government in this State, and in the case of the Labor Party by its disastrous budget that certainly does not show care for the disadvantaged.

Grants to ethnic communities in New South Wales have been cut by 20 per cent. It is not as though we are talking about money that was being wasted, unless that is the implication in the Government's action in cutting these grants. Our ethnic communities have to address many serious issues if all the people of New South Wales are to have a fair go in our society. New arrivals to this country have to cope with a new language and culture and have to adjust to a new society. We must address seriously issues of equality of opportunity and fair treatment in this State. That is precisely what those ethnic grants were doing. But according to the Government they had to go. If there is one thing this budget is not renowned for, it is concern for the disadvantaged. Changes were made to the school student transport scheme. I would be the first to admit that scheme had blown out to cost this State a lot of money, but I am extremely concerned about the way the Government has gone about cutting it without



concern for equality of opportunity. The New South Wales Parents Council raised a number of concerns about changes made by the budget. Parents were angered that the Government broke a clear election promise - only one of many. I quote from a press release of that council:

Many parents are of the view that the Government, with such a slim majority, does not have a mandate to make such significant and inequitable changes.

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Parents are most concerned the Government has been slow to inform schools of the changes and that many details are still unclear. In making decisions about their children's schooling, parents consider it too late to be provided with the cost of the impact of the changes as late as mid-1996.

According to parents, the two-kilometre radial distance criterion is rigid and inflexible, given the many obstacles and no-go areas. Some children may have to travel more than two kilometres to school. There are problems with the \$450 travel subsidy. The New South Wales Parents Council reported:

Parents are most upset about these changes which will have a serious impact on families in the identified urban areas. Parents consider this change threatens their right to exercise freedom of choice in schooling for their children. Many Principals have said that this change threatens the ability of non-government schools to maintain enrolments and interferes with orderly school planning.

My major concern with that budget cut is that it hits the disadvantaged. One of the most significant developments in education in this State over the past seven years has been zoning and development of specialist schools which have provided a beacon particularly for students in disadvantaged areas of Sydney. Students who have never been encouraged to take pride in their schools have been given real justification to do just that as their schools were awarded certificates as centres of excellence. Similarly, specialist and selective schools were set up in regions that never previously had access to such schools. These schools have for the most part been available only to the children of middle-class parents and families in middle-class areas.

We have had these opportunities opened up in disadvantaged areas of Sydney. But the Government brought in a draconian new school student transport scheme which will seriously affect students who want to travel some distance from their local area to attend a specialist school that meets their special needs. The \$450 travel subsidy will go nowhere for such students, and if those students come from poor families they will miss out. Only middle-class and wealthier families will be able to afford to send their children to a school that meets their needs. This action again shows the hypocrisy of this Government. The budget hits the disadvantaged and those who cannot fight back.

The Treasurer proudly boasted that 5,000 jobs will be slashed from the public service. That was a major exercise in hypocrisy. When the coalition came to government in 1988 a major restructure was undertaken which substantially streamlined various government departments, and voluntary redundancies were offered. Many dishonest allegations were made about those voluntary redundancies. It was claimed that people were being fired. But that is not the point I seek to make. Whenever administrative changes were made the Labor Opposition screamed foul. It claimed that jobs were being cut, and tried to stir the community into unnecessary anxiety about the changes. Yet the Labor Government has cut 5,000 additional jobs from that new, lean, streamlined system. Supposedly, that is not hypocrisy. It is impossible to believe that a Labor Government could do that and keep a straight face.

I now refer to the community services grants program. I attended an interesting presentation yesterday morning in the Parliamentary theatre. The management and staff of the National Council of Social Service had invited members of Parliament to a presentation about the community services grants program and the need for the services that it funds. It was interesting to note which members of Parliament attended the presentation. The Hon. Elisabeth Kirkby opened the program. The Hon.



Andrew Tink, shadow minister for community services, the Hon. Helen Sham-Ho, the Hon. Virginia Chadwick, a former Minister for Community Services, Mr Barry O'Farrell and I attended from the coalition side of politics. The Labor Party was represented by a lone member: the Hon. Ann Symonds, the Chair of the Standing Committee on Social Issues.

**The Hon. Franca Arena:** I was not invited.

**The Hon. Dr MARLENE GOLDSMITH:** It is my understanding that invitations were sent to every member of Parliament. That was stated by NCOSS yesterday.

**The Hon. Virginia Chadwick:** Forty people accepted.

**The Hon. Dr MARLENE GOLDSMITH:** The Hon. Virginia Chadwick points out that 40 people accepted that invitation to attend. The organisers were expecting 40 members of Parliament, but only seven attended and a couple were not able to stay the full time.

**The Hon. Virginia Chadwick:** Some of those involved in the presentation had travelled such a long way and were so well prepared.

**The Hon. Dr MARLENE GOLDSMITH:** Yes, they had come a long way and were well prepared. I know how disappointing it was for them.

**The Hon. I. M. Macdonald:** Shock, horror!

**The Hon. Dr MARLENE GOLDSMITH:** The Hon. I. M. Macdonald made an interjection that is beneath him. I will not repeat it. The community services grants program is funded by the New South Wales Government and supports about 1,000 community services. What makes this program different is that it aims in part to prevent social distress by supporting and developing communities, and by carrying out crisis work. One of the speakers yesterday delivered an interesting presentation about the prevention of social distress. The speaker was a young mother of three children, who is now a single parent. She spoke of how important the program had been in providing her with a support network, a community centre where she could meet others in similar situations and could receive the support and assistance that she needed to

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cope with the extraordinary stresses she had experienced in the seven years since she had become a parent.

She had gone from being an independent professional working person who was completely in control of her life to being a mother looking after a child. Her needs had to be secondary to those of the child. Two more children came along, she had a great deal of economic stress, and her marriage broke down. Her courage and articulation gave me a great deal of hope for the future. I wonder, as she did, whether she would have been so strong and articulate if she had not had the support network provided by the community services grants program. The funding for the program has remained stagnant; in real terms it has decreased.

I will speak about the importance of providing resources up front for prevention services. The Hon. Elisabeth Kirkby mentioned in her speech when opening the NCOSS forum that she believed in putting a fence at the top of a cliff rather than an ambulance at the bottom. The Treasurer may need to be reminded that it is far cheaper to put a fence at the top of a cliff than an ambulance at the bottom. An area that is particularly dear to my heart, as members of the social issues committee would know, is the parents as teachers program, which was introduced under the Greiner Government and has now expanded to 10 sites. I could find no mention of the parents as teachers program anywhere in the budget papers.



I am relieved that a recent question by the Hon. Jennifer Gardiner in this House was answered and honourable members were assured that the program is not being dismantled; it is being maintained. The parents as teachers program needs to be made available to every new parent in the State. If one thing is certain, it is that we should ensure that every new parent has the support services required by the young mother to whom I have referred; she received those support services through the grants program. If every new parent in this State has access to a support network and to information about positive and appropriate parenting, it will save the State a great deal of money in the long term.

It will save the State money in remedial education, in the costs of treating abused children, and in mental health costs. The mental illness caused by childhood abuse, both physical and particularly sexual, is enormously costly to the individual and to society. It will save the State a fortune by preventing crime, because there is a link between crime and underperformance in school. The last study I saw on the population of prisoners in gaols was several years ago. About 80 per cent of adult prisoners in gaols had serious reading difficulties, and approximately 50 per cent were functionally illiterate. They are illiterate because they do not learn at school. Programs such as the parents as teachers program address that problem.

Long-term data is not available for Australia as yet, but it is known that the developmental norm for children who went through the first three years of the program at Liverpool was as good as or better than that for children who went through the Manly program. It gives me good reason to hope. The same program has been running in the United States since the late 1960s, and there is much long-term data to support it. It has been found - I am sure the Hon. Jan Burnswoods will be interested in this as an educator - that socioeconomic status does not make a difference to the performance of children who have been through the parents as teachers program as they went through school. As an educational researcher, I have found that only the parents as teachers program has managed to produce such results.

Many programs, such as head start, have attempted to address socioeconomic disadvantages in education. The trouble with such programs is that they start when the child is about three years old. Educational researchers believe that if we do not get it right in the first three years of life, we will not get it right at all. On his next trip to the United States I recommend the Treasurer do as the former Premier Nick Greiner did some years ago. He should visit the Parents as Teachers Foundation in St Louis, Missouri - it converted Nick Greiner to become a fan of the parents as teachers program - or get a referral to one of a number of areas in the United States that run parents as teachers programs. He should see what the program does and how much money it can save the State in the long term.

We need to measure the costs inflicted on the community as a result of the lack of the fence at the top of the cliff that the Hon. Elisabeth Kirkby talked about. It is much better to spend a small amount of resources up front to ensure that kids are properly parented and that they have a fair start in life than to try to address the problems of toxic parenting later down the line. I am not necessarily blaming toxic parents, because many of them simply parent as they themselves were parented, which is why we get replications of the cycle of abuse and disadvantage. The parents as teachers program should be extended to every school in the State. The program is run through schools, although it attracts parents in the first three years of their children's lives. Experts in the United States to whom I have spoken say that the State will save much more down the line than it spends up front on early childhood programs. I have mislaid the reference, but as I recall, it was an educator in Minnesota who estimated that every dollar the State spends up front on early childhood parenting programs will save the State \$12 down the line in all areas in which damaged human beings can cause problems, be it health, crime or education. It is a worthwhile initiative.

We need to factor into the economic rationalism that seems to be the flavour of the month in New South Wales a way of measuring the costs of not doing something. Unfortunately only the squeaky wheels get the grease. Small children are not very squeaky wheels in our society. They



and their parents are not strongly organised. Parents are too busy to lobby and have too few resources. Small children do not vote, therefore their problems and needs are not being met. It is about time that changed. If society is truly just, fair and caring, that will change. At the other end of the scale the Government has cut funding for older people. An article on the front page of *COTA News*, the quarterly newsletter of the Council on the Ageing, stated:

Services for older people in NSW certainly did not get the thumbs up in this years budget . . .

It appears that many of the initiatives under the previous Government's "positive ageing" agenda have not been refunded.

My complaint is that it is difficult to confirm that, because programs are not itemised in the budget papers. The article continued:

However, \$400,000 previously available to the Directorate on Ageing, for the Mature Workers Program, has been cut.

Some pre-election promises have not been kept, such as increased podiatry services and the extension of the Senior's Card to partners of cardholders.

The Home and Community Care Program, which provides services to assist frail older people and younger people with disabilities to remain living in the community received a real cut of 1.4%.

It is insane to cut such a service. It is not only an important and deserving community program that achieves social justice; it is another example of providing resources for a program that will save the State much more money than it spends on the program. What is the alternative to providing support and assistance to people to remain as independent as possible within the community they have always known? The alternative is to put them in institutions that are much more expensive and less satisfactory because they diminish independence and take people out of the community. Cuts have also been made to rehabilitation and extended services within the health budget. The authors of the article - Lewis Kaplan, Barbara Quintrell and Cathy Moore - concluded:

The lack of concern for the needs of older people in the budget overall is of serious concern.

The Carr Government has broken a key election commitment to employ an additional 60 child-protection specialists in front-line services. The Labor Party led those involved in child protection to believe that the specialists would deliver direct services; instead, they will be involved in clerical administration tasks. What will that do to assist child protection in this State? In addition, the Minister has only announced the appointment of the first 17 specialists, although Premier Bob Carr promised that 30 specialists would be appointed by 30 September, with the remaining 30 specialists appointed by the end of the year. This is a blatant breach of Labor's election policy on child protection in New South Wales. As for vocational education, I shall share with honourable members a powerful letter I received from Mr David Firmstone of Goulburn. The letter stated:

Dear Dr Goldsmith

I am writing to you and other parliamentarians about the imminent closure of a most valuable service, namely the **Vocational Guidance Service** provided by the **NSW Department of Training and Education Co-ordination**. As a parent of a Year 10 student about to make some critical choices that will effect his future, an enrolled voter in a rural community and also a Psychologist employed to provide this service, I would like to voice my concern and dismay about the abolition of this very valuable, free counselling service that has been in operation for the past 70 years.

The Vocational Guidance Service was axed by the October 10th NSW State Budget in a purely cost



saving exercise (4.6 million dollars will be saved!). I find the cost saving approach of axing such a cost effective free service to be a cruel blow indeed to the general and especially rural community where employment and vocational choice is often limited and people require specialised counselling and support. Following the abolition of this service people requiring it will be forced to travel to a large regional centre and pay steep fees for a private psychologist. For most people this would be out of the question.

More and more people today require professional and highly skilled counsellors/psychologists to help them with the complicated issue of making further decisions about their career and education direction. A personal counselling approach is required because of the complicated psychosocial barriers and issues that people often present with and a professional vocational counsellor/psychologist is best able to perform this function which is truly a valuable and needed community service.

Most people will be unable to afford the high cost of the alternative services through private providers and require more assistance than that which is available through Careers Advisers, relevant information officers and counsellors at TAFE and through the Federal Government. The line that the Department has taken in saying that the advisory function of Vocational Guidance is to be transferred to TAFE Counsellors is ludicrous given TAFE is not resourced to give the general community training advice let alone provide the complicated other functions that Vocational Guidance provided to 20,000 people last year. I am certain that the function of the Vocational Guidance Service has been abolished and the Government is rationalising this by saying it was a duplication. This is untrue.

Rural communities are at risk of becoming more and more impoverished of support and welfare services because of this rash cost cutting exercise. We need more help not less!!!! I wish to lodge my objections at the dumping of the broad function of Vocational Guidance and wish for you to make representations on my behalf for this service to continue.

I read this letter not only because of my concern about the sleight of hand in the budget where Vocational Guidance Service "gets secretly axed", as the Public Service Association referred to it, but because it shows the suffering this decision will cause in country New South Wales. Country New South Wales is by far the most disadvantaged area of our State at the moment. Yet again this Government is hitting the most disadvantaged. As somebody who lived most of her life in the country and who has taught at country schools, I know how important it is to get information to young people to help them make appropriate life choices and how much harder it is in an area where they cannot have access to the range of information that young people

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in the cities can access. I refer to the media release issued by the Public Service Association of New South Wales where it rightly complained that:

"The Carr Government has secretly axed the State's Vocational Guidance Service," the General Secretary of the Public Service Association, Janet Good, said today . . .

"Education Minister Aquilina had given an assurance the service would continue. This is not so."

Another broken promise. Miss Good also stated:

"The Government claims it will be saving dollars by its decision. However, the tax payers of NSW will have to pick up a very much greater tab as a result of these people being dumped back on the dole. . .

Young people just about to leave school in rural areas and looking for jobs will be amongst the hardest hit.

It is the most disadvantaged who get hit the hardest in this State budget. The New South Wales Council



for Intellectual Disability is extremely concerned at the moment about the treatment of people with intellectual disability in New South Wales. People are being deinstitutionalised but at the same time their families are not being given appropriate information about this deinstitutionalisation. There is no assurance that the quality of care in deinstitutionalisation will be that which is necessary to ensure that such people are properly looked after in community care. Overwhelmingly it has been known for some time that deinstitutionalisation is not cheap.

To fulfil appropriately a policy of deinstitutionalisation one must do it with more resources, not less, because these people need special support to live in a community setting. For those who have had a lifetime in special institutions the notion of deinstitutionalising them, making them move into a completely different environment is, as one parent has put it to me, nothing short of cruel - cruel and unusual punishment for the innocent. John Jacobsen, the Chairperson of the New South Wales Council for Intellectual Disability, in a letter dated 1 December 1995, said:

Abuse and neglect are sadly, a daily fact in the lives of people with intellectual disability in this State. The Minister for Community Services needs to take this seriously.

Mr Jacobsen stated that the Minister is attempting to sweep things under the carpet and to denigrate the work of the council. I find that horrifying because the Council for Intellectual Disability has worked so hard for this very important community group. Mr Jacobsen continued:

In eight months since coming to government Labor has:

- not addressed the malnutrition issues in the 1993 Underweight Report, which shows that up to 15% of people in five institutions were severely underweight and malnourished, due to under feeding;
- abolished the only specialist Health Unit for people with developmental disability in NSW.

That is a serious concern to me as well. The letter continued:

General health centres do NOT have experience in the complex needs of people with developmental disabilities and associated physical disabilities as the Minister claimed in Parliament -

When members on our side of the House have repeatedly asked the Minister questions about this issue their concerns have been ignored. The letter said that Labor has also:

- cut the number of licensing inspectors to monitor private-for-profit boarding houses from 14 promised by the previous government to 5, in spite of the fact that Treasury allocated another \$800,000 towards this function;

I would have thought that this would have been considered an important area, considering the possibility for the abuse of such private for profit boarding houses and some of the sad cases that have occurred in the past. The letter said that Labor has also:

- failed to deliver an election promise to provide access to the Community Services Commission complaints system and community visitors scheme for boarding house residents;
- targeted \$10 million cuts to staffing in group homes and large institutions -

A very disturbing allegation is that the council has information to suggest even larger cuts will be made in coming years. Mr Jacobsen said that the Government has also:

- failed to answer letters regarding young people with intellectual disability who are homeless and are



on the streets;

- Resources to the Community Services Commission below their current expenditure rate;
- reallocated \$5 million allocated by the previous government to families, for other purposes.

This is a damning indictment of the response of this Government and the responsible Minister in the area of intellectual disability. It is certainly an indictment of this budget, which does nothing for the intellectually disabled. There are many other issues which are raised in this letter from Mr Jacobsen that I am sure other members have received. I can only recommend that honourable members, especially the Minister, read it with great care. Clearly the council has not had an adequate response to its concerns as yet, and that is a disgrace.

I should like now to address the topic of western Sydney, which is another traditionally disadvantaged area. In its budget the Carr Government has broken faith with the heartland of western Sydney by cutting its capital works spending, slashing programs and breaking promises. Premier Carr has already broken more than 150 promises and saved his more savage budget cuts for the very people who got him over the line at the last election - the people of western Sydney. For the sole goal of accelerating his deficit reduction plan, Premier Carr hit those who cannot hit back: schoolchildren, pregnant women and the unemployed of Sydney's west.

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Budget cutbacks for Sydney's west will mean that the proposed new maternity block at Nepean Hospital will now not proceed because of the \$50 million cut to the second stage of the redevelopment. The completion of the Nepean Hospital has been delayed for two years and Liverpool Hospital has been delayed for one year. The recurrent budget of the new children's hospital at Westmead has suffered a \$3.5 million cut. This means 2,000 fewer operations will be performed at the hospital than originally planned. Everyone knows that the Government reneged on its M4 and M5 toll removal promise. It offered an insulting tolls compensation package, which was only a fraction of the cost of the pre-election promise, to be spent on expressways rather than local road projects.

Budget cuts to the free school transport scheme will mean that parents will be forced to help pay to send their children to school. The budget also cut funding to the vital Parramatta-Hornsby rail link. The Government has axed thousands of public service jobs, mostly at lower levels of the bureaucracy. Training and employment programs have suffered budget cuts, particularly the Mamre project that is run by the Sisters of Mercy at St Marys, and other programs. The Carr Labor Government refuses to adequately fund the Warragamba Dam flood mitigation scheme. This will substantially increase the risk of flood for the 250,000 people living on the Hawkesbury flood plain. Of course, funds for ethnic affairs programs were slashed by more than half.

The western Sydney public have truly become Labor's forgotten people. They were promised so much and given so little. Green slip premiums, milk charges, workers compensation premiums and public transport tickets have all increased since the Carr Labor Government took office. Despite this, over the next two years \$200 million less will be spent on improving hospitals, schools and roads. Some parents will be hit with a \$24 a week bill to send their children to school, which will also impinge on the safety of children. These are just some concerns and problems arising for western Sydney from this disastrous budget. Some 55 election promises were entirely omitted from the budget. I do not refer to promises that were partially kept; I refer to promises made during the election campaign which have now been left out entirely. WILMA women's clinic, Bringelly Ambulance Service, Camden Hospital children's ward, Ryde Hospital, rural specialist outreach program, the extension of the Senior's Card, the abolition of the tolls -

**The Hon. Jan Burnswoods:** Your list is just a nonsense.



**The Hon. Dr MARLENE GOLDSMITH:** The Hon. Jan Burnswoods says it is a nonsense. Maybe she is not aware that the promise to abolish the M4 and M5 tolls has not been honoured.

**The Hon. Jan Burnswoods:** What was the promise with the Ryde Hospital? You cannot tell me what the promise was. You are not saying the promise was broken. You don't know what it was.

**The Hon. Dr MARLENE GOLDSMITH:** No, it was indeed. I must inform the Hon. Jan Burnswoods that the tolls on the M4 and M5 freeways remain in place.

**The Hon. Jan Burnswoods:** You can stand here for another hour and read the name of every hospital, school and post office in the State. Name the lot. It would be just as convincing. What was the promise on the Ryde Hospital? You can't say. You are just making it up.

**The Hon. Dr MARLENE GOLDSMITH:** It is perhaps a fact that the Hon. Jan Burnswoods does not go to western Sydney because she is not aware that the tolls remain in place. I find it absolutely extraordinary.

**The Hon. R. S. L. Jones:** You take a taxi.

**The Hon. Dr MARLENE GOLDSMITH:** The Hon. R. S. L. Jones says she perhaps takes a taxi.

**The Hon. R. S. L. Jones:** No, you take it.

**The Hon. Dr MARLENE GOLDSMITH:** Is the Hon. R. S. L. Jones supporting the Labor Government yet again? This is far from an exhaustive list of the disasters of this budget. I am reminded of the courageous woman I heard speaking yesterday in the theatrette downstairs about what the support of a community centre meant for her. Benjamin Franklin made this old statement, "A little neglect may breed mischief". The rest of the saying was, "For want of a nail, the shoe was lost, for want of a shoe, the horse was lost, for want of a horse, the rider was lost". This Government has knocked out a lot of nails from the framework of this State.

Those nails were holding together support structures for the neediest people in the State: the poor, the disabled, children, parents of young children, the elderly, and residents in western Sydney and country New South Wales. Country residents are the most disadvantaged of all. Ironically, all this cost cutting will undoubtedly add more debt to the public purse as horses and riders cost far more than nails. This budget is a betrayal of Labor's heartland and of the promises Labor made to con its way into office. Labor's election promises were the embodiment of the philosophy of former Labor Minister and General Secretary Graham Richardson, who said you do "whatever it takes", including lying through your teeth if necessary. Unfortunately, the price tag for this dishonesty and betrayal will be paid for by the people of New South Wales.

**The Hon. VIRGINIA CHADWICK [11.07]:** Before I begin my remarks on the budget I should like to welcome the new members of both sides of the House. I congratulate them on their introductory remarks and other contributions they have made to this House. Those members certainly bring a diverse range of backgrounds, interests and perspectives to this Chamber. Regardless of

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whether I totally agree from time to time with the views that a number of members, new and otherwise, may express, it is an enriching and interesting experience to hear this wide diversity of views. I look forward to their future contributions.

I shall comment on a number of areas in the budget. While I am aware that many areas have been traversed by other colleagues from both sides of the Chamber, I trust I will not cover too much similar ground. Certainly there are issues I shall address on matters of education and training. First, I touch



upon an area of the budget that is all too often ignored, despite being, in essence, the greatest single generator of economic income for this State and the fastest growing employment area, particularly for young people. Of course I refer to tourism. It is sad that in all the contributions made in the other place and in this place, it is telling that honourable members have not seen fit to comment upon tourism. I acknowledge that an informative and lengthy debate occurred on a most important aspect of tourism. That was the coalition's attempt to disallow the regulation regarding the handling of koalas. I commend my colleague the Hon. J. F. Ryan for bringing that matter to the attention of the House, even though the disallowance motion was not successful.

I said earlier that I and the previous Government regarded tourism as an area of great importance. The budgetary allocations show that that is not mere rhetoric on my part or on the part of the coalition; it is borne out by reality. The entire budgetary allocation for tourism in 1991-92 was of the order of \$21.1 million. Last year, 1994-95, that allocation was increased to \$38.4 million. In anyone's terms that is a most significant increase. That allocation was not used to increase staff in Tourism New South Wales or to provide fancy premises; it was spent almost entirely on three areas. First, it enabled New South Wales, for the first time, to develop a professional tourism master plan for the entire State, a subset of that being increased funding and strategic planning for regional tourism in New South Wales. Second, it enabled us to take the fight to our commercial enemy, as it were. We developed two major marketing and advertising programs, the enormously successful Australiawide Seven Wonders of New South Wales campaign and the All Day All Night campaign which was targeted at South-east Asia. I hope that the current Government will continue them.

I was disappointed when I discovered that two things have occurred under the current Government. First, there has been a general lack of understanding, commitment and support for tourism and a distinct lack of interest and enthusiasm on the part of the Minister for Tourism. In fact, the Minister for Tourism attempted to resign from his portfolio. He is still performing his duties as Minister for Tourism as his resignation would have created difficulties in the Kogarah electorate. That is not the way in which to guarantee that entrepreneurs in the tourism industry and public servants in Tourism New South Wales will retain confidence in Mr Langton - who should have a great commitment to and enthusiasm for his task - when it is commonly known that he wishes he did not have his job.

I am concerned about the decrease in the tourism budget. I am the first to commend Tourism New South Wales, the task force and the tourism board, which lobbied hard and effectively to minimise the decrease in the tourism budget, which initially represented several million dollars. That decrease has now been contained at about \$1 million but, sadly, that means that the yearly increase of the past few years has plateaued. We are now on a decline. Much of the impetus has been lost.

I would like this Government to consider again the issue of tourism in New South Wales, the largest single generator of income in our State and the fastest growing area of employment, particularly for young people. The ramifications of this decrease and the lack of interest in tourism has affected the whole tourism industry. The Government must be made aware of the impact that this has had on many other economic and employment-related areas in New South Wales. A matter that springs readily to mind that the Government seriously needs to address is conference and exhibition space in New South Wales. It is distressing that the Government has not moved to address the serious issue of the lack of space at the Sydney Convention and Visitors Bureau.

Over recent years we have been remarkably successful in New South Wales. In many ways we are hoist on our own petard because of that success. We are rapidly running out of convention and exhibition space in this city. At the change of government the previous Government was in the process of seeking to resolve that issue. Since that time little has happened. It should not be thought that I am exaggerating when I say that the ramifications for Sydney and our State will be serious. Let me give some examples. In 1994-95, \$201 million worth of convention business was secured for Sydney. The convention centre and exhibition centre are full and we have a limited capacity to write more business. Think of what we are losing!



**The Hon. R. S. L. Jones:** What did you contribute last year?

**The Hon. VIRGINIA CHADWICK:** Last year the State Government contributed \$2.2 million to the Sydney Convention and Visitors Bureau and it secured \$201 million worth of convention business. If a private individual got that sort of return on his investment he would be smiling.

**The Hon. R. S. L. Jones:** I think we should double the investment this year.

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**The Hon. VIRGINIA CHADWICK:** It has been cut by this Government. I believe that that is false economy. The Government has reduced funding and it has not moved quickly to provide extra convention and exhibition space. Brisbane has just opened new convention and exhibition space. Huge convention centres are being constructed in Hong Kong. It is a lucrative market, and it is hotly contested. In fact, Sydney has been doing remarkably well.

**The Hon. R. S. L. Jones:** How much would you have to spend?

**The Hon. VIRGINIA CHADWICK:** We would not have to spend much at all because there is space available that has already been purchased by this Government. If need be it could double up as a media centre.

**The Hon. R. S. L. Jones:** How much?

**The Hon. VIRGINIA CHADWICK:** I am not sure because I have not been privy to the final assessments. I could not give the Hon. R. S. L. Jones that figure. But I can tell him that this Government owns space -

**The Hon. R. S. L. Jones:** That could be converted.

**The Hon. VIRGINIA CHADWICK:** During the Olympic Games that space could be used as a media centre, if need be.

**The Hon. R. S. L. Jones:** What space are you talking about?

**The Hon. VIRGINIA CHADWICK:** Space adjacent to the existing convention and exhibition centre. As I mentioned earlier, tourism is the fastest growing area of employment, particularly for young people, and it also provides a tremendous opportunity for regional New South Wales to diversify its economic base in light of the rural recession and the changing nature of regional New South Wales. I am not in any way suggesting that tourism is some type of panacea for every economic employment ill in New South Wales, but it is of huge benefit both to our economy and our employment. I cannot understand why this Government has given it such a low priority. Research, both national and international, now shows that tourists are moving away from the concept of an artificial environment and high-rise; they want a more authentic and natural experience, which provides enormous opportunities for so many areas of New South Wales and Australia generally. We have the opportunity for a win-win.

As a matter of urgency, this Government has to address facilities for harbour cruise vessels. The previous Government opened a proper terminal and wharf for international cruise ships. I suggest that anybody who travels to Circular Quay take an extra 10 minutes to look at the inefficiency, lack of appeal, general physical attractiveness or professional, smart appearance of Circular Quay where large tourist buses struggle with one another to let people down and pick them up, and vessels are scrambling for space at the wharves. Whether it is in any future planned revamp of Circular Quay or whether it is in a new facility at Darling Harbour, the problem needs to be sorted out. Approximately 70 per cent of all



tourists who come to Sydney go on a harbour cruise.

**The Hon. R. S. L. Jones:** How many a year, do you know?

**The Hon. VIRGINIA CHADWICK:** I will see if I have those figures. I would have them somewhere. I am happy to try to find them for the Hon. R. S. L. Jones, given his interest in this subject. It is reported, and I believe accurately so, that 70 per cent of all tourists who visit Sydney take a harbour cruise as part of their visit. Despite such large numbers of people, Sydney is disadvantaged by not having any decent standard ferry-coach interchange. Anybody who spends any time at either Darling Harbour or Circular Quay will see for themselves what I mean.

**The Hon. R. S. L. Jones:** Couldn't it be privatised?

**The Hon. VIRGINIA CHADWICK:** It could, if one had the space. Or it could be a joint venture between bus and coach companies and the Government. I am sure there are any number of ways that it could be configured, but the current situation is a total shambles.

**The Hon. R. S. L. Jones:** It has to be addressed before the year 2000.

**The Hon. VIRGINIA CHADWICK:** It must be. We have facilities at Circular Quay, Campbells Cove and Darling Harbour, but they are all unsatisfactory. They give a very poor impression to tourists of our professionalism. They do not set off our harbour or our services in the way that we would like. I believe that it is something we need to address. As the Hon. R. S. L. Jones said, we certainly need to look at it seriously and sort it out before the Olympic Games. I should now like to turn to youth affairs and youth programs. Knowing that many other people have quite rightly raised this issue, I do not intend to speak at great length. But I would not like that in any way to be seen as a lack of real commitment and concern.

Honourable members may forgive me for feeling a little personally involved, as I was the Minister for Youth Affairs and responsible for the Office of Youth Affairs. Not surprisingly, I regarded it as a highly effective office that did a number of things. For the first time in the history of the State it allowed us to coordinate services that had been uncoordinated and spread across a range of government departments and agencies. For the first time it allowed us to collect from all types of departments elements of the relevant policies, services and programs they had in place that were worthy and used by young people.

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That allowed us, first, to make sure that young people knew those services existed, and, second, to identify any duplication that was occurring or gaps in services. It was a most worthwhile exercise that had never been done before. In that process we discovered many gaps in services. As a Government we determined that through the Office of Youth Affairs we would not, in the long term, set ourselves up as a deliverer of programs; rather we would start innovative services that would be a catalyst to fill identified gaps in the community. If those programs were successful, we would then push them through into the mainstream of the relevant department.

As a result, a number of innovative programs such as circuit-breaker, help and others were developed. I had nothing but high regard for the mainly young people who worked in the Office of Youth Affairs. In comparison with other departments and agencies for which I have been responsible, I suspect that most of them looked very different from those who might have worked in other government departments. They were young people who related very well to young people in the community. They did not look like public servants. They did not act like public servants. They worked extraordinarily long hours and they were hugely committed to the young people in need whose programs they served.

It was a source of both professional and personal disappointment to find that those people had their



work, their professionalism and their commitment denigrated by being told they were some sort of political tool, which demonstrably they were not. I was further distressed when I learned that the Government abolished the Office of Youth Affairs on attaining office. At the moment we are told that Youth Affairs has not totally been destroyed and that people have been transferred from the old Office of Youth Affairs to the Premier's Department. We are supposed to think that it is somehow better. Two people were transferred. Their work is to analyse government policy, not develop it. There is a huge difference, if you stop to think about it. There are no new initiatives, no new work and those people have been pigeonholed.

**The Hon. R. S. L. Jones:** What happened to the other workers?

**The Hon. VIRGINIA CHADWICK:** Most of them have gone to work in other community groups. Ellen Huntley, a very fine woman, coordinated the establishment of 10 youth centres across New South Wales. She would shriek with hysterical laughter if it were suggested she was a Liberal Party stooge. I recently attended her farewell at a very interesting restaurant in Redfern or Newtown that I had not visited before. She has bought a worm farm and tearoom in Nambucca Heads. That change is good for her, and I wish her well. But some of those people will be lost to the public service forever.

**The Hon. R. S. L. Jones:** They have gone to the worms.

**The Hon. VIRGINIA CHADWICK:** Yes, they have gone to the worms, and good luck to them. The young people of New South Wales they were seeking to serve are the poorer for their loss. The same is true of a number of vocational services that were run by the coalition Government. I am not alone in saying that I am still receiving mail from a number of organisations, not the least being the Youth Action and Policy Association of New South Wales - YAPA - about loss of programs. The Opposition has been asking about programs that have been cut. In this Chamber, in the other House, and in estimates committees, Ministers have been asked questions about estimates and about cuts, but we have been told that we are wrong and are scaremongering. Does the Government think that YAPA, a peak organisation, is scaremongering?

I commend to Government members a close reading of the YAPA newsletter, which reflects many of the comments that so many of the Opposition members have been making during recent months. I turn to the Department of School Education somewhat hesitantly as many members have spoken about it during the budget debate and when addressing motions for urgency and other motions in the other place. I cannot help but put on record my absolute despair about and opposition to much of what is happening in the Department of School Education at present. No-one, regardless of their political persuasion or educational philosophy, can take pleasure in the realisation that faithful servants, many of whom have served the department for 20 or 30 years in relatively modest public service positions - for instance, as clerical officers grade four or five in country towns such as Lismore, Tamworth and Wagga Wagga - find they have nowhere to go. Many of them, after years of devoted service, have been told they have no jobs - and all this is to be tidied up before Christmas.

It is outrageous that fairly low ranking or middle ranking public servants in country towns could be told, "Do not worry, there are jobs available and you might pick up one somewhere else in the system." Stop for a moment and think of house prices in Tamworth, Lismore, Wagga Wagga, and so on and think then about someone who might be on \$30,000 or \$35,000 a year, with a wife or a husband, a couple of kids and a mortgage. Tell me how they are going to sell their house, move to Sydney, and seek other work. Many of those officers are now of an age, around my age or even younger, when they will find it difficult to obtain work because there are so many talented and bright 24 year olds and 25 year olds seeking administrative and clerical positions.

**The Hon. R. S. L. Jones:** What about severance pay?

**The Hon. VIRGINIA CHADWICK:** How would they live on that for the rest of their lives? They will



be entitled to long service leave and the  
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like, but there are no huge payouts. Even those in more senior positions in the department are affected. I know of one case in which a person was simply given three months pay.

**The Hon. R. S. L. Jones:** After how many years?

**The Hon. VIRGINIA CHADWICK:** I could not tell you, but my guess would be about ten years. She is still looking for a job six months later. It is the human dimension that concerns me first and foremost. Ideologically I am totally opposed to the rationale for the restructure of the Department of School Education. But, first, it is based on a fallacy. We have been told that the restructure will save \$17 million a year. Anyone who believes that has not even looked at the budget papers. Those papers show that no savings are anticipated this year and that \$6 million savings are anticipated next year. I am not making that up, it is in the budget papers. There is no \$17 million. If someone wanted to save \$17 million in the department, the department would not need to be restructured. This is a \$4 billion department, and \$17 million could be saved on postage stamps. There were ways in which money could have been saved in that department, if savings had to be made, without a total spill of the department. When I say a total spill, I jest not. Five computer discs have been floating around and available to staff containing every single job in the department, advertised, together with job description. There has been a total spill.

**The Hon. R. S. L. Jones:** How many jobs?

**The Hon. VIRGINIA CHADWICK:** About 22,000.

**The Hon. R. S. L. Jones:** Everyone?

**The Hon. VIRGINIA CHADWICK:** Not the teachers. It is all non-teaching staff.

**The Hon. R. S. L. Jones:** Every single one of them?

**The Hon. VIRGINIA CHADWICK:** Yes. That indeed is upheaval - and to achieve what? It is not to achieve a saving of \$17 million, as we were told, because the budget papers show that is not what will be saved. It will achieve total recentralising of the Department of School Education. That is an absolute ideological and philosophical disgrace. I personally, and the coalition certainly, believe in school-centred education. We believe in empowering school communities and trying to take support services to the schools, which we did through clusters, cluster directors and the like. We tried to have support services and advice as close to schools as possible. I would be willing to accept criticism that I or we could have done it better. I do not suggest that everything one tries to do in a large organisation such as the Department of School Education is perfect or not open to improvement. But I argue and truly believe that the general philosophy of decentralising the department and empowering school communities was correct. It is a disgrace that recentralising of the department should occur. It was not mooted before the election. The Minister himself did not realise exactly the pup he was being sold.

**The Hon. R. S. L. Jones:** By whom?

**The Hon. VIRGINIA CHADWICK:** By the bureaucrats. A senior bureaucrat prefers centralisation to decentralisation.

**The Hon. R. S. L. Jones:** Were the schools consulted?

**The Hon. VIRGINIA CHADWICK:** Of course the schools were never consulted. They will never be consulted again; they will be told. When I first became Minister for School Education, one of the more bizarre examples of centralisation I found was that if a principal wanted a teacher to take students on an



overnight excursion, for example to bring them in for dinner in Parliament House and then keep them out overnight, he needed the permission of the Director-General of School Education - and there are 2,500 schools in New South Wales. I joke not when I say that the Government does not understand how the old centralist culture of the Department of School Education operates. During the seven years of its term of office, the coalition did its best to break that culture, and I make no apologies for that.

One of the most tragic things that has happened in the last six months or so is the recentralisation of that department and the return of the old culture. It is a telling point that even the other large centralised educational bureaucracy in the world, namely Russia, has now decentralised its education system. There has also been a total break-up in the autonomy of the Union of Soviet Socialist Republics. It is a total disgrace that New South Wales will lead the world in recentralising education. I am astonished that so few people have spoken out against the philosophy of the restructure. I would give anything if my fears were groundless. Sadly, they are not. The jobs of cluster directors, who used to be in charge of between 16 and 20 schools, do not exist any more. Clusters and regions will no longer exist. There will be 40 districts and the superintendents of each district, who each have about 65 schools to supervise, are into control and audit, not support and advice.

**The Hon. Jennifer Gardiner:** It is interesting that the health system is decentralised.

**The Hon. VIRGINIA CHADWICK:** It is interesting to compare what the Minister is doing with education with what is occurring in TAFE. Poor old TAFE is in a total shambles. At least those in the Department of School Education have been told what is happening. Employees of TAFE are still trying to figure out what to do next. One thing that is clear is that it will decentralise and all the colleges will be competing against each other.

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One of the ideological ironies of 1995 is that under the new Labor Government TAFE colleges will be tendering not only against private community colleges but against one another. The great TAFE system that has served New South Wales so well for so many years will be no more.

Apart from my total disagreement with the ideological basis of this move, in equity terms it will be a tragedy for the disadvantaged of New South Wales. I refer to those who have relied on TAFE for a second chance at education, such as those from non-English speaking backgrounds, rural women, single mothers in urban areas and Aborigines. If the mighty dollar, the lowest tender, commercial rates and bidding are to be the order of the day, what will happen to TAFE as the great area of equity and second chance? It is important to note that in TAFE in New South Wales today - and I hope it might also be true next year, but I fear it may not be - more Aborigines are receiving education and training than in all other institutions in the rest of Australia combined.

The opportunities provided by TAFE are real. Only a wilful government would tamper with them, particularly when it has no idea of what it will do to replace it. It is no wonder the Minister for Education and Training is the first Minister to face industrial action and to be the subject of a work ban. He should have taken the warning; he surely took no joy from that industrial action. The Opposition needs to look at programs next year when considering the curriculum issues that are currently under review. That is a great ministerial intrusion, and an intrusion by the Premier into the operation of the independent Board of Studies.

If previous Ministers for education had been so intrusive they would have been condemned by those opposite. But there is now dangerous knee-jerk interference by the Premier into a number of education programs, and a media response by the Minister. The Premier would love to see himself as the education Premier. I can assure members opposite that the Opposition will follow the curriculum review with immense interest. Despite the fact that both the Minister and the Premier allegedly outlawed the new kindergarten to year 6 English syllabus, I am heartened that it is still being taught in New South Wales schools, as are all the syllabuses introduced by the coalition Government.



I turn to an act of insensitivity and educational vandalism by the Government. I refer to the way the Government handled media comments relating to the higher school certificate. First, it is disgraceful that the Premier of the State and the Minister for Education and Training bagged certain subjects, schools, areas of Sydney and areas of socioeconomic disadvantage when students were studying for their contemporary English course and were on the eve of sitting for their HSC exams. How would honourable members feel if they were young people sitting for the HSC in Sydney's south-west, and were told that the Minister had said - and it had been reported in the media - that the courses they were studying were a total waste of time and their tertiary entrance rank would not get them into university in any event? They would feel terrific, and their parents would think it had been a worthwhile exercise to encourage them to stay at school rather than be like their mates, leave school and go on the dole!

It is also worth noting that the information that caused that furore, as the *Sydney Morning Herald* said so often, was information it had been attempting to obtain from me and the previous Government over a long period of time. When one follows the media outcry and baying, and the insensitivity of the reporting, the Opposition and I were justified in fearing that that would happen, and we believe we were justified in not releasing that information in the past. The Government said it had no choice. I say the coalition held on to that information for a long time for obvious reasons. I hope that in any further comments about the HSC and how students perform, the Minister might be a little better informed. Perhaps he should read the report of the early results of the PSDP project.

For some time we have been trying to track students who have completed the higher school certificate to find out who did well, where they went and what their post-school destinations have been. The fascinating discovery so far, in what I hope will be a continuing longitudinal study, is not so much whether students are sitting in Sydney's south-west, or whether a student studied contemporary English, English 3, mathematics 4 or whatever. What has come out is a strong correlation of information that shows that the characteristics of students, student households and their local communities are vital. That information should guide policy formulation in the future.

For example, the report showed that the level of education of parents and the local community is the most powerful indicator of unsuccessful outcomes and of students who are at risk of leaving school. Families and communities with low levels of education have tended to reproduce across generations, as my colleague the Hon. Dr Marlene Goldsmith said. The most important factor was the level of education of the mother. Economic factors were relevant but they were not as important as sociocultural factors. An especially susceptible group was male students from poor English-speaking families, in which the father had a level of education lower than higher school certificate. Poverty was associated with students leaving school, but largely poor households tend to be characterised by low education.

The low level of education of parents rather than the parents being poor appears to be the important factor. Poverty is a factor in its own right, although perhaps it is not nearly as important as its treatment shows. Essentially the culture of education is important. I commend both this report and others like it to the Minister and the Premier.

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It may assist them in the future to be more thoughtful and more accurate in their comments about education. Perhaps then they may not vandalise the students and teachers of New South Wales.

**Debate adjourned on motion by the Hon. R. T. M. Bull.**

## **BILLS RETURNED**

The following bills were returned from the Legislative Assembly without amendment:

Children (Care and Protection) Amendment Bill  
Births, Deaths and Marriages Registration Bill



Forfeiture Bill  
Motor Accidents Amendment Bill  
Dormant Funds Amendment Bill  
Adoption Information Amendment Bill

## **FORESTS AND RESERVES REVOCATION BILL**

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

**Suspension of standing orders agreed to.**

## **SPECIAL ADJOURNMENT**

**Motion by the Hon. M. R. Egan agreed to:**

That this House at its rising today do adjourn until Monday 11 December 1995 at 11.00 a.m.

## **ADJOURNMENT**

**The Hon. M. R. EGAN** (Treasurer, Minister for Energy, Minister for State Development, Minister Assisting the Premier, and Vice-President of the Executive Council) [11.56]: I move:

That this House do now adjourn.

## **ADOPTION INFORMATION PRIVACY**

**The Hon. Dr MARLENE GOLDSMITH** [11.56]: In the past few days I have received some disturbing correspondence from the Adoption Privacy Protection Group on the Adoption Information Amendment Bill. The correspondence contained information that I did not have previously. In a letter dated 4 December the President of the Adoption Privacy Protection Group, Rod Garrett, stated:

Adoption Privacy Protection Group circulated a number of New South Wales case histories to both Houses of Parliament last year between 12th August, 1994 and 21st November, 1994. In view of the recorded Hansard comments by a number of Upper House Members that they were not aware of any problems, A.P.P.G. encloses three new case histories to refresh memories of problems occurring with respect to this Act.

Although A.P.P.G. asked Minister Dyer's office, in writing, for information on the amendments to the Act on three occasions, the most recent being 27th October, 1995, we did not receive a copy. A.P.P.G. did however receive a copy of the Act from another source only recently, namely late afternoon of 21st November, 1995. Unfortunately not enough time to evaluate the Bill and contact Upper House Members prior to the Bill's passage through the Upper House.

The majority of the Act is well intentioned and supported by A.P.P.G. However there are additional privacy concerns and the single greatest problem with the Act of allowing people to make contact by themselves was not addressed.

A.P.P.G. has received 5,000 telephone calls over five years from people with a range of problems from simple concerns through to trauma triggering health problems.

Mr Garrett enclosed a number of case histories. Because of time constraints I shall read only one of the



case histories, which was enclosed in a letter to Mr Garrett dated 5 December 1995. The letter stated:

As you are aware, I am adopted and my adoptive mother, Joan Barnett, died in June 1992 as a direct result of ongoing contact from the Post Adoption Resource Centre. Prior to contact my Mother was fit, independent, running her own home, driving her car, working part-time, active mother and grandmother. After prolonged and insensitive contact - being constantly told she must tell her 42 year old son and 40 year daughter we were adopted - she died.

You hold letters from her G.P, Specialist and Psychiatrist which state that "I have no doubt that the laws and the manner in which she was contacted led to her severe depression and subsequent physical and mental breakdown".

My Mother deserves to be enjoying the fruits of raising a fine family. Instead her reward for providing a loving, stable and hardworking home for two unwanted babies was to be pushed to her premature death.

I am concerned about that and other cases in which allegations have been made of ongoing harassment by birth parents of adoptive families against their will. I have no evidence that these matters have been brought before the courts. It appears that in many cases families are not willing to go down the route of court hearings, particularly when they are advised by chamber magistrates, as apparently happened in one case, that there is nothing that they can do to stop the harassment, and that appearing in court to take out a court order will cost them a great deal of time, money and embarrassment. People are also told that court orders could not be enforced. If that is the case, I ask the Attorney General and the Minister for Community Services to examine the whole sphere of court orders. I am a strong supporter of the legislation. However, such anomalies need to be looked at carefully and addressed. There still appears to be a problem with the legislation, and it should be addressed.

**House adjourned at 12.01 a.m., Friday, until Monday, 11 December 1995 at 11.00 a.m.**

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